

CITATION: The Catalyst Capital Group Inc. and Callidus Capital Corporation v.
West Face Capital Inc. et al., 2021 ONSC 1191
COURT FILE NO.: CV-17-587463-00CL
DATE: 20210315

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

THE CATALYST CAPITAL GROUP INC.
and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

)
)
) *Richard Dearden, Marco Romeo and*
) *Benjamin Na, for the 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

AND BETWEEN:

THE CATALYST CAPITAL GROUP INC.
and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

)
)
) *Richard Dearden, Benjamin Na and Marco*
) *Romeo, for the Plaintiffs*
)
)
)

- and -)
))
DOW JONES AND COMPANY, ROB) *Phil Tunley and Jennifer Saville, for the*
COPELAND, JACQUIE MCNISH and) Defendants Dow Jones and Company, Rob
JEFFREY MCFARLANE) Copeland and Jacquie McNish.
))
Defendants) *Daniel Burnett, appointed as Amicus Curiae*
))
))
) **HEARD:** December 15, 2020 and February
) 5, 2021

ENDORSEMENT

MCEWEN, J.

[1] This is the third in a series of endorsements that I will be releasing in advance of the anti-SLAPP motions scheduled for the week of May 17, 2021.

[2] This Endorsement deals with the dispute between the Catalyst Corporation Group Inc. and Callidus Capital Corporation (the “Catalyst Parties”) and the defendants, Dow Jones and Company, Rob Copeland and Jacquie McNishr (the “Dow Jones Defendants”), concerning the Catalyst Parties’ attempt to have the Dow Jones Defendants produce, without redactions, a significant number of documents that the Dow Jones Defendants have entirely or partially redacted and marked “confidential source privilege.” The redactions include the identities of the sources of the information contained in the documents.

[3] In the underlying action, the Catalyst Parties have sued the Wall Street Journal’s owner, Dow Jones and Company, and its two journalists, Rob Copeland and Jacquie McNish, for libel as a result of articles published by the Wall Street Journal in August 2017.

[4] In addition to the libel action against the Dow Jones Defendants, the Catalyst Parties have also commenced a companion action, which involves a significant number of parties including Copeland. The companion action is commonly referred to as the “Wolfpack Action” in which, generally, the defendants have been sued for conspiracy: the Catalyst Parties claim that the defendants conspired through a short and distort campaign to harm the Catalyst Parties as a result of the articles published in the Wall Street Journal.

[5] I do not propose to set out the details of the Dow Jones action or the Wolfpack Action. The Wolfpack Action has been comprehensively set out by Boswell J.: see *The Catalyst Capital Group Inc. v. West Fact Capital Inc.*, 2021 ONSC 125. I have also set out additional background facts in my previous two endorsements: see *The Catalyst Capital Group Inc. and Callidus Capital*

Corporation v. West Face Capital Inc. et al., 2021 ONSC 1140 and *The Catalyst Capital Group Inc. and Callidus Capital Corporation v. West Face Capital Inc. et al.*, 2021 ONSC 1454.

PROCEDURAL HISTORY

[6] This matter originally appeared before me on December 5, 2020. At that time, there was a debate between the Catalyst Parties and the Dow Jones Defendants as to whether I should view the disputed documents and/or whether the disputed documents should be provided to counsel for the Catalyst Parties on a “counsel’s eyes only” basis. This would have allowed counsel for the Catalyst Parties to review the documentation but not disclose it to their clients.

[7] After hearing submissions on this issue and submissions with respect to the claim of journalist-source privilege, I decided I had to review the documents. I also determined that a “counsel’s eyes only” review was not practical. While I had no difficulty accepting the Catalyst Parties’ counsel’s undertaking of confidentiality, I was of the view that this would put counsel in a difficult, if not impossible, situation concerning their conduct in the action going forward. By way of example, if I allowed the “counsel’s eyes only” review, it could be very difficult for counsel to best serve their clients and ignore the information they obtained through their review, including the identity of confidential sources not disclosed.

[8] At the suggestion of counsel for the Dow Jones Defendants, I heard submissions as to whether *amicus curiae* (“Amicus”) ought to be appointed. The general suggestion was that Amicus would have the opportunity to review the documents without any redactions and argue the motion, *in camera*, on behalf of the Catalyst Parties. Amicus would not, however, disclose in any way, shape or form, the nature or context of the documents to the Catalyst Parties or their counsel.

[9] After hearing very useful submissions from counsel for both parties and discussing the matter with them, the parties entered into a consent order with respect to the role of Amicus, which is attached as Schedule A to this Endorsement.

[10] The matter appeared before me on February 5, 2021, as per the terms of the order, with Mr. Daniel Burnett acting as Amicus.

PRELIMINARY COMMENTS

[11] Before I begin my analysis of each of the disputed documents, I pause to make two specific rulings.

[12] The first deals with the issue of relevance. For the reasons that follow, I am of the view that all of the documents sought by the Catalyst Parties are relevant to the anti-SLAPP motions in which both the Catalyst Parties and the Dow Jones Defendants are participating.

[13] Both the Dow Jones action and the Wolfpack Action involve significant litigation. As I have noted in my previous endorsements and as has been noted by Boswell J., at paras. 212-215, proportionality takes on a different hue in a case like this.

[14] At the anti-SLAPP motions, the Catalyst Parties faced the dismissal of their claims against a number of defendants including the Dow Jones Defendants.

[15] I will have to engage in an exercise, pursuant to s. 137.1 of the *Courts of Justice Act*, RSO 1990, c. C.43 (“CJA”), to determine whether, amongst other things, there are grounds to believe that the Catalyst Parties’ actions have substantial merit and that the moving parties have no valid defence.

[16] The documentation in dispute in this motion involves interviews conducted by Copeland and/or McNish with sources in advance of the aforementioned Wall Street Journal articles. Given the allegations of libel and conspiracy, I am of the view that the information sought by the Catalyst Parties is relevant, subject to a few exceptions discussed below.

[17] In my previous endorsements, I have ordered fairly broad disclosure in advance of the anti-SLAPP motions acknowledging that the trend in civil litigation is toward full disclosure. This approach was also taken by Boswell J.: see *Catalyst Capital Group Inc. v. West Fact Capital Inc.*, *supra*, at para. 339. In this regard, significant production has been ordered as against the Catalyst Parties, and it is only fair and reasonable that a balance be struck between the parties concerning the scope of disclosure. In my view, that would include disclosure of the contents of the disputed documentation subject to my comments below.

[18] The second ruling deals with the adequacy of the Dow Jones Defendants’ supporting affidavits. As part of my analysis, I have also reviewed the identities of the sources that the Dow Jones Defendants wish to keep confidential.

[19] The Catalyst Parties, and now Amicus, submit that the Dow Jones Defendants’ claim of confidential source protection cannot be maintained based on the “generalized” affidavit evidence of Copeland and particularly in circumstances where McNish has not sworn any affidavit in this regard.

[20] I disagree.

[21] While I would have preferred affidavits from both Copeland and McNish, I am of the view that Copeland’s affidavits are sufficient. Considering the nature of this litigation and the contents of the affidavits, it would have been an onerous task to have both Copeland and McNish swear affidavits with respect to each and every source with whom they spoke.

[22] Further, as has been stated in my previous endorsements, this litigation involves significant damages and allegations on a scale rarely seen by this court.

[23] It is understandable that the sources that spoke with Copeland and McNish would fear repercussions. The Catalyst Parties’ business model, which includes lending to distressed companies, not infrequently, leads to litigation. Similarly, disputes in the short selling industry also, not infrequently, lead to litigation. This is well set out in the records that have been filed on the various motions before me and acknowledged by the Catalyst Parties and the defendant Nathan Anderson, an investor and professional short seller. This is also specifically referenced in Copeland’s November 8, 2019 affidavit, at paragraphs 9, 14 and 28, and his October 30, 2020

affidavit, at paragraphs 9, 11 and 12. Amongst other things, he specifically states that many of the sources they spoke to, which would include the sources in dispute on this motion, were spoken to on a confidential basis. Some of the sources specifically noted that they feared retribution and repercussions by the Catalyst Parties. Consequently, Copeland and McNish gave these sources undertakings of confidentiality which, as journalists, Copeland deposes were essential to their relationship.

[24] In this regard, Copeland and McNish researched the Catalyst Parties' past litigation, which confirmed their concerns, all of which is set out in Copeland's October 30, 2020 affidavit, at paragraph 28. Obviously, these concerns came to fruition.

[25] In conclusion, I am of the view that the documents reviewed in this Endorsement are both relevant and a proper claim of confidentiality has been advanced in the Copeland affidavits.

THE DOCUMENTS IN DISPUTE

Introduction

[26] In conducting the analysis, I must have regard to the four-part Wigmore Test for case-by-case privilege: see *R. v. National Post*, 2010 SCC 16, [2010] 1 S.C.R. 477, at para. 53. The test places the burden upon the Dow Jones Defendants to establish that:

- (i) the communication originated in a confidence that the identity of the informant would not be disclosed;
- (ii) the confidence is essential to the relationship in which the communication arises;
- (iii) the relationship is one which should be "sedulously fostered" in the public good; and
- (iv) the public interest served by protecting the identity of the informant from disclosure outweighs the public interest in getting at the truth.

[27] Based on my findings above concerning relevance and confidentiality, I am of the view that the documents sought by the Catalyst Parties are relevant, but also that the Dow Jones Defendants have established criteria (i)-(iii). As noted, I accept that the communications in dispute originated in a confidence that the informant would not be disclosed. I also similarly accept that this confidence is essential to the relationship in which the communications arose between Copeland/McNish and their sources. Copeland and McNish were acting as journalists for the Wall Street Journal and the sources were given a promise of confidentiality. Otherwise, I accept that they would not have spoken to Copeland and/or McNish, given what I have outlined above.

[28] I also accept that the relationship between a professional journalist and their sources, in a case such as this, is a relationship that ought to be sedulously fostered: see *1654776 Ontario Ltd. v. Stewart*, 2013 ONCA 184, 114 O.R. (3d) 745: at paras. 93-95

[29] In the analysis that I will be conducting below, I have also accepted that the fourth criterion has been established and that the public interest is served by protecting the identity of the informant

from disclosure on a case-by-case basis, with one exception. For the purposes of the upcoming anti-SLAPP motions, it is the content of the information that is paramount, rather than the identity of the sources; therefore, even though the Dow Jones Defendants are parties, I am of the view that the sources' identities should remain confidential: see *Globe and Mail v. Canada (Attorney General)*, 2010 SCC 41, [2010] 2 SCR 592, at paras. 61 and 66.

[30] As will be seen, I have ordered a broad range of disclosure since, in most instances, the information sought to be disclosed will not compromise the identity of the informant. In this regard, it must be kept in mind that the fourth criterion pits the search for truth against the Dow Jones Defendants' wish to keep relevant evidence secret. As will be seen below, while most of the informants' identities are protected, the Catalyst Parties are obtaining the vast majority of the evidence they seek, which establishes a necessary balance.

[31] In applying the fourth criterion, I am mindful of the fact that it does not protect documents, or portions of documents, that do not identify the confidential source.

[32] I will now turn to the documents in dispute with respect to the issue of journalist-source privilege. Counsel have been very cooperative in adopting a protocol to confidentially identify the sources and the documents in dispute, which I will follow below.

[33] With respect to my analysis below, the Dow Jones Defendants and Amicus have agreed to work cooperatively to employ the necessary redactions so that the sources' identities are protected, which would typically, amongst other things, include their addresses and positions. If difficulties arise, as I have advised the Dow Jones Defendants and Amicus, I can be spoken to.

Source #1

[34] I am ordering that the entire text of the emails in question be produced with the exception of any identifying information that would genuinely identify the source. The corporation which employs the source is large, and there is no reason to believe that identifying the corporation would lead to the disclosure of the source's identity to the Catalyst Parties.

Source #2

[35] I am ordering production of the emails and the transcripts in question, again with genuine identifiers being redacted.

[36] Of interest in this instance is the fact that over and above Copeland's general affidavit evidence that I have accepted, this source did expressly request that their identity be kept confidential and this source's identity was, in fact, kept confidential in the transcript.

[37] Other than genuine identifiers being redacted, however, the entirety of the emails and transcript ought to be produced. As noted, counsel have agreed to work cooperatively in this regard.

[38] The documents in question also include a transcript of a discussion between Copeland and McNish. Some portions have been redacted. The entirety of the transcript is to be produced, except where the confidential source's information might be disclosed.

Source #3-1 to #3-4

[39] These documents involve four sources that have provided information to the Wall Street Journal in the past but were not contacted with respect to the August 2017 articles. The documents consist of emails passing back and forth between Copeland and McNish with respect to the sources' identities and involve a discussion as to whether the sources should be contacted. The sources' identities are also contained in one page of Copeland's notes. It bears noting that the identities of these sources were also provided to Copeland by other individuals. Further, emails produced by the Dow Jones Defendants in this litigation, generated by other parties, have disclosed the identities of these sources and their names are in the record.

[40] In my view, given the fact that these sources were not contacted, their identities are relevant and have already been disclosed in other documentation, the documents ought to be produced in their entirety, without redaction. With respect to the issue of relevance, I accept Amicus's argument that it may be relevant as to why Copeland and/or McNish did not contact these sources.

[41] Last, there is no suggestion whatsoever that any of these four individuals have acted untoward in the past, nor is there any evidence as to the nature of their past unrelated discussions with the Dow Jones Defendants.

Source #4

[42] The initials that identify the source will be redacted and the rest of the document will be produced in an unredacted fashion.

[43] Given my ruling on relevance, the Dow Jones Defendants only seek redaction of the identifying initials.

Source #5

[44] The emails shall be produced with the genuine identifiers of the source redacted. Given the size of the institution with which the source is associated, the general text of the emails should not be of concern, with the exception of the last email, which will be redacted in its entirety on the basis that it is not relevant.

Source #6

[45] Any genuine identifiers with respect to this person's identity will be deleted, although the text will remain in place.

Source #7

[46] Any genuine identifiers concerning the source's identity will be deleted, although the text will remain: given the size of the institution with which this source is associated, the text should not identify the source's identity. Further, a promise of confidentiality was made to this source specifically in the documents.

Sources #8 and #9

[47] Once again, the information contained in the text is relevant but genuine identifiers should be deleted.

Source #10

[48] The information concerning the identity of the corporation will be redacted and this source will be referred to as "a corporate investor."

Source #11

[49] Amicus submitted that the identity of this source and the entire transcript of their interview, subsequent notes and text messages ought to be disclosed.

[50] I disagree.

[51] First, in this case, confidentiality was specifically asked for and granted as a condition of the source's cooperation.

[52] Second, the information discussed was marginally relevant to the stories that ran in the Wall Street Journal and does not particularly pertain to the allegations of fraud contained in the article.

[53] Third, with respect to the anti-SLAPP motions, the Catalyst Parties will not be prejudiced if the source's identity is redacted, as they will have a virtually unredacted copy of the information disclosed by this source, which, in my view, is sufficient for the purposes of the anti-SLAPP motions. Subsequent to the motion, counsel provided me with useful supplementary submissions concerning redactions. It appears as though the parties, with the exception of the identity of the source, have a very common view as to what should be redacted from the documents and the redactions are minimal. If counsel cannot agree with respect to the issue of redactions, I can be spoken to.

[54] Last, the transcript involves a situation where the interview was interrupted by a telephone call from a third-party which is entirely unrelated to this matter and the transcript of that telephone conversation ought to be redacted in its entirety.

Sources #12-#21

[55] Counsel have agreed to review these documents to determine if an agreement can be reached and/or further submissions are required. In this regard, transcriptions of McNish's notes may be necessary.

[56] If counsel cannot agree on any of the items, I can be spoken to.

DISPOSITION

[57] Based on the foregoing, I order that the Dow Jones Defendants make the disclosure as noted above.

[58] I also direct counsel who have appeared before me during the *in camera* submission process, initiated by my Order dated December 23, 2020, to prepare for my review a copy of the Confidential Source Documents at issue on the motion, together with revised redactions that give effect to my rulings on the issues raised. I will review their proposals and, after hearing further submissions if necessary, approve of a copy of those Documents with amended redactions (the "Amended Disclosure") that will be incorporated as an Appendix to my Order on this motion.

[59] In order to ensure that both parties to this motion have a full and fair opportunity to appeal this decision, I further direct as follows:

- (a) This Endorsement and the resulting Amended Disclosure shall remain confidential to the counsel who have appeared before me during the *in camera* submission process, initiated by my Order dated December 23, 2020, for a period not to exceed 15 days following release to counsel for the Dow Jones Defendants;
- (b) If, within the 15 days provided by paragraph 59(a), counsel for the Dow Jones Defendants advise me that they intend to exercise any right of appeal, then:
 - i. the resulting Amended Disclosure shall remain confidential until such appeal is finally disposed of; and
 - ii. this Endorsement shall be publicly released 2 business days following their release to the *in camera* counsel, unless within those 2 days such counsel request an opportunity to make submissions before me on the need for a redacted version of this endorsement that can be released publicly pending an appeal by the Dow Jones Defendants;
- (c) If, within the 15 days provided by paragraph 59(a), counsel for the Dow Jones Defendants advise me that they will not exercise any right of appeal, or if that period expires with no such appeal having been taken, then this Endorsement and the resulting Amended Disclosure shall forthwith be released publicly and sent to counsel of record for the Catalyst Parties; and

(d) The time period under the Rules for any appeal by the Catalyst Parties shall run from the date their counsel receives these Reasons for Decision and the resulting Amended Disclosure.

[60] Ultimately, if the parties cannot agree on the issue of costs, they can arrange for a 30 minute case conference before me to discuss further steps.

A handwritten signature in black ink, appearing to read 'McEwen', written over a horizontal line.

McEwen, J.

Released: March 15, 2021

Schedule A

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

Court File No. CV-18-593156-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

WEDNESDAY, THE 23RD

)

MR. JUSTICE MCEWEN

)

DAY OF DECEMBER, 2020

BETWEEN:

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

**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 MAST 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

Court File No. CV-18-593156-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Justice T. McEwen

23 Dec 20

B E T W E E N:

**THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION**

Plaintiffs

- and -

**DOW JONES AND COMPANY, ROB COPELAND, JACQUIE MCNISH and JEFFREY
MCFARLANE**

Defendants

ORDER

THIS MOTION, made by the Plaintiffs in both the above-styled actions, for an order that the Defendants, Rob Copeland, Jacquie McNish, and Dow Jones and Company (the “Dow Jones Defendants”) produce without redaction the documents included in Volume VII of the Plaintiffs’ Supplementary Motion Record (the “Documents in Issue”), was heard by the Court on December 15 and 16, 2020.

UPON READING the Motion Record, Supplementary Motion Record and Responding Record, the Facta, Books of Authorities, Compendia and other materials filed by the Plaintiffs and the Dow Jones Defendants, and upon hearing submissions of counsel for the Plaintiffs and the Dow Jones Defendants on December 15 and 16, and upon the Court determining that in order to fully resolve the issues raised on the motion it would be necessary to appoint counsel to act as *amicus curiae* on the terms set out herein and to hear further argument *in camera* from the Amicus and from counsel for the Dow Jones Defendants regarding the redactions in the Documents in Issue that relate to journalist-confidential source privilege (“JCS Privilege”).

AND UPON BEING ADVISED that the Plaintiffs and the Dow Jones Defendants consent to the within Order.

1. THIS COURT ORDERS that Daniel Burnett, of the law firm Owen Bird Law Corporation, be and he is hereby, appointed as *amicus curiae* (the “Amicus”) to assist the court in its review of the content of the Documents in Issue that have been redacted on account of JCS Privilege, and in preparing for and participating in the hearing of further argument *in camera* on this motion on the following terms.
2. THIS COURT ORDERS that the Amicus shall promptly be provided by the Plaintiffs and by the Dow Jones Defendants with complete copies of their respective materials filed on this motion, together with any such other material that counsel for the Plaintiffs or counsel for the Dow Jones Defendants may wish to provide to the Amicus, in confidence or otherwise, by way of background to the matters in issue on the motion.
3. THIS COURT ORDERS that the Dow Jones Defendants shall, on a mutually agreed upon date, provide to the Amicus in confidence a complete, unredacted copy of all Documents in Issue (the “Unredacted Documents in Issue”).
4. THIS COURT ORDERS that the Dow Jones Defendants shall, on or before January 25, 2021, or on such other date prior to the hearing of further argument *in camera* on this motion as counsel for the Plaintiffs and the Dow Jones Defendants may agree with the Amicus, provide to Justice McEwen a copy of the Unredacted Documents in Issue. The Unredacted Documents in Issue shall not be filed in either court file except under seal.
5. THIS COURT ORDERS that the Amicus may, prior to the receipt of the Unredacted Documents in Issue in accordance with paragraph 3 of this Order, communicate freely with counsel for the Plaintiffs and/or counsel for the Dow Jones Defendants, to discuss and agree on any matters of process, and to receive – in confidence or otherwise as may be agreed – any other materials and oral information that counsel for the Plaintiffs or counsel for the Dow Jones Defendants consider relevant to the Amicus’s mandate.
6. THIS COURT ORDERS that, after the receipt of the Unredacted Documents in Issue in accordance with paragraph 3 of this Order the Amicus shall not have any further

communication with representatives of the Plaintiffs, including counsel for the Plaintiffs, without prior leave of the Court or agreement of counsel for the Plaintiffs and counsel for the Dow Jones Defendants.

7. THIS COURT ORDERS that:
 - a. the Amicus shall keep confidential from all representatives of the Plaintiffs, and from counsel for the Plaintiffs, and from any others not participating in the hearing of further argument *in camera* on this motion, all confidential information and documents to which the Amicus has been given access by the Dow Jones Defendants pursuant to this Order, including the Unredacted Documents in Issue; and
 - b. the Amicus shall keep confidential from all representatives of the Dow Jones Defendants, and from counsel for the Dow Jones Defendants, and from any others not participating in the hearing of further argument *in camera* on this motion, all confidential information and documents to which the Amicus has been given access by the Plaintiffs pursuant to this Order.
8. THIS COURT ORDERS that the Amicus shall have full authority and discretion to conduct a pre-hearing review of the Unredacted Documents in Issue and to reach binding agreements with counsel for the Dow Jones Defendants to narrow the issues and documents to be reviewed by the Court at the hearing of further argument *in camera* on this motion, including for greater certainty agreements to accept any redactions made by the Dow Jones Defendants on the Documents in Issue that fulfill the *Wigmore* test, and agreements to permit removal of the redactions (in whole or in part), word substitutions, and/or summaries of redacted information.
9. THIS COURT ORDERS that the Amicus shall conduct both his pre-hearing review and his argument at any *in camera* hearing of further argument on this motion,
 - a. on the basis of the applicable common law relating to JCS Privilege, including in particular the *Wigmore* test and cases cited by counsel for the Plaintiffs and/or for the Dow Jones Defendants in their Facta filed on the motion; and

- b. acting as if he was counsel for the Plaintiffs during the *in camera* hearing of the motion.
10. THIS COURT ORDERS that, as soon as possible after reaching any agreements to permit additional removal of the redactions (in whole or in part), word substitutions, and/or summaries of redacted information on the Documents in Issue in accordance with this Order, the Amicus and counsel for the Dow Jones Defendants shall provide those documents to the Plaintiffs and all other parties to these actions.
11. THIS COURT ORDERS that the Unredacted Documents in Issue that are not the subject of agreements reached as a result of the pre-hearing review referred to in paragraph 8 of this Order shall be reviewed by the Court in a hearing *in camera* to receive further argument on this motion from the Amicus and counsel for the Dow Jones Defendants.
12. THIS COURT ORDERS that the Amicus shall institute an ethical wall between the Amicus and any lawyer at the Amicus' law firm who engages in any representation of any of the parties to these actions in order to screen off access to any documents, material or information obtained by the Amicus during his mandate as set out in this Order. So long as the ethical wall is in place, the Amicus' appointment to assist the Court in its review of the content of the Documents in Issue shall be personal to the Amicus and shall not be imputed to any other persons or lawyers at the Amicus' law firm.
13. THIS COURT ORDERS that the reasonable fees and disbursements invoiced by the Amicus shall be divided equally between, and paid by, the Plaintiffs and the Dow Jones Defendants, subject to the Court's discretion to treat such payments as a disbursement for the purposes of any decision on the costs of this motion and/or on the costs of the motions returnable on March 7-11, 2021, or as further ordered by this Court.

14. THIS COURT ORDERS that the Amicus is to destroy his copy of the Unredacted Documents in Issue following the decision of this Court on the within motion and the expiry of any appeal period.

McE T.

THE CATALYST CAPITAL GROUP INC., et al.
Plaintiffs

-and-

DOW JONES AND COMPANY, et al.
Defendants

Court File No. CV-17-587463-00CL
Court File No. CV-18-593156-00CL

23 Dec 20

Subsequent to the hearing of the motions on Dec 15 and 16 the
Plaintiffs and the Dow Jones Defendants agreed to this form of Order,
which shall go, on consent of these parties.

I agree that the proposed method of proceeding is fair and reasonable.

MCEST

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

ORDER

CITATION: The Catalyst Capital Group Inc. and Callidus Capital Corporation v.
West Face Capital Inc. et al., 2021 ONSC 1191
COURT FILE NO.: CV-17-587463-00CL
DATE: 20210315

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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
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MCFARLANE

Defendants

ENDORSEMENT

McEwen J.