

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**MOTION RECORD OF BRUCE LIVESEY**  
**(Responding to the Plaintiffs' Record in Support of Their Refusals Motion)**

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# TAB 1

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

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

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**AFFIDAVIT OF BRUCE LIVESEY  
(Plaintiffs' Refusals Motion)**

**(Sworn on March 11, 2021)**

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I, Bruce Livesey, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Defendant in the above-captioned proceeding. I have knowledge of the matters to which I refer in this affidavit. Where I make statements in this affidavit that are not within my personal knowledge, I have identified the source of that information, and I believe that such information is true.
2. This affidavit is sworn in response to the motion brought by Catalyst Capital Group Inc. (“**Catalyst**”) and Callidus Capital Corporation (“**Callidus**” and, together with Catalyst, the “**Plaintiffs**”) seeking various records and information over which I have asserted privilege. The information and records sought by the Plaintiffs include the identities of five confidential sources

whom I interviewed in my capacity as a freelance investigative journalist, during my fact-finding activities for articles I authored about the Plaintiffs and Newton Glassman.

#### **A. My Background and Experience as a Journalist**

3. At all times material to the claims in this proceeding, I have been a freelance investigative journalist based in Toronto, Canada. I have more than 35 years of experience as a journalist.

4. I have authored or co-authored numerous articles on business-related subjects published in prominent Canadian publications. My writings have appeared in major newspapers and magazines, including *The Globe and Mail*, *Report on Business Magazine*, *The Guardian*, *National Post*, *Toronto Star*, *Christian Science Monitor*, *The Gazette*, *The Walrus*, *Canadian Business*, *Canadian Lawyer*, *Buzzfeed* and *The Financial Post*, among many others. For *Canadian Lawyer* alone, I have written more than a dozen cover stories.

5. I am the author of the 2012 best-selling book on financial fraud in Canada's capital markets, *Thieves of Bay Street: How Banks, Brokerages and the Wealthy Steal Billions from Canadians*. This book was published by Random House Canada (now called Penguin Random House Canada).

6. In 2013, *Thieves of Bay Street* was nominated for an Arthur Ellis Award for best non-fiction crime book.

7. I am also an award-winning writer, director and producer of TV and radio documentaries on business and financial topics.

8. I spent six years as an associate producer at *CBC TV's* "the fifth estate" and then as a producer working for the investigative unit of "The National" and "CBC News Sunday". I also worked outside Canada on a co-production of *PBS's* "Frontline" and the *New York Times*. I directed documentaries for *Discovery Channel*, *The Real News Network* and *Current TV*.

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

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

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

12. I was the winner of a Radio Television Digital News Association award in 2010.

13. In addition, a documentary I co-produced for the *OMNI* television network won the Canadian Ethnic Media Award for best TV story in 2012.

14. I was part of the *National Observer* team that won four awards at the Canadian Online Publishing Awards (COP A) in 2016, including for best news coverage.

15. In 2019, I won a New York Festivals radio award for a *CBC Radio* documentary I co-produced.

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

17. I have a longstanding relationship with the *Globe and Mail's Report on Business Magazine*, for which I first wrote in 1988. I have written a number of cover stories for that magazine, and have been nominated and won awards for my articles in that publication.

## **B. My Work as a Fraud Investigator**

18. In addition to my work as a journalist, I have also performed services as a financial fraud investigator for law firms, institutional investors and other participants in the capital markets.

19. I am a licensed private investigator in Ontario and have held such a license for two years.

20. I first began to offer investigative services to capital markets participants in 2015. Since then, I estimate that I have devoted approximately seventy percent of my professional time to journalism and approximately thirty percent of my professional time to the performance of investigative services for capital markets participants and law firms.

### **C. My Two Published Articles About the Plaintiffs and Newton Glassman**

21. On November 7, 2019, I swore an affidavit in support of my anti-SLAPP motion in this matter (“**Anti-SLAPP Affidavit**”).

22. As explained in my Anti-SLAPP Affidavit at paragraphs 33-116, I co-authored two published articles about the Plaintiffs and Newton Glassman.

23. The first of those articles was entitled “Newton Glassman’s Legacy of Ashes” and was published on April 11, 2018 (the “**First Article**”) by the *Southern Investigative Reporting Foundation* (“*SIRF*”).

24. *SIRF* is an American news website which investigates malfeasance in the financial world. It was formed in 2012 with the goal of providing in-depth financial investigative reporting to ensure corporate accountability for the common good. It has since changed its name to the *Foundation for Financial Journalism*.

25. The second of those articles was entitled “Newton Glassman and Other Peoples’ Money” and was published by *SIRF* on November 27, 2018 (the “**Second Article**” and, together with the First Article, the “**Articles**”).

26. True copies of the First Article and the Second Article are attached hereto, respectively, as **Exhibit “A”** and **Exhibit “B”**.

27. As I explain in my Anti-SLAPP Affidavit, I first began working on a story about Newton Glassman and his feud with Gregory Boland in August 2016 (the “Glassman-Boland Article”).

28. The Glassman-Boland Article was assigned to me by *Canadian Business Magazine*. For the reasons explained in my Anti-SLAPP Affidavit, however, *Canadian Business Magazine*

ultimately did not publish the Glassman-Boland Article. It nevertheless paid me \$5,000 for my work on that article.

29. I subsequently sought to persuade other media organizations, including the *Globe and Mail's Report on Business Magazine*, to publish an updated version of the Glassman-Boland Article.

30. Although the *Report on Business Magazine* initially agreed to publish an updated version of the Glassman-Boland Article, ultimately it did not publish that article, for reasons that were never disclosed to me. It nevertheless paid me \$2,500 for my work on the Glassman-Boland Article.

31. In December 2017, after it became clear to me that *Report on Business Magazine* would not publish the Boland-Glassman Article, I approached Roddy Boyd, the founder and publisher of *SIRF*, and asked him if he was interested in an article about Mr. Glassman and the Plaintiffs.

32. By that point in time, I had concluded that I had seen evidence that Mr. Glassman was defrauding his investors and that the Glassman-Boland Article needed to be expanded to examine Mr. Glassman's wrongful actions.

33. Mr. Boyd expressed an interest in the expanded story. Ultimately, Mr. Boyd co-authored the Articles with me. *SIRF* paid me US\$12,000 for my work on the Articles.

34. The only published articles about Mr. Glassman and the Plaintiffs that I have ever authored are the two Articles published by *SIRF* in 2018. I have not endeavoured to write any further articles about the Plaintiffs.

#### **D. My Promises of Confidentiality to the Confidential Sources**

35. During the period 2016 to 2018, while working as a freelance investigative journalist on the Glassman-Boland Article and the Articles, I investigated the Plaintiffs' business and affairs.

36. In the course of conducting research for the Glassman-Boland Article and the Articles published by *SIRF*, I interviewed and otherwise communicated with over 20 individuals, including

over ten individuals who agreed to speak with me strictly on the condition that our discussions be kept confidential.

37. After the filing of my Anti-SLAPP Affidavit, a number of the persons I interviewed on a confidential basis waived the confidentiality and privilege attaching to their interviews. Those persons include the Defendants Gregory Boland, Bruce Langstaff, Nathan Anderson, Darryl Levitt and Jeffrey McFarlane.

38. Five of the persons whom I interviewed on a confidential basis for purposes of conducting research for the Boland-Glassman Article and for the Articles published by *SIRF* have not waived the confidentiality or privilege attaching to their interviews. (I hereafter refer to those five interviewees collectively as the “**Confidential Sources**”.)

39. None of the Confidential Sources is a party to this action.

40. I audio recorded my interviews of the five Confidential Sources and have retained those audio recordings. In this action, I have refused to produce to the Plaintiffs those audio recordings and the unredacted transcripts thereof on the basis of journalist source privilege and irrelevance.

41. Below, I discuss my relevant interactions with each of the Confidential Sources.

**(i) Confidential Source #1**

42. My confidentiality agreement with Confidential Source #1 was made in a telephonic conversation in the fall of 2016. I recorded most of that conversation and my counsel subsequently had the recording of the conversation transcribed. The pertinent exchanges between me and Confidential Source #1 relating to confidentiality were as follows:

**Confidential Source #1:** Yeah, sure. So just before we get started, is this -- I mean this would be for attribution or is this background?

**Me:** I was hoping this would be on the record, yes.

**Confidential Source #1:** Yeah, so depending on the scope of what we talk about, I may not be willing to have it for attribution. I don't mind providing background certainly, and there's certain elements that I wouldn't mind –

**Me:** Well, why don't we start on the record and if there's stuff that you feel alarmed or worried about or concerned about, then, you know, if you're happy to go off the record.

**Confidential Source #1:** Yeah.

**Me:** And we can sort of sort that out.

**Confidential Source #1:** Yeah.

**Me:** I understand -- listen, just to be clear, I understand that there's litigation, lots of litigation, there around Wind --

**Confidential Source #1:** Correct.

**Me:** -- and what happened to it. And Greg has the very same concerns, and he and I, you know, reached an understanding of how to deal with that. A lot of people I've been trying to reach or I have talked to have the same issues because the guys at, you know, Catalyst are litigious.

**Confidential Source #1:** Yeah, I mean that's the thing. So I think it's -- you know, it's probably the other way around. I would have to start this conversation completely on background

**Me:** Okay.

**Confidential Source #1:** And then if there are elements of it that are okay to be on the record, we can select those.

**Me:** Okay. That's fine.

[...]

**Confidential Source #1:** I wouldn't want any of this for attribution anyway. So let's be clear, I'm completely off the record.

**Me:** Okay.

[...]

**Confidential Source #1:** I would not characterize it in any way on the -- this is to be completely off the record.

**Me:** Yeah.

**Confidential Source #1:** I want to be just so clear about this, Bruce.

**Me:** Yeah.

**Confidential Source #1:** So completely off the record,...

[...]

**Confidential Source #1:** All completely off the record as well?

**Me:** Yeah.

**Confidential Source #1:** All completely off the record...

[...]

**Me:** I guess generally has this all been good for consumers or are we back to sort of the oligopoly situation for, you know, purchases of Wind technology or Wind - sorry, of mobile services?

**Confidential Source #1:** Okay. So for this whole conversation, this is the part that I am willing to be on the record.

**Me:** Sure.

**Confidential Source #1:** On the record. Look, I think that the government -- so here is what I'd say on the record. The government successfully implemented a competition policy. Everywhere we launched Wind, we brought prices down over 20 percent in all the markets we were operating in, and that benefitted Canadian consumers and businesses directly...

[...]

**Me:** Okay. I'll just see if there's anything we've sort of left out.

**Confidential Source #1:** So all of -- you know, so again I don't want anything --

**Me:** Yeah, everything we've talked about is on the record except that last bit, and then if there's stuff that you did say that I'd like to use on the record, I'll come back to you and we'll discuss it.

**Confidential Source #1:** Sorry, sorry, everything that we discussed I want as background, not for attribution --

**Me:** Yeah.

**Confidential Source #1:** -- except for specifically what I said on the record which was just now.

**Me:** But there was stuff early on in the conversation which was also kind of non-controversial --

**Confidential Source #1:** Yeah, anything –

**Me:** -- that if I like, I'll come back to you and say do you mind if I use this and if you say fine, then we'll use it.

**Confidential Source #1:** Okay. Let me just make sure that's -- because I have -- I want to make sure one of my guys is okay with that. [Name redacted], are we -- are we good with basically we're going to -- you heard everything. Are we good with everything and do we have any concerns? Yeah, okay. Yeah, okay. So, if you're going to make anything for attribution, then my strong legal advice here is that I need -- I need you to come back to me.

**Me:** Yes, I will do that.

**Confidential Source #1:** Otherwise –

**Me:** That's -- I think just to be clear, anything I use, whether you said it on or off the record, I'll come back to you.

**Confidential Source #1:** Great, I would appreciate that. I thank you for that, and that's very important, given the sensitivity of all these --

**Me:** Yeah, exactly. So, as I said, because what sometimes happens is there's stuff that, you know, you've said off the record, but when I read it back, you think well that's not actually very controversial, that's fine. But I understand the legal sensitivities around this, which I have, too, because, you know, the chance, you know, these guys will sue me. So we all want to be agreed that whatever I use in the story, you're fine with, I'm fine with, and that there's no controversy around it.

**Confidential Source #1:** Yeah, look, I think that's -- and I agree that's smart for –

**Me:** Because I don't want you saying at a later point I was misquoted or that's not what I said, blah, blah, blah, blah; right?

**Confidential Source #1:** Yeah.

**Me:** That doesn't help my cause either –

**Confidential Source #1:** Yeah.

**Me:** -- if I get sued. So it's my interest to ensure that whatever I print of this interview that you're fine with.

**Confidential Source #1:** Yes.

**Me:** Both in terms of, you know, that's what you said, and that any legal concerns you have, you know, you can think about.

**Confidential Source #1:** Okay. So I'll stand by to hear back from you...

[...]

**Confidential Source #1:** So I'll look forward to hearing from you, and I'll have my – [name redacted], who is my [redacted], who has been hearing -- he has only heard one side of this conversation. We sit in an open office, so I had him listen to what I was saying, so he didn't hear anything you said.

**Me:** Right.

**Confidential Source #1:** But he has just sort of confirmed for me now that we're satisfied if we can get everything that you are going to use for attribution in any way associated with my name, that we'll get that, a follow-up conversation with you to ensure that everything is good. And I certainly agree it's good for your cause as well and good for West Face as well to have this very clear what everyone said.

**Me:** Yeah. Great. Thanks, [name redacted].

43. In the excerpts set forth in paragraph 42 above, I have redacted the name of Confidential Source #1 and the name and title of that source's lawyer.

44. As appears from the exchanges set forth in paragraph 42 above, Confidential Source #1 made certain limited statements to me on the record. However, I did not identify or quote Confidential Source #1 in either of the Articles.

**(ii) Confidential Source #2**

45. My confidentiality agreement with Confidential Source #2 was made in a telephonic conversation in the fall of 2016. I recorded most of that conversation and my counsel subsequently had the recording of the conversation transcribed.

46. The pertinent exchanges between me and Confidential Source #2 relating to confidentiality are set forth below. (In the below excerpts from my interview of Confidential Source #2, I have redacted information which might enable the Plaintiffs to determine the source's identity.)

**Me:** And I... was calling see if you could chat...

**Confidential Source #2:** Um, I prefer not to.

[...]

**Me:** Okay. Um, do you know of any other people who had perhaps similar experiences or other experiences [redacted]?

**Confidential Source #2:** Again, the generic answer would be yes, but I don't really feel I'm in a position to discuss that.

**Me:** Okay.

**Confidential Source #2:** Unfortunately, I just don't think I'm going to be really of any assistance to you.

**Me:** Yeah.

[...]

**Confidential Source #2:** I mean, if you would agree to go off the record for a moment, I can make a recommendation.

**Me:** Sure.

[...]

**Me:** I'm not saying -- I don't know Riley. I have no idea who he is.

**Confidential Source #2:** [Redacted] and, you know, again, we agreed to be off record.

**Me:** Yes, this is all off the record.

[...]

**Me:** Is that -- was that something Catalyst was doing before -- or Callidus was doing earlier, or was this something that was planned, because that's not really what they -- basically, the allegation against Callidus was this is not what they've been telling shareholders.

**Confidential Source #2:** Mm-hmm, mm-hmm. You know, I mean, I know we're talking without attribution here.

**Me:** Yeah

[...]

**Confidential Source #2:** You know, I will say this, again, not for attribution...

[...]

**Me:** Interesting. Okay. Well, listen, again, this is all off the record, so don't worry, but thank you very much.

**(iii) Confidential Sources #3 and #4**

47. My confidentiality agreements with Confidential Sources #3 and #4 were made in telephonic conversations in the winter of 2018. I recorded most of those conversations and my counsel subsequently had the recordings of those conversations transcribed.

48. However, I did not record those parts of the conversations in which my confidentiality agreements with Confidential Sources #3 and #4 were made.

49. Frequently, when I record my telephonic conversations with persons whom I have interviewed in the course of researching a story, I begin the recording after introductory exchanges

between me and the interviewee. That is what happened in my interviews of Confidential Sources #3 and #4.

50. Nonetheless, I distinctly recall that Confidential Sources #3 and #4 insisted that my interviews of them be entirely off-the-record and that I not disclose that they had been interviewed by me.

**(iv) Confidential Source #5**

51. My confidentiality agreement with Confidential Source #5 was made in a telephonic conversation in the winter of 2018. I recorded most of that conversation and my counsel subsequently had the recording of the conversation transcribed.

52. The pertinent exchanges between me and Confidential Source #5 relating to confidentiality were as follows:

**Me:** And I just wanted to chat. So this is off the record just for background, not for attribution, just so I can better understand –

**Confidential Source #5:** Yeah

**Me:** -- what is going on...

**E. My Telephonic Interviews of Mr. Boland and Mr. Anderson**

53. As I stated above, in the course of doing research for the Glassman-Boland Article, I interviewed the Defendant, Gregory Boland, on a confidential basis. In late 2020, Mr. Boland waived the confidentiality and privilege attaching to my interviews of him.

54. My interviews of Mr. Boland were conducted in person and telephonically. In the course of my telephonic interview of Mr. Boland, I inadvertently mentioned to Mr. Boland that I had interviewed Confidential Source #4 and briefly discussed with Mr. Boland certain of the information that Confidential Source #4 had conveyed to me..

55. Confidential Source #4 did not authorize me to disclose his/her identity to Mr. Boland and, as I indicated above, Confidential Source #4 has not waived the confidentiality or privilege attaching to my interview of Confidential Source #4.

56. Accordingly, the audio recording and transcript of my telephonic conversation with Mr. Boland which my counsel provided to counsel for the Plaintiffs have been redacted to prevent disclosure of the identity of Confidential Source #4 to the Plaintiffs.

57. As I state above, another Defendant whom I interviewed in the course of my research for the Articles was Nathan Anderson. My interview of Mr. Anderson was conducted on an off-the-record, confidential basis, but Mr. Anderson subsequently waived the confidentiality and privilege attaching to his interview.

58. In the course of my interview of Mr. Anderson, Mr. Anderson suggested that I interview Confidential Source #4. Until that point in time, I had never spoken to Confidential Source #4.

59. In order to protect the identity of Confidential Source #4, I have redacted from the transcript of the Anderson interview which I have produced to the Plaintiffs the name of Confidential Source #4 and all information which might enable the Plaintiffs to identify Confidential Source #4.

#### **F. The Importance of Upholding Confidentiality as an Investigative Journalist**

60. In my experience as a journalist, I and the sources I have interviewed have frequently employed the term “off the record” to describe their conversations with the journalist. I have always understood that, when the source and the journalist agree that an interview is to be conducted on an “off the record” basis, the journalist is assuming a strict obligation to maintain in confidence both the identity of the source and the content of the conversation between the source and the journalist.

61. Journalists and their sources also frequently use the phrase “not for attribution.” In the context of my journalistic work, I have always understood the term “not for attribution” to mean that the journalist is assuming an obligation not to disclose the identity of the source and to maintain the source’s identity in strict confidence.

62. Upholding promises of confidentiality that I have made to my sources are matters of crucial importance to my journalistic activities and to the journalistic profession generally. Many of the sources whom I have interviewed confidentially in my career would not have disclosed to me any of the information I sought had I not provided to the source a promise of confidentiality.

63. Never in my career have I publicly disclosed the identity of a person whom I interviewed on an 'off-the-record' or 'not-for-attribution basis, unless the person subsequently waived the confidentiality and privilege attaching to the interview. I regard upholding these promises as vital to my ability to conduct my work, and I believe that the failure to protect the identities of my confidential sources would deter potential sources from providing me with important information.

64. My journalism has largely focused on investigating and exposing the misconduct of powerful individuals and entities. The nature of my work results in me often investigating matters that the powerful subject(s) of these investigations do not want to have exposed publicly. The objects of my investigations generally have a strong interest in keeping potentially damning information about them from coming to light.

65. The confidential sources whom I have interviewed must weigh providing information to me against the fear of reprisals should their identity be exposed. Often, when confidential sources agree to speak with me, they are imparting information that they could not safely disclose to me in the absence of an enforceable assurance that their identity will be protected.

66. In my experience, the powerful individuals whom I investigate engage in various forms of retribution against those who bring their misdeeds to light. As such, these sources will often have well-founded concerns about facing reprisals professionally, legally or otherwise should they be identified as a source. Confidential sources place significant trust in me upholding my promises of confidentiality, and given the risks disclosure can have on their lives, I hold these promises to be sacrosanct.

67. Some of my most important journalistic endeavours would not have been possible without information from confidential sources.

68. For example, in 2016, I wrote an exposé that was published in the *Globe and Mail* on the Irving Family of New Brunswick, one of Canada's wealthiest and most secretive families. Many

of the sources I spoke to who had first-hand information about the Irving's affairs were also familiar with the family's prevalence for engaging in coercive tactics to quell public discourse and criticism about their affairs. This included people who had married into the Irving family and had had children with them. Without being able to provide promises to these sources that their identity would be protected from disclosure, I would not have been able to connect the necessary dots to complete that story.

69. Similarly, in 2010, I authored an article entitled "The Drug Cartels and the Mexican Army," which was published by the *The Gazette* on May 22, 2010. (Similar articles were also published by *CBC* and *NPR*, who helped finance this project.) That article examined the relationship between Mexican drug cartels and the Mexican army.

70. As part of my research for that article, I travelled to El Paso, Texas and the City of Juarez in Mexico. While there, I interviewed on an off-the-record basis a former police commander in the Juarez police department who was hiding in El Paso seeking refugee status. He told me about the inner workings of the Juarez and Sinaloan cartels and that, if his name were to be used for my story, he would likely be killed.

71. Because of the Plaintiffs' and Mr. Glassman's extensive history of embroiling their critics in aggressive and costly litigation (as they are doing in the present case), similar concerns were present and were expressed by the confidential sources I interviewed during the course of my investigation of the Plaintiffs.

72. Ordering journalists to disclose the identities of confidential sources not only has an impact on the particular source and journalist, it will have a chilling effect on the journalism profession at large. If journalists are frequently ordered to disclose the identities of confidential sources, then it will become increasingly difficult for journalists to access sources of information that are vital to the protecting the public interest through the revelation of misconduct.

## **G. Other Matters**

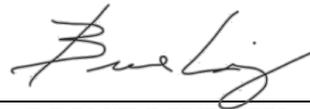
73. In opposition to my and the other Anti-SLAPP motions filed in this proceeding, James A Riley, a Managing Director of Catalyst, swore two affidavits on May 29, 2020. Subsequently, my

counsel herein cross-examined Mr. Riley on his affidavits. Attached hereo and marked as **Exhibit “C”** are Answers to the Undertakings made by Mr. Riley in the course of that cross-examination.

SWORN remotely by Bruce Livesey at )  
the City of Toronto, in the Province of )  
Ontario on March 11, 2021 in )  
accordance with O. Reg. 431/20: )  
*Administering Oath or Declaration* )  
*Remotely.* )



\_\_\_\_\_  
Commissioner for taking affidavits



\_\_\_\_\_  
**BRUCE LIVESEY**

A.J. Freedman (LSO# 73196R)

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

and

WEST FACE CAPITAL INC., *et al*  
Defendants

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**Affidavit of Documents of Bruce Livesey  
(sworn March 11, 2021)**

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Fax: (647)-243-6620  
c/o A. Dimitri Lascaris Law P.C

**Lawyers for the Defendant, Bruce Livesey**

This is **Exhibit “A”** referred to in the affidavit of  
Bruce Livesey, sworn before me via teleconference this 11<sup>th</sup>  
day of March, 2021

A handwritten signature in black ink, appearing to be the initials 'ajf', is written above a horizontal line.

\_\_\_\_\_  
A Commissioner, etc.

## FINANCIAL SERVICES

# Newton Glassman's Legacy of Ashes

By **Bruce Livesey and Roddy Boyd** | April 11, 2018

It was corporate skulduggery at its most audacious. Last September Frank Newbould dined at Scaramouche, a swanky downtown Toronto restaurant, with a businessman who said he would like to hire Newbould as an arbitrator. In reality, this was a ruse to engineer an attempted sting on Newbould, a retired Ontario judge, as the [National Post](http://nationalpost.com/feature/exclusive-the-judge-the-sting-black-cube-and-me) (<http://nationalpost.com/feature/exclusive-the-judge-the-sting-black-cube-and-me>) reported.

Newbould's would-be client worked for Black Cube, a Tel Aviv-based business intelligence firm, staffed with former Israeli intelligence agents, that has attracted notoriety for its work for disgraced Hollywood producer [Harvey Weinstein](https://www.newyorker.com/news/news-desk/harvey-weinsteins-army-of-spies) (<https://www.newyorker.com/news/news-desk/harvey-weinsteins-army-of-spies>), among others.

As Newbould and the man conversed, another Black Cube operative was secretly photographing them. Newbould's dinner companion also surreptitiously taped the conversation. During the dinner, and at a prior meeting as well, the private eye seemed to try to elicit a reaction from the former judge by making rather loaded references to the "Jewish lobby" and "the Jewish way of doing things . . . all the time trying to take more than they should and more than agreed." The Black Cube operative's apparent goal? To provoke the former judge into saying something anti-Semitic, as the National Post reporter who was offered information about this meeting later reported.

But after reporter Christie Blatchford was approached by Black Cube with the recording of the meeting, she found that the 74-year-old retired judge hadn't agreed with the statements and didn't say anything offensive about Jewish people. She ended up reporting that Black Cube had tried to entrap Newbould on behalf of Catalyst Capital Group Inc., a \$4.3 billion private equity firm in Toronto that was founded by Newton Glassman, who is Jewish. Catalyst has since denied that it hired Black Cube to do a sting on Newbould.

In August 2016 when Newbould was still on the bench, he had [ruled against](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_MoyesDecision_Sept16_Mar18.pdf) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_MoyesDecision\\_Sept16\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_MoyesDecision_Sept16_Mar18.pdf)) Catalyst in a lawsuit it had brought against Toronto-based hedge fund West Face Capital, [claiming](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Moyes_PlaintiffStatement_Feb16_Mar18.pdf) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Moyes\\_PlaintiffStatement\\_Feb16\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Moyes_PlaintiffStatement_Feb16_Mar18.pdf)) that it had used insider information when it purchased Wind Mobile Corp. In that ruling, the judge had disparaged Glassman, [saying](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_JudgeOpinion_Glassman_Feb18.png), ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_JudgeOpinion\\_Glassman\\_Feb18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_JudgeOpinion_Glassman_Feb18.png)) "I viewed him more as a salesman than an objective witness."

Catalyst, which runs five primary investment funds and whose clients include some of the largest [institutional investors](http://sirf-online.org/wp-content/uploads/2018/04/Screen-Shot-2018-04-10-at-10.05.53-PM.png) (<http://sirf-online.org/wp-content/uploads/2018/04/Screen-Shot-2018-04-10-at-10.05.53-PM.png>) in the United States and Canada, appealed that decision. Had Black Cube caught Newbould making an anti-Semitic remark, an appellate court might have considered reversing the judge's decision, reasoning that it had been motivated by prejudice against Glassman.

In February the [appeal](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_MoyesAppeal_Decision_Mar18.pdf) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_MoyesAppeal\\_Decision\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_MoyesAppeal_Decision_Mar18.pdf)) was dismissed. While Judge Newbould had initially ordered Catalyst to [reimburse](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_MoyesAppeal_Decision_Mar18.pdf) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_MoyesAppeal\\_Decision\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_MoyesAppeal_Decision_Mar18.pdf))

Newbould's ruling is likely to influence another judge's opinion in [another Catalyst](#) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Vimpelcom\\_PlaintiffStatementofClaim\\_May16\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Vimpelcom_PlaintiffStatementofClaim_May16_Mar18.pdf)) suit, charging West Face with misuse of confidential information, conspiracy and breach of contract. Glassman informed some of Catalyst's limited partners last year that he saw a "reasonable likelihood" of garnering a huge payout from this suit: In an [investor presentation](#) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_AGM\\_CatFunds\\_IIIIV\\_Apr18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_AGM_CatFunds_IIIIV_Apr18.pdf)), Glassman said the litigation was "[extremely material](#) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_2016AGM\\_Wind\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_2016AGM_Wind_Apr18.png))" and he [listed](#) (<http://sirf-online.org/wp-content/uploads/2018/03/Wind-Litig.-1.jpg>) its expected outcome as an [unrealized gain](#) (<http://sirf-online.org/wp-content/uploads/2018/03/Wind-litig-2.jpg>) of more than \$448 million. But by losing the appeal in the first case, Catalyst's chances of a big payout are slim.

Yet Catalyst has brought two other lawsuits against West Face that are still playing out in court. In the most recent suit brought last November, Catalyst made its most outrageous claims against West Face as well as others — with CA\$455 million in damages sought. The suit has [argued](#) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Wolfpack\\_Claim.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Wolfpack_Claim.pdf)) that the defendants were part of a "Wolfpack" that had conspired to orchestrate a "short and distort" campaign against Catalyst's publicly traded subsidiary, Callidus Capital Corp. This "Wolfpack" is said to include a wide array of participants: a Wall Street Journal reporter, former Callidus borrowers, hedge funds and stock research and investment firms. The suggestion is that by working together and coordinating their efforts, these individuals and entities were acting like a "wolf pack" in trying to undermine Catalyst.

And Catalyst's potential retention of Black Cube's services has again been raised in filings for this suit. West Face alleged last year in a [court filing](#) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_WestFace\\_DefenseCounterclaim\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_WestFace_DefenseCounterclaim_Mar18.pdf)) that Catalyst had employed Black Cube to orchestrate an elaborate deception — and that [Black Cube](#) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_BlackCube\\_WestFaceCCSoD\\_Dec17\\_Mar18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_BlackCube_WestFaceCCSoD_Dec17_Mar18.png)) had flown several current and former West Face employees to London for "interviews" with fictional companies, apparently with the aim of extracting information. (Other Callidus borrowers involved in litigation against Glassman have claimed that they have also been approached by private eyes.)

Black Cube allegedly had some interesting help: In West Face's statement of defense and counterclaim, it accused Catalyst of hiring PSY Group Inc., a Cyprus-based, Israeli-directed intelligence services company. West Face, which currently has an estimated CA\$2 billion under management, has claimed in a legal filing that PSY Group is little more than an internet-based trolling operation that has [planted](#) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_FacetheMusic\\_WFCCCSoc\\_Mar18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_FacetheMusic_WFCCCSoc_Mar18.png)) and spread fake news and video stories about [Greg Boland](#) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Boland\\_WFCCCSoc\\_Mar18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Boland_WFCCCSoc_Mar18.png)), [West Face's CEO](#) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_BolandII\\_WFCCCSoc\\_mar18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_BolandII_WFCCCSoc_mar18.png)). West Face has also [claimed](#) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_WolfpackCorruptionI\\_Mar18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_WolfpackCorruptionI_Mar18.png)) that PSY Group directed the creation of a webpage that alleged the existence of a "[Wolfpack corruption](#)" ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_WolfpackCorruptionII\\_Mar18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_WolfpackCorruptionII_Mar18.png))" conspiracy targeting Catalyst.

Why has Newton Glassman been spending so much time and money on these scorched-earth tactics?

In a December [court filing](#) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_WestFaceDefense\\_distract\\_Feb18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_WestFaceDefense_distract_Feb18.png)), West Face left little to the imagination about its view of Glassman's motives: It claimed he was trying to "distract attention from the deteriorating financial performance, overvalued assets, material non-

disclosures and misrepresentations to investors of Catalyst, Callidus and their principals” and attempting to “intimidate West Face, Boland, other capital market participants, regulators and members of the media, in an effort to dissuade or discourage them from scrutinizing, discussing or commenting publicly on the deteriorating financial performance” of Catalyst and Callidus.

How did the conflict start? Callidus is an asset-based lender, also run by Glassman, that specializes in making loans to companies that the banks won't touch. After Callidus' share price mounted steadily in the wake of its 2014 IPO, West Face's managers began examining Callidus' financial prospects. They found that roughly 20 percent of Callidus' loan portfolio might have to be written down because the commercial borrowers involved were in bankruptcy, restructuring or otherwise impaired. West Face elaborated in a court brief ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Short\\_WFC\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Short_WFC_Apr18.png)) how in November 2014 its portfolio managers shorted Callidus stock when it was trading higher than CA\$20.

Another rationale for West Face's skepticism was its view, as shown in a court filing ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_LoanConversion\\_WFC\\_Defamation\\_Mar18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_LoanConversion_WFC_Defamation_Mar18.png)), that in late 2014 Callidus' disclosures to investors were often highly misleading, particularly upon revealing its balance sheet. Yet Callidus' analysts said when the company sought bids for the collateral that was taken from borrowers who were unable to repay their loans, Callidus could rarely find buyers willing to pay close to the loan's value.

Rather than acknowledge deteriorating loans and writing them off, West Face said Callidus simply recategorized such debts as equity and called them “assets acquired from loans” on its balance sheet and gave few updates.

West Face's legal filings say it exited ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_WestFace\\_short\\_Mar18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_WestFace_short_Mar18.png)) its Callidus short in April 2015, and the fund's analysis was prescient. For 2017 Callidus racked up a net loss of CA\$171.59 million as a series of its loans took a turn for the worse, and its book value (<https://www.fool.com/knowledge-center/what-is-book-value.aspx>) dropped to \$3.44 a share. (Callidus' **current tangible book value** (<https://www.investopedia.com/terms/t/tbvps.asp>) — a measurement of its physical assets that subtracts intangible, (<https://www.investopedia.com/terms/i/intangibleasset.asp>) or nonphysical, assets in calculating book value — is negative CA\$55 million. Thus, in a potential liquidation scenario, the company's shareholders wouldn't see a dime.)

Catalyst even advanced CA\$31 million ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Callidus\\_Advance\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Callidus_Advance_Apr18.png)) to Callidus this past February and March, shortly before the release of Callidus' annual report. Though no reason was given, the most likely explanation is the cash helped Callidus avoid violating its debt covenants.

Court documents as well as interviews conducted over the past year and a half suggest that Glassman and Catalyst have regularly engaged in business practices that, at best, are well outside Wall Street's norms.

The avalanche of expensive litigation that Glassman has brought to bear against his critics is less a tactic than a tool, one that helps keep at bay many skeptical investors and reporters, who are wary of lawsuits and the likes of Black Cube and PSY Group. (Catalyst and Callidus also filed a defamation [suit](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Wolfpack_DowJones_Mar18.pdf) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Wolfpack\\_DowJones\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Wolfpack_DowJones_Mar18.pdf)) against two Wall Street Journal reporters; Dow Jones, the paper's parent company; and a Callidus borrower.) **In turn, the litigation allows Callidus and Catalyst to operate without the headaches and awkward questions that public scrutiny can bring.**

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Newton Glassman might be spending millions to make his enemies miserable but even his most implacable foes would say the 53-year-old Toronto native is fiercely smart and relentless. He's also very private. On the rare occasions that he gives an interview to the press, he refuses to allow photographs or even illustrations of his face to accompany the story. (A [recent](http://sirf-online.org/wp-content/uploads/2018/03/Glassman.jpg) (<http://sirf-online.org/wp-content/uploads/2018/03/Glassman.jpg>) photograph captured him in a suit and tie.)

The son of a surgeon, Glassman is an alumnus of the University of Toronto's law school and the University of Pennsylvania's Wharton School. He eventually headed to Wall Street, joined the staff of Cerberus Capital Management LP in 1997 and rose to the rank of a managing director. He oversaw the fund's telecommunications portfolio and its Canadian investments.

While working for Cerberus, Glassman developed a distinctive attitude about lending to companies in fiscal dire straits: "If you want to be in a blood sport — and distressed [lending] is a blood sport — you got to be able to take a punch," he told [Bloomberg](https://www.bloomberg.com/news/articles/2016-09-28/canada-s-pugnacious-distressed-debt-king-can-t-lend-fast-enough) (<https://www.bloomberg.com/news/articles/2016-09-28/canada-s-pugnacious-distressed-debt-king-can-t-lend-fast-enough>) in 2016. He also learned to land a punch or two. A 2011 [profile](http://business.financialpost.com/financial-post-magazine/the-fixer) (<http://business.financialpost.com/financial-post-magazine/the-fixer>) of Glassman in Canada's Financial Post Magazine noted, "He earned a reputation for being a tenacious, heavy-handed financier who doesn't suffer fools lightly."

In 2002 Glassman left Cerberus and returned to Toronto, where he set up Catalyst. He partnered with a banker, Gabriel de Alba, and later a Toronto lawyer, James Riley.

Over the past 16 years Catalyst, under Glassman's leadership, has raised in its five primary funds a sum that is now \$4.3 billion, generating a healthy stream of management fees. Catalyst has also provided a stage for Glassman to deploy the distressed-debt investing chops he developed at Cerberus; he has played a role in management shake-ups at wireless provider Mobilicity, Advantage Rent-A-Car and many other firms. One of the Catalyst's highest-profile investments has been in Gateway Casinos & Entertainment Ltd., a casino company that is now the second largest gaming operator in Canada. In 2015 The Wall Street Journal [noted](http://sirf-online.org/wp-content/uploads/2018/03/WSJ-on-Callidus.pdf) (<http://sirf-online.org/wp-content/uploads/2018/03/WSJ-on-Callidus.pdf>), "Catalyst boasts the second-most consistent performance record among distressed-debt funds globally, according to data provider Preqin Ltd., after Cerberus."

Most fund managers would give their front teeth for results like that, but Glassman appears to want more — much more — and that's where Callidus Capital Corp. has come in.

Toronto businessman Sam Fleiser founded Callidus in 2004 and Glassman directed Catalyst to buy a controlling interest in the company three years later. Catalyst provides the capital for Callidus' loans.

Considering the risk involved in making such loans, Fleiser ran the company conservatively. During the five years prior to 2011, just CA\$4 million in losses were written down on three loans, out of an estimated CA\$600 million in lending — even though Callidus charged interest rates as high as 18 percent.

But in 2011 Fleiser departed from Callidus. Upon taking the helm of Callidus, Glassman had two very specific goals: to take Callidus public and grow its loan book considerably. While this might have seemed like a good idea given the success of Callidus under its previous management team, things turned out very differently.

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Growing Callidus' loan book has meant lending more money to troubled companies, and the universe of financially stressed companies that are able to repay significant sums at high interest rates is limited. But in order for Catalyst's heavyweight investors to be protected, Callidus' borrowers must have sufficient collateral to cover their loans in case they run into financial difficulty — or the losses will flow right to the lender's bottom line. (About 71 percent of Callidus' shares is held in three Catalyst funds and with the stock trading at about CA\$5.15, the value of this stake has dropped to just less than CA\$185 million. Callidus has also borrowed CA\$315.3 million from Catalyst via a short-term line of credit.)

Sam Fleiser was discerning in selecting borrowers; Newton Glassman appears to have been anything but. Nonetheless, Callidus' growth was truly extraordinary in the initial years of Glassman's leadership: In 2012 the company had CA\$132 million in gross loan receivables. Two years later this metric had mushroomed to CA\$823 million, with the size of loans climbing as well.

And by the end of 2015, Callidus had 39 loans for an amount totaling CA\$1.2 billion on its books. But were all the new loans sound?

Underwriters tasked with marketing Callidus to investors were likely asking that very question in April 2014 as they examined its IPO. To allay these concerns, Catalyst promised ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Guarantee\\_21715\\_Apr18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Guarantee_21715_Apr18.pdf)) it would guarantee all the loans Callidus made before the IPO.

Callidus was relentless in selling investors on the idea that its management team was expert at handling loan risk. Since 2014 Callidus' filings have been peppered with point-blank assurances that it has made almost no dud loans and its borrowers' collateral has been more than sufficient to cover any risks. In the IPO prospectus ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_CallidusIPO\\_April14\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_CallidusIPO_April14_Mar18.pdf)), Callidus claimed (<http://sirf-online.org/wp-content/uploads/2018/03/Screen-Shot-2018-03-27-at-6.39.36-PM.png>) to have “no realized losses on principal on Callidus-originated loans after consideration of liquidated collateral costs to settle from 2011 until 2013.” During a November 2014 conference call with brokerage analysts, Glassman boasted ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Glassman\\_CC\\_Mar18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Glassman_CC_Mar18.png)), “we don't have a single loan in the portfolio that's not performing” and “performing means [paying] current interest and all obligations.” A year later Glassman, on another call, repeated this claim.

These assurances have proved very hollow.

Callidus' portfolio, as shown in its 2017 annual report ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Callidus\\_AR2017\\_Apr18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Callidus_AR2017_Apr18.pdf)), is a wasteland of troubled loans.

Start with Callidus' loan receivables, which tumbled to CA\$247.3 million ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Callidus\\_NetLoans\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Callidus_NetLoans_Apr18.png)) (a drop of 76 percent from CA\$1.02 billion at the end of 2016), as well as its set loan loss provision of CA\$217.4

[million](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Callidus_2017LoanLosses_Apr18.png) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Callidus\\_2017LoanLosses\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Callidus_2017LoanLosses_Apr18.png)), which rose 39 percent from CA\$134.3 million.

Then consider the loan portfolio's leverage: More than 68 percent of Callidus' net loans receivable are to just two very troubled companies.

C&C Wood Products Ltd., a British Columbia-based timber products company, owes the fund CA\$104 million. And because of C&C Wood's inability to repay its loans, Callidus assumed control of the company in November 2017. In a [press release](https://www.newswire.ca/news-releases/callidus-capital-reports-2017-full-year-and-fourth-quarter-results-678591363.html) (<https://www.newswire.ca/news-releases/callidus-capital-reports-2017-full-year-and-fourth-quarter-results-678591363.html>), Glassman was [glowing](http://sirf-online.org/wp-content/uploads/2018/03/Screen-Shot-2018-04-03-at-4.21.40-PM.png) (<http://sirf-online.org/wp-content/uploads/2018/03/Screen-Shot-2018-04-03-at-4.21.40-PM.png>) in describing C&C Wood's turnaround. But its financial results — a loss of CA\$1.2 million on CA\$16.3 million in sales — point to a different reality.

The other company is Horizontal Well Drillers, an Oklahoma-based oil-drilling outfit that has received \$216.9 million in loans from Callidus. If Horizontal's name rings a bell, this is probably because of the attention it received in September 2016 when Venezuela's state-owned oil company, *Petróleos de Venezuela SA*, announced that Horizontal (in conjunction with Halliburton) had been [awarded](https://www.reuters.com/article/us-venezuela-pdvsa-contract/venezuela-pdvsa-awards-3-2-billion-oil-service-contracts-protest-breeds-idUSKCN11R1NY) (<https://www.reuters.com/article/us-venezuela-pdvsa-contract/venezuela-pdvsa-awards-3-2-billion-oil-service-contracts-protest-breeds-idUSKCN11R1NY>) a contract worth \$3.2 billion to drill 480 wells.

The announcement immediately raised investor eyebrows (<https://www.cnn.com/2017/11/10/an-oklahoma-oil-companys-deal-in-venezuela-raises-questions.html>) given Horizon's small size and the fact that, [per a CNBC report](https://www.cnn.com/2017/11/10/an-oklahoma-oil-companys-deal-in-venezuela-raises-questions.html) (<https://www.cnn.com/2017/11/10/an-oklahoma-oil-companys-deal-in-venezuela-raises-questions.html>), Venezuela isn't paying its immense debts to even the largest of the oil services companies. This situation has forced the likes of Baker Hughes, Schlumberger and Halliburton to set aside hundreds of millions of dollars to cover prospective losses from their uncollectible debts.

Callidus has taken a dim view of Horizontal's prospects and now values its loan at CA\$69.1 million, a write down of CA\$131.9 million.

And the financial pain for Callidus and its investors from this loan probably isn't over yet: Buried at the foot of a lengthy [disclosure](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Callidus_LossProvision_Apr18.png) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Callidus\\_LossProvision\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Callidus_LossProvision_Apr18.png)) in the 2017 [management discussion and analysis](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Callidus_2017MDA_Apr18.pdf) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Callidus\\_2017MDA\\_Apr18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Callidus_2017MDA_Apr18.pdf)) statement is the acknowledgement that if the Venezuelan contract doesn't materialize, as much as \$64 million more could be written down.

As if the Callidus-Horizontal relationship wasn't already strange enough, matters became surreal when Callidus' former chief underwriter Craig Boyer [sued](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Boyer_SoC_Mar18.pdf) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Boyer\\_SoC\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Boyer_SoC_Mar18.pdf)) Callidus, alleging it had failed to grant him his stock options and health and other benefits. In a [counterclaim](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Boyer_CatalystSoDCC_Mar18.pdf) ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Boyer\\_CatalystSoDCC\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Boyer_CatalystSoDCC_Mar18.pdf)), Callidus accused Boyer of allowing Horizontal to draft a letter with a forged Callidus letterhead to assure Venezuelan officials that Horizontal had adequate financing in place. Boyer has denied this allegation. (See "[Mr. Boyer's War](http://sirf-online.org/2018/04/11/mr-boyers-war/)" (<http://sirf-online.org/2018/04/11/mr-boyers-war/>)" for more on this saga.)

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So what happened to Glassman's assurances to investors about performing loans and a robust cushion of collateral? Under his leadership, Callidus' lending practices have seemingly defied logic at times. Many borrowers, in interviews and legal filings, have complained that Callidus changes its loan terms just as negotiations are ending, then seeks personal guarantees from the borrower's management.

Moreover, some of the borrowers have claimed that once a loan is signed, Callidus then fails to provide them sufficient financing. As a result, at least six commercial borrowers (and likely more) have seen their operations nearly collapse, only for the companies to then be rescued by Callidus.

Alken Basin Drilling Ltd.'s history offers an example of this scenario. In 2013 Kevin Baumann bought the Canadian water-well drilling firm in Bentley, Alberta. A year later, when he needed credit after his business fortunes sharply declined, Baumann turned to Callidus, which agreed to lend him as much as CA\$28.5 million. Baumann is now being sued ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Callidusclaim\\_Baumann.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Callidusclaim_Baumann.pdf)) by Callidus for refusing to deliver his personal guarantee to cover the losses accrued.

Baumann said Callidus initially told him he didn't have to put up a personal guarantee, as the company charged interest rates of 18 percent to 20 percent. But then at the "eleventh hour," according to a counterclaim ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Baumann\\_counterclaim\\_April18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Baumann_counterclaim_April18.pdf)) he filed, Callidus changed its mind, forcing Baumann and other Alken shareholders to provide personal guarantees. In Baumann's case, the guarantee was to be his Alken shares and a farm he owned, with the total value of both at CA\$6 million. (In an interview with the Southern Investigative Reporting Foundation, Baumann accused Callidus of embracing a "loaning to own" strategy.)

And Baumann has also claimed that Callidus reneged on giving him the money that Alken needed to keep functioning. Instead, Callidus "drip fed" funds to the business, according to his counterclaim. When Alken made multiple funding requests to draw on its credit, most were rejected, Baumann said. "You might ask for \$5 million," he said, "but they say, 'Take \$100,000 or how about \$200,000.' . . . So they drip you until they kill ya and then they take the business over." (Callidus, however, has denied it withheld funds.)

In March 2015 Callidus demanded repayment of its loan, even though Alken was not in breach of its loan agreement, Baumann said. Baumann tried to file for creditor protection for Alken. The following month, he said, he was pressured to resign and Callidus then inserted its own management team. The new president, Scott Sinclair, is an interesting choice to replace Baumann, given the 2009 sanction ([http://sirf-online.org/wp-content/uploads/2018/03/set\\_20090402\\_sinclairm.pdf](http://sirf-online.org/wp-content/uploads/2018/03/set_20090402_sinclairm.pdf)) he received from the Ontario Securities Commission, which included a CA\$15,000 fine and a 10-year ban on serving as a director of publicly traded company.

Alken was put into receivership in March 2016; Callidus claimed Alken owed it CA\$27.4 million. But its assets were worth only CA\$10.6 million, according to an April 2016 report from the receiver. Soon after this, another Callidus-owned company, Altair Water and Drilling Services, took over Alken's remaining assets through a credit bid of CA\$24.2 million that added up to an estimated CA\$17 million loss on the loan. Whatever drove Altair's bid, it wasn't value.

Yet, according to Baumann's March 2017 legal brief ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Baumann\\_LegalBrief.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Baumann_LegalBrief.pdf)), just before the receivership went into effect, Altair and Alken received two memorandums of agreement for a well-drilling contract in Egypt that Sinclair allegedly described ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_BaumannCC\\_EgyptOpportunity\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_BaumannCC_EgyptOpportunity_Apr18.png)) to Callidus as potentially worth CA\$200 million. This begs the question: Why place a company in receivership just as it was gaining such large contracts?

Baumann has an answer for that. He claimed in a court filing ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_MOU\\_Baumann\\_Counterclaim\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_MOU_Baumann_Counterclaim_Apr18.png)) that these Egyptian memorandums were withheld from other potential Alken suitors because the contract

“would have significantly increased the value of Alken’s assets available for sale in the receivership process” and would have decreased the amount that Callidus demanded from him personally in the loan guarantee.

Another borrower accused Callidus of lending money under false pretenses. In 2014 Callidus agreed to lend \$34 million to Esco Marine Inc., a ship recycling company in Brownsville, Texas. Esco’s managers put up personal guarantees. And Esco’s team has also said Callidus changed the terms of the loan at the last minute and then balked at providing the company sufficient funds to continue its operations. (Callidus denies this allegation.) In 2015 Esco filed for bankruptcy, with Callidus pursuing Esco’s management for some of the money promised under the personal guarantees.

Last year a U.S. district court judge in Texas wrote in an opinion that there was sufficient evidence to indicate that Callidus had engaged in “fraudulent inducement” in failing to fulfill all of the loan’s original terms. Andrew Levy, Esco’s CEO, settled his suit against Callidus in return for cooperating with its litigation against the “Wolfpack.” In a brief interview with the Southern Investigative Reporting Foundation, Levy said that while “we dislike Newton Glassman,” the agreement with Callidus prevented him from discussing the terms of the settlement.

“[I] had to make a very hard business decision about [Esco Marine’s] interests,” Levy said, “despite having strong feelings about our case.”

In another case, Callidus agreed in 2012 to lend Morrisville, North Carolina-based information technology provider Xchange Technology Group \$36.9 million but wound up pushing out its CEO in June 2013. Soon afterward Callidus put the company into receivership. (In 2013 the receiver [disclosed](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Xchange_ReceiverReport_Nov13_Apr18.pdf) that Xchange had lost [\\$27.5 million](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Xchange_Receiver_NetLosses_Apr18.png) over the previous two years. But Callidus’ 2014 [IPO filing](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_CallidusIPO_April14_Mar18-1.pdf) made no mention of the fact that Xchange was insolvent, had suffered such losses or was being kept afloat only with Callidus financing.)

Unable to find a buyer as Xchange bled cash and customers, Callidus turned Xchange into a subsidiary and brought it out of bankruptcy in 2015, but not before listing its value in Callidus’ [2014 annual report](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_CallidusAR2014_Apr18.pdf) at [\\$60.18 million](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Xchange_2014CarryValue_Apr18.png) (a steep increase from the \$35 million it paid through a credit bid in 2013). Through a loan guarantee with Callidus in March 2016, Catalyst spent [\\$101.3 million](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Xchange_2016CallidusGuarantee_Apr18.png) to purchase the Xchange loan from Callidus’ books, thereby presenting one of its most troubled positions as a windfall and forestalling a share price decline that could weigh heavily on Catalyst’s performance. (Previous payments to Callidus under the guarantee had covered only the loan’s principal, as investors had [learned](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Guarantee_Clip_21715_Apr18.png) in February 2015; this payment included accrued and unpaid interest.)

But that’s not the half of it: At the [annual meeting](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_AGM_CatFunds_IIIIV_Apr18.pdf) for the limited partners of Catalyst Fund III and Catalyst Fund IV held in April 2017, Catalyst reported having paid \$54.82 million for Xchange, with no discussion of the \$46.48 million discrepancy. Just as potentially troubling for investors, however, is the fact that in the same presentation Xchange’s total value was listed as \$9.39 million, a \$91.9 million loss in value in just over a year.

Callidus' investment in Bluberi Group, a Drummondville, Quebec-based developer of games for slot machines, has been even more problematic. In November 2012 Callidus provided Bluberi a CA\$24 million loan on the basis of a business plan that projected selling 3,300 slot machines and generating by the end of 2013 CA\$25.5 million in earnings before interest, taxes, depreciation and amortization, or EBITDA

(<https://www.investopedia.com/articles/analyst/020602.asp>). The projections proved to be more like daydreams ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_BluberiPL\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_BluberiPL_Apr18.png)), however, as Bluberi installed just 324 slot machines and burned through CA\$2.6 million in cash.

Despite the missed projections, Callidus continued to extend credit to Bluberi. By November 2015 Bluberi owed Callidus CA\$84.1 million. Early in that month, employees of Cole Kepro International, ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Bluberi\\_Cole\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Bluberi_Cole_Apr18.png)) which makes the slot machines that house Bluberi's software, entered a Bluberi storage facility and repossessed all the gaming units Cole Kepro had recently sold Bluberi. This brought Bluberi's business to a virtual halt. Bluberi's CEO then dismissed most of the staff of the company and filed for creditor protection. A report by Ernst & Young ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Bluberi\\_MonitorReport\\_Nov15\\_Apr18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Bluberi_MonitorReport_Nov15_Apr18.pdf)), the court-appointed bankruptcy monitor, portrayed Bluberi as being in financial and operational chaos, with a negative equity ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Bluberi\\_NegativeEquity\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Bluberi_NegativeEquity_Apr18.png)) of CA\$52.8 million after incurring losses of CA\$14.1 million in 2013 and CA\$22.8 million in 2014.

By the middle of November 2015, according to the receiver, Bluberi had just CA\$54,000 left in its bank account.

In March 2017 when Callidus released its results for fiscal 2016, (<http://www.calliduscapital.ca/2017-03-31-Callidus-Capital-Reports-2016-Full-Year-and-Fourth-Quarter-Results>) it disclosed that it had taken over ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Bluberi\\_CCTakeover\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Bluberi_CCTakeover_Apr18.png)) Bluberi and appraised the company at CA\$110.7 million (<http://sirf-online.org/wp-content/uploads/2018/03/Screen-Shot-2018-04-09-at-2.33.03-PM.png>), a value with little discernible economic basis whatsoever. Callidus' reasoning? A "large, diversified gaming company" had signed "an agreement to deploy 7,000 slot machines" that Bluberi would be building.

That assertion was problematic.

The "large, diversified gaming company" said to be buying all those machines was Gateway Casinos & Entertainment Ltd., a company controlled by Catalyst that's not in any shape financially to pay for an order that large. In 2012, Gateway disclosed ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Bluberi\\_BCLC\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Bluberi_BCLC_Apr18.png)) in a prospectus ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Bluberi\\_Gateway\\_Apr18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Bluberi_Gateway_Apr18.pdf)) that all its gaming equipment was purchased and owned by the British Columbia Lottery Corporation; Gateway didn't have the authority to purchase a single machine.

In March of this year Gateway won a concession in another part of Canada: The Ontario Lottery and Gaming Commission awarded (<https://www.toronto.com/news-story/8330545-olg-picks-operator-for-casinos-in-innisfil-casino-rama/>) Gateway the right to operate as many as 11 casinos in central Ontario.

Nonetheless Bluberi can't capitalize on a relationship with Gateway because Bluberi doesn't have the requisite Class III license (<https://www.realmoneyaction.com/slots/understanding-the-difference-between-class-iii-and-class-ii-slots/>) to manufacture and market traditional slot machines. It develops and markets Class II (<http://www.slot-source.com/what-is-class-ii-gaming/>) games, which are a variation of bingo installed in slot machines in Native American casinos throughout the United States. It's unclear if Bluberi is seeking a Class III license.

Since March 2017 Callidus' filings have subtly changed the language used to discuss the agreement for the 7,000 slot machines. A June 30, 2017, filing ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Bluberi\\_GatewayOrder\\_Aug.17MDA\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Bluberi_GatewayOrder_Aug.17MDA_Apr18.png)) refers to it numerous

times: There's a reference to a "mutual understanding" between Catalyst, Bluberi and Gateway that 7,000 slot machines would be sold to Gateway, along with a letter from Gateway's CEO confirming the company's "potential to purchase up to 7,000 slot machines from Bluberi" over a three-year period.

But in the filing for the quarter that ended Sept. 30, 2017, ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_BluberiMDA\\_Mar18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_BluberiMDA_Mar18.png)) however, the discussion of Bluberi's Gateway contract is limited to Callidus' being "hopeful that [Bluberi] will be able to firm up an order for 7,000 machines."

And Callidus' management discussion and analysis (<http://sirf-online.org/wp-content/uploads/2018/03/Screen-Shot-2018-04-06-at-1.40.40-PM.png>) for 2017 contained no reference to a Bluberi order from Gateway.

Still more Bluberi headaches may arrive for Catalyst, however. In a little-noticed court decision on March 16 of this year, Montreal Justice Jean-François Michaud approved a petition by Gérald Duhamel, Bluberi's founder and former CEO, for obtaining litigation funding so as pursue a claim against Callidus.

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Glassman's promises to Callidus' investors about the strength of the collateral that backs its loans are also problematic.

Callidus' investor filings regularly feature a discussion of the amount and quality of the collateral behind its loans, nearly every time noting that its borrowers' collateral is equal to or greater than ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_collateral\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_collateral_Apr18.png)) the value of their loan.

The implied message conveyed to investors is simple, along lines such as this: "No matter what happens, these loans are protected and so is your investment." Notwithstanding Callidus' and Catalyst's ample disclosures (<http://sirf-online.org/wp-content/uploads/2018/03/Screen-Shot-2018-04-06-at-1.44.06-PM.png>) about the loans' risks to investor capital, the Southern Investigative Reporting Foundation has uncovered instances when a Callidus borrower's collateral was nowhere close to the loan's value. Moreover, Callidus' filings have repeatedly failed to disclose borrowers' sharply deteriorating finances.

Consider Harvey Industries LLC, a Livonia, Michigan-based auto parts company that in 2012 borrowed \$41.5 million ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Harvey\\_Callidusclaim.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Harvey_Callidusclaim.pdf)) from Callidus; Harvey's collateral was its plant, land and a personal guarantee ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Harvey\\_GJHPersonalGuarantee\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Harvey_GJHPersonalGuarantee_Mar18.pdf)) from the founder. Things went badly, with Harvey closing a plant and laying off staff. By early 2015 the company owed Callidus \$39 million. At that point, Harvey filed for bankruptcy protection.

Those reading Callidus' March 2015 quarterly management discussion and analysis ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_CallidusQ115\\_Apr18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_CallidusQ115_Apr18.pdf)) would likely conclude the loan portfolio's collateral was more than adequate. (<http://sirf-online.org/wp-content/uploads/2018/03/Screen-Shot-2018-04-06-at-1.59.13-PM.png>) The document stated, "the estimated collateral value coverage on net loans receivable was approximately 161 percent with a range between 100 percent and 250 percent on an individual loan basis."

A few months later investors would learn how much Harvey had collapsed. A July 2015 court filing ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Harvey\\_RecvRpt\\_March15.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Harvey_RecvRpt_March15.pdf)) valued Harvey's assets at just \$4.5 million to \$9.1 million — more than 75 percent less than the figure Callidus had given investors the previous March.

The collateral's loss in value didn't represent the only threat that the Harvey loan posed to Catalyst's limited partners: In June 2015 Callidus took control of Harvey through a \$25 million credit bid (<http://www.bankruptcy.lawnetwork.com/what-is-credit-bidding-in-bankruptcy/>). Per the

bankruptcy receiver's reports from March through October 2015, Harvey was awash in a sea of red ink, losing an average of \$1 million a month. Business hasn't improved, though, since Callidus acquired the company, with Harvey reporting a gross margin loss of \$3.2 million ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Harvey\\_FY17\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Harvey_FY17_Apr18.png)), according to Callidus' 2017 annual report.

Going broke takes a lot of money: Harvey's monthly debt service, paid primarily to Callidus, was \$758,200 over the eight months of bankruptcy, and "professional fees," primarily paid to lawyers and accountants, were \$98,445. It's not all grim news for Callidus investors, though. From a few brief lines (<http://sirf-online.org/wp-content/uploads/2018/03/Screen-Shot-2018-04-06-at-2.40.04-PM.png>) in the Sept. 30, 2017, quarterly filing, they learned that Catalyst bailed out Callidus' loan to Harvey, which is now called Wabash Castings Inc.

Then there is the case when the collateral for one of Callidus' borrowers went belly-up. In 2013 Callidus acquired millions of dollars of debt owed to HSBC by Gray Aqua Group, a fish-farming business located on Canada's Atlantic Coast. At the same time, Gray Aqua entered into a CA\$43.5 million credit agreement with Callidus. The terms of the loan called for its repayment in the fall of 2014, but the deadline was later extended to early 2016.

In the summer of 2015 sea lice infested some of Gray Aqua's fish farms, wiping out most of its harvest. A few months later, 380,000 smolt in a hatchery facility had to be destroyed due to disease.

As a result, Gray Aqua did not repay the loan by the 2016 deadline. Soon after, the company filed for bankruptcy protection ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_GrayAqua\\_1stReceiversRpt\\_Apr18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_GrayAqua_1stReceiversRpt_Apr18.pdf)) and still owed Callidus CA\$55 million ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_GrayAqua\\_losses\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_GrayAqua_losses_Apr18.png)). Although the bankruptcy receiver stated Callidus knew about the sea lice infestation (<http://sirf-online.org/wp-content/uploads/2018/03/Screen-Shot-2018-04-10-at-2.27.59-PM.png>) in August 2015, it did not disclose this loss in its third-quarter earnings report, as many analysts might have expected. Callidus later reported in its 2015 annual report a pretax loan loss provision of CA\$22.7 million ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_GrayAqua\\_lossProvision\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_GrayAqua_lossProvision_Apr18.png)).

The loss provision was inadequate, and in Callidus' second-quarter 2016 filing it set aside CA\$12 million ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_GrayAqua\\_LossProvision63016.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_GrayAqua_LossProvision63016.png)) more for loan losses related to Gray Aqua, bringing the amount reserved to CA\$34.7 million. The company was sold that year for a mere CA\$15 million (<https://thefishsite.com/articles/marine-harvest-to-acquire-canadas-gray-aqua-group>).

Similar to what happened in Harvey's case, the losses from Gray Aqua's and other troubled loans have rarely seemed to meaningfully affect Callidus' disclosures. In its 2015 annual management discussion and analysis ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Callidus\\_2015MDA\\_Apr18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Callidus_2015MDA_Apr18.pdf)), Callidus reported that its loans ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_GrayAqua\\_MDA2015\\_Collateral\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_GrayAqua_MDA2015_Collateral_Apr18.png)) in aggregate were backed by collateral representing 172 percent of the loans' value — and the loans on its internal watch list had collateral representing on average 104 percent of the loans' value.

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Catalyst's holding large portions of Callidus' stock and serving as the guarantor for many of its troubled loans are not the only looming headaches for Catalyst's limited partners.

Start with Catalyst's estimated CA\$900 million investment in Gateway Casinos & Entertainment; in 2016 stakes in Gateway represented more than 38 percent of the Catalyst Fund II and 29 percent of the Catalyst Fund III. How Catalyst could arrive at its valuation of this huge position is baffling.

While the Catalyst Fund III marked up its Gateway positions by almost 50 percent from 2011 to 2016, another private equity firm with a stake in the company, Los Angeles-based Tennenbaum Capital Partners, however, marked down ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Gateway\\_Tennenbaum2012\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Gateway_Tennenbaum2012_Apr18.png)) its position 16.4 percent ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Gateway\\_Tennenbaum2016\\_Apr16.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Gateway_Tennenbaum2016_Apr16.png)).

Though Gateway is clearly in better financial shape than the likes of Xchange and Bluberi, Gateway has a debt load of CA\$690 million and, per Moody's Investor Services ([https://www.moodys.com/research/moodys-affirms-gateway-casinos-b2-cfr-rates-new-debt-ba3--pr\\_378600?wt.mc\\_id=am~rmluyw56zw4ubmvox1jtql9syxrbmdzx05ld3nftm9fvhjhbnnsvxrb25z~20180228\\_pr\\_378600](https://www.moodys.com/research/moodys-affirms-gateway-casinos-b2-cfr-rates-new-debt-ba3--pr_378600?wt.mc_id=am~rmluyw56zw4ubmvox1jtql9syxrbmdzx05ld3nftm9fvhjhbnnsvxrb25z~20180228_pr_378600)), a subprime B2 ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_MoodysRatings\\_Mar18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_MoodysRatings_Mar18.png)) credit rating. The rating agency's most recent note expected Gateway to have negative CA\$110 million in free cash flow given its schedule of improvements and renovations. To free up cash, Gateway has completed (<https://www.businesswire.com/news/home/20180226005861/en/Gateway-Casinos-Entertainment-Limited-Announces-Sale-Leaseback>) a series of sale-leaseback transactions, with its most recently announced transaction in late February netting CA\$483 million.

A deal like this to sell and then lease back property is a standard (<https://www.accountingtools.com/articles/sale-leaseback-accounting.html>) corporate finance tool, typically offering a company a mixed bag of pros and cons: It is a quick way to raise capital, especially for an entity like Gateway that's used a lot of debt to grow rapidly. Yet, given the sale of its core real estate assets, Gateway's future borrowing will likely carry a higher interest rate since the company will have fewer assets to pledge as collateral. Unless a sale-leaseback deal helps a corporation acquire a trophy asset or is used to retire a block of debt, many investors look at this as the financial equivalent of chopping up the deck to keep the fireplace going — a clear signal that financing options are becoming limited.

Gateway's debt holders recently sent a message to Catalyst's management that their patience is wearing thin. After Gateway negotiated new lines of credit with its lenders, Catalyst sought to use \$250 million of the proceeds to pay a dividend (or return capital) to its limited partners — a standard practice for private equity funds of all stripes. But in recent weeks, several investors who own a large chunk of Gateway's 8.25 percent notes protested, arguing that Gateway's operations needed the cash more than Catalyst and its limited partners. After some tense negotiations with the noteholders, Catalyst was allowed to take \$100 million as a dividend, with a mighty big catch: The bondholders made the fund pay them a consent fee (<http://markets.businessinsider.com/news/stocks/gateway-casinos-entertainment-limited-announces-new-senior-secured-credit-facility-and-related-consent-solicitation-for-8-250-second-priority-senior-secured-notes-due-2024-1017184642>) of 2 points (one-half a percentage point more than what was initially agreed upon) or \$5.1 million, to receive the money.

By cutting its prospective dividend in half and then making Catalyst pay what is effectively a 10 percent fee to obtain the money, investors were sending a clear message about what Catalyst's priorities should be.

Therapure Biopharma Inc., a Canadian pharmaceutical contract manufacturer, is another company that Catalyst has invested in; Catalyst has long touted its prospects only to find the marketplace offering a decisively different value. According to the prospectus ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Therapure\\_Prospectus\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Therapure_Prospectus_Mar18.pdf)) for Therapure's aborted (<https://www.bloomberg.com/news/articles/2016-02-04/therapure-biopharma-postpones-canadian-ipo-on-market-conditions>) 2016 IPO, it lost ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_TherapureIPO\\_PL\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_TherapureIPO_PL_Apr18.png)) CA\$10.8 million on just CA\$29.5 million in revenue for the nine months that ended on Sept. 30, 2015; during 2012 to 2014, it lost CA\$37.16 million on CA\$69.87 million in revenue.

In January 2016 before the erstwhile IPO, Therapure's management had made some rosy assertions ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Therapure\\_bizplan\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Therapure_bizplan_Mar18.pdf)) that the company had a roster of drugs and treatments in development. But it's unclear

what the status of these products is today. (The IPO had sought to raise CA\$130 million and valued Therapure at more than CA\$900 million.)

Therapure also carried CA\$32.4 million in debt prior to its September sale for \$290 million (<https://www.businesswire.com/news/home/20170903005043/en/Therapure-Biopharma-Announces-Spin-Sale-Contract-Development>) to a partnership between a Hong Kong-based biotech company and a private equity fund advised by China Citic Bank International. As part of that deal, Catalyst retains the right to Therapure's plasma product line. Currently this line seems to be centered on one product that's undergoing a Food and Drug Administration Phase 3 trial ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Therapure\\_Bizplan\\_products\\_Mar18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Therapure_Bizplan_products_Mar18.png)). For this product, the protein in plasma is purified. The good news for Therapure is that there's a real demand for the product; the bad news is that large, established competitors (<https://www.linkedin.com/pulse/beginners-guide-plasma-fractionation-industry-current-zuby-okemefuna/>) dominate the crowded (<http://shop.nusep.com/prime-plasma.php>) and mature marketplace.

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Newton Glassman's carefully constructed world is starting to give way.

Although the bevy of lawsuits initiated by Glassman is evidence that he's not quietly accepting his professional setbacks or public criticism, investment managers and journalists should not be his biggest concern. In August The Wall Street Journal reported ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_WSJ\\_Aug2017\\_Apr18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_WSJ_Aug2017_Apr18.pdf)) that at least four individuals had filed whistleblower complaints with Canadian securities regulators, including the Ontario Securities Commission, alleging fraud at Catalyst and Callidus. One of the whistleblowers told the Southern Investigative Reporting Foundation of the U.S. Securities and Exchange Commission interview on these matters.

While those who criticize Catalyst may do so at their own financial peril, signs of changing times for Catalyst and Callidus are all around. Last fall Lax O'Sullivan Liss Gottlieb, Catalyst's longtime law firm, stopped representing ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Change-of-Lawyer\\_Apr18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Change-of-Lawyer_Apr18.pdf)) Catalyst and Callidus, perhaps in response to their involvement with Black Cube. Meanwhile, West Face is seeking \$550 million in damages against Catalyst through a Dec. 29 counterclaim, alleging that Catalyst "utilized unlawful means in carrying out their agreed upon campaign of vilification, defamation and harassment."

Callidus' stock price flirts daily with all-time lows (<http://sirf-online.org/wp-content/uploads/2018/04/Screen-Shot-2018-04-10-at-4.05.14-PM.png>) despite the company's having spent an estimated CA\$110 million for a series of share repurchases. And a pair of no-frills websites, Litigating With Catalyst Capital (<https://catalystlitigation.com/>) and Callidus Capital Litigation (<https://calliduscapitallitigation.com/>) (owned and maintained by West Face and Kevin Baumann, respectively), offer an unflattering picture of Newton Glassman's future: constant litigation, massive expenses and increasingly bruising defeats.

The Southern Investigative Reporting Foundation submitted ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Questions\\_Livesey\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Questions_Livesey_Mar18.pdf)) detailed questions ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_QuestionsII\\_Livesey\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_QuestionsII_Livesey_Apr18.png)) via email ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_SIRF\\_Gagnier\\_Mar18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_SIRF_Gagnier_Mar18.png)) to Callidus and Catalyst spokesman Daniel Gagnier, but he didn't reply.

David Moore, a lawyer representing Callidus and Catalyst, responded with a letter ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Letter\\_DMoose\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Letter_DMoose_Mar18.pdf)) saying many of the questions dealt with ongoing litigation and thus the companies would decline comment. Nonetheless, he claimed the questions were "riddled with inaccuracies, misunderstandings and purposeful fabrications."

**Editor’s note:** In its CA\$455 million “Wolfpack” conspiracy lawsuit, Catalyst alleged that journalist Bruce Livesey was a member of a short selling conspiracy against Callidus. It specifically claimed ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Wolfpack\\_Livesey\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Wolfpack_Livesey_Apr18.png)) that West Face had “retained” Livesey to write a negative story about Callidus.

The allegations are entirely false: Livesey (<https://www.nationalobserver.com/u/bruce-livesey>) is an investigative reporter with 30 years of experience; he has never worked for West Face in any capacity. And West Face has completely denied Catalyst’s claim in court filings ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Wolfpack\\_Denial\\_Livesey\\_Apr18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Wolfpack_Denial_Livesey_Apr18.png)).

The claim about Livesey first surfaced in 2017 when Callidus lawyers deposed Esco Marine co-founder Andrew Levy. **In a recent interview with the Southern Investigative Reporting Foundation, however, Levy strongly denied ever having said that West Face had employed Livesey.** Levy refused to discuss his deposition but noted the following: “All I said was that a reporter named Bruce from Canada called me and told me he was reporting on Callidus for a publication up there. I asked him who else he’d spoken to and he told me, ‘Greg Boland’ and some other people. It’s just false to connect him to any hedge fund.”

Catalyst attorney David Moore’s letter ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Letter\\_DMoose\\_Mar18.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Letter_DMoose_Mar18.pdf)) to the Southern Investigative Reporting Foundation also repeated the lawsuit claim that Livesey was part of a “Wolfpack” conspiracy. Moore sharply criticized Livesey, decrying “his use of expletives” and “an animus and agenda” against Glassman.

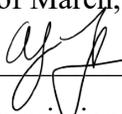
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This is **Exhibit “B”** referred to in the affidavit of  
Bruce Livesey, sworn before me via teleconference this 11th

day of March, 2021

A handwritten signature in black ink, appearing to be 'AJP', is written over a horizontal line.

A Commissioner, etc.

## FINANCIAL SERVICES

# Newton Glassman and Other People's Money

By Bruce Livesey and Roddy Boyd | November 27, 2018

Things are not going well for Newton Glassman.

Southern Investigative Reporting Foundation readers will recall Glassman was the subject of a [lengthy exposé](http://sirf-online.org/2018/04/11/newton-glassmans-legacy-of-ashes/) (<http://sirf-online.org/2018/04/11/newton-glassmans-legacy-of-ashes/>) in April that detailed the many ways his direction of Catalyst Capital Group Inc., a Toronto-based private equity fund with \$4.3 billion in capital commitments, and its sister company Callidus Capital Corp. should alarm both investors and regulators.

Specifically, the reporting illuminated the risk Catalyst's [limited partners](http://lexicon.ft.com/Term?term=limited-partner-LP) (<http://lexicon.ft.com/Term?term=limited-partner-LP>) face because of the fund's continually growing exposure to Callidus — a lender to distressed companies the fund bought in 2007 and took public in 2014 — whose performance has been disastrous. If that wasn't bad enough, Glassman directed the fund's plunge into a series of costly and reputation-threatening lawsuits against a host of purported enemies.

On both fronts, things have gotten worse.

Callidus is kept alive only because Glassman has repeatedly violated one of the cardinal tenets of investing: Don't throw good money after bad.

But the bigger questions for the limited partners who invested in Catalyst's funds is how are they going to get all of their money back — especially if Catalyst can't sell its holdings?

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Catalyst's specialty is what's known as [distressed investing](https://www.caisgroup.com/blog/an-introduction-to-distressed-debt-and-credit-investing/) (<https://www.caisgroup.com/blog/an-introduction-to-distressed-debt-and-credit-investing/>). In a nutshell this is how it's supposed to work: Glassman raises money from pension funds or endowments and then seeks to buy either the stock or debt of a company that's hit some kind of rough patch and thus available cheaply, on the view that with some capital, better strategy or new leadership, the business turns around. (The "turnaround" part is key because private equity funds, unlike hedge funds, don't offer regular redemptions to their limited partners, and so are set up with an eight- to 10-year lifespan.)

So when an opportunity presents itself, the fund looks to monetize their investment and sell it via an initial public offering — or to another company — for a windfall with most of the profits flowing to its LPs. But of the billions of dollars Glassman has raised in Catalyst's five funds, only the first has since cashed out, back in 2013. The second fund was supposed to have cashed out more than four years ago in the spring of 2014. But Catalyst has repeatedly extended the deadline, and it's now due to conclude in the fall of next year, just before its third fund is slated to cash out.

So why is Glassman not paying back LPs, some of whom are among the most prominent [institutional investors](http://sirf-online.org/wp-content/uploads/2018/04/Screen-Shot-2018-04-10-at-10.05.53-PM.png) (<http://sirf-online.org/wp-content/uploads/2018/04/Screen-Shot-2018-04-10-at-10.05.53-PM.png>) in the US and Canada?

The answer appears simple: He doesn't have the money because — at least in the case of Funds II and III — it's been sunk into a series of investments whose performance has often been nothing short of brutal.

The mess starts with Catalyst's 72.2 percent ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_72.2\\_Callidus\\_11.23.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_72.2_Callidus_11.23.18.png)) Ownership stake in Callidus, a block amounting to almost 41.25 million shares, primarily concentrated in Funds III and IV, with 24.8 and 10.8 million shares, respectively; Fund II has 4.7 million.

Callidus' loan book is geared towards mid-sized companies and at the end of September was valued at CA\$1.1 billion. But as last April's Southern Investigative Reporting Foundation investigation revealed, many of these loans have turned sour.

Indeed, through the first three quarters of the year Callidus has racked up CA\$68.2 million ([http://sirf-online.org/wp-content/uploads/2018/11/Callidus\\_9Mo.NetLoss\\_11.21.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Callidus_9Mo.NetLoss_11.21.18.png)) in losses, while its stock tumbled to new lows, to CA\$1.36 from CA\$10.30 at the beginning of the year. Marked to market, this one position has cost Catalyst just under CA\$369 million on paper, or about 8.6 percent.

And it's a safe bet that Callidus' losses will continue, helped along mightily by the mysterious CA\$201 million loan extended to Horizontal Well Drillers, an Oklahoma-based oil drilling contractor that made news in September 2016 (<http://www.okenergytoday.com/2017/08/purcell-oil-drilling-company-stuns-industry-venezuelan-exploration-contract/>) when Venezuela's state oil company announced Horizontal was awarded a license to drill up to 191 wells — a contract purportedly worth nearly \$1.3 billion. Inexplicably, this loan was made despite Horizontal's lack of experience in working on projects of that size and scope.

Moreover, as noted in April, Venezuela's ongoing economic collapse and political collapse has forced even the largest multinational oil exploration companies to cease operations there.

Against this backdrop, it's not clear what, if anything, the loan was used for. It appears Horizontal has not begun drilling any wells. Nor, given its new high profile, has the company obtained any other big contracts. More simply, it's an open question why, if the Venezuela project isn't currently feasible, any unused funds haven't been returned.

(Oddly, the news tab on Horizontal's website (<http://www.hwdrillers.com/news/>) lists only two items: a 3-year-old announcement about a new "information management" system and a press release from four years ago about the new website. There is no mention of Venezuela.)

Accordingly, Callidus wrote down the loan's value to CA\$78.6 million in the fourth quarter of last year. A call to Horizontal's headquarters was not returned.

While loans like that to Horizontal Well Drillers stand apart, the sheer density of bad loans on Callidus' books — the company has been forced to assume control of at least 13 borrowers — often requires Catalyst to ride to the rescue.

Through Sept. 30 CA\$112 million of Catalyst LP cash had been either loaned or guaranteed in the hopes of stabilizing Callidus and, according to a trio of disclosures posted April 30, a lot more of their money will be headed that way.

For example, this filing ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_430\\_HelpCollateral\\_July18.pdf](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_430_HelpCollateral_July18.pdf)) suggests Sun Life Assurance Company of Canada (Callidus' senior lender since 2014) was unhappy about Callidus' request to again defer the repayment of a CA\$50 million loan. In return for perhaps not calling its loan — thereby triggering a "going concern" (<https://www.investopedia.com/terms/g/goingconcern.asp>)" warning from Callidus' auditors — Catalyst guaranteed the loan while also agreeing to pay \$15.5-million of it by early next year. As of Sept. 30, just under CA\$8.5 million had been paid.

Additionally, the filings note how Catalyst is funding ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_430\\_HWD\\_150mmGTJ\\_July18.pdf](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_430_HWD_150mmGTJ_July18.pdf)) up to \$150 million to cover a Callidus loan, which is likely the Horizontal Drill loan. Catalyst also agreed to extend up to \$30 million ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_430\\_30mmloan\\_11.24.18.pdf](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_430_30mmloan_11.24.18.pdf)) to pay Callidus' operating expenses.

Afterward, look at Callidus' third-quarter interim financial report ([http://sirf-online.org/wp-content/uploads/2018/11/Callidus\\_3QInterim\\_11.24.18.pdf](http://sirf-online.org/wp-content/uploads/2018/11/Callidus_3QInterim_11.24.18.pdf)), where the mounting loan losses have left its shareholders with no tangible book value (<https://www.myaccountingcourse.com/accounting-dictionary/tangible-book-value>) — or what's left after the physical and marketable assets are sold and the liabilities paid off — the most common measurement of a company's worth. As of Sept. 30, Callidus has a CA\$40.9 million deficit.

Why does this paper deficit matter? In a bankruptcy, if a company's current liabilities exceed its tangible assets, the subordinated lenders have to make up the difference by taking a so-called haircut (<https://corporatefinanceinstitute.com/resources/knowledge/finance/haircut/>), or accepting less than the amount they are owed.

Since Catalyst's cash is Callidus' sole lifeline, it's a valid risk for the limited partners of Catalyst Fund's III and IV, whose capital is behind the CA\$377.2 million ([http://sirf-online.org/wp-content/uploads/2018/11/Callidus\\_Sub.Bridge\\_11.23.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Callidus_Sub.Bridge_11.23.18.png)) subordinated bridge lending facility. Moreover, the situation is bafflingly circular: Catalyst's "advances" are how Callidus is paying the principal and interest on the subordinated loans owed to the fund. In the most recent interim management discussion and analysis ([http://sirf-online.org/wp-content/uploads/2018/11/Callidus\\_3QMDA\\_11.24.18.pdf](http://sirf-online.org/wp-content/uploads/2018/11/Callidus_3QMDA_11.24.18.pdf)) Callidus reported that Catalyst has pledged ([http://sirf-online.org/wp-content/uploads/2018/11/Callidus\\_BridgeLoanExtension\\_11.24.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Callidus_BridgeLoanExtension_11.24.18.png)) to extend the maturity date of the loan for as long as necessary.

Meanwhile, language in that interim filing suggests that the Ontario Securities Commission is beginning to put a foot (lightly) down over the quality of Callidus' financial reporting, and has placed the company on its refilings and errors list for the next three years. This list warns the public of companies that have either failed to disclose all material information or whose filings contained an inaccuracy. Additionally, the OSC made Callidus discontinue its references to yield enhancements ([http://sirf-online.org/wp-content/uploads/2018/11/Callidus\\_OSC\\_YieldEnhancements\\_11.24.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Callidus_OSC_YieldEnhancements_11.24.18.png)), a term dreamed up to make impaired loan write downs more palatable by claiming that they would be offset by the increases in borrower principal and interest payments.

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All this bad news about Callidus couldn't come at a worse time for Catalyst's limited partners in Funds II and III, who are justifiably anxious about getting their money back. Catalyst Fund II, as shown in this New Jersey Division of Investment ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_NJDI\\_CCGIFundPerf\\_10.17.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_NJDI_CCGIFundPerf_10.17.18.png)) disclosure, has returned 45.1 percent of its initial CA\$635 million of capital ([http://sirf-online.org/wp-content/uploads/2018/11/PaidInCapital\\_PE\\_11.26.18.png](http://sirf-online.org/wp-content/uploads/2018/11/PaidInCapital_PE_11.26.18.png)).

In a typical private-equity fund, the diversity of investments would likely provide enough cushion to help absorb the losses from a bet gone wrong like Callidus.

Catalyst is not the typical private-equity fund manager, however. In prior years Catalyst's initial fund with CA\$185 million in assets returned an average of 32 percent a year and he could note to the Wall Street Journal that he was the "[No. 1] distressed-debt manager in the world." ([http://sirf-online.org/wp-content/uploads/2018/11/Glassmanquote\\_11.26.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Glassmanquote_11.26.18.png)) But it's fair to say that the days of Glassman and his colleagues wielding a hot hand are long gone.

Catalyst Fund II is a case in point: Of its five remaining investments — in Therapure BioPharma, Callidus, Gateway Casinos & Entertainment, Sonar Entertainment and Natural Markets Food Group — two are deeply troubled (Callidus and, as Glassman noted in an

August Globe and Mail ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_CapitalCall\\_82018.pdf](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_CapitalCall_82018.pdf)) article, Natural Markets ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_Natural-Markets\\_11.24.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_Natural-Markets_11.24.18.png)), leaving only Therapure and Gateway with the potential to be sold in the near term.

Except the fund's limited partners are learning that there's a big difference between "potential" and "likely" when it comes to selling an investment, and an even bigger gulf between selling an investment and doing it profitably.

Consider Therapure BioPharma Inc., a core Fund II holding since 2006, and well on its way to being sold earlier this year to a joint-venture between 3SBio Inc., a China-based pharmaceutical company, and CPE Funds, a Chinese private equity fund, for **\$290 million** (<https://www.businesswire.com/news/home/20170903005043/en/Therapure-Biopharma-Announces-Spin-Sale-Contract-Development>).

But on May 1 the deal collapsed (<https://www.caixinglobal.com/2018-05-05/3sbio-scraps-290-million-canadian-pharma-purchase-101244274.html>) for unspecified reasons, and despite Catalyst's assertions that its pursuing an IPO of Evolve Biologics (<https://www.businesswire.com/news/home/20180328005629/en/Evolve-Biologics-Therapure-Biopharma%E2%80%99s-Biologics-Division-Announces>), Therapure's drug development arm, it's anyone's guess if the sale even occurs, let alone brings in the **\$100 million** ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_EvolveIPO\\_11.24.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_EvolveIPO_11.24.18.png)) Glassman said he's shooting for, according to the Globe and Mail article referenced above.

(It was the second time in three years that an attempt to sell Therapure failed. A February 2016 IPO was shelved (<http://therapurebio.com/news/therapure-biopharma-inc/therapure-biopharma-inc-postpones-initial-public-offering>) after investors, wary of a then-choppy market and the income statement's sea of red ink, apparently balked at the roughly CA\$900 million valuation placed on the company.)

Gateway, held in Catalyst Funds II and III, is equally as speculative as Therapure and has a recent history that includes numerous failed efforts to sell it both publicly — in this case in **2012** (<https://business.financialpost.com/news/fp-street/gateway-casinos-entertainment-postponed-equity-offering>) — and to other casino companies. On Nov. 20, Catalyst filed the initial prospectus ([https://www.sec.gov/Archives/edgar/data/1755874/000119312518330759/d597838df1.htm#rom597838\\_16](https://www.sec.gov/Archives/edgar/data/1755874/000119312518330759/d597838df1.htm#rom597838_16)) for its IPO.

All any diligent investor can conclude about Catalyst's stewardship of the company since taking control in 2011 is that it's a larger company, yet remains just as hamstrung from both its leverage and its longstanding inability to turn a profit ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_GatewayFincls2018\\_11.21.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_GatewayFincls2018_11.21.18.png)) — a problem its larger rival, Great Canadian Gaming ([http://sirf-online.org/wp-content/uploads/2018/11/Gateway\\_GCRIncomeStatement\\_11.24.18-1.png](http://sirf-online.org/wp-content/uploads/2018/11/Gateway_GCRIncomeStatement_11.24.18-1.png)), appears to have solved. Similarly, it's unlikely they will be fooled by the CA\$156 million profit Gateway has reported through Sept. 30, the result of a CA\$192.3 million paper (noncash) profit booked from a one-time sale-leaseback transaction (<https://www.businesswire.com/news/home/20180226005861/en/Gateway-Casinos-Entertainment-Limited-Announces-Sale-Leaseback>). Without it, Gateway would be well on its way to a loss of over CA\$40 million this year.

Obtaining the right to operate casinos and slot machines in three Ontario region gaming "bundles ([http://sirf-online.org/wp-content/uploads/2018/11/Gateway\\_OntarioBundles\\_11.25.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Gateway_OntarioBundles_11.25.18.png))" won't be a magic bullet for Gateway either: a pro forma income statement ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_GatewayProForma2018\\_11.21.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_GatewayProForma2018_11.21.18.png)) incorporating the properties into its 2017 results shows an CA\$18.7 million loss. To develop and improve them, according to the prospectus, will require Gateway to spend between **CA\$490 million and CA\$530 million** ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_GatewayCapEx\\_11.22.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_GatewayCapEx_11.22.18.png)).

in capital expenditures over the next three years. This won't be a light task for a balance sheet with a [CA\\$908 million](http://sirf-online.org/wp-content/uploads/2018/11/Gateway_TotalDebt_11.25.18.png) ([http://sirf-online.org/wp-content/uploads/2018/11/Gateway\\_TotalDebt\\_11.25.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Gateway_TotalDebt_11.25.18.png)) debt burden.

One thing to note is the humdinger of a [related party transaction](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst- RPTransaction_11.21.18.png) ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst- RPTransaction\\_11.21.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst- RPTransaction_11.21.18.png)) between Catalyst and Gateway involving the company's purchase of CA\$217 million in net operating losses from a bankrupt unit of Natural Markets Restaurant Corp., permitting Gateway to avoid the avoid making a cash tax payment this year on its paper profits.

Catalyst Fund III, scheduled to wind up next December, also has a portfolio that tries a limited partner's soul. In addition to the aforementioned 24.8 million Callidus shares, and its half of the subordinated bridge facility (currently worth CA\$188.6,) it owns at least three other struggling companies – Natural Markets Restaurant Corp., Advantage Rent-A-Car and Mobilicity.

The Advantage Rent-A-Car investment looks particularly painful. With roughly \$310.5 million pumped into the company after buying it out of bankruptcy in April 2014, Catalyst's sizable investment hasn't helped Advantage strengthen its competitive position: Ranked by 2017 fleet size and revenues, the company is a distant [fourth place](https://www.autorentalnews.com/fc_resources/PDF/arnfb18-market.pdf) ([https://www.autorentalnews.com/fc\\_resources/PDF/arnfb18-market.pdf](https://www.autorentalnews.com/fc_resources/PDF/arnfb18-market.pdf)) behind Enterprise, Hertz and Avis, according to trade publication Auto Rental News.

A [Reuters investigation](https://www.reuters.com/investigates/special-report/canada-catalyst/) (<https://www.reuters.com/investigates/special-report/canada-catalyst/>) published in March detailed how Catalyst's Advantage valuation is extravagantly out of line with its publicly traded peers Avis and Hertz, whose market capitalizations are less than half of their revenues.

Assuming this yardstick remains valid, and using Auto Rental News' estimate of 2017 revenues of \$330 million, would imply an initial market value of less than \$200 million for Advantage, making it another investment Catalyst won't easily sell.

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One of the most damaging revelations about Glassman's activities didn't actually involve investments, but rather the Aug. 15 Ontario Superior Court [filing](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_BC_StatementofDefense_11.25.18.pdf) ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_BC\\_StatementofDefense\\_11.25.18.pdf](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_BC_StatementofDefense_11.25.18.pdf)) in which Black Cube – the notorious Israeli corporate intelligence outfit whose assignments have included working for film producer [Harvey Weinstein](https://www.newyorker.com/news/news-desk/harvey-weinsteins-army-of-spies) (<https://www.newyorker.com/news/news-desk/harvey-weinsteins-army-of-spies>) to discredit women who alleged he had sexually assaulted them – [admitted](http://sirf-online.org/wp-content/uploads/2018/11/BCRetainer_11.25.18.png) ([http://sirf-online.org/wp-content/uploads/2018/11/BCRetainer\\_11.25.18.png](http://sirf-online.org/wp-content/uploads/2018/11/BCRetainer_11.25.18.png)) they were retained to work on Catalyst's behalf on September 11, 2017.

(Black Cube was used by Catalyst to help improve its odds in its ongoing war with a Toronto hedge fund, West Face Capital, a fight that has launched four lawsuits and enriched lawyers on both sides of the border.)

Shortly after being retained, Black Cube launched a [star-crossed sting operation](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_Newbould_11.25.18.png) ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_Newbould\\_11.25.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_Newbould_11.25.18.png)) against Justice Frank Newbould, a then-recently retired Ontario Superior Court judge who'd ruled against Catalyst in an important decision regarding the sale of WIND, a wireless carrier Glassman coveted but that West Face eventually landed. The sting was designed to tar him as biased and anti-Semitic prior to filing an appeal.

Ultimately, this backfired in a big way in November, 2017 when a National Post reporter – herself the target of a Black Cube-controlled operation – [exposed](https://nationalpost.com/feature/exclusive-the-judge-the-sting-black-cube-and-me) (<https://nationalpost.com/feature/exclusive-the-judge-the-sting-black-cube-and-me>) the whole affair.

But who hired Black Cube? The answer is a bit complicated.

Catalyst, in its [reply](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_ReplyCounterclaim_11.21.18.pdf) ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_ReplyCounterclaim\\_11.21.18.pdf](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_ReplyCounterclaim_11.21.18.pdf)) to West Face's counterclaim, [stated](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_TamaraGH_11.25.18.png) ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_TamaraGH\\_11.25.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_TamaraGH_11.25.18.png)) that in August 2017 its counsel hired Tamara Global Holdings Ltd., to provide personal and professional security to the fund's employees, as well as litigation support. Tamara, in turn, hired Black Cube the following month (referred to in the counterclaim by its formal name: B.C. Strategy UK Ltd.) And who's behind Tamara? [Yosef "Yossi" Tanuri](http://sirf-online.org/wp-content/uploads/2018/11/Tanuri_11.25.18.png) ([http://sirf-online.org/wp-content/uploads/2018/11/Tanuri\\_11.25.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Tanuri_11.25.18.png)), a former Israeli special forces soldier better known in the Toronto area as the [director general, Israel](https://www.jewishcanada.org/about-us/leadership/yossi-tanuri) (<https://www.jewishcanada.org/about-us/leadership/yossi-tanuri>) of the Jewish Federations of Canada. An [email](http://sirf-online.org/wp-content/uploads/2018/11/RequestforComment_YossiTanuri_JFC_11.25.18.png) ([http://sirf-online.org/wp-content/uploads/2018/11/RequestforComment\\_YossiTanuri\\_JFC\\_11.25.18.png](http://sirf-online.org/wp-content/uploads/2018/11/RequestforComment_YossiTanuri_JFC_11.25.18.png)) to Tanuri was not replied to.

All of which suggests a version of the late Sen. Howard Baker's [famous question](https://www.brennancenter.org/blog/curious-history-%E2%80%9Dwhat-did-president-know-and-when-did-he-know-it-%E2%80%9D) (<https://www.brennancenter.org/blog/curious-history-%E2%80%9Dwhat-did-president-know-and-when-did-he-know-it-%E2%80%9D>) during the Watergate hearings: "What did Glassman know and when did he know it?"

Catalyst attempts to thread a rather slim needle with its answer to that question.

The reply to West Face's counterclaim said Catalyst's principals had nothing to do with what West Face described as allegedly unlawful activity in its counterclaim. To further distance themselves from Black Cube's widely condemned tactics, Catalyst argued that Black Cube was directed to use "[its] best professional judgement" in executing its litigation support duties. (Catalyst doesn't describe what these duties were.)

What Catalyst's filing doesn't say is that Glassman and colleagues had no idea of Black Cube's plans, both with respect to the attempted Newbould sting as well as the parallel effort to mislead the National Post's Blatchford prior to the filing of its "Wolfpack" suit in November 8, 2017.

A strange footnote to the Black Cube drama is the [collapse](https://www.calcalistech.com/ctech/articles/o.7340.L-3738491.00.html) (<https://www.calcalistech.com/ctech/articles/o.7340.L-3738491.00.html>) of [PSY Group](https://www.wsj.com/public/resources/documents/psygroup.pdf) (<https://www.wsj.com/public/resources/documents/psygroup.pdf>), a Cyprus-based, Israeli-directed intelligence services company that West Face's court filings have claimed started [defaming](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_Psy_WestFaceDefense_Feb18.png) ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_Psy\\_WestFaceDefense\\_Feb18.png](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_Psy_WestFaceDefense_Feb18.png)) both the fund and Greg Boland through [social media and blog posts](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_PsyGroup_InternetDefamation_11.21.18.png) ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_PsyGroup\\_InternetDefamation\\_11.21.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_PsyGroup_InternetDefamation_11.21.18.png)) last September, a charge that Catalyst has flatly denied.

West Face lawyers have [requested](http://sirf-online.org/wp-content/uploads/2018/11/IsraelRequest_11.25.18.pdf) ([http://sirf-online.org/wp-content/uploads/2018/11/IsraelRequest\\_11.25.18.pdf](http://sirf-online.org/wp-content/uploads/2018/11/IsraelRequest_11.25.18.pdf)) that an Israeli court order that PSY Group's hard drives be preserved, a motion Ontario Superior Court Justice [Glenn Hainey](http://sirf-online.org/wp-content/uploads/2018/11/HaineyEndorsement_11.25.18.pdf) ([http://sirf-online.org/wp-content/uploads/2018/11/HaineyEndorsement\\_11.25.18.pdf](http://sirf-online.org/wp-content/uploads/2018/11/HaineyEndorsement_11.25.18.pdf)) endorsed. Both [INVOP](http://sirf-online.org/wp-content/uploads/2018/11/INVOPDefault_11.25.18.pdf) ([http://sirf-online.org/wp-content/uploads/2018/11/INVOPDefault\\_11.25.18.pdf](http://sirf-online.org/wp-content/uploads/2018/11/INVOPDefault_11.25.18.pdf)), the corporate shell that owned PSY Group, and [Emmanuel Rosen](http://sirf-online.org/wp-content/uploads/2018/11/RosenDefault_11.25.18.pdf) ([http://sirf-online.org/wp-content/uploads/2018/11/RosenDefault\\_11.25.18.pdf](http://sirf-online.org/wp-content/uploads/2018/11/RosenDefault_11.25.18.pdf)), a [controversial](https://www.haaretz.com/.premium-channel-10-journalist-takes-leave-of-absence-following-harassment-claims-1.5239919) (<https://www.haaretz.com/.premium-channel-10-journalist-takes-leave-of-absence-following-harassment-claims-1.5239919>) former Israeli TV journalist who West Face has alleged worked with PSY Group, have not responded to any claims and have had motions of default filed against them. On the other hand, [Virginia Jamieson](http://sirf-online.org/wp-content/uploads/2018/11/JamiesonStatementDefence_11.25.18.pdf) ([http://sirf-online.org/wp-content/uploads/2018/11/JamiesonStatementDefence\\_11.25.18.pdf](http://sirf-online.org/wp-content/uploads/2018/11/JamiesonStatementDefence_11.25.18.pdf)), a New York City-based former public relations executive who West Face alleged sought to get the National Post to write critically about Judge Newbould, has denied having anything to do with PSY Group or the purported Internet defamation campaign. She was unable to be reached by phone and her lawyer didn't return a call seeking comment.

The animating spirit of Glassman's furor towards West Face Capital is his 2014 defeat at the hands of West Face and a consortium of investors in a bid to buy WIND — a loss he alleges was brought about at least in part because Brandon Moyses, a former Catalyst junior analyst who worked briefly for West Face after his departure, provided proprietary information.

Unfortunately for Glassman, Judge Newbould bluntly rejected ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_JudgeOpinion\\_Glassman\\_Feb18.png](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_JudgeOpinion_Glassman_Feb18.png)) these claims in 2016. Earlier this year an appellate court took the unusual move of dismissing Catalyst's appeal without even hearing from West Face's lawyers. Since then, Catalyst has applied for leave to have the Supreme Court of Canada consider their appeal. If the Supreme Court declines or if it loses, Catalyst will forfeit a CA\$1.3 million letter of credit, and may be assigned other costs.

A second Catalyst lawsuit (<http://sirf-online.org/wp-content/uploads/2018/11/Catalyst-Statement-of-Claim-31-May-2016-1.pdf>) against West Face and others, known as the Vimpelcom case after the Dutch telecommunications company that sold WIND to West Face, sought a whopping CA\$1.5 billion in damages.

Like the Moyses litigation, it proved unsuccessful, with a judge dismissing it on April 18 ([http://sirf-online.org/wp-content/uploads/2018/11/VimplecomAppealDecision\\_11.25.18.pdf](http://sirf-online.org/wp-content/uploads/2018/11/VimplecomAppealDecision_11.25.18.pdf)) after concluding Catalyst brought the case for a "second bite at the cherry (<http://sirf-online.org/wp-content/uploads/2018/11/BiteatCherry-1.png>)," meaning the fund was merely re-litigating the already unsuccessful Wind claim above. In fact, the judge said that at least as far as Catalyst's lawsuit pertained to West Face, it was an "abuse of process ([http://sirf-online.org/wp-content/uploads/2018/11/Abuse-of-Process\\_11.25.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Abuse-of-Process_11.25.18.png))." Catalyst has filed an appeal (<https://catalystlitigation.com/wp-content/uploads/2018/07/Catalyst-Appeal-Factum-24-July-2018.pdf>).

This aggressive litigation strategy, while bringing no end to headaches for Glassman's opponents, is poised to make a considerable dent to Catalyst's bank account. In the Canadian legal tradition, the losing party in a civil trial is liable to bear at least some of the victor's legal costs. On November 19, Justice Hainey ordered (<http://sirf-online.org/wp-content/uploads/2018/11/Cost-Endorsement-of-Justice-Hainey-19-November-2018.pdf>) Catalyst to pay CA\$1.6 million in costs to the defendants, describing its efforts as "an abusive attempt to re-litigate the same allegations. ([http://sirf-online.org/wp-content/uploads/2018/11/VimplecomCostAward\\_11.27.18.png](http://sirf-online.org/wp-content/uploads/2018/11/VimplecomCostAward_11.27.18.png))" (Catalyst sought to pay about CA\$906,000 according to this cost submission ([http://sirf-online.org/wp-content/uploads/2018/11/Catalyst\\_Vimpelcom\\_Defendantcosts\\_-10.30.18.pdf](http://sirf-online.org/wp-content/uploads/2018/11/Catalyst_Vimpelcom_Defendantcosts_-10.30.18.pdf)); their payment is suspended pending a Feb. 19 appeal hearing.)

The most high-profile contest is the CA\$455 million lawsuit ([http://sirf-online.org/wp-content/uploads/2018/03/Catalyst\\_Wolfpack\\_Claim.pdf](http://sirf-online.org/wp-content/uploads/2018/03/Catalyst_Wolfpack_Claim.pdf)) Catalyst brought last year against West Face and a bevy of other critics, including hedge funds, former Callidus borrowers, analysts and two journalists from the Wall Street Journal that alleged a complex "Wolfpack" conspiracy designed to benefit short sellers by driving down Callidus' stock price.

On Oct. 29, an Ontario court heard pleadings from many of the defendants, seeking the suit's dismissal on several grounds: That Catalyst's defamation and conspiracy claims lacked sufficient detail and made it difficult to respond to the claim, and that the Fund had missed multiple deadlines to provide those details.

For its part, Catalyst filed a motion to strike on Oct. 25 (<https://catalystlitigation.com/wp-content/uploads/2018/10/Factum-of-Catalyst-re-Defendants-Motion-to-Strike-25-October-2018.pdf>) that reiterated its claim of conspiracy and said they had provided sufficient details for the defendants to respond to.

Arguably the biggest risk to Glassman's wealth from this legal combat might be the CA\$500-million counterclaim (<https://catalystlitigation.com/wp-content/uploads/2017/11/West-Face-Statement-of-Defence-and-Counterclaim-29-December-2017.pdf>) West Face launched in 2017 against Catalyst, Callidus, Glassman and colleagues James Riley and Gabriel de Alba, as well as Black Cube and their alleged sub-contractors. Catalyst tried to have the counterclaim thrown out this

year but on June 15 Ontario Superior Court Justice Sean Dunphy, in a handwritten endorsement (<http://sirf-online.org/wp-content/uploads/2018/11/Handwritten-Endorsement-of-Justice-Dunphy-15-June-2018.pdf>), denied the fund's bid. This case is moving towards the discovery process.

One of the more overlooked claims against Catalyst is from Bruce Langstaff, a former managing director of equity sales desk for Canaccord Genuity Corp., a Toronto-based broker-dealer.

A 24-year equity sales veteran, Langstaff claims Glassman and Gabriel de Alba threatened Cannacord with withholding investment banking assignments unless he was fired. He is seeking CA\$3.35 million from Catalyst and Callidus for breach of contract and interference with economic relations. (He is also suing (<https://catalystlitigation.com/wp-content/uploads/2017/11/Langstaff-Third-Party-Claim-26-January-2018.pdf>) Cannacord.)

Langstaff, in his statement of defense and counterclaim (<http://sirf-online.org/wp-content/uploads/2018/11/Langstaff-Statement-of-Defence-and-Counterclaim-15-January-2018.pdf>), acknowledged that he provided trading strategies to West Face and the Anson Fund (another Toronto-based asset management company that Glassman sued) but denied ([http://sirf-online.org/wp-content/uploads/2018/11/LangstaffDenial\\_WFCAnson\\_11.25.18.png](http://sirf-online.org/wp-content/uploads/2018/11/LangstaffDenial_WFCAnson_11.25.18.png)) advising them to short Callidus' shares at any point around Aug. 9, 2017 – a day the stock price dropped to as low as CA\$10.57 (<http://sirf-online.org/wp-content/uploads/2018/11/Screen-Shot-2018-11-07-at-9.16.38-PM.png>) after opening at CA\$15.36, according to Yahoo! Finance. His filing also asserted ([http://sirf-online.org/wp-content/uploads/2018/11/Langstaff\\_Clarification.png](http://sirf-online.org/wp-content/uploads/2018/11/Langstaff_Clarification.png)) that neither he nor his clients were involved with Cannacord's trading in the stock in the time between August 9 and August 14.

A more likely – albeit much less dramatic – explanation for the abrupt decline in Callidus' stock price: Aug. 9 was the day a Wall Street Journal article appeared that said Callidus was the subject ([http://sirf-online.org/wp-content/uploads/2018/11/WSJExcerpt\\_11.27.18.png](http://sirf-online.org/wp-content/uploads/2018/11/WSJExcerpt_11.27.18.png)) of four different whistleblower complaints with the OSC that alleged fraud, and that the Toronto police had opened an inquiry into the firm. Moreover, the stock continued to fall because earnings, released the following day, showed net losses.

According to Langstaff's filing, throughout that August and early September Cannacord's management had repeated discussions with Glassman and other Catalyst executives about how his role at the firm hurt its ability to get investment-banking business from the fund. On Sept. 26 he was fired. The claim says both Langstaff's immediate supervisor ([http://sirf-online.org/wp-content/uploads/2018/11/Langstaff\\_Firing\\_11.25.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Langstaff_Firing_11.25.18.png)) – the bank's institutional equity chief – and an internal investigation cleared ([http://sirf-online.org/wp-content/uploads/2018/11/Langstaff\\_cleared\\_11.25.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Langstaff_cleared_11.25.18.png)) him of any wrongdoing, but says senior managers at Canaccord told him he was being terminated to insulate the company from possible litigation from Glassman.

More specifically, the filing asserts that Langstaff – who earned up to CA\$750,000 annually at Canaccord – was let go after Glassman telephoned Dan Daviau, the bank's CEO, and told him Langstaff had engaged in improper conduct in relation to Callidus. It also says Canaccord was told by Catalyst if they were not careful, "it would get caught in the crossfire."

Catalyst has not replied to Langstaff's motions, prompting his lawyers to file a notice of default (<http://sirf-online.org/wp-content/uploads/2018/11/Catalyst-Noted-in-Default-re-Langstaff-Third-Party-Claim-18-September-2018.pdf>) on Sept. 18.

In a statement of defense and counterclaim (<http://sirf-online.org/wp-content/uploads/2018/11/Canaccord-response-to-Langstaff-and-counterclaim.pdf>), Canaccord denied that Langstaff was dismissed due to pressure from Catalyst, but was let go because of an unspecified misconduct, as well as an internal restructuring.

Reached by phone, Langstaff declined to discuss the lawsuit. A representative for Canaccord did not respond to three phone messages seeking comment on the Langstaff lawsuit.

One transaction that may merit extra scrutiny is a deal Catalyst had absolutely nothing to do with — which is the problem.

For once Glassman is in the background; at the center of this drama is Gabriel de Alba, Glassman's longtime deputy and a Catalyst partner since 2002.

As a core member of Catalyst's portfolio team, de Alba has a legal obligation to devote his professional efforts solely to Catalyst and little else, according to the corporate opportunity doctrine (<https://weblaw.usc.edu/why/academics/cle/icc/assets/docs/articles/iccfinal.pdf>). It's not a complicated principle: Corporate directors and officers are not allowed to make side deals for themselves at the expense of their employer. Additionally it states company officers have a duty of loyalty, stipulating they must try and act to the benefit of the company and investors.

Catalyst's marketing documents (<http://sirf-online.org/wp-content/uploads/2018/11/2012.05-Catalyst-IV-Pitchbook.pdf>) embrace these concepts, emphasizing that Catalyst team members will devote 100 percent of their professional time to the fund's investment activities, and "no Catalyst professional may sit on a non-portfolio 'for-profit' board of directors ([http://sirf-online.org/wp-content/uploads/2018/11/deAlba\\_AlignmentofInterests\\_11.25.18.png](http://sirf-online.org/wp-content/uploads/2018/11/deAlba_AlignmentofInterests_11.25.18.png))."

But in 2011, de Alba had a role in a restructuring of Satélites Mexicanos (or Satmex), a struggling Mexican satellite communications company that his family had a significant ownership interest in (<https://translate.google.com/translate?sl=auto&tl=en&js=y&prev=t&hl=en&ie=UTF-8&u=http%3A%2F%2Fwww.excelsior.com.mx%2Fnode%2F707110&edit-text=>) and for which he and his sister served on the board ([http://sirf-online.org/wp-content/uploads/2018/11/deAlba\\_SatMex-Board\\_11.25.18.png](http://sirf-online.org/wp-content/uploads/2018/11/deAlba_SatMex-Board_11.25.18.png)).

There's nothing surprising about de Alba getting involved with a struggling telecom company; he's acknowledged by many to be an expert in the field. Moreover, in Catalyst's early years, de Alba's role in a series of telecom investments was a key source of the fund's profits.

Without a doubt, de Alba's efforts paid off in a very big way when Eutelsat Communications, a French satellite operator, acquired Satmex in 2014 for a total price of over \$1.4 billion (<https://www.eutelsat.com/en/news/2014/Eutelsat-Satmex.html>) (including the assumption of \$311 million of debt.) It's unclear how much de Alba, his family and other equity holders earned from the sale, but it might have been in excess of \$200 million.

Yet this deal did not benefit Catalyst's investors. Half a dozen other investment funds, including Centerbridge Partners LP and Monarch Partners LP ([http://sirf-online.org/wp-content/uploads/2018/11/Monarchcenterbridge\\_11.25.18.png](http://sirf-online.org/wp-content/uploads/2018/11/Monarchcenterbridge_11.25.18.png)), provided loans for the 2011 transaction. Catalyst is not recorded as one of them.

A Catalyst's spokesman declined to respond to questions on de Alba's role in the transaction.

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The Southern Investigative Reporting Foundation posed questions (<http://sirf-online.org/wp-content/uploads/2018/11/Questions-for-Catalyst-Update.pdf>) via email to Catalyst spokesman Dan Gagnier.

His reply ([http://sirf-online.org/wp-content/uploads/2018/11/DeclineComment\\_Catalyst\\_11.25.18.png](http://sirf-online.org/wp-content/uploads/2018/11/DeclineComment_Catalyst_11.25.18.png)) in full is as follows: "Catalyst declines to comment. Please be aware that virtually all of your questions and statements are factually inaccurate or fanciful creations that are readily reconciled by actually doing some research of the public record and/or court filings. Instead

of parroting a pack of lies fed to you to advance the agenda of others, it would behoove you and SIRF to adhere to even the most basic of journalistic principles, integrity and decency. Failure to do so exposes you and SIRF to legal liability.”

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*Impressed by this article? Please share it with your friends and colleagues. Then help the nonprofit Foundation for Financial Journalism continue to tell its rigorously reported pieces about elaborate corporate deceptions and consumer scams: Make a tax-deductible contribution of your own or reach out to someone else who can. Founded in 2012 as the Southern Investigative Reporting Foundation, this unique independent journalism outlet relies solely on the contributions of individual donors and philanthropic groups.*

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This is **Exhibit “C”** referred to in the affidavit of  
Bruce Livesey, sworn before me via teleconference this 11th

day of March, 2021

A handwritten signature in black ink, appearing to be 'J.P.', is written over a horizontal line.

A Commissioner, etc.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

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

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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

CANACCORD GENUITY CORP.

Third Party

AND BETWEEN:

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 ROSEN, B.C. STRATEGY LTD. D/B/A BLACK CUBE, B.C. STRATEGY UK LTD. D/B/A BLACK CUBE and INVOP LTD. D/B/A PSY GROUP

Defendants to the Counterclaim

AND BETWEEN:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Defendants to the Counterclaim

**UNDERTAKINGS, QUESTIONS TAKEN UNDER ADVISEMENT, AND REFUSALS**  
**given at the Cross-Examination of James Riley held on November 18, 2020**

**Cross-Examination by Dimitri Lascaris**

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
1.	709-710	2054	UA	To advise whether the Plaintiffs are asserting all the causes of action in paragraph 1(a) of the Fresh as Amended SOC against Mr. Livesey.	The Plaintiffs are pleading civil conspiracy and the tort of causing loss by unlawful means against Mr. Livesey at this time.
2.	710	2055-2056	UT	To confirm that the Plaintiffs never served a libel notice on Mr. Livesey.	Mr. Livesey was not served with a Notice of Libel.
3.	710-711	2057	UT	To advise whether the Plaintiffs are alleging that Mr. Livesey violated sections 126.1 and 126.2 of the Ontario <i>Securities Act</i> .	Yes.
4.	725-726	2103	UT	To confirm that the Plaintiffs are alleging that Mr. Livesey took part in the establishment of a data room where false information was shared, and that Mr. Livesey provided Anderson and Clarity with access to a Dropbox facility.	Yes.

5.	726-729	2104-2107	UA	<p>To advise whether the Plaintiffs have any direct evidence that Mr. Livesey actually participated in the establishment of the data room or that he provided access to a Dropbox facility; and if so, to advise what the evidence is.</p>	<p>This question assumes or seeks an answer “confirming” that the only source/basis of the particular issue being raised is limited to a specific paragraph and/or exhibit to Mr. Riley’s affidavits.</p> <p>This assumption and/or approach is inaccurate and inappropriate.</p> <p>While the answer now provided in response to this question focus on the specific paragraph or email raised by the questioner, the Plaintiffs’ evidence of and the basis for the allegation made are much broader. The Plaintiffs allege that the Defendants conspired with each other. The underlying nature of the conspiracies is set out in the Plaintiffs (Amended) Statement of Claim and is reflected in the reasons for decision of the Honourable Justice Wilton-Siegel, dated January 9, 2019.</p> <p>In these circumstances, the Plaintiffs can and do rely upon all of the acts of the co-conspirators and all of the documents and other evidence, direct and circumstantial, implementing or constituting the conspiracy. Consequently, all of the evidence relating to the actions and conduct of each conspirator is relevant to and supports the Plaintiffs’ claims against all of the conspirators. Hence, the relevance of the Riley Affidavits to any given issue cannot be confined to any one paragraph or exhibit – all of the facts asserted and exhibits are relevant to and probative of the alleged conspiracies.</p> <p>The same is true with respect to the productions (and further productions to come), to the Anti-SLAPP cross-examinations conducted to date, and to the discovery examinations to be conducted (of both the Anti-SLAPP Moving Parties and to the other Defendants who have not</p>
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					brought Anti-SLAPP motions, who have not been questioned at all).
6.	730	2110	UT	To advise whether the Plaintiffs have any direct evidence that Mr. Livesey filed a false complaint with the SEC and/or OSC against Catalyst, Callidus or Glassman.	See the answer to Q. 2104-2107 above.
7.	735-736	2116	UT	To advise whether the Plaintiffs are alleging that Mr. Livesey took short positions either directly or indirectly in Callidus shares.	Examinations for discovery have not occurred in the conspiracy action for any defendant. Accordingly, the Plaintiffs are unaware, at this time, of whether Mr. Livesey took short positions either directly or indirectly in Callidus shares.
8.	746-747	2137	UT	To advise whether the Plaintiffs are asserting defamation against Mr. Livesey.	Defamation is not being alleged against Mr. Livesey at this time.
9.	747	2138	UT	To advise, if the Plaintiffs are asserting the cause of action of defamation of Mr. Livesey, whether that cause of action is based strictly on what was said in the Wall Street Journal article or also based on what was said in the two articles Mr. Livesey co-authored and were published by SIRF after the Wall Street Journal article.	Defamation is not being alleged against Mr. Livesey at this time.

10.	747-749	2139	UT	To advise if the Plaintiffs are relying on any direct evidence that Mr. Livesey picked up the phone and physically contacted Mr. Copeland directly.	See the answer to Q. 2104-2107 above.
11.	759-760	2166	UT	To advise whether the Plaintiffs are asserting that Mr. Livesey used encrypted and self-destructing messaging applications such as Confide with one or more of the Defendants in the course of this conspiracy.	Examinations for discovery have not occurred in the conspiracy action for any defendant. Accordingly, the Plaintiffs do not, at this time, have any direct evidence at this time that Mr. Livesey used encrypted and self-destructing messaging applications such as Confide with one or more of the Defendants in the course of this conspiracy.

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

and

WEST FACE CAPITAL INC., *et al*  
Defendants

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**MOTION RECORD OF BRUCE LIVESEY**  
(Responding to the Plaintiffs' Record in Support  
of their Refusals Motion)

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**Lawyers for the Defendant, Bruce Livesey**