

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

THE CATALYST CAPITAL GROUP INC. AND CALLIDUS CAPITAL
CORPORATION

PLAINTIFFS

AND

WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC., C.O.B.,
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,
MOEZ KASSAM, ADAM SPEARS, SUNNY PURI, CLARITYSPRING INC.,
NATHAN ANDERSON, BRUCE LANGSTAFF, ROB COPELAND, KEVIN
BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT, RICHARD MOLYNEUX,
GERALD DUHAMEL, ANDREW LEVY, GEORGE WESLEY VOORHEISS, BRUCE
LIVESEY, CANNACCORD GENUITY CORP. AND JOHN DOES #6-10

DEFENDANTS

STATEMENT OF DEFENCE
OF BRUCE LIVESEY

1. The defendant, Bruce Livesey (the “Defendant”), denies each and every one of the allegations made in the Fresh as Amended Statement of Claim (the “Claim”) that pertain to him, unless expressly admitted herein.
2. In particular, the Defendant denies the allegations contained in paragraphs 63, 64, 65, 66, 86, 105, 133, 134, 135, 136, 139 and 177 of the Claim. The Defendant further denies the allegations contained in paragraphs 39, 57, 83, 87, 88, 90, 105, 107, 108, 109,

110, 111, 115, 116, 117, 118, 119, 121, 123, 124, 125, 127, 128, 129, 130, 131, 132, 138, 140, 142, 143, 144, 145, 147, 148, 149, 152, 156, 157, 158, 159, 161, 163, 165, 166, 170, 173, 174, 175, 179, 181, 182, 184, 185, 186, 187, 188, 189, 193, 194, 196, 197 and 198, insofar as such allegations pertain to him. Insofar as such allegations pertain to other defendants, the Defendant has no knowledge as to whether such allegations are true or false.

3. At paragraph 177 of the Claim, the Plaintiffs refer to four press reports relating to the Plaintiffs, the first two of which were entitled “A private equity star’s picks shine...” and the second of which was entitled “Callidus shares tumble after Reuters report on Catalyst valuations.” The Plaintiffs falsely allege that the Defendant ‘made efforts’ to have these articles published in the media. In fact, however, the Defendant did not author either such article and had no involvement whatsoever in their writing or publication.

4. The Defendant has no knowledge of, and was not involved in, any part of a conspiracy, as alleged or otherwise.

5. To the extent the Defendant communicated with the other defendants, such contact was highly limited and had no relation to the conspiracy alleged in the Claim.

6. The Defendant has no knowledge of the extent to which the other defendants communicated and/or agreed to coordinate with respect to the actions alleged in the Claim.

7. The Defendant was unaware of, and did not participate in, the alleged short-selling conspiracy.

8. The Defendant denies providing any support, financial or otherwise, to any individual or entity in connection with the alleged conspiracy as pleaded in the Claim.

9. The Defendant expressly denies that the Plaintiffs are entitled to the relief claimed against him in paragraph 1 of the Claim and puts the Plaintiffs to the strict proof thereof.

10. The Defendant admits the allegation contained in paragraph 24 of the Claim.

The Defendant

11. The Defendant resides in Toronto and is a journalist and author of numerous articles on business-related subjects that have been published in prominent Canadian publications. He is also an award-winning writer, director and producer of TV and radio documentaries on business and financial topics. He is author of the 2012 best-selling book on financial fraud in Canada's capital markets, *Thieves of Bay Street: How Banks, Brokerages and the Wealthy Steal Billions from Canadians*, published by Random House Canada (now called Penguin Random House Canada).

12. The Defendant has more than 35 years of experience as a journalist. His writings have appeared in major newspapers and magazines, including *The Globe and Mail*, *Report on Business Magazine*, *The Guardian*, *National Post*, *Toronto Star*, *Christian Science Monitor*, *The Gazette*, *The Walrus*, *Canadian Business*, *Canadian Lawyer*, *Buzzfeed* and *The Financial Post*, among many others. For *Canadian Lawyer* alone, the Defendant has written more than a dozen cover stories.

13. The Defendant also has extensive experience working in television. He spent six years as an associate producer at CBC TV's "The Fifth Estate" and then as a producer working for the investigative unit of "The National" and "CBC News Sunday". He has also worked outside Canada on a co-production of PBS's "Frontline" and the *New York Times* and directed documentaries for Discovery Channel, The Real News Network and Al Gore's Current TV.

14. From 2012 to 2015, the Defendant produced investigative items for the Global TV newsmagazine "16x9". As well, the Defendant collaborated with National Public Radio (NPR) and CBC-Radio on an investigative radio exposé about the collusion of Mexico's army with drug cartels. He produces items for CBC Radio's program "Ideas".

15. In 2016, the Defendant wrote and directed a documentary on the Koch brothers that was narrated by Oscar winning actress and screenwriter Emma Thompson (and updated in 2017, narrated by Danny Glover).

16. The Defendant is a co-winner of a Dupont Award, one of the most prestigious U.S. television awards, winner of a Canadian Association of Journalism (CAJ) award (and nominated for one other CAJ award), and been nominated for two Geminis and 11 National Magazine Awards, winning in 2008 and in 2013, and nominated for a Society of Business Editors and Writers Canada award in 2015 and 2017.

17. The Defendant was also the winner of a Radio Television Digital News Association (RTDNA) award in 2010. In addition, a documentary he co-produced for the OMNI television network won the Canadian Ethnic Media Award for best TV story in 2012.

18. The Defendant was part of the *National Observer* team that won four awards at the Canadian Online Publishing Awards (COPA) in 2016, including for best news coverage. In 2019, he won a New York Festivals radio award for a CBC Radio documentary he produced.

19. In 2017, the Defendant won a National Newspaper Award for a series of stories on the Irving family for the *National Observer*.

20. In 2013, the Defendant's book, *Thieves of Bay Street*, was nominated for an Arthur Ellis Award for best non-fiction crime book.

21. The Defendant has a longstanding relationship with the Globe and Mail's *Report On Business Magazine*, which he first wrote for in 1988. He has written a number of cover stories for the magazine, and been nominated and won awards for his articles in that publication.

The Defendant's Articles About the Plaintiffs

22. The plaintiff, Catalyst Capital Group Inc. ("Catalyst"), is a Toronto-based private equity firm which has a distressed debt-lending subsidiary, Callidus Capital Corp. ("Callidus"). These two firms are the brainchild of Toronto businessman and attorney, Newton Glassman ("Glassman").

23. On April 11 and November 27, 2018, two articles co-authored by the Defendant about problems at Callidus and Catalyst were published by the Southern Investigative Reporting Foundation (SIRF), an American news website that investigates malfeasance in the financial world. The Defendant's co-author was Roddy Boyd, founder and publisher of SIRF and one of America's most experienced investigative reporters on matters of unethical behaviour in the capital markets. Those articles were entitled "Newton Glassman's Legacy of Ashes" and "Newton Glassman and Other People's Money."

24. As described more particularly below, Glassman, Catalyst and Callidus and their other executives declined requests to be interviewed for those articles, despite repeated attempts, or to answer lengthy lists of questions submitted to them prior to publication.

25. In the spring of 2016, the Defendant was working full-time as chief investigative reporter for the *National Observer*, an on-line newspaper based in Vancouver, B.C., that focuses mainly on environmental issues. The Defendant worked for the newspaper from his home in Toronto.

26. On May 25, 2016, Joe Castaldo, Managing Editor for features at *Canadian Business* magazine, emailed the Defendant, introducing himself to the Defendant "in hopes that we might be able to work together at some point." Mr. Castaldo indicated he wanted stronger stories in the magazine, and said "if you have any ideas that might be a fit for *Canadian Business*, please let me know."

27. The Defendant knew of Mr. Castaldo through reputation but had never met or spoken to him before. On information and belief, Mr. Castaldo reached out to the Defendant on his own volition due to the Defendant's reputation as an investigative journalist on business matters.

28. The Defendant spoke with Mr. Castaldo soon afterwards and thanked him for the overture, but explained his duties at the *National Observer* precluded him from working for *Canadian Business* at that time.

29. Matters changed at the end of July 2016, however, when the publisher of the *National Observer* abruptly informed the staff that the newspaper had run out of money and was laying off most of its employees, including the Defendant. Now needing work, on July 27, 2016, the Defendant wrote to Mr. Castaldo and suggested they meet to discuss some story ideas he wanted to pitch to *Canadian Business*.

30. The Defendant also reached out for work to the Globe and Mail's *Report On Business Magazine*, which promptly assigned him a feature on the demise of steelmaker Stelco, as well as to *Buzzfeed*, which assigned him a story on police brutality, while he continued to work on a documentary he was directing for the Baltimore, MD-based *The Real News Network*.

31. On August 5, 2016, the Defendant and Mr. Castaldo met near the head office of Rogers Media, Inc. ("Rogers"), which owned *Canadian Business* magazine.

32. At that meeting, the Defendant presented Mr. Castaldo with four proposed story ideas for the magazine.

33. Like most freelance writers who submit more than one idea to a periodical, the Defendant listed his story ideas by preference. The first idea the Defendant listed was a story on whether Brookfield Asset Management had swindled investors out of a mine in Alberta.

34. The second idea was entitled "Greg Boland – Bay Street's Don Quixote" which suggested a profile of the hedge fund manager Greg Boland, in particular because of his battle with Glassman. The story pitch did not suggest Glassman, Catalyst or Callidus was running a fraudulent operation.

35. The Defendant had never met, interviewed or communicated with Mr. Boland in any capacity prior to that point. To his knowledge, the only time the Defendant had ever written about a company associated with Mr. Boland was in his 2012 book *Thieves of Bay Street*, in which the Defendant mentioned in passing the role of Sunrise Partners LP, a company with which Mr. Boland was involved, in the demise of Stelco. Sunrise was not

portrayed favourably in that account and was indirectly referred to as a “vulture” for its role in helping deindustrialize Canada’s economy.

36. At the August 5, 2016 meeting with Mr. Castaldo, the *Canadian Business* editor became excited over the Boland-Glassman story idea as he too had heard of the feud between the two financiers. By then, Glassman had suggested a public debate between himself and Mr. Boland to discuss Callidus – a throwing down of the gauntlet that was much discussed on Bay Street (the debate never occurred).

37. In August 2016, shortly after his meeting with Mr. Castaldo, *Canadian Business* assigned the Defendant a feature story about Mr. Boland, which would have as its central focus his feud with Glassman. The Defendant reached out to both Mr. Boland and Glassman to ask for their participation. The Defendant dealt directly with Mr. Boland himself, and in the case of Glassman, through his hired public relations consultant, Dan Gagnier.

38. On September 6, 2016, the Defendant met Mr. Boland at the offices of West Face Capital Inc., located at 2 Bloor St. East, on the 30th floor, to discuss participating in the article for *Canadian Business* magazine. This was the first time the Defendant and Boland had ever met one another. However, Mr. Boland was wary of participating, both due to the ongoing litigation he was facing from Catalyst over various disputes (which included a defamation lawsuit) and because he had been warned by unnamed persons about speaking with the Defendant. After a lengthy discussion, it was decided to proceed with an interview with certain provisos attached, namely over quotes used in the story.

39. Meanwhile, Glassman refused to commit to meeting the Defendant or to be interviewed by him.

40. The Defendant researched his story, interviewing a wide range of people, including borrowers from Callidus and those engaged in disputes with the company. He also interviewed some of Mr. Boland’s business acquaintances. The Defendant requested a list of similar acquaintances of Glassman from Dan Gagnier, who failed to provide them. The Defendant also examined court documents and testimony related to the Wind

legal dispute. The Defendant did what he and other journalists generally do when researching a magazine feature – speak to as many knowledgeable people as possible about the various players and disputes.

41. On September 29, 2016, the Defendant delivered his first draft of the Boland story to Mr. Castaldo.

42. On the following day (September 30, 2016), Rogers announced sweeping cuts and changes to its magazine division: one of those changes would be ending *Canadian Business* as a printed magazine, and turning it into an on-line publication as of the beginning of 2017. This announcement had a direct impact on the fate of the Boland story.

43. Mr. Castaldo indicated to the Defendant that he and the other editors would try to get the Boland story into one of the final print issues before the end of the year, when the magazine ceased publication. An experienced fact-checker, Catherine Dowling, who is the chief fact-checker for the Globe and Mail's *Report On Business Magazine*, was hired by *Canadian Business* to verify all of the facts in the Defendant's story, which she did. The story went through the usual editing process.

44. The Defendant also sent lists of questions to Catalyst via Dan Gagnier.

45. Through Mr. Castaldo, the Defendant learned that Glassman and his associates were attempting to have the article killed by complaining to senior managers at Rogers. There were also efforts by Glassman's people to influence James Cowan, the editor of *Canadian Business* (Mr. Castaldo's immediate superior).

46. By late November 2016, a new problem arose. The magazine's outside legal counsel, Julian Porter, refused to approve the article. This was not on the grounds the article was defamatory, or of any facts being in question, but because Mr. Porter wanted the magazine to hold off until the Court of Appeal for Ontario had ruled on an appeal that Catalyst had launched in the Wind litigation between West Face Capital and Catalyst.

47. In August 2016, Justice Frank Newbould dismissed Catalyst's lawsuit that had disputed the sale of Wind to a consortium led by West Face. Mr. Porter wanted the appeal of that case to be ruled on before he would approve the Defendant's story for publication. The Defendant and the editors of *Canadian Business* were astonished by Mr. Porter's decision.

48. Given that the appeal decision would not come down for many months, and the magazine was now going out of print and its future was unclear, the editors and the Defendant agreed it made the most sense that the Defendant take the article to another publication.

49. The Ontario Court of Appeal did not rule on Justice Newbould's decision until April 2018.

50. *Canadian Business* paid the Defendant \$5,000.00 for his work on the story.

51. On December 8, 2016, the Defendant spoke to Duncan Hood, editor of the *Globe and Mail's Report On Business Magazine*. The Defendant had worked with Mr. Hood on the aforementioned Stelco story. The Defendant explained to Mr. Hood what had happened with the Boland-Glassman story at *Canadian Business* and asked whether Mr. Hood would be interested in reading the article. Mr. Hood indicated his interest in the article, after which the Defendant sent to Mr. Hood the most recent draft of the article.

52. Mr. Hood read the draft article and immediately forwarded it to his superior, Derek DeCloet, editor of the *Globe and Mail's* business section. They both agreed that the article should be published in the *Report On Business Magazine*. Subsequently, the Defendant met Mr. DeCloet and Mr. Hood at the *Globe and Mail's* offices to discuss the article.

53. Mr. Hood wanted to make some minor changes to the article. It was further agreed that there would be another effort to see if Glassman would agree to do an interview for the article. Mr. DeCloet, who knew Dan Gagnier in another capacity, agreed to play a role in encouraging Glassman to participate.

54. Mr. Hood edited the article and the Defendant worked on new revisions of the piece according to Mr. Hood's suggestions. The article was fact-checked a second time, this time by staff at the *Report On Business Magazine*.

55. Meanwhile, the *Canadian Business* version of the article had been sent to the Globe and Mail's outside defamation counsel, Peter Jacobsen, a partner at Bersenas Jacobsen Chouest Thomson Blackburn LLP, a Toronto litigation firm, for his evaluation. Mr. Jacobsen is the Globe and Mail's long time libel lawyer and is highly-regarded in his field.

56. Mr. Jacobsen was informed that Julian Porter had refused to greenlight the article until the Court of Appeal had ruled on Justice Newbould's decision. Mr. Jacobsen disagreed, however, with Mr. Porter and approved the article for publication by the *Report On Business Magazine* prior to issuance of the Court of Appeal's ruling.

57. Mr. DeCloet began talking to Dan Gagnier, seeking an interview with Glassman. Through Gagnier, Glassman indicated he was willing to entertain the notion. Ultimately, however, Glassman refused to give a definite time and date for an interview.

58. Months passed as Glassman dallied with the Globe and Mail. Finally, it was decided to give Glassman a date by which to offer himself for an interview and that, if that date came and went without Glassman agreeing to meet with the Defendant, the magazine would proceed with publication.

59. Glassman missed the deadline. As a result, it was decided to run the article in the July/August issue of the magazine, which would arrive on the stands the final Friday of June 2017. The article was edited, fact-checked and its design and layout finalized.

60. On June 7, 2017, however, Duncan Hood sent the Defendant an email informing him that "you're not going to believe this, but Derek [DeCloet] has asked us to hold the story until next issue. He says Dan Gagnier has promised us an interview with Glassman next week — just after we've gone to press. Derek wants to hold the piece partly for legal reasons and partly because he thinks it will be a lot better with Glassman's comments in there. I don't know what to say. I think it's a stalling tactic and they won't produce

Glassman, and I told Derek as much. He agrees it might be, but doesn't want to take the chance. We weren't really prepared for this — I don't have a backup feature — so we've had to cut pages out of the magazine in response.”

61. On July 25, 2017, Mr. DeCloet and the Defendant met to discuss what to do about the story. They agreed that it would run in the *Report On Business* section of the newspaper so as not to be affected by the long lead time that was an issue with the magazine. As of that date, Glassman had not yet made himself available for an interview.

62. In August 2017, Catalyst requested a meeting with Mr. DeCloet. At a meeting at Catalyst's offices in downtown Toronto, Mr. DeCloet was shown a transcript of a deposition given by Andrew Levy, one of the principals of Esco Marine, a Texas-based ship dismantling company that had borrowed money from Callidus. Mr. Levy had signed a personal guarantee for the loan. When Callidus drove Esco into insolvency, Mr. Levy was now liable for the guarantee.

63. Glassman's lawyers offered to Mr. Levy a deal: in return for him disclosing everyone to whom he had spoken about Callidus and Glassman, they would cease legal proceedings against him seeking the money he owed Callidus under the guarantee. Mr. Levy told Catalyst's lawyers he had spoken to the Defendant prior to 2017 and thought the Defendant may be working on behalf of West Face Capital, which was false.

64. The Defendant had spoken to Mr. Levy while conducting research on Callidus to discuss what happened after Callidus lent money to Esco. The Defendant never told Mr. Levy, however, that he was working on behalf of West Face.

65. In September 2017, Mr. DeCloet and the Defendant spoke about the Levy deposition. In that discussion, the Defendant confirmed to Mr. DeCloet that the Defendant had never worked for West Face Capital in any capacity. Subsequently, Mr. Levy denied telling Catalyst that West Face employed the Defendant.

66. However, for reasons never disclosed to the Defendant, the Globe and Mail decided against publication of the Defendant's article on Boland-Glassman.

67. By the late fall of 2017, after learning of the Globe and Mail's decision, the Defendant reached out to other media outlets to find a new home for the article.

68. In December 2017, the Defendant contacted Roddy Boyd, the publisher of SIRF, and asked Mr. Boyd if he had interest in an article about Glassman, Catalyst and Callidus. Mr. Boyd expressed an interest.

69. By then, the Defendant had concluded that he had seen sufficient evidence that Glassman was defrauding his investors and that the story needed to be broadened to examine Glassman's wrongful actions.

70. The broadened article, co-written with Boyd, was published by SIRF on April 11, 2018.

71. A follow-up piece (together with the Defendant's article of April 11, 2018, the "Articles") was published on November 27, 2018.

72. The Defendant has not written about these subjects since publication by SIRF of the April 11, 2018 article, nor has he attempted to do so.

Failure to Plead the Alleged Defamatory Words and Their Meanings

73. The Plaintiffs have not specified the words in the Articles or in any other writings or statements of the Defendant that are alleged to be defamatory, nor have the Plaintiffs specified the meanings of such words.

74. Therefore, the Claim contains no words or meanings to which the Defendant is required to respond and, accordingly, this action should be dismissed as against the Defendant.

Justification and Fair Comment

75. The Defendant states and the fact is that the Articles were true or, in the alternative, substantially true.

76. In the further alternative, to the extent that either Article contained one or more false statements, which is not admitted but is expressly denied, any such statements were expressions of opinion made honestly and in good faith in relation to matters of public interest.

Failure to Provide Notice

77. The Defendant states and the fact is that the Plaintiffs were aware of the Articles, even before they were published, and certainly became aware of the Articles promptly following their publication, and yet the Plaintiffs failed to comply with section 5(1) of the *Libel and Slander Act*, R.S.O. 1990, c. L. 12., which states that no action for libel in a broadcast lies unless the Plaintiff has, within six weeks after the alleged libel has come to the Plaintiff's knowledge, given the Defendant notice in writing, specifying the matter complained of, which shall be served in the same manner as a Statement of Claim or by delivering it to a grown-up person at the chief office of the Defendant.

78. Furthermore, in contravention of section 6 of the *Libel and Slander Act*, the Plaintiffs failed to commence an action within three months from the time that the alleged defamatory material came to their knowledge.

79. The Defendant therefore pleads that the within action as it relates to the Articles is statute-barred.

Strategic Lawsuit Against Public Participation

80. At all times, the Defendant has acted in good faith with respect to his reporting on the Plaintiffs, and has reasonably believed that such reporting, which concerns matters of public interest, are true and accurate.

81. The Plaintiffs' allegations against the Defendant in this proceeding are frivolous and are designed to punish the Defendant for exposing the Plaintiffs' unethical business practices, to silence the Defendant and to deter the Defendant and other journalists from writing reports that are critical of the Plaintiffs.

82. The Defendant submits that this action should be dismissed pursuant to section 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. The stated purpose of section 137.1 is, among other things, to promote broad participation in debates on matters of public interest and to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action.

83. Accordingly, the Defendant respectfully requests that this action be dismissed with costs on a full indemnity basis.

Dated: September 30, 2019

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Plaintiffs

Defendants

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF DEFENCE

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