

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Clerk's Stamp

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

**NOTICE OF MOTION**

The Defendant, Kevin Baumann, will make a Motion to a Judge presiding over the Commercial List on a date and time to be set by the Court at the court house, 330 University Avenue, 9<sup>th</sup> Floor, Toronto, Ontario, M5G 1R7.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard

[ ] in writing under sub rule 37.12.1 (1) because it is

[ ] in writing as an opposed motion under sub rule 37.12.1 (4);

[X] orally.

### **THE MOTION IS FOR**

- a) An order dismissing the proceeding brought by the Plaintiffs as against the Defendant, Kevin Baumann, in accordance with section 137.1(3) of the *Courts of Justice Act*;
- b) The cost of this proceeding on a full indemnity basis, in accordance with section 137.1(7) of the *Courts of Justice Act*; and
- c) Such further and other Relief as to this Honorable Court may seem just.

### **THE GROUNDS FOR THE MOTION ARE**

#### ***The Parties***

- a) The Defendant, Kevin Baumann, (“Baumann”) is the President of Alken Basin Drilling Ltd (“Alken”), who as a former borrower of the Plaintiff has insight into the Plaintiff’s business practices which Baumann believes to be unlawful, Baumann is a self-represented Defendant in this action brought on by the Plaintiffs.
- b) The Plaintiffs, The Catalyst Capital Group Inc. (“Catalyst”) and Callidus Capital Corporation (“Callidus”) are related corporations controlled by Newton Glassman (“Glassman”), that purport to make investments in distressed and undervalued

Canadian situations in return for control, including the provision of capital on a bridge basis to companies that cannot access traditional lending sources;

- c) Defendant by Counterclaim, Altair Water and Drilling Services Inc. (“Altair”) is a wholly owned Callidus company which was a result of Callidus acquiring and assigning Alken’s assets as part of Alken’s Callidus controlled receivership.

Defendant by Counterclaim Sinclair Range (“Range”) and Scott Sinclair (“Sinclair”) are parties forced upon Alken and Baumann by Callidus as part of Callidus’ loan to own strategy. Sinclair is the President of Sinclair Range. Callidus recommended and demanded Sinclair be retained as Alken’s CRO – Chief Recovery Officer.

- d) Catalyst’s principals are Glassman, Gabriel De Alba (“De Alba”) and James Riley (“Riley”) and Rocco DiPucchio (“DiPucchio”). De Alba is a Managing Director and Partner of Catalyst, Riley is Managing Director and Chief Operating Officer of Catalyst. DiPucchio is a lawyer and a Managing Director of Catalyst. Glassman was then the Executive Chairman and CEO of Callidus and is currently the Executive Chair and a Director of Callidus and Chair of the Credit Committee. Riley is Callidus’ Secretary. Both are Directors of Callidus. Riley and Glassman offer management services on behalf of Catalyst to Callidus.

***OSC Whistleblower Submission***

- e) As a former Callidus borrower Baumann and Alken struggled with the Callidus and Range oppression. The Callidus conduct was unfathomable to many from the first day of the loan period.

Some of the conduct is as follows:

- i. Callidus, at Glassman's insistence placed an immediate \$1,250,000 block on Alken's receivables without explanation or communication.
- ii. Callidus denied numerous funding requests which made no rational business sense other than to oppress Alken and set Callidus up for its ultimate unlawful takeover of Alken.
- iii. A Callidus VP insisted Sinclair Range be retained or no further funding would be forthcoming.
- iv. Callidus and Sinclair Range managed Alken's cash and decided which suppliers would be paid, if any, regardless of availability.
- v. While Callidus and Sinclair Range totally managed Alken in excess of \$800,000 of trade payables were incurred when Callidus knew full well Alken would be filed into receivership. This appears to be a Callidus specialty as Baumann has discovered 15 million in trade payables related to Callidus controlled receiverships. This conduct damaged Baumann's reputation in his community as Callidus and Range abused Baumann's Power of Attorney.
- vi. Baumann had good reason to investigate and communicate with others after Callidus abused Baumann's Power of Attorney and Share Hypothecation while recklessly operating Alken.
- vii. Upon reviewing Callidus' IPO on SEDAR Baumann became aware that Callidus stated as part of its IPO it would be subject to conduct and ethics. The IPO stated the Code of Conduct and Ethics would be filed on SEDAR.

When Baumann searched SEDAR there was no Callidus code of conduct or ethics, it was at this time Baumann contacted the OSC and made them aware of the lack of filing. Shortly after Callidus filed a Code of Conduct on SEDAR.

Upon review, the written and filed Code of Conduct contradicted the treatment Baumann had received from Callidus and its Representatives. This contradiction proved to Baumann that he was induced to accept a Callidus loan.

Once Baumann reviewed further Callidus press releases he was of the opinion the Callidus business plan was a Ponzi or Shell Game. By an attempt to obtain yield enhancements from borrowers in order to increase Callidus' stock price.

Callidus initially referred to its elaborate scheme as proprietary procedures, and later renamed its unlawful conduct yield enhancements. A yield enhancement as Glassman explains in numerous earnings calls and press releases is a gain Callidus would obtain from taking over or assisting borrowers, therefore it was advantageous.

For Callidus to oppress borrowers and unlawfully seize assets while abusing the sole desertion clause relating to borrower funding.

- f) From Baumann's research himself nor his forensic specialists could locate a single borrower which entered into a yield enhancement agreement with Callidus. It's obvious enhancement agreements were entered into between Callidus and forced CRO's such as Sinclair.

g) Baumann's sources of information and assistance confirming the Callidus scheme include:

1) Consultation with two forensic Specialists involved in the Callidus Baumann relationship which completed several reports.

2) Consultation with five Lawyers Baumann has had involved in his Callidus disputes.

3) Callidus' preliminary and final prospectus.

4) Callidus involved receivership filings.

5) Callidus' earnings transcripts and press releases.

h) Baumann and his professional assistants determined and were of the view that Catalyst and Callidus were engaging in an unlawful and fraudulent scheme to oppress borrowers by withholding funds in order to install management and control the receivership process, all in order to take a yield enhancement valued in excess of the borrowers loan amount.

i) Baumann believes the yield enhancement Callidus booked relating to Alken was 32 Million dollars. Had the stock market responded and Callidus' shares increased Callidus would have been a historical pump and bump. Unfortunately for Callidus Baumann believes due to the massive amount of endless litigation and publications the market never responded.

***JOST and OSC Submissions***

- j) Baumann submitted 11 complaints to the OSC and regulators relating to Callidus. Most complaints relate to Callidus' yield enhancement scheme. In Q2 2018 Callidus soft sold and released on the last bullet point of its quarterly report that upon recommendation from the OSC Callidus would no longer be booking non realized yield enhancements. Baumann believes the OSC Action was the result of his and other borrowers submissions.

### ***Police Reports***

- k) Baumann like other borrowers lodged a complaint with the Toronto Police relating to Callidus' unlawful conduct and fraudulent loan control mechanisms.
- l) On May 21, 2019 Baumann retained additional Calgary Counsel and a Forensic Specialist to evaluate and investigate all conduct relating to the various claims. The mandate was to obtain Preservation Orders and access to certain Callidus email accounts to confirm the unlawful conduct Baumann and other Callidus borrowers from Texas to Alberta which Baumann and others believe has been utilized. Unfortunately this endeavor would not be completed prior to Callidus being privatized in early November.

From evaluation and investigation it was recommended that an extensive submission be made to the RCMP Commercial Crimes. A complaint against Callidus relating to fraud, theft over and Bankruptcy Act offences was submitted and confirmed received by the RCMP K Division Federal Policing on October 3, 2019. The individual who conducted the investigation and submission on behalf of Baumann has proper credentials and is known in Alberta as a leading investigator.

### ***Communication with Journalists***

m) Baumann was approached by several Journalists relating to his various disputes with Callidus. Baumann always pointed the Journalists to Court Filings including a strong truth indicator of a Texas Ruling discussing Breach of Contract and Fraudulent Inducement discussions mentioning Callidus.

### ***The Plaintiffs Commence Multiple Proceedings against Baumann***

a) On November 7 2017, the Plaintiffs commenced this action against Baumann and others (the “Action”). As against Baumann and others, the Plaintiffs seek damages for:

- i. Defamation;
- ii. Civil conspiracy;
- iii. Intentional interference with economic relations;
- iv. Injurious falsehood; and
- v. Breach of the *Securities Act*;

b) The Plaintiffs have commenced this Action at the same time as they have commenced a Parallel Action for Defamation against Baumann arising from the same set of facts in Court File 1701-14167 (the “Parallel Action”), in Alberta;

c) The same allegations of defamation and conspiracy made against Baumann in this Action are duplicated in the Parallel Action;



- d) There is no genuine issue for trial with respect to any of the factual allegations made by the Plaintiffs against Baumann in this Action or in the Parallel Action;

***The Proceeding is a SLAPP***

- a) The core allegation in the Action that Baumann acted in furtherance of a “conspiracy” with and among the Defendants, against the Plaintiffs, simply by filing regulatory whistleblower complaints and speaking to the press and filing police reports is vexatious and is baseless and demonstrates the nature and purpose of this Action as a SLAPP. This Action is being pursued for the collateral purposes of deflecting from the Plaintiffs’ own wrongful and unlawful misconduct and business failures and losses.
- b) The Parallel Action constitutes and is being pursued as a strategic lawsuit against public participation (a “SLAPP”). The Action arises from an expression made by Baumann, namely, the opinion included in the Wall Street Journal article and the OSC whistleblower complaints and is designed primarily to discourage public discourse on matters of public interest, and in particular:
- i. To discourage individuals who make whistleblower complaints to the OSC and other Canadian securities regulators, and;
  - ii. To discourage individuals from speaking with journalists about their concerns;
- c) The Action is also designed to reinforce the Plaintiffs’ reputation for engaging in aggressive litigation, as a means to discourage individuals or journalists from investigating the Plaintiffs’ business and accounting practices;

- d) The Action does not have substantial merit;
- e) The harm likely to be or have been suffered by the Plaintiffs as a result of Baumann's expression is not sufficiently serious that the public interest in permitting the Action to continue outweighs the public interest in protecting Baumann's expression;
- f) Section 137.1 of the Courts of Justice Act, R.S.O. 1990, c. C.43; and
- g) Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- a) The Affidavit of Kevin Baumann, to be sworn; and
- b) Such further and other evidence as Baumann may advise and this Honourable Court may permit.

Date: November 5, 2019

**Kevin Baumann**

Self-represented

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**THE CATALYST CAPITAL GROUP  
INC et. al. Plaintiffs**

**WEST FACE CAPITAL INC et. al. Defendants**

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

**ONTARIO  
SUPERIOR COURT OF  
JUSTICE COMMERCIAL  
LIST**

PROCEEDING COMMENCED AT TORONTO

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**NOTICE OF MOTION**

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