

**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

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, and JOHN  
DOES #1-10

Defendants

and

CANACCORD GENUITY CORP.

Third Party

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL  
CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA, JAMES  
RILEY, VIRGINIA JAMIESON, EMMANUEL 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

**AMENDED AMENDED NOTICE OF MOTION OF  
WEST FACE CAPITAL INC. AND GREGORY BOLAND**

**MOTION FOR COMMISSION AND LETTER OF REQUEST**

The Plaintiffs by Counterclaim, West Face Capital Inc. ("**West Face**") and Gregory Boland ("**Boland**"), will make a motion to a Judge presiding over the Commercial List on a date to be fixed at 10:00 a.m., or as soon after that time as the motion can be heard at the court house, 330 University Avenue, Toronto, Ontario, M5G 1R8.

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

in writing as an unopposed motion under subrule 37.12.1(4);

orally.

**THE MOTION IS FOR:**

- (a) an Order that the Registrar prepare and issue a letter of request addressed to the appropriate judicial authorities of Israel, in the form attached hereto as **Schedule "A"**, requesting the issuing of such process as is necessary to compel: (1) the Counterclaim Defendant, Emmanuel Rosen ("**Rosen**"); (2) other principals, executives, employees, and/or agents of the Counterclaim

Defendant, Invop Ltd. doing business as Psy Group (“**Psy Group**”), namely (i) Royi Burstien (“**Burstien**”), (ii) Judith Helfgott Burstien (“**Helfgott**”), and (iii) Sharon Kisluk (“**Kisluk**”); and (3) Yossi Tanuri (also known as Yosef Tanuri) (“**Tanuri**”, and together with Rosen, Burstien, Helfgott, and Kisluk, the “**Israeli Witnesses**”), to attend and be examined for the purpose of giving evidence to be introduced at trial, and to produce in advance of such examination all documents within their power, possession or control that are relevant to the matters pleaded in the Counterclaim;

- (b) to the extent necessary, an Order that the Registrar prepare and issue a commission in the form attached hereto as **Schedule “B”** naming Yaron Alon as commissioner to take the evidence of the Israeli Witnesses in Israel, if necessary;
- (c) to the extent necessary, an Order declaring that the documentary and oral evidence of the Israeli Witnesses are all relevant and necessary for the just determination of the Counterclaim at trial, and that the only way to get this evidence from the Israeli Witnesses, which is important for the just determination of the Counterclaim at trial, is via the requested letter of request;
- (d) to the extent necessary, an Order validating service of this Amended Notice of Motion;
- (e) such further and other Relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

- (f) West Face is a Toronto-based investment management firm, led by its CEO, Boland;
- (g) West Face and Boland's reputations among investors are essential to their continued success in the investment community;
- (h) on November 7, 2017, the Plaintiffs commenced this Action against West Face, Boland, and the other Defendants;
- (i) on December 29, 2017, West Face and Boland commenced a Counterclaim against a number of individuals and entities, including Psy Group and Rosen, who resides in Israel;
- (j) in the Counterclaim, West Face and Boland allege that the Counterclaim Defendants, including Psy Group and Rosen, participated in a clandestine conspiracy to harm West Face and Boland, including by publishing false and defamatory statements about West Face and Boland on the Internet and through traditional media;
- (k) Psy Group and Rosen were properly served with the Counterclaim, in Israel, in accordance with the Hague Convention;
- (l) nevertheless, Psy Group and Rosen failed to deliver Statements of Defence within the prescribed time, and were noted in default;

- (m) as parties to this proceeding, Psy Group and Rosen have important obligations to preserve all potentially relevant documents, to disclose all relevant documents, and to produce all relevant, non-privileged documents, and to otherwise participate in the documentary and oral discovery process provided for under the *Rules of Civil Procedure*;
- (n) Psy Group is in liquidation proceedings in Israel, and both Psy Group and Rosen have ignored this Court proceeding, have not defended the Counterclaim, have not produced any documents, and will not participate in the normal discovery process on a voluntary basis;
- (o) the Counterclaim Defendants The Catalyst Capital Group Inc., Callidus Capital Corporation, Newton Glassman, Gabriel De Alba, and James Riley opposed West Face and Boland's efforts to schedule a motion for default judgment against Rosen;
- (p) Psy Group and Rosen are parties to the Counterclaim and West Face and Boland are entitled to examine them for the purposes of trial;
- (q) Rosen, Burstien, Helfgott and Kisluk are all principals, executives, employees and/or agents of Psy Group;
- (r) Tanuri is a former commander of an elite unit of the Israeli Defence Force and the owner and proprietor of Tamara Global Holdings Ltd. ("**Tamara Global**"). Tanuri is alleged in the Counterclaim to have acted as an intermediary between the Catalyst Defendants and Jamieson, Rosen,

Black Cube and Psy Group. The Catalyst Defendants have pleaded in their Statement of Defence to Counterclaim that Tamara Global retained Black Cube on Catalyst's behalf, and denied any responsibility for the conduct that Black Cube thereafter engaged in, as pleaded in West Face's Counterclaim;

- (s) as the principal of Tamara Global, Tanuri is expected to have important information concerning the retention and instruction of Black Cube, including in respect of the activities pleaded in West Face's Counterclaim;
- (t) in light of their roles, each of the Israeli Witnesses has relevant documentary and oral evidence that is necessary for the just determination of the Counterclaim at trial, and in view of Psy Group and Rosen's conduct the only way to get all of the relevant and necessary information and testimony from these parties and witnesses for the purpose of being used at trial is via the requested letter of request;
- (u) the direct evidence of the Israeli Witnesses is not otherwise obtainable;
- (v) Psy Group and Rosen are pleaded to have participated in a widespread, covert conspiracy with the other Counterclaim Defendants to harm West Face and Boland by various means;
- (w) evidence produced by the Counterclaim Defendant Virginia Jamieson in this proceeding demonstrates Rosen's, Burstien's, Helfgott's, and Kisluk's direct involvement in the conspiracy pleaded by West Face and Boland,

and the Catalyst Defendants admitted the involvement of Tamara Global, of which Tanuri is the principal;

- (x) the Israeli Witnesses are therefore likely to have evidence about the misconduct of other Counterclaim Defendants or others, including directions given to them, and conduct witnessed by them, by other Counterclaim Defendants or others in furtherance of the conspiracy, that may not be available by other means;
- (y) it would be unfair to require West Face and Boland to proceed without having the Israeli Witnesses' evidence available to them;
- (z) there is no unfairness to any party or to any Israeli Witness;
- (aa) the interests of justice favour the disclosure sought;
- (bb) West Face understands that Tanuri's communications with the Counterclaim Defendants are the subject of claims of privilege by the Catalyst Defendants. West Face expressly commits to abide by, and not to circumvent, the procedures established or to be established by this Court in respect of any issues of privilege, production, discovery or otherwise;
- (cc) Rules 1.04, 16, 34.01(b), 34.07(2), 36.01(2), 36.01(3), 36.03, 36.04, and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;

- (dd) this Honourable Court's inherent and equitable jurisdiction to grant the relief sought, including pursuant to section 96 of the *Courts of Justice Act*, R.S.O. 1990, c. C 43; and
- (ee) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (ff) the Amended Amended Fresh as Amended Statement of Defence and Counterclaim of West Face and Boland dated July 10, 2018 and the Reply and Defence to Counterclaim of the Catalyst Defendants dated September 25, 2018;
- (gg) the Affidavit of Philip Panet sworn May 21, 2019;
- (hh) the Affidavit of Christie Blatchford sworn May 21, 2019;
- (ii) additional evidence previously filed with this Court, including the Affidavit of Maja Bogovic sworn April 25, 2018, the Affidavit of Amin Razvi sworn May 24, 2018, and the two Affidavits of Philip Panet sworn June 4, 2018; and
- (jj) such further and other evidence as the lawyers may advise and this Honourable Court may permit.



October 16, 2019

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
155 Wellington Street West  
Toronto ON M5V 3J7

**Kent E. Thomson (LSO# 24264J)**  
Tel: 416.863.5566  
Email: kentthomson@dwpv.com

**Matthew Milne-Smith (LSO# 44266P)**  
Tel: 416.863.5595  
Email: mmilne-smith@dwpv.com

**Andrew Carlson (LSO# 58850N)**  
Tel: 416.367.7437  
Email: acarlson@dwpv.com

Tel: 416.863.0900  
Fax: 416.863.0871

Lawyers for the Defendants (Plaintiffs by  
Counterclaim),  
West Face Capital Inc. and Gregory  
Boland

TO: **MILBURN & ASSOCIATES**  
Barristers & Solicitors  
20 Toronto Street  
Suite 860  
Toronto ON M5C 2B8

**Jane Milburn**  
Tel: 647.728.8081  
Fax: 647.689.2983  
Email: jmilburn@milburnlaw.ca

**Devin Jarcaig**  
Tel: 647.728.8083  
Email: djarcaig@milburnlaw.ca

Tel: 416.238.7865  
Fax: 647.689.2983

Lawyers for the Defendant (Plaintiff by Counterclaim),  
Bruce Langstaff

AND TO: **MOORE BARRISTERS**  
Suite 1600  
393 University Avenue  
Toronto ON M5G 1E6

**David C. Moore (LSO# 16996)**  
Tel: 416.581.1818 ext. 222  
Email: david@moorebarristers.ca

**Ken Jones**  
Tel: 416.581.1818 ext. 224  
Fax: 416.581.1279  
Email: kenjones@moorebarristers.ca

Tel: 416.581.1818 ext. 222  
Fax: 416.581.1279

Lawyers for the Plaintiffs (Defendants to the Counterclaim), The Catalyst Capital Group Inc. and Callidus Capital Corporation and the Defendants to the Counterclaim, Newton Glassman, Gabriel De Alba and James Riley

AND TO: **MACKENZIE BARRISTERS**  
120 Adelaide Street West  
Suite 2100  
Toronto ON M5H 1T1

**Gavin MacKenzie**  
Tel: 416.304.9293  
Fax: 416.304.9296  
Email: gavin@mackenziebarristers.com

**Brooke MacKenzie**  
Tel: 416.304.9294  
Fax: 416.304.9296  
Email: brooke@mackenziebarristers.com

Tel: 416.304.9293  
Fax: 416.304.9296

Lawyers for the Defendant to the Counterclaim,  
Virginia Jamieson

AND TO: **EMMANUEL ROSEN**  
ID No. 56548456  
25 Em Hakvuzot (apartment 5)  
Hod Hasaron 4537501

Defendant to the Counterclaim

AND TO: **ADAIR GOLDBLATT BIEBER LLP**  
95 Wellington Street West  
Suite 1830  
Toronto ON M5J 2N7

**John Adair (LSO# 52169V)**

Tel: 416.941.5858  
Email: jadair@agbllp.com

**Gord McGuire**

Tel: 416.351.2781  
Fax: 416.689.2059  
Email: gmcguire@agbllp.com

Tel: 416.499.9940  
Fax: 647.689.2059

Lawyers for the Defendants to the Counterclaim,  
B.C. Strategy Ltd. d/b/a Black Cube and B.C. Strategy UK Ltd. d/b/a Black  
Cube

AND TO: **INVOP LTD.**  
No. 51-517203-9  
At Adv. Hayut Grinberg 7 Menahem Begin Street (12 Floor)  
Ramat Gan 5268102

Defendant to the Counterclaim

AND TO: **TORYS LLP**  
Barristers and Solicitors  
79 Wellington Street West  
Suite 3000  
Box 270, TD South Tower  
Toronto ON M5K 1N2

**Linda M. Plumpton**  
Tel: 416.865.8193  
Fax: 416.865.7380  
Email: lplumpton@torys.com

**Leora Jackson**  
Tel: 416.865.7547  
Fax: 416.865.7380  
Email: ljackson@torys.com

Tel: 416.865.0040  
Fax: 416.865.7380

Lawyers for the Defendants,  
M5V Advisors Inc. c.o.b. Anson Group Canada, Admiralty Advisors LLC,  
Frigate Ventures LP, Anson Investments LP, Anson Capital LP, Anson  
Investments Master Fund LP, AIMF GP, Anson Catalyst Master Fund LP,  
ACF GP, Moez Kassam, Adam Spears and Sunny Puri

AND TO: **LERNERS LLP**  
Barristers and Solicitors  
130 Adelaide Street West  
Suite 2400  
Toronto ON M5H 3P5

**Lucas E. Lung (LSO# 52595C)**  
Tel: 416.601.2673  
Fax: 416.601.4192  
Email: llung@lernalers.ca

Tel: 416.867.3076  
Fax: 416.867.9192

Lawyers for the Defendants,  
Clarityspring Inc. and Nathan Anderson

AND TO: **ST. LAWRENCE BARRISTERS LLP**  
144 King Street East  
Toronto ON M5C 1G8

**Phil Tunley**

Tel: 647.245.8282  
Email: Phil.Tunley@Stlbarristers.ca

**Jennifer Saville**

Tel: 647.245.2222  
Fax: 647.245.8285  
Email: jennifer.saville@stlbarristers.ca

**Alexi Wood**

Tel: 647.245.8283  
Fax: 647.245.2121  
Email: alexi.wood@stlbarristers.ca

Tel: 647.245.8284  
Fax: 647.245.8285

Lawyers for the Defendant,  
Rob Copeland

AND TO: **SCOTT VENTURO RUDAKOFF LLP**  
Lawyers  
1500, 222 3rd Ave SW  
Calgary AB T2P 0B4

**Eugene J. Bodnar**

Tel: 403.231.8209  
Fax: 403.565.4632  
Email: g.bodnar@scottventuro.com

**Breanne Campbell**

Email: b.campbell@scottventuro.com

Tel: 403.261.9043  
Fax: 403.265.4632

Lawyers for the Defendant,  
Kevin Baumann

AND TO: **JEFFREY MCFARLANE**  
220 Dominion Drive  
Suite B  
Morrisville NC 27560

Email: jmcfarlane@triathloncc.com

Defendant

AND TO: **SOLMON ROTHBART GOODMAN LLP**  
Barristers and Solicitors  
375 University Avenue  
Suite 701  
Toronto ON M5G 2J5

**Melvyn L. Solmon**  
Tel: 416.947.1093  
Email: msolomon@srglegal.com

**Nancy Tourgis**  
Tel: 416.947.1093 ext.  
Email: ntourgis@srglegal.com

Tel: 416.947.1093  
Fax: 416.947.0079

Lawyers for the Defendant,  
Richard Molyneau

AND TO: **DARRYL LEVITT**  
Suite 206  
30 Speers Road  
Oakville ON L6K 2E4  
  
Email: darryl@dlevittassociates.com  
Tel: 416.879.6965

Defendant

AND TO: **JOHN DOES #1-10**

Defendant

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

**Andrew Burns**

Tel: 416.350.2934  
Email: aburns@huntlegal.com

**Melissa Brainis**

Tel: 416.350.2934  
Fax: 416.943.1484  
Email: mbrainis@huntlegal.com

Tel: 416.943.4868  
Fax: 416.943.1484

Lawyers for the Defendant,  
Kevin Baumann

AND TO: **CRAWLEY MACKAWN BRUSH LLP**  
Barristers and Solicitors  
179 John Street  
Suite 800  
Toronto ON M5T 1X4

**Robert Brush**

Tel: 416.217.0822  
Fax: 416.217.0220  
Email: rbrush@cdblaw.ca

**Clarke Tedesco**

Tel: 416.217.0884  
Fax: 416.217.0220  
Email: ctedesco@cdblaw.ca

**Dana Carson**

Tel: 416.217.0110  
Fax: 416.217.0220  
Email: dcarson@cdblaw.ca

Tel: 416.217.0110  
Fax: 416.217.0220

Lawyers for the Third Party,  
Canaccord Genuity Corp.

AND TO: **GOWLING WLG (CANADA) LLP**  
Barristers and Solicitors  
1 First Canadian Place  
100 King Street West  
Suite 1600  
Toronto ON M5X 1G5

**John Callaghan**

Tel: 416.369.6693  
Fax: 416.862.7661  
Email: John.Callaghan@gowlingwlg.com

**Benjamin Na**

Tel: 416.862.7525  
Fax: 416.862.7661  
Email: Benjamin.Na@gowlingwlg.com

Lawyers for the Plaintiffs (Defendants to the Counterclaim), The Catalyst Capital Group Inc. and Callidus Capital Corporation and the Defendants to the Counterclaim, Newton Glassman, Gabriel De Alba and James Riley



THE CATALYST CAPITAL GROUP INC. et al. -and- WEST FACE CAPITAL INC. et al. -and- CANACCORD GENUITY CORP.  
Plaintiffs Defendants Third Party  
WEST FACE CAPITAL INC. et al. -and- THE CATALYST CAPITAL GROUP INC. et al.  
Plaintiffs by Counterclaim Defendants to the Counterclaim

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

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PROCEEDING COMMENCED AT TORONTO

**AMENDED AMENDED NOTICE OF MOTION OF WEST FACE AND  
BOLAND**

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
155 Wellington Street West  
Toronto ON M5V 3J7

**Kent E. Thomson (LSO# 24264J)**  
Email: kentthomson@dwpv.com  
Tel: 416.863.5566

**Matthew Milne-Smith (LSO# 44266P)**  
Email: mmilne-smith@dwpv.com  
Tel: 416.863.5595

**Andrew Carlson (LSO# 58850N)**  
Email: acarlson@dwpv.com  
Tel: 416.367.7437

Tel: 416.863.0900  
Fax: 416.863.0871

Lawyers for the Defendants (Plaintiffs by Counterclaim),  
West Face Capital Inc. and Gregory Boland