

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**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,
GEORGE WESLEY VOORHEIS, BRUCE LIVESEY AND JOHN DOES #4-10**

Defendants

**STATEMENT OF DEFENCE
OF THE DEFENDANT, GEORGE WESLEY VOORHEIS**

1. The Defendant, George Wesley Voorheis (“**Voorheis**”) admits the allegations contained in paragraphs 6 and 23 of the Statement of Claim.
2. Except as expressly admitted herein, Voorheis denies each and every other allegation contained in the Statement of Claim.

The Parties

3. The Defendant, George Wesley Voorheis, is a lawyer and businessman, who is resident in Toronto, Ontario.
4. The Plaintiff, Callidus Capital Corporation (“**Callidus**”), is a publicly-traded company with headquarters in Toronto, Ontario. Callidus is an asset-based lender, focussed primarily on

Canadian and American companies that are unable to obtain adequate financing from traditional lenders.

5. The Plaintiff, the Catalyst Capital Group Inc. (“**Catalyst**”, and together with Callidus, the “**Plaintiffs**”), is a private equity investment management firm, with headquarters in Toronto, Ontario. Catalyst controls the business and affairs of Callidus through, among other things, its control over a majority interest in the common shares of Callidus owned through Catalyst’s investment fund subsidiaries.

The Allegations Against Voorheis Are Baseless And Without Merit

6. The allegations made against Voorheis in the Statement of Claim are baseless and entirely without merit.

7. Specifically, contrary to the allegations in the Statement of Claim:

- (a) Voorheis did not conspire with the other Defendants, or anyone, either to injure the Plaintiffs as alleged, or at all;
- (b) Voorheis did not engage in a “short attack” or a “short and distort” campaign against the Plaintiffs, either on August 9, 2017, or at all;
- (c) Voorheis did not assist, encourage, approve, or otherwise participate in preparing any whistleblower complaints regarding Callidus or Catalyst to the Ontario Securities Commission (the “**OSC**”) or the United States Securities and Exchange Commission (the “**SEC**”), either in association with the other Defendants, or at all;
- (d) Voorheis did not assist, encourage, approve, or otherwise participate in contacting the Toronto Police Services regarding Callidus or Catalyst, either in association with the other Defendants, or at all; and
- (e) Voorheis did not assist, encourage, approve, or otherwise participate in the dissemination of any false information regarding Callidus or Catalyst, either in association with the other Defendants, or at all, including, but not limited to, the

publication of an article in the Wall Street Journal regarding Callidus and Catalyst on August 9, 2017.

Voorheis did not participate in any conspiracy

8. Voorheis did not participate in any conspiracy intended to injure or harm either Callidus or Catalyst, either in association with the other Defendants, or at all. Contrary to paragraph 30 of the Statement of Claim, Voorheis did not:

- (a) Maliciously and intentionally, or otherwise, enter into an agreement to injure the Plaintiffs, or act in concert with the other Defendants with the predominant purpose to injure the Plaintiffs;
- (b) Use unlawful means, including, but not limited to, acting in a manner that amounted to defamation, injurious falsehood, unjust enrichment, or breaches of subsections 126.1 or 126.2 of the *Securities Act*, R.S.O. 1990, c. S.5, for the purpose of causing harm or injury to the Plaintiffs;
- (c) Cause the stock price of Callidus to drop; or
- (d) Cause damages to the Plaintiffs.

9. Voorheis denies that he entered into an agreement with the other Defendants to cause harm to the Plaintiffs. Specifically, contrary to paragraph 87-90 of the Statement of Claim, Voorheis denies that he ever agreed with the other Defendants, either by December 2016 or ever, to do any of the following:

- (a) Spread false information regarding the Plaintiffs through the Bay Street rumour mill;
- (b) Assist, encourage, or in any way participate in the filing of false whistleblower complaints to the OSC and/or the SEC regarding the Plaintiffs;

- (c) Assist, encourage, or in any way participate in the public dissemination of the existence of and allegations contained in any whistleblower complaints to the OSC and/or the SEC regarding the Plaintiffs; and
- (d) Assist, encourage, or in any way participate in the publication of a false and defamatory media report regarding the Plaintiffs in order to profit off of the decline in Callidus' share price.

Moreover, contrary to paragraph 92 of the Statement of Claim, Voorheis specifically denies having ever participated in a conspiracy as alleged in the Statement of Claim, either in order to harm the Plaintiffs, or at all.

10. Voorheis has never met or spoken with any of the Anson Defendants (as that term is defined in the Statement of Claim), or any of Rob Copeland, Gerald Duhamel, or Richard Molyneaux, let alone entered into an agreement with any of them. Moreover, Voorheis has never discussed the Plaintiffs or their businesses at any time with either West Face Capital Inc. (“**West Face**”) or Gregory Boland.

11. In particular, contrary to paragraphs 67-75 and 77 of the Statement of Claim, Voorheis was not contacted by Mr. Boland or West Face for the purpose of inducing Voorheis to conspire to harm the Plaintiffs. Nor was Voorheis ever introduced by Mr. Boland to Darryl Levitt, Jeffrey McFarlane, Richard Molyneaux, Kevin Baumann, Gerald Duhamel, Richard Jaross, or Andrew Levy, nor did he maintain close communication with them regarding Callidus or Catalyst. Moreover, contrary to paragraph 76 of the Statement of Claim, Voorheis has never met or spoken with Mr. Levy, including on September 27, 2016 or any time thereafter. Similarly, contrary to paragraphs 78-80 of the Statement of Claim, as stated above, Voorheis has never met or spoken with the Anson Defendants, including in relation to encouraging the Anson Defendants to engage in a “short attack” on the Plaintiffs or for the purpose of inducing the Anson Defendants to participate in the conspiracy.

12. While Voorheis has discussed Callidus and Catalyst with Mr. McFarlane, Mr. Levitt, Mr. Baumann, Bruce Langstaff, and Bruce Livesey, these discussions are restricted to privileged communications that occurred in the context of ongoing or potential litigation.

Further, contrary to paragraph 99 of the Statement of Claim, Voorheis had no knowledge of or involvement in Mr. Levitt purportedly contacting Cameron Watson at the OSC.

13. Moreover, contrary to paragraphs 81-82 of the Statement of Claim, Voorheis did not make contact with the Defendants, Nathan Anderson and Clarityspring Inc. to induce them to participate in a conspiracy to injure the Plaintiffs. While Voorheis did discuss the Plaintiffs with Mr. Anderson, this discussion took place after Mr. Anderson filed a complaint with the OSC or SEC, and Voorheis did not assist, encourage, or otherwise participate in the filing of said complaint.

14. Further, contrary to paragraph 118(a) of the Statement of Claim, Voorheis did not meet with Mr. McFarlane, Mr. Levitt and Mr. Anderson on December 20, 2016.

15. As set out above, Voorheis never conspired with the Defendants or otherwise to injure or cause harm to the Plaintiffs. These allegations are baseless and without merit.

Voorheis did not engage in a “short-attack” against the Plaintiffs

16. Voorheis denies ever engaging or in any way participating in a “short-attack” or a “short and distort” campaign against the Plaintiffs.

17. Voorheis has never personally taken a short position in relation to Callidus. While some of Voorheis’ businesses have, from time to time, taken short positions on Callidus, these short positions have all been the result of the due diligence and research performed by Voorheis’ businesses on Callidus, and not as a part of any conspiracy to injure or harm the Plaintiffs, either in association with the other Defendants, or at all.

18. Moreover, Voorheis’ businesses have never engaged in a “short-attack” or a “short and distort” campaign against Callidus: Voorheis’ businesses did not coordinate their short positions with any other investor, including any of the other Defendants, nor did Voorheis’ businesses ever attempt to benefit from their short positions by publicly disseminating false information regarding the Plaintiffs.

19. Further, contrary to paragraphs 157-175 of the Statement of Claim, Voorheis' businesses did not take or closeout a short position on Callidus on or around August 9, 2017, or, in fact, in the several weeks either before or after August 9, 2017.

Voorheis did not participate in making whistleblower complaints against the Plaintiffs

20. Voorheis denies any involvement in the making of whistleblower complaints regarding Callidus or Catalyst to the OSC and/or the SEC, as alleged in the Statement of Claim.

21. Voorheis was not aware of the existence of any OSC or SEC whistleblower complaints filed on or before August 9, 2017, or of any of the allegations contained therein. Moreover, Voorheis did not assist, encourage, approve, or otherwise participate in the making of false whistleblower complaints to the OSC and/or the SEC, either in conjunction with the other Defendants, or at all.

22. Specifically, contrary to paragraph 118 of the Statement of Claim, Voorheis was never "tasked with accomplishing" the filing of false complaints regarding the Plaintiffs to the SEC. Moreover, contrary to paragraphs 99-108 of the Statement of Claim, Voorheis had no knowledge of or involvement in Mr. Levitt meeting with OSC personnel.

23. Further, contrary to paragraphs 109-116, Voorheis did not assist, encourage, approve, or otherwise participate in providing false information to the OSC and/or the SEC for the purpose of furthering a conspiracy to injure the Plaintiffs, or at all.

24. Contrary to paragraph 121 of the Statement of Claim, Voorheis also did not attempt to elicit information from Craig Boyer in an attempt to make false allegations against the Plaintiffs, either in March of 2017, or at all.

Voorheis did not contact Toronto Police Services regarding the Plaintiffs

25. Voorheis denies any involvement in making false allegations to the Toronto Police Services regarding the Plaintiffs.

26. Voorheis was not aware that the Toronto Police Services, including Gail Regan and Diane Kennedy, had been contacted regarding the Plaintiffs' conduct, nor was he aware of the

contents of the allegations made against the Plaintiffs. Moreover, contrary to paragraph 128 of the Statement of Claim, Voorheis did not assist in, encourage, approve, or otherwise participate in the making of false allegations of criminal offences on the part of the Plaintiffs to the Toronto Police Services, either in conjunction with the other Defendants, or at all.

Voorheis did not conspire to publish false information in the Wall Street Journal article

27. Voorheis denies conspiring with the other Defendants to publish false information regarding the Plaintiffs in the Wall Street Journal on August 9, 2017, or at all.

28. Voorheis has never disseminated false information regarding Callidus or Catalyst to the public or to any journalist.

29. Further, Voorheis did not provide information to any person regarding ongoing OSC or SEC investigations into the Plaintiffs, or any whistleblower complaints made against them, as Voorheis was unaware of the existence of these investigations and complaints, as well as the allegations made therein. Specifically, contrary to paragraphs 145-156 of the Statement of Claim, Voorheis did not assist, encourage, approve, or otherwise participate in an effort to have Mr. Copeland publish an article in the Wall Street Journal regarding the Plaintiffs, either in conjunction with the other Defendants, or at all.

The Plaintiffs Have Suffered No Damages

30. The allegations against Voorheis contained in the Statement of Claim are baseless and false. Voorheis states and the fact is that he never participated in a conspiracy to injure the Plaintiffs, either with the other Defendants, or at all.

31. Voorheis denies liability for any damages claimed by the Plaintiffs.

32. In the alternative, if the Plaintiffs have suffered any damages (which is expressly denied), such damages are the result of the Plaintiffs' own conduct, and not the result of any acts or omissions on the part of Voorheis, either as alleged or otherwise.

33. If the Plaintiffs have suffered damages, those damages are remote and not recoverable in law.

34. Voorheis requests that this action against him be dismissed with costs on a substantial indemnity basis.

October 1, 2019

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

R. Paul Steep LS# 21869L
psteep@Mccarthy.Ca
Tel: 416-601-7998 / Fax: 416-868-0673
Daniel Goudge LS# 69632J
dgoudge@mccarthy.ca
Tel: 416-601-7598 / Fax: 416-868-0673

Lawyers for the Defendant,
George Wesley Voorheis

TO: **GOWLING WLG LLP**
1 First Canadian Place
100 King Street West
Suite 1600
Toronto ON M5X 1G5

John E. Callaghan
john.callaghan@gowlingwlg.com
Benjamin Ng
Benjamin.ng@gowlingwlg.com
Matthew Karabus
matthew.karabus@gowlingwlg.com

Tel: (416) 862-7525
Fax: (416) 862-7661

MOORE BARRISTERS
Suite 1600
393 University Avenue
Toronto ON M5G 1E6

David C. Moore
david@moorebarristers.com
Tel: (416) 581-1818 x222
Fax: (416) 581-1279

Lawyers for the Plaintiffs

AND TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**

155 Wellington Street West
37th Floor
Toronto ON M5V 3J7

Matthew Milne-Smith

mmilne-smith@dwpv.com

Tel: (416) 863-5595

Fax: (416) 863-0871

Andrew Carlson

acarlson@dwpv.com

Tel: (416) 367-7437

Fax: (416) 863-0871

Lawyers for the Defendants,
West Face Capital Inc. and Gregory Boland

AND TO: **TORYS LLP**

79 Wellington Street West
Suite 3000
Box 270, TD South Tower
Toronto ON M5K 1N2

Andrew E. Bernstein

abernstein@torys.com

Tel: (416) 865-7678

Fax: (416) 865-7380

Linda M. Plumpton

lplumpton@torys.com

Tel : (416) 865-8193

Fax: (416) 865-7380

Leora Jackson

ljackson@torys.com

Tel : (416) 865-0040

Fax: (416) 865-7380

Lawyers for the Defendants,
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, and Sunny Puri

AND TO: **LERNERS LLP**

130 Adelaide Street West
Suite 2400
Toronto ON M5H 3P5

Lucas E. Lung

llung@lernalers.ca

Tel: (416) 601-2673

Fax: (416) 867-2412

Rebecca Shoom

rshoom@lernalers.ca

Tel: (416) 601-2382

Fax: (416) 867-2412

Lawyers for the Defendants,
Clarityspring Inc. and Nathan Anderson

AND TO: **MILBURN & ASSOCIATES**

20 Toronto Street
Suite 860
Toronto ON M5C 2B8

Devin M. Jarcaig

djarcaig@millburnlaw.ca

Tel: (647) 728-8083

Fax: (647) 689-2983

Lawyers for the Defendant, Bruce Langstaff

AND TO: **ST. LAWRENCE BARRISTERS LLP**

144 King Street East
Toronto ON M5C 1G8

Phil Tunley

phil.tunley@stlbarristers.ca

Alexi Wood

alexi.wood@stlbarristers.ca

Jennifer Saville

jennifer.saville@stlbarristers.ca

Tel: (647) 245-8282

Fax: (647) 245-8285

Lawyers for the Defendant, Rob Copeland

AND TO: **HUNT PARTNERS LLP**
1404-21 Balmuto Street
Toronto ON M4Y 1W4

Andrew Burns
aburns@huntlegal.com

Melissa Brainis
mbrainis@huntlegal.com

Tel: (416) 350-2934
Fax: (416) 943-1484

SCOTT VENTURO RUDAKOFF LLP
1500, 222 3 Ave SW
Calgary AB T2P 0B4

Eugene J. Bodnar
gbodnar@svrlawyers.com

Tel: (403) 231-8209
Fax: (403) 265-4632

Breanne Campbell
b.campbell@svrlawyers.com

Tel: (403) 231-8215
Fax: (403) 265-4632

Lawyers for the Defendant, Kevin Baumann

AND TO: **JEFFREY MCFARLANE**
jmcfarlane@triathloncc.com
220 Dominion Drive
Suite B
Morrisville NC 27560
U.S.A.

Defendant

AND TO: **DARRYL LEVITT**
darryl@dlevittassociates.com
30 Speer Road
Suite 206
Oakville ON L6K 2E4

Tel: (416) 879-6965

Defendant

AND TO: **SOLOMON ROTHBART GOODMAN LLP**

18 King Street East
Suite 1600
Toronto ON M5C 1C4

Melvyn L. Solomon

msolomon@srglegal.com

Tel: (416) 947-1093 ext 333

Fax: (416) 947-0079

Nancy Tourgis

ntourgis@srglegal.com

Tel: (416) 947-1093 ext 342

Fax: (416) 947-0079

Lawyers for the Defendant, Richard Molyneux

AND TO: **BEN J. HAHN**

Barrister & Solicitor
Bloomsbury Law Chambers
31 Elm Street
Toronto ON M5G 1H1

bhahn@onlawadvice.com

Tel : (647) 660-7979

Fax: (647) 660-8008

Lawyers for the Defendant, Gerald Duhamel

AND TO: **A. DIMITRI LASCARIS LAW PROFESSIONAL CORPORATION**

360 Rue St. Jacques
Suite G101
Montreal, QC H2Y 1P5

A. Dimitri Lascaris

Tel: (514) 941-5991

Fax : (514) 941-5991

Email : alexander.lascaris@gmail.com

Lawyers for the Defendant, Bruce Livesey

AND TO: **ANDREW LEVY**

46 Baldwin Farms N.
Greenwich, CT 0631 USA

Defendant

THE CATALYST CAPITAL GROUP INC.
et al.
Plaintiffs

and

WEST FACE CAPITAL INC. et al.
Defendants

Court File No.: CV-17-587463-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

**STATEMENT OF DEFENCE AND
CROSSCLAIM OF THE DEFENDANT,
GEORGE WESLEY VOORHEIS**

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

R. Paul Steep

psteep@mccarthy.ca

Tel: 416-601-7998 / Fax: 416-868-0673

Daniel Goudge

dgoudge@mccarthy.ca

Tel: 416-601-7598 / Fax: 416-868-0673

Lawyers for the Defendant,
George Wesley Voorheis