

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP 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, KEVIN
BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT, RICHARD
MOLYNEUX, GERALD DUHAMEL, GEORGE WESLEY VOORHEIS,
BRUCE LIVESEY and JOHN DOES #4-10

Defendants

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

- and -

THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL CORPORATION
NEWTON GLASSMAN, GABRIEL DE ALBA, JAMES RILEY, VIRGINIA JAMIESON,
EMMANUEL ROSE, B.C. STRATEGY LTD. d/b/a BLACK CUBE, B.C. STRATEGY UK
LTD. d/b/a BLACK CUBE, and PSY GROUP INC.

Defendants by Counterclaim

**AMENDED REPLY AND DEFENCE TO COUNTERCLAIM OF WEST
FACE CAPITAL INC. AND GREGORY BOLAND**

1. The defendants to the counterclaim, The Catalyst Capital Group Inc. ("**Catalyst**"), Callidus Capital Corporation ("**Callidus**"), Newton Glassman ("**Glassman**"), Gabriel De Alba ("**De Alba**") and James Riley ("**Riley**") (collectively, the "**Catalyst Defendants**"), deny all of the allegations contained in the Fourth Fresh as Amended Statement of Defence and Counterclaim (the "**Counterclaim**") of West Face Capital Inc. ("**West Face**") and Gregory Boland ("**Boland**") dated October 1, 2019, save and except those allegations expressly admitted herein.

Overview

2. West Face and Boland have advanced this Counterclaim as a tactical move in response to the Statement of Claim (the "**Claim**") with the intent of avoiding and obfuscating the issues raised in the Claim. The Claim addresses serious allegations of market distortion and the use of short-selling to wreak havoc on the capital markets in particular in relation to Callidus.
3. The Counterclaim is nothing more than a smokescreen: it is an improper attempt by West Face and Boland to distract the market from West Face's poor fund management and deteriorating financial performance, to divert attention from the merits of Catalyst's and Callidus's claim, to shield West Face's and Boland's improper conduct from scrutiny by the courts, and to unduly limit the Catalyst Defendants from expressing themselves on matters of public interest.
4. The Catalyst Defendants have neither defamed nor conspired to defame West Face or Boland, nor have they participated in any systematic "Campaign" to harm West Face and Boland, as alleged. Indeed, most of the statements complained of

by West Face and Boland were neither made nor published by the Catalyst Defendants.

5. The Catalyst Defendants plead and rely upon the defences of fair comment, qualified privilege, public interest responsible communication, and as regards to certain statements complained about, the defence of justification.
6. West Face and Boland have not suffered any harm or damages as a result of any alleged wrongful conduct on the part of the Catalyst Defendants. Any loss of investments or investor confidence, any inability to attract investors or raise investment funds, or any failure to retain or hire employees that West Face and Boland complain of in the Counterclaim, are directly attributable to West Face's own past and continued underperforming Fund investments, as well as West Face's poor investment decisions, lack of due diligence and incompetent management. Indeed, West Face's performance has been abysmal for the better part of 5 years, and has resulted in an exodus of investors from its funds. This has nothing to do with the Catalyst Defendants, but rather West Face's own poor management and ineptitude.
7. The Catalyst Defendants are not vexatious litigants, as alleged. This allegation is also entirely tactical. West Face and Boland seek to avoid a determination of the merits of the allegations in the Claim that they have participated in an improper and unlawful short-selling campaign.

8. There is simply no foundation for the damages and other relief sought by West Face and Boland. The Counterclaim should be dismissed with substantial indemnity costs to the Catalyst Defendants.

The Catalyst Defendants

9. Catalyst is a Canadian private equity firm that specializes in investments in distressed and undervalued situations (i.e., investments in companies that are under-managed, under-valued or poorly capitalized). Catalyst has statutory and common law obligations to keep its investors and the public informed of matters concerning the management, conduct and performance of Catalyst, its affiliates and investment funds, and of any other matter material to the company.
10. Callidus is a publicly traded asset-based lender that operates in the growth and recovery market in Canada and the U.S. Callidus provides capital to meet the financing requirements of companies that cannot access traditional lending sources. Callidus has statutory and common law obligations to keep its investors and the public informed of matters concerning the management, conduct and performance of Callidus and of any other matter material to the company.
11. Glassman is the Managing Partner of Catalyst, and the Executive Chairman and a Director of Callidus. Riley is a Managing Director and the COO of Catalyst, and the Secretary and a Director of Callidus. De Alba is a Managing Director and Partner of Catalyst and has no role at Callidus.
12. As officers and/or directors of Catalyst and/or Callidus, Glassman, Riley and De Alba have statutory and regulatory obligations to keep Catalyst's and Callidus's

investors and the public, as the case may be, informed of matters concerning the management, conduct and performance of Catalyst, Callidus, their affiliates and investment funds, and of any other matter material to the operation of the companies.

13. At all material times, Glassman, Riley and De Alba were solely acting in their capacity as officers and/or directors of Catalyst and/or Callidus. Glassman, Riley and De Alba deny that they are personally liable for any alleged defamation, conspiracy, breach of confidence or any of the other alleged acts complained of by West Face and Boland.

West Face and Its Poor Financial Performance

14. West Face is an investment management firm that manages a number of hedge funds and investment portfolios in Canada, the United States and the Cayman Islands. These include:
 - (a) **The West Face Long Term Opportunities Fund (the “Long Term Opportunity Fund”)** - closed to new investors in 2007 with a cap of \$700 million, this group of funds consists of the West Face Long Term Opportunities Limited Partnership (the “**Canadian Fund**”), the West Face Long Term Opportunities (USA) Limited Partnership (the “**US Fund**”) and the West Face Long Term Opportunities Master Fund L.P. (the “**Cayman Master Fund**”). The Canadian Fund, the US Fund and the Cayman Master Fund together invest in the West Face Long Term Opportunities Global Master Fund L.P. The West Face Long Term Opportunities Fund Ltd. (the

“**Cayman Fund**”) invests in the Cayman Master Fund. West Face is the investment advisor to each of the Canadian Fund, the US Fund and the Cayman Master Fund; and

- (b) **The West Face Alternative Credit Fund (the “Alternative Credit Fund”)** – closed to new investors in September 2014 with a cap of \$600 million, this group of funds consists of the West Face Credit Opportunities Master I L.P. which is managed by the WFCOF Cayman Inc., the West Face Alternative Credit Master L.P., which is managed by West Face ACF Cayman GP Inc. and WF ACF KI I L.P., which is managed by the WF ACF KY I GP Inc. The focus of the West Face Alternative Credit Fund is on high risk investments in second-lien debt, unsecured debt, mezzanine financing, acquisition financing and bridge loans,

(collectively, the “**West Face Funds**”).

15. The founding principal of West Face is Boland, who serves as CEO and Co-Chief Investment Officer. The other principals of West Face are Peter Fraser, Anthony Griffin and Thomas Dea. West Face’s investment strategies are directed by its four principals. Unlike other hedge fund firms, West Face has refused to subscribe or conform to reporting requirements of independent data and market research firms, such as Preqin, upon which institutional investors rely to perform due diligence and keep track of hedge fund managers and hedge fund performance.
16. A significant part of West Face’s investment strategy is to take short positions in companies and try to take advantage of sharp declines in a company’s stock price.

West Face has taken short positions in companies such as Home Trust Company, SunOpta Inc., Hain Celestial Group, Inc., Air Methods Corporation and Callidus.

17. Since 2011, the West Face Funds have consistently suffered from poor financial performance. For example, the Long Term Opportunity Fund has, for more than 5 years, repeatedly underperformed relative to other indices, including the S&P/TSX Composite Total Return Index and the S&P 500. The Long Term Opportunity Fund consistently failed to achieve double digit returns and in some years incurred negative returns.
18. As of June 30, 2017, prior to the alleged publication of the “Internet Postings” complained of, the cumulative returns earned in the Long Term Opportunity Fund were significantly below the cumulative returns of the S&P/TSX Composite Total Return Index and the S&P 500. As shown below, the three-year cumulative return on the Long Term Opportunity Fund as of June 30, 2017 was -2.5%. In contrast, the three-year cumulative return for the S&P/TSX Composite Total Return Index and the S&P 500 for the same period were 9.5% and 31.7%, respectively. From the perspective of a five-year cumulative return, the Long Term Opportunity Fund’s performance lagged even further behind the comparative indices:

	West Face Long Term Opportunity Fund	S&P/TSX Composite Total Return Index	S&P 500
1-Year Cumulative	2.8%	11.0%	17.9%
3-Year Cumulative	-2.5%	9.5%	31.7%
5-Year Cumulative	16.9%	52.1%	97.9%

19. The Long Term Opportunity Fund has consistently underperformed for many reasons, including:
 - (a) negative investment returns from high investment exposure in oil and gas companies like PHI Inc. and Gran Tierra Energy Inc., following the collapse of the oil and gas market in 2014-2015;
 - (b) “unexpected outcomes” in West Face’s investments in Entravision Communications Corporation and Air Methods Corporation;
 - (c) investing in a company that was charged criminally for bribery and corruption;
 - (d) investments that failed to meet West Face’s forecast;
 - (e) failed short positions; and
 - (f) over-attribution of illiquid investments.

20. For example, in a public SEC 13F Filing, West Face disclosed that it suffered a negative US\$204.1 million return over a three-year period ending February 20, 2018 (equating to a -47.5% aggregate annual return and a -18% internal rate of return) in the following investments: PHI Inc., Entravision Communications Corp., Gran Tierra Energy Inc., Hudson Technologies Inc., SunOpta Inc. and Suncoke Energy Inc.

21. West Face’s poor investment performance meant that it never achieved the high water mark or preferred return on its funds.

22. As a consequence of West Face's poor performance as a fund manager, its investors lost confidence in the firm and elected to redeploy their investment elsewhere. Thus, the total value of assets under West Face's management ("**AUM**") suffered a precipitous decline.
23. West Face's AUM declined from a high of approximately \$2.8 billion to approximately \$1.7 billion by March 2016. By September 2017, well before the publication of the alleged defamatory statements, West Face's AUM had further declined to only approximately \$1 billion as its investors rushed to redeem their investments.
24. West Face was subject to significant redemptions from its investors well before the publication of any of the alleged defamatory statements. Contrary to West Face's and Boland's allegations, any loss of investments or investor confidence, or any inability to attract investors or raise investment funds, were a result of West Face's poor financial performance and management. The Catalyst Defendants deny that West Face has suffered any loss or damages as a result any the actions by the Catalyst Defendants.
25. The Catalyst Defendants further deny that West Face has encountered any difficulty in retaining or recruiting employees as a result of the actions of the Catalyst Defendants. If West Face has suffered such difficulties, then it is a result of employees who became seriously disillusioned with West Face's financial struggles, extensive fund redemptions and future prospects and sought opportunity for advancement and growth elsewhere. Simply put, any inability to

retain or recruit employees is due to West Face's dismal performance and rapidly declining AUM, and not attributable to the Catalyst Defendants.

26. Moreover, the reputational damage suffered by West Face due to its exceedingly poor performance was further compounded when it announced:

(a) in September 2017, the decision to suspend withdrawals and redemptions in the Long Term Opportunity Fund (known in the business as "gating"). As a result of this extreme decision, investors in the Long Term Opportunity Fund were prohibited from withdrawing any of their investment from the Long Term Opportunity Fund. This decision, made out of necessity given the accelerated pace of redemption requests, created strong negative sentiment amongst West Face's investors and the marketplace, and damaged West Face's business prospects; and

(b) in December 2017, the decision to discontinue offering both the US Fund and the Cayman Fund. As a result, investors in the US Fund and the Cayman Fund only received a return of capital on a pro rata basis upon redemption and not on an expected "first come-first out" basis. In effect, West Face could not meet investors' demands for redemption and decided to wind up the US Fund and the Cayman Fund.

27. Indeed, in December 2017, West Face acknowledged that its investment strategies were ill-suited to a hedge fund structure. West Face conceded that, over the last several years, the quarterly liquidity requirements for its hedge funds and the lack of available capital to allocate to private investments, have restricted West

Face's ability to successfully participate in higher value opportunities, thereby resulting in losses.

28. West Face's losses and lack of "business success" have nothing to do with the Catalyst Defendants. They are solely attributable to West Face's own mismanagement and ineptitude, which led its hedge funds to fail.
29. West Face, itself, conceded this mismanagement. In 2018, West Face abandoned its flawed investment strategy that had failed its investors and attempted to create a new private equity fund, the "West Face Distressed Fund". Unlike West Face's other funds, the primary focus of the "West Face Distressed Fund" was intended to be on investments in distressed and undervalued situations - the same investment focus as Catalyst.
30. West Face sought to raise \$1 billion for its new fund, notwithstanding that it had no prior performance record of managing and creating value from a private equity fund focussed on distressed and undervalued investments. The size of the raise was excessive for a first time private equity fund by a manager with no private equity track record.
31. In an attempt to raise the new fund, West Face held "road show" sales presentations to potential investors. These sales pitches presented a "cherry-picked" list of specific investments that showed positive returns, while ignoring many of West Face's investments that yielded negative or poor returns. This approach is not consistent with SEC rules.

32. Given the poor financial performance of the West Face Funds, the lack of any prior record of private equity fund performance of distressed and undervalued investments, West Face's history of gating and prohibiting its investors from withdrawing their investments, West Face's refusal to report to independent data and market research firms, and the selective and improper investment illustrations used to attempt to raise \$1 billion from potential investors, West Face failed to raise the West Face Distressed Fund as would be expected. West Face's failure to raise new funds had nothing to do with the Catalyst Defendants.
33. Consequently, any loss that West Face and Boland have allegedly suffered or any lack of success on the part of West Face and Boland to attract investors for the new proposed private equity fund were entirely attributable to their own decisions and actions in marketing the proposed fund, and West Face's growing reputation as a poor fund manager.

The West Face Court Actions

34. West Face and Boland improperly seek to have the Catalyst Defendants declared vexatious litigants in order to shield their own actions and wrongful conduct from scrutiny of the court. There is no basis for this extraordinary relief. The court actions that West Face and Boland complain of in the Counterclaim are neither abusive nor vexatious, as alleged.

(i) The Moyse Action

35. On June 25, 2014, an action was commenced against West Face and Brandon Moyse, a former employee of Catalyst who resigned to join West Face. The action

was commenced in order to enforce Moyse's non-competition obligation pursuant to his Employment Agreement with Catalyst (the "**Moyse Action**").

36. Before his resignation, Moyse was on Catalyst's internal "telecom" deal team working on Catalyst's acquisition of Wind Mobile Inc. ("**Wind**").
37. Wind is a Canadian telecommunications provider that was formerly owned by VimpelCom Ltd. ("**VimpelCom**") and Globalive Capital Inc. ("**Globalive**").
38. In late 2013, Catalyst and VimpelCom had entered into negotiations for the sale of VimpelCom's interest in Wind. In the spring of 2014, Catalyst and VimpelCom entered into a confidentiality agreement to keep confidential the negotiations regarding Catalyst's potential purchase of VimpelCom's interest in Wind (the "**Confidentiality Agreement**"). In July 2014, Catalyst and VimpelCom also entered into an Exclusivity Agreement pursuant to which VimpelCom, its affiliates, and its advisor, UBS Securities Canada Inc. ("**UBS**"), were prohibited from soliciting or encouraging any offers, or participating in any negotiation or discussions with any other party regarding the sale of Wind (the "**Exclusivity Agreement**").
39. At that time, West Face was not considered by VimpelCom to be a serious player in the negotiations for Wind. VimpelCom had rejected earlier offers by West Face for the acquisition of Wind.
40. By May 6, 2014, Catalyst and VimpelCom had agreed to a \$300 million purchase price for Wind and were working to complete a formal Share Purchase Agreement.

41. On May 24, 2014, Moyse resigned from Catalyst effective June 22, 2014 to join West Face.
42. The Moyse Action was therefore commenced on June 25, 2014 to enforce the non-competition clause in Moyse's Employment Agreement.
43. As described further below, Moyse was subsequently enjoined, pursuant to an order of Justice Lederer of the Ontario Superior Court of Justice, from using, misusing or disclosing any and all confidential and/or proprietary information of Catalyst, and from engaging in activities competitive to Catalyst in order to be in compliance with the non-competition clause. Justice Lederer also ordered that Moyse's personal computer and other electronic devices be forensically imaged and reviewed by an independent supervising solicitor.
44. By August 3, 2014, a Share Purchase Agreement between Catalyst and VimpelCom was "substantially completed" for the sale of Wind to Catalyst.
45. On August 11, 2014, VimpelCom and Catalyst informed Industry Canada that the deal "was done".
46. On August 15, 2014, VimpelCom demanded a \$5 - \$20 million break fee from Catalyst, which had been previously requested and abandoned by VimpelCom early in the negotiations. This demand for a break fee, made 10 days after VimpelCom told Catalyst that the Share Purchase Agreement was "substantially settled" and 4 days after Catalyst and VimpelCom informed Industry Canada that the deal was "done", was rejected.

47. On September 15, 2014, it was announced that a consortium that included West Face (the "**Consortium**"), entered into an agreement with VimpelCom to purchase Wind for the same price as Catalyst had negotiated.
48. On October 9, 2014, Catalyst amended its statement of claim against Moyse and West Face, alleging that West Face used confidential information it received from Moyse to successfully pursue the acquisition of Wind.
49. The Moyse Action was tried on June 6-13, 2016 before Justice Newbould. The action was dismissed and costs were awarded against Catalyst. The decision and costs award were appealed and upheld by the Court of Appeal.
50. Although it was unsuccessful, the Moyse Action was neither abusive nor vexatious.
51. Before commencing the Moyse Action, Catalyst wrote to West Face and Moyse about the implications of the departure of Moyse and his acceptance of employment with West Face.
52. In response, West Face and Moyse took the position that the non-competition and non-solicitation clauses of Moyse's Employment Agreement were both unenforceable. West Face and Boland offered an "ineffectual assurance" that Moyse had no intention of revealing any information which could reasonably be considered confidential or proprietary in nature. Their response proposed that either Catalyst simply accept their assurance or go to court. As West Face and Moyse "volunteered nothing", Catalyst commenced an action and sought an injunction.

53. The injunction, as further particularized below, was granted by Justice Lederer of the Ontario Superior Court of Justice. During the course of the injunction proceeding, it was discovered that despite their assurances, Moyses had indeed provided West Face with Catalyst memos marked “Confidential” and “For Internal Discussion Purposes Only” (“**Catalyst Confidential Memos**”). It was learned that Moyses provided Catalyst Confidential Memos to Thomas Dea of West Face who then circulated them to the other partners and a Vice-President at West Face. West Face and Moyses said nothing about the sharing of Catalyst Confidential Memos when they gave their assurances to Catalyst that that they had no intention of revealing or improperly using any information that was confidential to Catalyst. West Face and Moyses waited until Catalyst discovered that the Catalyst Confidential Memos had been delivered, before acknowledging that the transmission took place. As Justice Lederer found, West Face and Moyses provided an “ineffectual assurance”. In the face of the ineffectual assurance that West Face and Moyses did not have or would not improperly use Catalyst confidential information, it was reasonable and not vexatious of Catalyst to pursue the Moyses Action.
54. On November 14, 2014, Justice Lederer issued an order enjoining Moyses from using, misusing or disclosing any and all confidential and/or proprietary information of Catalyst. To ensure that Moyses did not communicate confidential information to West Face, the court also enjoined Moyses from engaging in activities competitive to Catalyst, in compliance with the non-competition clause.

55. Justice Lederer held that there was a strong *prima facie* case that Moyses had breached the confidentiality clause of his Employment Agreement. The Court found that Moyses took and delivered to West Face confidential information which could demonstrate strategies Catalyst used in a competitive business. West Face understood the Catalyst Confidential Memos received were confidential. Notwithstanding its confidential nature, West Face distributed the Catalyst Confidential Memos to each of its partners and a Vice-President.
56. Moreover, Justice Lederer ordered an Independent Supervising Solicitor (“ISS”) to review the forensic images of Moyses’s personal electronic devices to identify if any material confidential to Catalyst remained in Moyses’s possession. The order was necessary as it was discovered during the course of the injunction proceeding that Moyses had deleted emails evidencing the transmission of Catalyst Confidential Memos to West Face. Moyses opposed the order and asserted that he should be left to review and determine what must be produced. Justice Lederer rejected Moyses’s assertion.
57. It was later discovered by the ISS, that on the very day that the court had ordered Moyses’s personal devices to be forensically imaged, Moyses downloaded military-grade deletion software to his personal computer and deleted material from his computer the night before his computer was turned over for imaging.
58. Contrary to West Face’s and Boland’s allegations, the Moyses Action was neither abusive nor vexatious. Indeed, the Court of Appeal for Ontario noted that Moyses’s

decision to delete material from his computer was a “serious breach of the court order”.

(ii) The VimpelCom Action

59. On May 31, 2016, a week before the trial of the Moyse Action, a claim was commenced against VimpelCom, its advisor UBS, and members of the Consortium, including West Face, for inducing breach of contract, conspiracy and breach of confidence relating to the Consortium’s acquisition of Wind (the “**VimpelCom Action**”).
60. Contrary to West Face’s and Boland’s allegations, West Face did not act in an entirely appropriate manner with respect to the acquisition of Wind. Catalyst discovered, long after the commencement of the Moyse Action, that during the period of confidentiality and exclusivity with Catalyst:
 - (a) confidential information was obtained by members of the Consortium about the dates of Catalyst’s exclusivity rights and the status of Catalyst’s negotiations and dealings with VimpelCom and its Board;
 - (b) the Consortium had discussed and negotiated the purchase of Wind with VimpelCom and its advisors;
 - (c) VimpelCom’s advisor, UBS, participated in and encouraged the Consortium’s competing proposals; and
 - (d) the timing and content of the Consortium’s competing bid were designed for the specific purpose of providing VimpelCom with an alternative option to

Catalyst's offer at the same time as VimpelCom was scheduled to consider the agreement with Catalyst.

61. For example:

- (a) on or about July 18, 2014, West Face and the Tennenbaum Group requested, and later obtained, VimpelCom's consent to share information and work together to develop a proposal for the acquisition of Wind;
- (b) on July 21, Tennenbaum Group's principal, Michael Leitner ("**Leitner**"), wrote to West Face's principal, Boland, stating that he "heard [C]atalyst is seeking exclusivity this week";
- (c) on July 22, Leitner told Boland that "I spoke to Felix [Saratovsky of VimpelCom]...Catalyst may have this in exclusivity by the end of the week";
- (d) on July 23, Leitner and Boland were advised that "[Jonathan] Herbst [of UBS] called me to say that the company has entered into exclusivity at the reserve price - \$150 million";
- (e) by August 1, West Face, Tennenbaum Group and other members of the Consortium reconciled their financial models. The Consortium received comments "over the phone" from VimpelCom about the Consortium's Share Purchase Agreement and received some "feedback on price levels";
- (f) on August 1, the Consortium was advised when the Share Purchase Agreement with Catalyst was going to be submitted to the VimpelCom board; and

- (g) on August 6-7, the Consortium, with the benefit of inside information, deliberately delivered its own “superior” proposal to pre-empt VimpelCom’s approval of Catalyst’s Share Purchase Agreement. At that time, the Consortium was also provided with additional confidential information about the internal processes and timetable of VimpelCom, including a revised board schedule. The Consortium was told by UBS “not to burn their file”.
62. Contrary to West Face’s and Boland’s allegations, VimpelCom’s board was not genuinely dissatisfied with the offer from Catalyst. Rather, with information it improperly obtained in breach of the Confidentiality Agreement and the Exclusivity Agreement, West Face and the other members of the Consortium made a proposal they believed to be “superior” to Catalyst’s. Shortly thereafter, the Consortium’s proposal was deliberately provided during the period of the Exclusivity Agreement so that the VimpelCom board had, as stated by Leitner, “2 birds in hand” when it came to approve the Share Purchase Agreement with Catalyst. Providing the proposal before the VimpelCom board approved Catalyst’s Share Purchase Agreement was the Consortium’s “only play”.
63. To the knowledge of West Face and Boland:
- (a) Catalyst was not aware at the time of any of the communications and the sharing of information that occurred amongst VimpelCom, Globalive, UBS and members of the Consortium;
 - (b) the communications and the sharing of information that occurred among VimpelCom, Globalive, UBS and the Consortium were in violation of the

Confidentiality Agreement and the Exclusivity Agreement that Catalyst and VimpelCom had entered into; and

- (c) the conduct of the Consortium, VimpelCom, Globalive and UBS was intended to frustrate and impair Catalyst's contractual rights and to provide West Face and the other members of the Consortium with an improper advantage, and in fact their conduct led to these effects.

- 64. Upon discovering these new facts, Catalyst commenced the VimpelCom Action against VimpelCom, Globalive, UBS and members of the Consortium. The breach of and interference with Catalyst's Confidentiality Agreement and Exclusivity Agreement by VimpelCom, Globalive, UBS, and members of the Consortium were not known to Catalyst at the time the Moyse Action was commenced. At issue in the VimpelCom Action are the breaches of contract and confidence alleged against VimpelCom, Globalive and UBS, contrary to Catalyst's Confidentiality and Exclusivity Agreement, and the misuse of confidential information by the Consortium to conspire and induce VimpelCom to breach its agreements with Catalyst.
- 65. The claim against VimpelCom, UBS and members of the Consortium is neither abusive nor vexatious.
- 66. Indeed, Catalyst's belief that confidential information about the Wind negotiations and transactions was improperly obtained by the Consortium in breach of Catalyst's confidentiality and exclusivity rights has subsequently been confirmed by former West Face employees.

67. According to a former West Face employee with extensive experience as a portfolio manager, inside information about the Wind negotiations was obtained by members of the Consortium. As a result, the Consortium was able to purchase Wind by making a different bid with fewer conditions than Catalyst. This employee stated that he thought the deal was “polluted” and that the Consortium had benefited from inside information about Catalyst’s confidential bid:

Former WF employee But one of them in particular was – they were like ‘we can’t provide you with that’. And somehow that news made its way into our shop. And so they [**the West Face consortium**] made a bid with no conditions—

Interviewer That’s crazy—

Former WF employee --and the board took it.

Interviewer --this is why – it’s crazy, isn’t it? I mean –

Former WF employee It is, unless someone on the Wind board told you what the right answer was, but said they couldn’t put it on paper.

Interviewer So they had inside information from Wind or from Catalyst? Or from both, you think?

Former WF employee They had information about Catalyst’s bid, and they had information about why Wind wasn’t taking it. And so they gave a bid that was lower but a little bit different that the board would accept.

68. Further, this same former West Face employee stated that Catalyst was correct in believing that West Face had indeed received confidential information about the Wind transaction that it was not supposed to have:

Interviewer Who has the right answer?

Former WF employee Catalyst. It’s – I believe they’re correct that West Face had information they weren’t supposed to.

Interviewer Ah, okay.

Former WF employee It just didn't come to West Face's hands the way--

Interviewer So what's the right path? Where did it go, I mean it's --

Former WF employee The board.

Interviewer A board member? Of Wind, you think a board member of Wind gave them the--

Former WF employee Yeah."

69. A second former West Face employee with extensive investment industry experience stated that the Consortium's winning bid was made as a result of collusion:

Former WF employee [**Catalyst**] actually had a bid that was higher than ours. They bid something, something over 300 million, I don't know what. Our belief that it was higher than ours. Umm, so they kind of forgot about, they kind of forgot about, umm... If you remember what, umm, VimpelCom told UBS, the three key--.

Interviewer Conditions.

Former WF employee Umm, yeah. Umm, items they were looking for in the bidding process was, umm, expediency of close, whoever can close the fastest; certainty of close; and number three was price. But price wasn't the most important factor. So, we put our bid in, and we said, "See, no conditions to close, we can close--." And the big thing was regulatory, because you need a regulatory approval to take ownership of the asset, and they had to put in a, a regulatory approval.

Interviewer And you had that approval?

Former WF employee We didn't, but what we did differently from Catalyst Capital is we went to Tony Lacavera and we said, "Tony, umm, technically speaking, you already control this asset. You own 51% of the votes, so why don't we team up with you, we'll give you the money, and then you pay VimpelCom?"

Interviewer Is that, isn't that conflict of interest?

Former WF employee No, no. There's no conflict of interest.

Interviewer He was selling to himself?

Former WF employee He, well, he--. He only owned 5% of the business, remember? But he owned 51% of the votes.

Interviewer Yeah.

Former WF employee So we said to him, "Why don't we give you 285 million dollars, and then you use that to pay VimpelCom 285 million--."

Interviewer To buy their--.

Former WF employee "-to buy out their shares."

Interviewer -95%?

Former WF employee Correct. And then, at some point later, we will restructure the company such that we own 90% and you own 10%. So, we teamed up with Tony Lacavera, and he was first, was willing to do that because he would essentially be gifted a certain percentage of the company for free."

70. To date, no court has made any determination as to whether the actions of VimpelCom, UBS, Globalive or members of the Consortium had breached any of Catalyst's confidentiality and exclusivity rights. Contrary to West Face's and Boland's allegations, these issues were not determined by Justice Newbould in the Moyse Action. VimpelCom and other defendants in that action were not parties to nor subject to any documentary or oral discovery in the Moyse Action. No court has heard from VimpelCom or UBS regarding the circumstances surrounding the sale of VimpelCom's shares of Wind. No explanation has been given by VimpelCom about why it made its demand for a break fee after having already settled the terms of a Share Purchase Agreement with Catalyst and announcing that a deal with Catalyst was done. There has been no explanation by UBS for the numerous conversations it had with the Consortium throughout the period of

Catalyst's Exclusivity Agreement. The propriety of VimpelCom's, UBS's and Globalive's conduct that led to the Consortium's bid has yet to be adjudicated upon.

71. Given the foregoing, there is no basis whatsoever to have the Catalyst Defendants declared as vexatious litigants.

(iii) The Veritas Action – 2014 Short-Selling Attack

72. On June 18, 2015, an action against Veritas Investment Research Corporation ("**Veritas**") and West Face was commenced for defamation, conspiracy and intentional interference with economic relations relating to a short-selling scheme orchestrated against Catalyst and Callidus (the "**Veritas Action**").
73. The short-selling scheme involved the publication and dissemination of reports by West Face and Veritas that contained false and defamatory statements impugning the financial viability and conduct of both Catalyst and Callidus. The scheme was designed to deceive market participants into believing that Callidus was a poor investment, and thus to drive the price of Callidus stock downward.
74. At a meeting between West Face and Veritas representatives in December 2014, Boland disclosed details of an unfavourable report that West Face had prepared regarding Callidus (the "**West Face Report**"). Boland "arranged" for the report to be shared with Veritas so that Veritas would produce a second unfavourable report on Callidus (the "**Veritas Report**"), creating the false impression that West Face and Veritas had independently and separately issued negative reports. This had the effect of deceiving the market place into believing that a negative consensus

was building against Callidus, and driving the price of Callidus stock downward which, in turn, bolstered West Face's admitted short-selling campaign.

75. Catalyst and Callidus claim that the Veritas Report and West Face Report contained false and defamatory statements impugning the financial viability and conduct of both Callidus and Catalyst designed to cause shareholders to sell Callidus stock. The Veritas Action is not abusive or vexatious, as alleged.
76. Indeed, West Face had previously sought to strike Catalyst's and Callidus's claim in its entirety on the basis that it disclosed no reasonable cause of action. West Face's motion to strike, however, was dismissed by the Ontario Superior Court of Justice.
77. On appeal, the Court of Appeal of Ontario confirmed that Catalyst and Callidus have "made out a *prima facie* cause of action in defamation against both West Face and Veritas" and are "proceeding in good faith".
78. There is no basis for this second attempt by West Face to prematurely halt the Veritas Action and have the Catalyst Defendants declared as vexatious litigants.

(iv) The Conspiracy Action – 2017 Short-Selling Attack

79. This action by Catalyst and Callidus against West Face, Greg Boland, Anson Group Canada and others, relates to a subsequent short-selling attack that began on August 9, 2017 when the Wall Street Journal published an article regarding false whistleblower complaints filed with the OSC against Callidus and Catalyst.

80. The Catalyst Defendants repeat and rely on their assertions contained in the Statement of Claim.
81. The Counterclaim is an attempt by West Face and Boland to avoid a court adjudication on West Face's and Boland's conduct in this case and to conceal its behaviour in communicating with the whistleblowers and short-selling Callidus stock. The within action is neither abusive nor vexatious, as alleged.

The Litigation and Investigations

82. Following the short-selling attack in August 2017, Catalyst, through its counsel, retained Tamara Global Holdings Ltd. ("**Tamara Global**") to provide personal and corporate security and to provide litigation support in respect of ongoing and contemplated litigation.
83. Tamara Global was authorized to retain subcontractors and additional consultants pursuant to its retainer.
84. Tamara Global retained B.C Strategy UK Ltd. ("**B.C. Strategy**") for the purpose of litigation, including litigation between Catalyst and West Face. B.C. Strategy was to execute its retainer in accordance with its best professional judgment.
85. The Catalyst Defendants deny that it engaged B.C. Strategy for any improper purpose, as alleged. The Catalyst Defendants did not direct or have any involvement in the alleged activities described by West Face in the Counterclaim. The Catalyst Defendants did not conspire with B.C. Strategy or with any of the other defendants to engage in any unlawful activity.

86. B.C. Strategy was to conduct itself at all times in a lawful manner. Insofar as the Catalyst Defendants are aware, all interviews and meetings were conducted and all information was gathered by B.C. Strategy, lawfully.
87. The interviews and meetings were conducted for the purpose of litigation between Catalyst and West Face. The interviews and meetings and any information that exists therefrom are therefore privileged, unless that privilege is expressly waived.
88. The Catalyst Defendants did not induce West Face employees to breach any duties of confidence or fiduciary duties, as alleged. Specifically, none of the information obtained by B.C. Strategy, including any purported information from Alex Singh related to the hiring and employment of Moyse, is privileged. If any information was privileged then any such privilege has been waived by West Face. This occurred when Alex Singh delivered an affidavit in the Moyse Action and was cross-examined thereon in relation to Moyse's hiring, including advice and direction he gave to Moyse and West Face about these and other related matters. Singh's affidavit and cross-examination transcript and additional evidence in relation to these matters were filed and relied upon by West Face at the trial of the Moyse Action.
89. In any event, West Face and Boland have suffered no damages whatsoever as a result of the employee interviews. No actionable wrong has been committed against West Face or Boland.
90. With respect to B.C. Strategy's meeting with Mr. Newbould, the Catalyst Defendants had no prior knowledge of the meeting with Mr. Newbould. The

Catalyst Defendants were only informed of the meeting with Mr. Newbould after the meeting had occurred.

91. The Moyse Appeal was to commence on September 25, 2018. Upon learning of the meeting with Mr. Newbould, a brief adjournment of the appeal was sought to consider a possible motion to introduce fresh evidence.
92. Upon further consideration of B.C. Strategy's meeting with Mr. Newbould and its implications, Catalyst abandoned any motion to introduce fresh evidence on the appeal.
93. Catalyst also sought to strike the allegations regarding Mr. Newbould from the Counterclaim. West Face and Boland, however, opposed Catalyst's request to strike. They did so, in part, to deflect attention away from their own improper activities and the merits of Catalyst's and Callidus's claim against them.
94. West Face and Boland have also engaged with the media to keep this litigation in the public eye, including matters surrounding Mr. Newbould.
95. West Face and Boland have not suffered any damages as a result of the meeting with Mr. Newbould, nor does it constitute any actionable wrong against them.

The Alleged Defamation Campaign

96. Contrary to West Face's and Boland's allegations, the Catalyst Defendants did not make any defamatory statements to the media or the financial community, nor did they issue any false and defamatory press releases, investor communications or internet postings regarding West Face or Boland. Further, the Catalyst Defendants

did not authorize B.C. Strategy, PSY Group Inc., Emmanuel Rosen, Virginia Jamieson, or any other party to make or post any defamatory statements, through aliases or otherwise, concerning West Face or Boland, as alleged.

97. The Catalyst Defendants did not on their own (or in concert with the other defendants by counterclaim) engage in any of the activities described as the alleged "Defamation Campaign".
98. The Catalyst Defendants state that the words complained of by West Face and Boland in the Counterclaim are incapable of bearing any of the meanings pleaded, do not bear the meanings pleaded, and are not defamatory. Further, the Catalyst Defendants plead and rely upon the fair comment defence, the qualified privilege defence, the public interest responsible communication defence, and with respect to certain statements set out below, the defence of justification.
99. The Catalyst Defendants acted in good faith and deny all allegations that they acted maliciously towards West Face and Boland.
100. The statements complained of by West Face and Boland are expressions relating to matters of public interest. The Counterclaim is merely an attempt by West Face and Boland to chill off the Catalyst Defendants from expressing themselves on matters that are of public interest.
101. Further particulars of the Catalyst Defendants' defence regarding the statements complained about in Catalyst's press releases, Catalyst's investor letters, and the internet postings are pleaded below.

(i) Catalyst Press Releases

102. West Face and Boland complain of two press releases issued on August 18, 2016 (the “**August 18 Press Release**”) and October 13, 2016 (the “**October 13 Press Release**”) (collectively, the “**Press Releases**”). The Press Releases were issued following the release of Justice Newbould’s decision in the Moyse Action and his decision on costs.
103. The outcome of the Moyse Action and the costs decision are information material to the company.
104. Pursuant to its statutory and common law obligations, Catalyst had a duty to disclose such material information to the public. The statements in the Press Releases that West Face and Boland complain about were not made with malice or with the intent to injure West Face or Boland. Rather, the statements that West Face and Boland complain about were made by Catalyst in the course of discharging its duty to keep the public informed of material information concerning the company and are protected by the defence of qualified privilege.
105. The statements made in the Press Releases that West Face and Boland complain about are also protected by public interest responsible communication defence.
106. The statements made in the Press Releases that are opinion constitute fair comment, made in good faith and without malice, on matters of public interest.
107. In addition, with respect to the August 18 Press Release, the statement complained about that “Additional evidence has come out since the Moyse

litigation that supports the new case that alleges conspiracy and breach of contract” is true. Since the commencement of the Moyses Action, additional evidence was discovered that members of the Consortium, including West Face, were kept apprised of Catalyst’s negotiations for Wind, and had discussed and negotiated the purchase of Wind during the period of Catalyst’s Confidentiality and Exclusivity Agreement with VimpelCom. The truth about the Consortium’s above-noted conduct is unassailable.

108. With respect to the statements complained about in the October 13 Press Release, the actions of West Face and Moyses in receiving and circulating Catalyst documents marked “Confidential”; the deletion of data and information from Moyses’s personal devices following a court order intended to preserve such information, and West Face’s and Moyses’s failure to be forthcoming about their conduct, are fairly characterized as “unethical”.
109. The Catalyst Defendants deny that the Press Releases caused West Face or Boland any damages whatsoever as a result of their publication. Further, the Catalyst Defendants by Counterclaim were never served with a Notice of Libel pursuant to section 5 of the *Libel and Slander Act* with respect to the National Post/Financial Post article published on August 19, 2016 (referred to in paragraph 129 of the Fourth Fresh as Amended Statement of Defence and Counterclaim of the Plaintiffs by Counterclaim).

(ii) Catalyst Investor Letters

110. West Face and Boland complain of statements made in letters sent by Catalyst to its investors on August 14, 2017 (the “**August 14 Investor Letter**”) and March 19, 2018 (the “**March 19 Investor Letter**”) (collectively, the “**Investor Letters**”).
111. Specifically, the statements complained about in the August 14 Investor Letter addressed the short-selling attack against Callidus. It had been the subject of a short-selling attack that had a significant and material impact on its share price. Catalyst received information that Callidus and Glassman were targeted by a group, including Boland of West Face, acting in concert to short-sell Callidus stock and spread false rumours in the marketplace.
112. Pursuant to its obligations, Catalyst is required to inform its investors of material information concerning the short-selling attack. The statements contained in the August 14 Investor Letter were not made with malice with the intent to injure West Face or Boland. Rather, these statements were made in the course of discharging Catalyst’s duty to keep its investors informed of material information concerning the company and are protected by the defence of qualified privilege.
113. The statements made in the August 14 Investor Letter that West Face and Boland complain about are also protected by the public interest responsible communication defence.
114. The statements made in the August 14 Investor Letter that are opinion constitute fair comment, made in good faith and without malice, on matters of public interest.

115. The matters addressed in the March 19 Investor Letter concern both the Moyses Action and the VimpelCom Action, and the information discovered from former West Face employees that are material to those Actions.
116. The March 19 Investor Letter accurately set out the information obtained from West Face former employees, including information that:
 - (a) inside information about the Wind negotiations was improperly communicated to members of the Consortium during the period of Catalyst's exclusivity and confidentiality;
 - (b) West Face had indeed received confidential information about the Wind transaction that it was not entitled to have; and
 - (c) the deal with the Consortium was "polluted" and that the Consortium had benefited from inside information about Catalyst's confidential bid.
117. The statements contained in the March 19 Investor Letter that West Face and Boland complain about are protected by the defence of qualified privilege.
118. The statements contained in the March 19 Investor Letter that West Face and Boland complain about are also protected by the public interest responsible communication defence.
119. The statements made in the March 19 Investor Letter that are opinion constitute fair comment, made in good faith and without malice, on matters of public interest.

120. The Catalyst Defendants deny that the Investor Letters caused West Face or Boland any damages whatsoever as a result of their publication. Further, the Catalyst Defendants by Counterclaim were never served with a Notice of Libel pursuant to section 5 of the *Libel and Slander Act* with respect to the Globe and Mail article published on April 17, 2018 (referred to in paragraphs 195 and 199 of the Fourth Fresh as Amended Statement of Defence and Counterclaim of the Plaintiffs by Counterclaim).

(iii) “Internet Postings”

121. The Catalyst Defendants deny that they authored, created, published, directed or instructed any party to draft, create or publish the internet postings complained about by West Face and Boland.

122. The Catalyst Defendants did not create or use, or direct any party to create or use false identities or aliases to post statements that were false or otherwise, as alleged. The Catalyst Defendants have no knowledge of the authors of the internet postings complained of by West Face and Boland.

123. Specifically:

(a) **Boland Post:** the Catalyst Defendants did not author or direct any party to author the alleged post that West Face and Boland have defined in the Counterclaim as the “Boland Post”, nor did they create or direct any party to create any of the websites and Twitter accounts through which the post was allegedly posted. Until being notified by West Face’s counsel, the Catalyst Defendants had no knowledge of the alleged websites and Twitter

accounts. Indeed, these websites and Twitter accounts are largely unknown to the public with little to no visitors or followers. The post and the alleged websites and Twitter accounts are largely unknown. Contrary to West Face's and Boland's allegations, the post was not widely read or disseminated. Moreover, most, if not all, of the information contained in the post is derived from past publications from recognized news media for which West Face and Boland made no complaint;

- (b) **Wolfpack Video:** the Catalyst Defendants did not create or direct any party to create the video that West Face and Boland have labelled in the Counterclaim as the "Wolf Pack Video", nor did they create or direct any party to create Twitter accounts through which the video was allegedly posted. The Catalyst Defendants had no knowledge of the video or the Twitter accounts through which the video was allegedly posted until it was brought to their attention by West Face's counsel. The video and the alleged Twitter accounts are largely unknown. There is no evidence that the video was widely disseminated or viewed so as to attract any negative attention to West Face or Boland;
- (c) **Esco Post:** the Catalyst Defendants did not author or direct any party to author the post that West Face and Boland have defined in the Counterclaim as the "Esco Post", nor did they create or direct any party to create any of the alleged websites and Twitter accounts through which the post was allegedly posted. The Catalyst Defendants did not direct or indirectly use the pseudonym "julesljones", as alleged. Until the post was

brought to their attention by West Face's counsel, the Catalyst Defendants had no knowledge of the post. Indeed, the post contains statements regarding Callidus that are inaccurate. The alleged post and Twitter account are not widely known to the public. The post was not broadly disseminated or read so as to attract any negative attention to West Face and Boland;

(d) **Face the Music Post:** the Catalyst Defendants did not author or direct any party to author the post that West Face and Boland have defined in the Counterclaim as the "Face the Music Post", nor post directly or indirectly on the website that the post was allegedly posted. The Catalyst Defendants had no knowledge of the alleged post or the website upon which the post was posted, until it was brought to their attention by West Face's counsel. The post and the website are widely unknown to the public. The alleged post and Twitter account are not widely known to the public. The post was not broadly disseminated or read so as to attract any negative attention to West Face and Boland;

(e) **Wolfpack Corruption Post:** the Catalyst Defendants did not author or publish, nor direct any party author or publish the post that West Face and Boland have defined in the Counterclaim as the "Wolfpack Corruption Post". Further, they did not create nor cause anyone to create the website upon which the post was allegedly posted. Moreover, they did not create nor direct any party to create the Twitter accounts through which the post was allegedly posted. Until the post was brought to their attention, the Catalyst Defendants had no knowledge of the alleged post or the website and the

Twitter accounts through which the post was allegedly posted. The alleged post and website are not widely known to the public. The post was not broadly read or disseminated so as to attract any negative attention to West Face and Boland; and

- (f) **Westface.net Post:** the Catalyst Defendants did not publish, create, make directly or indirectly the statements complained of in the post that West Face and Boland have defined in the Counterclaim as the “Westface.net Post”. Further, they did not use any pseudonym nor cause any pseudonym to be registered, as alleged. Moreover, they did not create or register the website, as alleged. The alleged post and website are not widely known to the public. The post was not broadly disseminated or viewed so as to attract any negative attention to West Face and Boland.

124. Contrary to West Face and Boland’s allegations, the Catalyst Defendants did not conspire to harm West Face or Boland by disseminating false or defamatory statements through any “Defamation Campaign”. The Catalyst Defendants did not engage in any unlawful or wrongful activity, as alleged.

125. In any event, West Face and Boland have not suffered any loss or damages as a result of the publication, circulation or posting of the Press Releases, Investor Letters and Internet Postings. Well before the publication of any of the defamatory statements complained of, West Face suffered a precipitous decline in its AUM as a result of its poor financial performance and mismanagement. For the better part of 5 years, West Face consistently underperformed relative to other indices, often

incurring negative or minimal returns. The loss and damages alleged to have been suffered by West Face and Boland are a result of West Face's and Boland's own failed investment decisions and mismanagement, and not as a result of any actions of the Catalyst Defendants.

Conclusion

126. There is no merit to the Counterclaim and it ought to be dismissed. The Counterclaim is a bald attempt by West Face and Boland to distract the market from West Face's poor fund management and deteriorating financial performance, to divert attention from the merits of Catalyst's and Callidus's claim, to shield West Face's and Boland's improper conduct from scrutiny by the courts, and to chill off the Catalyst Defendants from expressing themselves on matters of public interest.
127. West Face and Boland have not suffered any damages whatsoever as a result of any conduct by the Catalyst Defendants.
128. In any event, the damages claimed are excessive and too remote to be recoverable at law. West Face and Boland have failed to mitigate their damages.
129. The Catalyst Defendants did not act in a reckless, high-handed, malicious, oppressive or reprehensible manner that would warrant an award of aggravated or punitive damages.
130. The Catalyst Defendants therefore request that the Counterclaim be dismissed with costs on a substantial indemnity basis.

~~September 25, 2018~~
November 29, 2019

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TO: **SERVICE LIST**

THE CATALYST CAPITAL GROUP INC. et al
Plaintiffs

-and- WEST FACE CAPITAL INC. et al.
Defendants

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

**ONTARIO
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TORONTO**

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