

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff  
(Appellant)

and

WEST FACE CAPITAL INC. and BRANDON MOYSE

Defendants  
(Respondents)

**MOTION RECORD  
OF THE DEFENDANT (RESPONDENT) WEST FACE CAPITAL INC.**

November 28, 2017

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

**Kent Thomson (LSUC# 24264J)**  
Tel: 416.863.5566  
Email: kethomson@dwpv.com

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

Tel: 416.863.0900  
Fax: 416.863.0871

Lawyers for the Defendant (Respondent)  
West Face Capital Inc.

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

**David C. Moore (LSUC# 16996)**  
Email: david@moorebarristers.ca  
Tel: 416.581.1818 ext. 222  
Fax: 416.581.1279

**GREENSPAN HUMPHREY WEINSTEIN**  
15 Bedford Road  
Toronto, ON M5R 2J7

**Brian H. Greenspan**  
Email: bgreenspan@15bedford.com  
Tel: 416.868.1755, ext. 222

Tel: 416.868.1755  
FAX: 416.868.1990

Lawyers for the Plaintiff (Appellant),  
The Catalyst Capital Group Inc.

AND TO: **PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**  
Barristers and Solicitors  
155 Wellington Street West  
35th Floor  
Toronto ON M5V 3H1

**Robert A. Centa (LSUC# 44298M)**  
Tel: 416.646.4314

Email: robert.centa@paliareroland.com

**Kristian Borg-Olivier (LSUC# 53041R)**  
Tel: 416.646.7490

Email: kris.borg-olivier@paliareroland.com

**Denise Cooney (LSUC# 64358R)**

Tel: 416.646.7422

Email: denise.cooney@paliareroland.com

Tel: 416.646.4300  
Fax: 416.646.4301

Lawyers for the Defendant (Respondent),  
Brandon Moyse

## INDEX

<b>TAB</b>	<b>DOCUMENT</b>	<b>PAGE NO.</b>
1.	West Face's Notice of Motion dated November 28, 2017	1 – 15
2.	Catalyst's Notice of Appeal dated September 13, 2016	16 – 29
3.	Catalyst's Supplementary Notice of Appeal dated October 21, 2016	30 – 36
4.	Catalyst's Second Supplementary Notice of Appeal dated February 15, 2017	37 – 53
5.	Affidavit of Andrew Carlson sworn November 28, 2017	54 – 62
A	Exhibit A – Letter from Mr. Greenspan to the Registrar of the Court of Appeal dated September 25, 2017	63 – 65
B	Exhibit B – Endorsement of Justice Rouleau dated September 27, 2017	66 – 68
C	Exhibit C – Letter from Mr. Milne-Smith to Mr. Greenspan dated September 26, 2017	69 – 71
D	Exhibit D – Letter from Mr. Milne-Smith to Mr. Greenspan dated September 27, 2017	72 – 74
E	Exhibit E – Letter from Mr. Greenspan to Mr. Milne-Smith dated September 27, 2017	75 – 76
F	Exhibit F – Letter from Mr. Milne-Smith to Mr. Greenspan dated September 28, 2017	77 – 79
G	Exhibit G – Letter from Mr. Borg-Olivier to Mr. Greenspan dated September 29, 2017	80 – 82
H	Exhibit H – Letter from Mr. Greenspan to Mr. Milne-Smith dated October 4, 2017	83 – 84

TAB	DOCUMENT	PAGE NO.
I	Exhibit I – Letter from Mr. Greenspan to Mr. Borg-Olivier dated October 4, 2017	85 – 86
J	Exhibit J – Letter from Mr. Milne-Smith to Mr. Greenspan dated November 3, 2017	87 – 89
K	Exhibit K – Letter from Ms. Lutes to Mr. Milne-Smith dated November 6, 2017	90 – 91
L	Exhibit L – Letter from Mr. Milne-Smith to Ms. Lutes dated November 6, 2017	92 – 94
M	Exhibit M – Letter from Mr. Centa to Ms. Lutes and Mr. Greenspan dated November 7, 2017	95 – 96
N	Exhibit N – Statement of Claim issued November 7, 2017	97 – 131
O	Exhibit O – Black Cube's website	132 – 161
P	Exhibit P – <i>The New Yorker</i> article dated November 6, 2017 titled: "Harvey Weinstein's Army of Spies"	162 – 179
Q	Exhibit Q – <i>Daily Mail</i> article dated November 8, 2017	180 – 193
R	Exhibit R – <i>Wall Street Journal</i> article dated November 8, 2017 titled: "Undercover Operative Resurfaces, With a Different Alias"	194 – 198
S	Exhibit S – <i>CBS</i> article dated November 8, 2017 titled: "NYT fires attorney David Boies, who worked with Weinstein"	199 – 204
T	Exhibit T – <i>Medium.com</i> article titled: "Black Cube: How did an Israeli intelligence agency land contracts worth £1.5 million in Romania?"	205 – 211
U	Exhibit U – <i>CTECH</i> article dated November 23, 2017 titled: "Police Complaint Reveals Details about Black Cube Tactics"	212 – 216
V	Exhibit V – Search results of ServiceOntario website	217 – 219
W	Exhibit W – Order of Justice Hainey dated	220 – 224



TAB	DOCUMENT	PAGE NO.
	November 16, 2017	
X	Exhibit X – Letter from Mr. Milne-Smith to Messrs. Moore, DiPucchio, and Greenspan dated November 10, 2017	225 – 228
Y	Exhibit Y – Email from Mr. Moore to Messrs. DiPucchio and Milne-Smith dated November 6, 2017 attaching Notices of Change of Lawyers	229 – 243
Z	Exhibit Z – Letter from Mr. Greenspan to Mr. Milne-Smith dated November 13, 2017	244 – 246
AA	Exhibit AA – Letter from Mr. Milne-Smith to Mr. Greenspan dated November 14, 2017	247 – 249
BB	Exhibit BB –Letter from Mr. Milne-Smith to Mr. Moore dated November 14, 2017	250 – 252
CC	Exhibit CC – Redacted Affidavit of Alexander Singh sworn November 14, 2017, with Exhibits	253 – 375
DD	Exhibit DD – Letter from Mr. Gottlieb to Mr. Milne-Smith dated November 15, 2017	376 – 377
EE	Exhibit EE – Letter from the Court of Appeal dated November 17, 2017	378 – 380
FF	Exhibit FF – <i>National Post</i> article dated November 24, 2017 titled: "Exclusive: The Judge, the Sting, Black Cube and Me"	381 – 393
GG	Exhibit GG – Letter from Mr. Milne-Smith to Mr. Greenspan dated November 24, 2017	394 – 397
HH	Exhibit HH – Letter from Mr. Milne-Smith to Mr. Moore dated November 24, 2017	398 – 401
II	Exhibit II – Emails between Mr. Milne-Smith and Mr. Moore dated November 27, 2017	402 – 404
JJ	Exhibit JJ – <i>Financial Post</i> article dated August 19, 2016 titled: "Catalyst Capital Group Inc to appeal after judge dismisses Wind Mobile lawsuit"	405 – 408

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff  
(Appellant)

and

WEST FACE CAPITAL INC. and BRANDON MOYSE

Defendants  
(Respondents)**NOTICE OF MOTION**

The Defendant (Respondent), West Face Capital Inc. ("**West Face**"), will make a motion to Justice Rouleau on Friday, December 1, 2017 at 1:15 p.m. or on another date to be fixed by him, or to a full Panel of the Court of Appeal for Ontario (as may be necessary or appropriate) on a date to be fixed by Justice Rouleau or by the Court, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally. The estimated length of time for the oral argument of the motion by counsel for West Face is between 30 and 60 minutes.

**THE MOTION IS FOR AN ORDER:**

- (a) To the extent necessary, validating service of this Notice of Motion and the Motion Record and the manner in which service was effected, abridging the time for service thereof, and dispensing with service thereof on any person or entity other than the parties to this appeal;

- (b) Requiring the Plaintiff (Appellant), The Catalyst Capital Group Inc. ("**Catalyst**") and its counsel from the Greenspan Humphrey Weinstein firm and from the Moore Barristers firm (collectively, "**Catalyst's Counsel**") to produce immediately, within no more than 48 hours from the date and time of any Order the Court might make, the following:
- (i) the proposed fresh evidence that Brian Greenspan represented to Justice Rouleau on September 25, 2017 that he had received, reviewed and regarded to be credible when he sought to adjourn the hearing of this appeal from the scheduled dates of September 26 and 27, 2017;
  - (ii) all physical and electronic documents, including recordings, in the possession, control or power of: (i) Catalyst or its principals; (ii) Catalyst's Counsel; and (iii) investigators, private security firms or other contractors (including subcontractors) retained for, by or on behalf of Catalyst or its principals, that pertain to, arise out of or discuss in any way the investigation of Alexander Singh, the former General Counsel of West Face, who was a witness in the proceedings at issue in this appeal;
  - (iii) all physical and electronic documents, including recordings, in the possession, control or power of: (i) Catalyst or its principals, (ii) Catalyst's Counsel; and (iii) investigators, private security firms or other contractors (including subcontractors) retained for, by or on

behalf of Catalyst or its principals, that pertain to, arise out of or discuss in any way the investigation of Frank Newbould, formerly a Justice of the Superior Court of Justice, who was the Trial Judge in the proceedings at issue in this appeal;

- (c) Requiring Catalyst and Catalyst's Counsel to deliver, within no more than 72 hours from the date and time of any Order the Court might make, a comprehensive and detailed privilege log listing each and every document that falls within the scope of paragraph (b) above over which Catalyst asserts claims of privilege (the "**Allegedly Privileged Documents**");
- (d) Requiring Catalyst to deliver to Justice Rouleau (or to another Justice designated by a full Panel of the Court), the Allegedly Privileged Documents to permit proper determinations to be made in respect of any assertion of privilege that Catalyst might make;
- (e) Fixing an immediate date for the hearing of a motion to determine the propriety or validity of any assertion of privilege Catalyst might make in respect of the Allegedly Privileged Documents;
- (f) To the extent that Catalyst proceeds with a fresh evidence motion in this appeal, requiring Catalyst and Catalyst's Counsel to file the proposed fresh evidence under seal, pending a determination by the Court as to what portions of such evidence, if any, should be filed publicly; and
- (g) Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:****Background**

- (a) Catalyst's appeal is from a Judgment of Justice Newbould dated August 18, 2016. Catalyst alleged at trial that West Face had obtained confidential information about Catalyst's strategy for the acquisition of WIND Mobile from Brandon Moyse, a former junior employee of Catalyst. West Face participated in a consortium of investors that acquired WIND Mobile in September 2014 after Catalyst failed to do so.
- (b) Justice Newbould dismissed Catalyst's claim in its entirety, and awarded costs to West Face in an amount of approximately \$1.2 million, on a substantial indemnity basis.
- (c) On August 19, 2017, immediately after Justice Newbould released his Reasons for Judgment, Catalyst provided a written statement to the *Financial Post* in which it claimed that Justice Newbould's Reasons raised "severe indications of possible bias".
- (d) Catalyst perfected its appeal on February 23, 2017. In its appeal factum, Catalyst suggested that Justice Newbould had applied different standards in evaluating the evidence of the parties, but did not allege actual bias or a reasonable apprehension of bias.
- (e) The appeal of this matter was scheduled to be heard on September 26 and 27, 2017. Catalyst's appeal against West Face is manifestly devoid of merit,

and consists largely of re-arguing findings of fact and credibility that Justice Newbould made against Catalyst and its witnesses at trial. All of those findings were grounded firmly in the evidence.

### **Catalyst Launches Black Cube Investigations**

- (f) In September 2017, when the argument of the appeal was imminent, Catalyst decided to launch a series of covert investigations against West Face and Justice Newbould, using Black Cube, an Israeli-based private investigation firm comprised of former Mossad and Israeli Defence Force operatives. The purpose of these investigations was to manufacture evidence that could be used by Catalyst during the course of this appeal. Operators of Black Cube used systematic lies and deception in their efforts to entrap current and former employees of West Face, as well as Justice Newbould, to elicit from them potentially damaging statements and information that could be used by Catalyst to attack and discredit Justice Newbould as well as his Judgment at trial in this proceeding.
- (g) One Black Cube operation involved a surreptitious and deceptive "sting" against Justice Newbould that was intended to bait Justice Newbould into making anti-Semitic comments, in the hopes of utilizing secret recordings of meetings conducted by a Black Cube operative with Justice Newbould to accuse him of having been biased at trial against Newton Glassman, the Founder and Managing Partner of Catalyst, who is Jewish.

- (h) One or more operatives acting for and on behalf of Catalyst met with Justice Newbould on Monday September 18, 2017, under the false pretence of potentially retaining him to arbitrate a commercial dispute. Notwithstanding their lies, deception and blatantly improper conduct, these investigations failed entirely in their efforts to elicit from Justice Newbould anti-Semitic comments or other evidence of bias against Catalyst or Mr. Glassman.
- (i) A second Black Cube operation involved a surreptitious and deceptive "sting" against Alexander Singh, who was the General Counsel of West Face during the events that gave rise to this appeal. Black Cube first contacted Mr. Singh on Monday September 13, 2017, and then met with him on September 18, 2017, for morning coffee and dinner. These meetings, like the meeting with Justice Newbould, failed to elicit any information relevant to Catalyst's appeal.
- (j) Three days after the events referred to above, on Thursday, September 21, 2017, Catalyst received the investigative materials arising from the meetings with Justice Newbould, including audio and video recordings and transcripts of the meetings. Catalyst retained Mr. Greenspan that same day to assess the materials Catalyst had received, and to consider bringing a fresh evidence application in this appeal on behalf of Catalyst.
- (k) In addition to the deceptive sting operations against Justice Newbould and Mr. Singh referred to above, Black Cube also launched investigations using systematic lies and deception against a number of other current and former

employees of West Face. None of these operations produced any evidence relevant to Catalyst's appeal.

- (l) All of Black Cube's operations were undertaken on false pretences, using lies, deception, false identities, and false offers of employment or investment. These operations were conducted around the globe, including in Toronto, Ontario, and London, England.
- (m) All of Black Cube's operations in Canada were unlawful, including because Black Cube and its operatives are not now and have never been licensed private investigators in Ontario, or in any other Province of Canada.

### **Catalyst Obtains an Adjournment of the Appeal**

- (n) On the morning of Monday, September 25, 2017, Mr. Greenspan wrote to the Court of Appeal asking for an adjournment of the hearing of the appeal on the basis that "irreconcilable differences" had arisen between Catalyst and its counsel of record, Rocco DiPucchio of the Lax O'Sullivan firm. Prior to then, Mr. Greenspan had played no role in this matter.
- (o) That same day, at approximately 3:30 p.m., counsel attended before Justice Rouleau. Mr. Greenspan, David Moore, Mr. DiPucchio and Eric Hoaken were all in attendance for Catalyst or Lax O'Sullivan. A contested motion for an adjournment of the appeal was argued before Justice Rouleau. During the argument of the motion, Mr. Greenspan advised that he had been retained by Catalyst on Thursday, September 21, 2017 to



consider a potential fresh evidence motion, and that the irreconcilable differences that were said to have arisen between the Lax O'Sullivan firm and Catalyst pertained to that motion. He did not specify what those differences were. Nor did he specify how or in what circumstances those differences had arisen.

- (p) During the attendance on September 25, 2017, Mr. Greenspan represented to the Court that he had seen and reviewed the fresh evidence that Catalyst was considering seeking leave to introduce on appeal, and that he regarded the evidence to be credible and relevant to the appeal. He stated that he needed time to assess the potential impact of that evidence to determine whether it met the test in the Palmer case for the admission of fresh evidence on appeal.
- (q) No disclosure was made to the Court, or to opposing counsel, as to what the proposed fresh evidence was, where it had come from or when. Moreover, Mr. Greenspan did not take the position that Catalyst required more time to find the fresh evidence it might seek leave to introduce on appeal. Instead, as indicated above, he stated the opposite, namely that he had seen the proposed fresh evidence of Catalyst and regarded it to be credible and relevant.
- (r) Over the objections of West Face and Mr. Moyse, Justice Rouleau reluctantly adjourned the hearing of the appeal to February 20-22, 2018 on the basis that the Lax O'Sullivan firm had withdrawn and that it would be

unfair to force Catalyst to proceed with the hearing of the appeal the next day without counsel.

### **Events Following the Adjournment**

- (s) Having obtained the adjournment, Catalyst and Black Cube proceeded to continue their illicit investigations of Mr. Singh and various other current and former West Face employees in the hopes of obtaining fresh evidence to adduce on appeal.
- (t) Moreover, in the period after September 25 Mr. Greenspan refused repeatedly to disclose to counsel to West Face and Mr. Moyse the proposed fresh evidence that Catalyst might seek leave to introduce on appeal, as well as any information as to where and when Catalyst had obtained that information. West Face and Mr. Moyse were kept completely in the dark.
- (u) On Tuesday, November 7, 2017, Catalyst commenced a new claim against West Face, claiming \$450 million in damages. This claim was drafted and issued by Mr. DiPucchio of the Lax O'Sullivan firm, despite the fact that Catalyst had secured the adjournment of this appeal on September 25, 2017 on the explicit basis that "irreconcilable differences" had arisen between Catalyst and Lax O'Sullivan.
- (v) On Thursday, November 9, 2017, West Face uncovered for the first time Black Cube's operations against a number of its current and former employees. West Face only learned of Black Cube's activities as a result of

widespread publicity in the mainstream media and over the Internet surrounding Black Cube's activities on behalf of Harvey Weinstein against the victims of his alleged sexual harassment and assault, as well as against the journalists who sought to expose these allegations.

- (w) On Friday, November 10, 2017, counsel to West Face wrote to counsel to Catalyst to demand that Black Cube's activities stop, and that all evidence of Black Cube's activities be preserved. Catalyst provided no such assurances. It was only upon receipt of this letter that Lax O'Sullivan was removed as counsel of record from the new cases it had commenced three days earlier.
- (x) On Sunday, November 12, 2017, West Face learned of Black Cube's activities against Mr. Singh. These activities included flying him to London, England on false pretences, and then eliciting from him disclosure of solicitor-client privileged advice that Mr. Singh had given to West Face during the course of his tenure as the firm's General Counsel concerning the hiring and employment of Mr. Moyse.
- (y) On Tuesday, November 14, 2017, counsel to West Face wrote to counsel to Catalyst demanding immediate disclosure concerning who at Catalyst or its external counsel was aware of Black Cube's activities in respect of Mr. Singh. This letter also advised that West Face would be seeking production of all evidence that pertained to Black Cube's activities involving West Face, and demanded that such evidence be preserved.

- (z) On November 16, 2017, West Face obtained a Consent Order from Justice Hainey of the Superior Court of Justice (Commercial List) that Catalyst preserve all records of Black Cube's activities.
- (aa) On the evening of Friday, November 24, 2017, the *National Post* published online an article exposing and detailing Black Cube's "sting" against Justice Newbould. This was the first time West Face learned of the investigation of Justice Newbould. That same night, counsel to West Face wrote letters to all of Catalyst's Counsel asking them, among other things, to explain the basis on which Catalyst had sought and obtained an adjournment on September 25, 2017, to disclose what knowledge they had of Black Cube's operations against Justice Newbould, and to produce to West Face all evidence of such operations.
- (bb) Although the Lax O'Sullivan firm responded immediately to this letter, neither Mr. Greenspan nor Mr. Moore have provided substantive responses.
- (cc) Catalyst's investigations of Mr. Singh and Justice Newbould are an egregious and entirely improper abuse that cast the administration of justice into disrepute. The actions of Catalyst and its investigators, and of any other person who played a role in, authorized, directed or attempted to utilize or take advantage of these illicit investigations in any way, either directly or indirectly, including in their dealings with third parties, journalists

or the judiciary, shock the conscience of the Court and expose Catalyst to the most severe form of judicial sanctions.

- (dd) Based on the disclosure sought on this motion, West Face may well bring motions: (i) for an Order removing or disqualifying Catalyst's Counsel; and (ii) dismissing Catalyst's appeal for abuse.
- (ee) This motion may be heard by a single judge because it is not a motion required to be heard by a three-judge Panel as set out in the Practice Direction of the Court of Appeal. Alternatively, West Face would be pleased to argue this motion before a full Panel of the Court.
- (ff) Subsection 13(2) of the *Courts of Justice Act*, and the inherent jurisdiction of the Court to control its own processes.

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

- (a) The Affidavit of Andrew Carlson sworn November 28, 2017; and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 28, 2017

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

**Kent Thomson (LSUC# 24264J)**

Tel: 416.863.5566

Email: kethomson@dwpv.com

**Matthew Milne-Smith (LSUC# 44266P)**

Tel: 416.863.5595

Email: mmilne-smith@dwpv.com

Tel: 416.863.0900

Fax: 416.863.0871

Lawyers for the Defendant (Respondent)  
West Face Capital Inc.

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

**David C. Moore (LSUC# 16996)**

Email: david@moorebarristers.ca

Tel: 416.581.1818 ext. 222

Fax: 416.581.1279

**GREENSPAN HUMPHREY WEINSTEIN**

15 Bedford Road  
Toronto, ON M5R 2J7

**Brian H. Greenspan**

Email: bgreenspan@15bedford.com

Tel: 416.868.1755, ext. 222

Tel: 416.868.1755

FAX: 416.868.1990

Lawyers for the Plaintiff (Appellant)  
The Catalyst Capital Group Inc.

AND TO: **PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**  
Barristers and Solicitors  
155 Wellington Street West  
35th Floor  
Toronto ON M5V 3H1

**Robert A. Centa (LSUC# 44298M)**

Tel: 416.646.4314

**Kristian Borg-Olivier (LSUC# 53041R)**

Tel: 416.646.7490

**Denise Cooney (LSUC# 64358R)**

Tel: 416.646.7422

Email: denise.cooney@paliareroland.com

Tel: 416.646.4300

Fax: 416.646.4301

Lawyers for the Defendant (Respondent),  
Brandon Moyse

THE CATALYST CAPITAL GROUP INC.  
Plaintiff  
(Appellant)

-and- WEST FACE CAPITAL INC. et al.  
Defendants  
(Respondents)

Court File No. C62655

**COURT OF APPEAL FOR ONTARIO**  
**PROCEEDING COMMENCED AT**  
**TORONTO**

**NOTICE OF MOTION**

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

**Kent Thomson (LSUC# 24264J)**  
Tel: 416.863.5566  
Email: kethomson@dwpv.com

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

Tel: 416.863.0900  
Fax: 416.863.0871

Lawyers for the Defendant (Respondent)  
West Face Capital Inc.



Court of Appeal File No.  
Court File No. CV-14-507120

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**THE CATALYST CAPITAL GROUP INC.**

**Plaintiff/  
Appellant**

**and**

**BRANDON MOYSE and WEST FACE CAPITAL INC.**

**Defendants/  
Respondents**

**NOTICE OF APPEAL**

THE PLAINTIFF APPEALS to the Court of Appeal from the Judgment of the Honourable Justice F. Newbould dated August 18, 2016, made at Toronto.

THE APPELLANT ASKS that the Judgment be set aside and Judgment be granted as follows:

1. Ordering that a new trial be held before another Judge of the Superior Court of Justice;
2. An award of costs of the trial and this appeal; and
3. Such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS OF APPEAL are as follows:

**A. Denial of Procedural Fairness**

1. The trial judge deprived the Plaintiff ("Catalyst") of procedural fairness by applying an inconsistent standard in his evaluation of the witnesses' credibility. Catalyst's witnesses were held to, and found not to have met, a higher standard than the defendants' witnesses.
2. In particular, without limiting the generality of the foregoing, the trial judge relied upon small inconsistencies in Catalyst's witnesses' evidence as justification to hold that those witnesses were not credible, when similar (or even more glaring) inconsistencies in the defendants' witnesses were held not to affect credibility.
3. At the direction of the trial judge, the trial was conducted as a summary/hybrid trial with evidence in chief to be adduced by way of affidavits previously sworn by witnesses in motions preceding the trial, to be supplemented by additional affidavits where necessary.
4. Prior to the issuance of this direction, the Plaintiff's witnesses in pre-trial motions consisted of James Riley, a partner and chief operating officer at the Plaintiff, and Martin Musters, a forensic IT investigator, who gave expert evidence.
5. The Defendants' witnesses included:
  - (a) The defendant Brandon Moyse, who swore numerous affidavits in 2014 and 2015;
  - (b) Kevin Lo, Moyse's expert forensic IT witness;
  - (c) Anthony Griffin, a partner at the defendant West Face Capital Inc. ("West Face");
  - (d) Tom Dea, a partner at West Face;

-3-

(e) Michael Leitner, a partner at Tennenbaum Capital Partners LLC; and

(f) Hamish Burt, an employee at 64NM Holdings LP.

6. The trial judge erred in law and in fact by finding that Catalyst's witnesses lacked credibility on facts that were supported by contemporaneous documentary evidence. In addition, the trial judge erred in law and in fact by finding that the defendants' witnesses' credibility was not diminished by inconsistencies with contemporaneous documentary evidence.

7. The contrast between the standard applied to Catalyst's witnesses and the standard applied to the defendants' witnesses amounted to a denial of procedural fairness to Catalyst – different standards were applied to the parties, which tainted the trial judge's findings of fact.

#### **B. Error of Law in Determining the Spoliation Issue**

8. The motion judge erred in law in relation to his findings on the issue of spoliation of evidence by Moyse.

9. It is undisputed that after Moyse consented to an order that required him to preserve the contents of his personal computer, Moyse deleted his web browsing history from his computer and launched a document deletion programme (a "Scrubber") the night before his computer was scheduled to be forensically imaged.

10. The trial judge held that in order to make out the tort of spoliation, Catalyst was required to adduce evidence of a particular piece of evidence that was destroyed. This was an error of law.

11. In circumstances where the alleged spoliation undisputedly involved the running of a Scrubber, which deletes data in a manner that makes detection of that deletion activity impossible,

it is impossible for a plaintiff to point to particular pieces of evidence that were destroyed. That it is the mischief inherent in the use of Scrubber software.

12. The trial judge held Catalyst to an impossible level of proof in circumstances where the undisputed evidence was sufficient to permit him to draw a reasonable inference that evidence was destroyed in order to affect the outcome of the litigation. In so doing the trial judge erred in law.

13. In addition, the trial judge erred in law by adopting a subjective approach to the intent to destroy evidence. The trial judge accepted Moyse's subjective evidence that he did not intend to destroy relevant evidence, when the tort of spoliation requires a determination of objective intent to destroy evidence.

14. It is undisputed that Moyse intentionally destroyed his web browsing history. That is sufficient to establish the requisite level of intent to make out the tort of spoliation. The trial judge's finding that Catalyst failed to establish intent to destroy evidence is an error of law.

15. Finally, the trial judge erred in law by failing to properly apply one of the accepted required elements for the tort of spoliation to the evidence.

16. It is undisputed and the trial judge acknowledged that to establish spoliation, the plaintiff must establish that it must be reasonable to infer that the evidence was destroyed in order to affect the outcome of the litigation. However, the trial judge did not properly consider this requirement. Instead of considering whether it was "reasonable" to draw the required inference, the trial judge considered whether he would draw the inference from the established facts.

17. The evidentiary record at trial established that:

-5-

- (a) On June 17, 2014, when litigation was within his contemplation, Moyse wiped his Blackberry smartphone before returning it to Catalyst;
- (b) On July 16, 2014, approximately one hour before the hearing of an interim motion concerning preservation of data, Moyse downloaded a software suite that included a Scrubber as one of its tools;
- (c) In order to launch the Scrubber tool, a user had to first click through two well-labelled screens and on two clearly labelled buttons;
- (d) Moyse launched the Scrubber the evening of July 20, 2014, the night before he was to turn over his computer to a forensic expert for the purpose of creating a forensic image;
- (e) Moyse admitted to deleting an email from his email system in March or April 2014 because he knew he had erred in sending the email to West Face and did not want Catalyst to find out he had done so; and
- (f) Moyse had misrepresented facts concerning his work on the Wind deal team in affidavits sworn prior to the July 16 interim motion.

18. The facts established in the evidentiary record create the **reasonable** inference that evidence was destroyed to affect the outcome of the litigation. The test is not whether that fact is established on a balance of probabilities, but whether the inference is a reasonable one to make. The trial judge misapplied this requirement of the tort, held Catalyst to a higher burden of proof, and in so doing erred in law.

### **C. Errors of Fact and Mixed Fact and Law in Determining Spoliation**

19. The trial judge made palpable and overriding errors of fact and errors of mixed fact and law with respect to the spoliation issue. In particular, the trial judge erred by refusing to accept opinion evidence from Catalyst's forensic IT investigator on the basis that the evidence lay outside his area of expertise.

20. The trial judge erred by adopting a too-narrow approach to the expert's area of expertise. Martin Musters, Catalyst's expert, was qualified as an expert in the area of IT forensics. The forensic nature of his expertise requires Musters to consider and opine on the behaviour of persons such as Moyse who use computers to hide or delete information.

21. Moreover, at a pre-trial cross-examination, Moyse's former counsel asked Musters to opine on the types of usual patterns of behaviour where an employee takes confidential information. Moyse, having acknowledged through this cross-examination that Musters' expertise extended to issues concerning patterns of behaviour, could not object to Musters' opinion on the same topic at trial and the trial judge should not have excluded or discounted Musters' evidence on this basis.

22. In addition, the trial judge made a palpable and overriding error of fact by finding that Musters' basis for concluding that Moyse ran the Scrubber was speculative when all of the facts relied upon by Musters for forming his opinion were not in dispute. In particular, both Musters and Kevin Lo, Moyse's expert, agreed that the Scrubber function was not easy to get at and that knowledge of a computer's registry was limited to a small pool of computer users, which included Moyse. Musters' evidence was not speculative, it was an exercise in the expert interpretation of

known information to opine on a question that could not be answered definitively due to the evasive nature of Scrubber software.

23. The trial judge made a palpable and overriding error of mixed fact and law by determining that Catalyst was required to prove that Moyse destroyed documents that no longer exist either at Catalyst or West Face. The trial judge misapprehended the significance of the possible existence of Catalyst's confidential Wind documents on Moyse's computer – the existence of those documents would have supported the allegation that the contents of those documents were communicated to West Face, even if the documents themselves were not.

24. The trial judge's conclusion that Moyse did not run the Scrubber to delete inculpatory evidence relied on this logical fallacy, which taints the trial judge's related evidentiary findings.

25. Finally, the trial judge made a palpable and overriding error of mixed fact and law by concluding that the absence of "cogent" evidence that Moyse removed evidence of his use of the Scrubber meant that there was no cogent evidence that Moyse ran the Scrubber. Musters and Lo both agreed in their evidence that it was possible to remove evidence of Moyse's use of the Scrubber without any ability to detect that removal activity.

26. The trial judge's reliance on a misapprehension of uncontested facts affected the inference-drawing exercise, such that his refusal to draw a reasonable inference is a related error of fact.

**D. Errors of Fact in Determining the Misuse of Confidential Information Claim**

27. In his review of the evidence and determination of disputed facts relating to Catalyst's misuse of confidential information claim, the trial judge made several palpable and overriding errors of fact, including, but not limited to the following:

- (a) The trial judge erred by finding that Moyse was not aware of Catalyst's negotiating strategy with the government of Canada or with VimpelCom, when contemporaneous documents establish that Moyse was privy to, worked on, and had an appreciation for those negotiations;
- (b) The trial judge erred by finding that Catalyst's explanation for why PowerPoint presentations and notes were destroyed differed from witness to witness and "made little sense", when in fact the explanations were consistent and inherently logical;
- (c) The trial judge erred by finding that documentary evidence did not support the allegation that Moyse was kept apprised of Catalyst's strategy in May 2014, when in fact documentary evidence proves the opposite;
- (d) The trial judge erred when he referred to an alleged lack of common decency or respect for individuals at Catalyst, and called these alleged facts "not surprising", without any contemporaneous documentary evidence to support these spurious allegations;
- (e) The trial judge erred by finding that West Face had a "critical need" for an analyst in March 2014 when the undisputed evidence is that Moyse did little to no work for West Face during the three weeks he was actively employed at West Face;



-9-

- (f) The trial judge engaged in improper speculation when he determined that Moyse “had to be tired” when he emailed Catalyst’s confidential deal sheet and deal memos to West Face in March 2014;
- (g) The trial judge’s speculation as to Moyse’s state of mind, combined with failing to consider Moyse’s cross-examination evidence in which he denied that the confidential memos were in fact confidential, led to a palpable and overriding error of fact by failing to find that Moyse had a cavalier attitude about Catalyst’s confidentiality;
- (h) The trial judge erred in finding that West Face “took seriously” the issue of confidentiality when the documentary and oral evidence demonstrates that in March and April 2014, Tom Dea knowingly and repeatedly distributed Catalyst’s confidential information to his partners and reviewed that information to determine if it was “helpful” to West Face;
- (i) The trial judge erred in finding that Wind was the only telecom investment West Face was working on in spring 2014 when West Face’s witnesses admitted and documentary evidence demonstrated it was also considering an investment in Mobilicity;
- (j) The trial judge erred in finding that Catalyst’s statement in late March 2014 that it was in advanced discussions with VimpelCom was “clearly misleading” when the documentary evidence shows Catalyst had engaged in such discussions up to that point;

-10-

- (k) The trial judge erred in failing to draw an inference that Moyse had a general inclination to destroy evidence when the undisputed evidence is that Moyse destroyed relevant evidence of his wrongdoing;
- (l) The trial judge erred in finding that no one at Tennenbaum Capital Partners knew the details of any offer made by Catalyst to VimpelCom when the documentary evidence demonstrates Leitner was aware of the details of Catalyst's offer;
- (m) The trial judge erred in characterizing Hamish Burt as an impressive witness when Burt was unable to recall basic facts about 64NM's offers to VimpelCom;
- (n) The trial judge erred in finding there was no direct evidence that West Face knew Catalyst was a bidder when contemporaneous emails sent in early June 2014 reveal that Griffin referred to Catalyst as a bidder and demonstrated that Griffin had insight into Catalyst's bid;
- (o) The trial judge erred in his characterization of Catalyst's Wind strategy. The trial judge held that Catalyst required the ability to sell spectrum to an incumbent in order for Wind to survive, when in fact Catalyst sought the ability to sell spectrum only in case Wind did not survive. The trial judge also erred in finding that West Face did not adopt the same strategy as Catalyst. West Face's internal deal memo revealed it engaged in the same approach to the Wind transaction as Catalyst;
- (p) The trial judge erred in finding that the thesis that no regulatory concessions were required for Wind to operate successfully was correct when in fact Wind sought,

-11-

and obtained, regulatory concessions to transfer spectrum as part of a three-way deal with Rogers and Mobilicity;

- (q) The trial judge erred in finding that Leitner's reference in his unsolicited offer to VimpelCom to a "superior proposal" was not made in comparison to Catalyst's offer, and that this reference was based on knowledge of the details of Catalyst's offer;
- (r) The trial judge erred in finding that the consortium's offer was not based on anything Catalyst was doing, when contemporaneous documents demonstrate the consortium acted as it did because of what Catalyst was doing;
- (s) The trial judge erred in finding that suing the federal government played no part in West Face's investment thesis when West Face's internal deal memo reveals this was an "exit strategy" West Face expressly contemplated; and
- (t) The trial judge erred in finding that VimpelCom would not agree to any deal that carried risk of the federal government not approving the deal when VimpelCom's own deal template contemplated this outcome.

28. These palpable and overriding errors of fact affected the trial judge's determination that West Face and Moyse were not liable for misuse of confidential information.

29. It is impossible for this Court to determine the issues of liability on this appeal. Too many errors have been made. A new trial is required in order to permit a new trial judge to hear the evidence and make fresh determinations of credibility and of fact.

-12-

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. Sections 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C-43;
2. The Judgment of Justice Newbould dismissing the Plaintiff's action is final; and
3. Leave to appeal is not required.

September 13, 2016

**LAX O'SULLIVAN LISUS GOTTlieb LLP**  
Counsel  
Suite 2750, 145 King Street West  
Toronto, Ontario M5H 1J8

**Rocco DiPucchio** LSUC#: 38185I  
Tel: (416) 598-2268  
rdipucchio@counsel-toronto.com

**Andrew Winton** LSUC#: 54473I  
Tel: (416) 644-5342  
awinton@counsel-toronto.com

**Bradley Vermeersch** LSUC#: 69004K  
Tel: (416) 646-7997  
bvermeersch@counsel-toronto.com

Fax: (416) 598-3730

Lawyers for the Plaintiff/Appellant

-13-

TO: **PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**  
Barristers and Solicitors  
155 Wellington Street West  
35th Floor  
Toronto ON M5V 3H1

**Robert A. Centa** LSUC#: 44298M  
Tel: (416) 646-4314

**Kristian Borg-Olivier** LSUC#: 53041R  
Tel: (416) 646-7490

Fax: 416-646-4301

Lawyers for the Defendant/Respondent,  
Brandon Moyse

AND TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**  
Barristers and Solicitors  
40th Floor - 155 Wellington Street West  
Toronto ON M5V 3J7

**Matthew Milne-Smith** LSUC#: 44266P  
Tel: (416) 863-0900

**Andrew Carlson** LSUC#: 58850N  
Tel: (416) 863-0900

Fax: 416-863-0871

Lawyers for the Defendant/Respondent,  
West Face Capital Inc.

THE CATALYST CAPITAL GROUP INC.  
Plaintiff (Appellant)

-and- BRANDON MOYSE et al.  
Defendants (Respondents)

Court of Appeal File No.  
Court File No. CV-14-507120

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF APPEAL**

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
Counsel

Suite 2750, 145 King Street West  
Toronto, Ontario M5H 1J8

**Rocco DiPucchio** LSUC#: 381851  
rdipucchio@counsel-toronto.com  
Tel: (416) 598-2268

**Andrew Winton** LSUC#: 544731  
awinton@counsel-toronto.com  
Tel: (416) 644-5342

**Bradley Vermeersch** LSUC#: 69004K  
Tel: (416) 646-7997  
bvermeersch@counsel-toronto.com

Fax: (416) 598-3730

Lawyers for the Plaintiff/Appellant

Court of Appeal File No. C62655  
Court File No. CV-14-507120

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff/  
Appellant

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants/  
Respondents

**SUPPLEMENTARY NOTICE OF APPEAL**

The Appellant amends the Notice of Appeal dated September 13, 2016 in the following manner:

1. To replace the Preamble and the Relief Requested with the following:

THE PLAINTIFF APPEALS to the Court of Appeal from the Judgment of the Honourable Justice F. Newbould, which dismissed the Plaintiff's action, dated August 18, 2016 (the "Judgment"), made at Toronto and from the decision of the Honourable Justice F. Newbould, awarding costs of the trial to West Face Capital Inc. in the amount of \$1,239,965, dated October 7, 2016 (the "Costs Order"), both made at Toronto, Ontario.

THE APPELLANT ASKS that the Judgment and Costs Order be set aside and Judgment be granted as follows:

1. Ordering that a new trial be held before another Judge of the Superior Court of Justice;
2. An award of costs of the trial and this appeal in the Plaintiff's favour; and

-2-

2. To add the following text after paragraph 30:

**E. Denial of Procedural Fairness in Fact Findings**

30. The trial judge deprived Catalyst of procedural fairness by barring Catalyst from advancing certain claims and leading facts about these claims but then making factual findings about these claims in any event.

31. Prior to the trial, the trial judge refused to permit Catalyst to amend its Statement of Claim to include allegations that West Face had induced VimpelCom to breach a contract that provided Catalyst with an exclusive negotiating period with VimpelCom (the "Exclusivity Agreement").

32. The trial judge held that Catalyst's allegations of inducing breach of contract against West Face would not form any portion of the trial between Catalyst, West Face and Moyse (the "Moyse Litigation").

33. Catalyst issued a new Statement of Claim prior to the trial in which it alleged, *inter alia*, that West Face and other parties that were part of the "Consortium" to purchase Wind (and that were not named in the Moyse Litigation) had induced VimpelCom to breach the Exclusivity Agreement and that VimpelCom had breached the Exclusivity Agreement ("VimpelCom Litigation"). Moyse was not named in the VimpelCom Litigation.

34. West Face brought the VimpelCom Litigation to the attention of the trial judge at the trial of the Moyse Litigation. It also objected to testimony during the trial of the Moyse Litigation on the basis that the testimony may impact the VimpelCom Litigation. The trial judge granted West Face's objection.



35. Despite his prior ruling and the ruling on the objection at trial, the trial judge made the following findings of fact concerning Catalyst's dealings with VimpelCom:

- (a) The trial judge concluded that no one at Tennenbaum Capital Partner LLC or 64NM Holdings GP LLC knew the details of any offer made by Catalyst to VimpelCom during the period of the Exclusivity Agreement;
- (b) The trial judge concluded that VimpelCom had no substantive communication with the members of the Consortium, including West Face, during the term of the Exclusivity Agreement; and
- (c) The trial judge concluded that there was no evidence that VimpelCom's board of directors looked at the Consortium's proposal during the exclusivity period with Catalyst or that the Consortium's proposal played any part in the decision of VimpelCom to demand a break fee from Catalyst.

36. The trial judge erred in law and fact and denied Catalyst procedural fairness by making these findings despite having barring Catalyst from advancing claims that relate to these facts and preventing Catalyst from leading evidence on these facts.

37. After the Judgment was released, the defendants in the VimpelCom Litigation, including West Face, sought to have the VimpelCom Litigation struck on the basis of the trial judge's findings.

#### **F. Errors of Fact and Law in Determining Costs**

38. Catalyst seeks this Court's leave to appeal the Costs Order.

-4-

39. Leave to appeal should be granted to correct errors of law and errors of mixed fact and law that the trial judge made in rendering the Costs Order.

40. The trial judge erred by concluding that Catalyst's conduct in the litigation was reprehensible, scandalous or outrageous and warranted an award of costs on a substantial indemnity scale.

41. The trial judge made the following palpable and overriding errors of mixed fact and law in finding that West Face was entitled to costs on a substantial indemnity scale:

- (a) The trial judge erred in relying on the evidence given by Newton Glassman during trial to make determinations about Catalyst's conduct in the litigation;
- (b) The trial judge erred in concluding that it was improper for Catalyst to prosecute its action on the basis of the confidentiality wall that West Face erected after Moyse commenced his employment with West Face; and
- (c) The trial judge erred in concluding that Catalyst's prosecution of its action was based on unfounded allegations of West Face's conduct.

42. These palpable and overriding errors led the trial judge to improperly conclude that West Face was entitled to costs on a substantial indemnity basis.

43. The trial judge also erred in accepting the quantum of costs claimed by Moyse without deduction for excessive costs.

3. To amend the basis of the Appellate Court's Jurisdiction in the following manner:

-5-

1. Sections 6(1)(b) and 133(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C-43;
2. The Judgment of Justice Newbould dismissing the Plaintiff's action is final;
3. Leave to appeal the Judgment is not required;
4. Catalyst requests that the appeal of the Costs Order be joined with the appeal of the Judgment; and
5. Leave to appeal the Costs Order is required.

October 21, 2016

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
Counsel  
Suite 2750, 145 King Street West  
Toronto, Ontario M5H 1J8

**Rocco DiPucchio** LSUC#: 38185I  
Tel: (416) 598-2268  
rdipucchio@counsel-toronto.com

**Andrew Winton** LSUC#: 54473I  
Tel: (416) 644-5342  
awinton@counsel-toronto.com

**Bradley Vermeersch** LSUC#: 69004K  
Tel: (416) 646-7997  
bvermeersch@counsel-toronto.com

Fax: (416) 598-3730

Lawyers for the Plaintiff/Appellant

-6-

**TO: PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**  
Barristers and Solicitors  
155 Wellington Street West  
35th Floor  
Toronto ON M5V 3H1

**Robert A. Centa** LSUC#: 44298M  
Tel: (416) 646-4314

**Kristian Borg-Olivier** LSUC#: 53041R  
Tel: (416) 646-7490

Fax: 416-646-4301

Lawyers for the Defendant/Respondent,  
Brandon Moyse

**AND TO: DAVIES WARD PHILLIPS & VINEBERG LLP**  
Barristers and Solicitors  
40th Floor - 155 Wellington Street West  
Toronto ON M5V 3J7

**Matthew Milne-Smith** LSUC#: 44266P  
Tel: (416) 863-0900

**Andrew Carlson** LSUC#: 58850N  
Tel: (416) 863-0900

Fax: 416-863-0871

Lawyers for the Defendant/Respondent,  
West Face Capital Inc.

THE CATALYST CAPITAL GROUP INC.  
Plaintiff (Appellant)

-and- BRANDON MOYSE et al.  
Defendants (Respondents)

Court of Appeal File No.  
Court File No. CV-14-507120

## COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT  
TORONTO

## SUPPLEMENTARY NOTICE OF APPEAL

### LAX O'SULLIVAN LISUS GOTTLIEB LLP

Counsel

Suite 2750, 145 King Street West  
Toronto, Ontario M5H 1J8

**Rocco DiPucchio** LSUC#: 381851

rdipucchio@counsel-toronto.com

Tel: (416) 598-2268

**Andrew Winton** LSUC#: 544731

awinton@counsel-toronto.com

Tel: (416) 644-5342

**Bradley Vermeersch** LSUC#: 69004K

Tel: (416) 646-7997

bvermeersch@counsel-toronto.com

Fax: (416) 598-3730

Lawyers for the Plaintiff/Appellant

Court of Appeal File No. C62655  
Court File No. CV-14-507120

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff/  
Appellant

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants/  
Respondents

**SECOND SUPPLEMENTARY NOTICE OF APPEAL**

THE PLAINTIFF APPEALS to the Court of Appeal from the Judgment of the Honourable Justice F. Newbould, which dismissed the Plaintiff's action, dated August 18, 2016 (the "Judgment"), made at Toronto and from the decision of the Honourable Justice F. Newbould, awarding costs of the trial to West Face Capital Inc. in the amount of \$1,239,965, dated October 7, 2016 (the "Costs Order"), both made at Toronto, Ontario.

THE APPELLANT ASKS that the Judgment and Costs Order be set aside and Judgment be granted as follows:

1. Judgment against Moyse for the tort of spoliation;
2. In the alternative, Ordering that a new trial be held before another Judge of the Superior Court of Justice;
3. An award of costs of the trial and this appeal in the Plaintiff's favour; and

-2-

4. Such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS OF APPEAL are as follows:

**A. Denial of Procedural Fairness**

1. The trial judge deprived the Plaintiff ("Catalyst") of procedural fairness by applying an inconsistent standard in his evaluation of the witnesses' credibility. Catalyst's witnesses were held to, and found not to have met, a higher standard than the defendants' witnesses.

2. In particular, without limiting the generality of the foregoing, the trial judge relied upon small inconsistencies in Catalyst's witnesses' evidence as justification to hold that those witnesses were not credible, when similar (or even more glaring) inconsistencies in the defendants' witnesses were held not to affect credibility.

3. At the direction of the trial judge, the trial was conducted as a summary/hybrid trial with evidence in chief to be adduced by way of affidavits previously sworn by witnesses in motions preceding the trial, to be supplemented by additional affidavits where necessary.

4. Prior to the issuance of this direction, the Plaintiff's witnesses in pre-trial motions consisted of James Riley, a partner and chief operating officer at the Plaintiff, and Martin Musters, a forensic IT investigator, who gave expert evidence.

5. The Defendants' witnesses included:

- (a) The defendant Brandon Moyse, who swore numerous affidavits in 2014 and 2015;
- (b) Kevin Lo, Moyse's expert forensic IT witness;
- (c) Anthony Griffin, a partner at the defendant West Face Capital Inc. ("West Face");

-3-

- (d) Tom Dea, a partner at West Face;
- (e) Michael Leitner, a partner at Tennenbaum Capital Partners LLC; and
- (f) Hamish Burt, an employee at 64NM Holdings LP.

6. The trial judge erred in law and in fact by finding that Catalyst's witnesses lacked credibility on facts that were supported by contemporaneous documentary evidence. In addition, the trial judge erred in law and in fact by finding that the defendants' witnesses' credibility was not diminished by inconsistencies with contemporaneous documentary evidence.

7. The contrast between the standard applied to Catalyst's witnesses and the standard applied to the defendants' witnesses amounted to a denial of procedural fairness to Catalyst – different standards were applied to the parties, which tainted the trial judge's findings of fact.

**B. Error of Law in Determining the Spoliation Issue**

8. The motion judge erred in law in relation to his findings on the issue of spoliation of evidence by Moyse.

9. It is undisputed that after Moyse consented to an order that required him to preserve the contents of his personal computer, Moyse deleted his web browsing history from his computer and launched a document deletion programme (a "Scrubber") the night before his computer was scheduled to be forensically imaged.

10. The trial judge applied the wrong legal test for spoliation. This was an error of law.

11. The trial judge held that in order to make out the tort of spoliation, Catalyst was required to adduce evidence of a particular piece of evidence that was destroyed. This was an error of law.



-4-

12. In circumstances where the alleged spoliation undisputedly involved the running of a Scrubber, which deletes data in a manner that makes detection of that deletion activity impossible, it is impossible for a plaintiff to point to particular pieces of evidence that were destroyed. That it is the mischief inherent in the use of Scrubber software.

13. The trial judge held Catalyst to an impossible level of proof in circumstances where the undisputed evidence was sufficient to permit him to draw a reasonable inference that evidence was destroyed in order to affect the outcome of the litigation. In so doing the trial judge erred in law.

14. In addition, the trial judge erred in law by adopting a subjective approach to the intent to destroy evidence. The trial judge accepted Moyse's subjective evidence that he did not intend to destroy relevant evidence, when the tort of spoliation requires only that Moyse destroyed material not that he intended to destroy relevant evidence. ~~a determination of objective intent to destroy evidence.~~

15. It is undisputed that Moyse intentionally destroyed his web browsing history. That is sufficient to establish the requisite level of intent to make out the tort of spoliation. The trial judge's finding that Catalyst failed to establish intent to destroy evidence is an error of law.

16. Finally, the trial judge erred in law by failing to properly apply one of the accepted required elements for the tort of spoliation to the evidence.

17. The trial judge misapplied the element ~~It is undisputed and the trial judge acknowledged that to establish spoliation, the plaintiff must establish that it must be reasonable to infer that the evidence was destroyed in order to affect the outcome of the litigation. This was an error of law. However, the trial judge did not properly consider this requirement. Instead of considering whether~~

it was "reasonable" to draw the required inference, the trial judge considered whether he would draw the inference from the established facts.

18. The evidentiary record at trial established that:

- (a) On June 17, 2014, when litigation was within his contemplation, Moyse wiped his Blackberry smartphone before returning it to Catalyst;
- (b) On July 16, 2014, approximately one hour before the hearing of an interim motion concerning preservation of data, Moyse downloaded a software suite that included a Scrubber as one of its tools;
- (c) In order to launch the Scrubber tool, a user had to first click through two well-labelled screens and on two clearly labelled buttons;
- (d) Moyse launched the Scrubber the evening of July 20, 2014, the night before he was to turn over his computer to a forensic expert for the purpose of creating a forensic image;
- (e) Moyse admitted to deleting an email from his email system in March or April 2014 because he knew he had erred in sending the email to West Face and did not want Catalyst to find out he had done so; and
- (f) Moyse had misrepresented facts concerning his work on the Wind deal team in affidavits sworn prior to the July 16 interim motion.

19. The facts established in the evidentiary record create the **reasonable** inference that evidence was destroyed to affect the outcome of the litigation. ~~The test is not whether that fact is~~

~~established on a balance of probabilities, but whether the inference is a reasonable one to make. The trial judge misapplied this requirement of the tort, held Catalyst to a higher burden of proof, and in so doing erred in law. The trial judge failed to apply the correct legal test and erred in concluding Moyse had not committed the tort of spoliation. The trial record conclusively establishes that Moyse did commit the tort of spoliation.~~

### **C. Errors of Fact and Mixed Fact and Law in Determining Spoliation**

20. The trial judge made palpable and overriding errors of fact and errors of mixed fact and law with respect to the spoliation issue. In particular, the trial judge erred by refusing to accept opinion evidence from Catalyst's forensic IT investigator on the basis that the evidence lay outside his area of expertise.

21. The trial judge erred by adopting a too-narrow approach to the expert's area of expertise. Martin Musters, Catalyst's expert, was qualified as an expert in the area of IT forensics. The forensic nature of his expertise requires Musters to consider and opine on the behaviour of persons such as Moyse who use computers to hide or delete information.

22. Moreover, at a pre-trial cross-examination, Moyse's former counsel asked Musters to opine on the types of usual patterns of behaviour where an employee takes confidential information. Moyse, having acknowledged through this cross-examination that Musters' expertise extended to issues concerning patterns of behaviour, could not object to Musters' opinion on the same topic at trial and the trial judge should not have excluded or discounted Musters' evidence on this basis.

23. In addition, the trial judge made a palpable and overriding error of fact by finding that Musters' basis for concluding that Moyse ran the Scrubber was speculative when all of the facts relied upon by Musters for forming his opinion were not in dispute. In particular, both Musters

and Kevin Lo, Moyse's expert, agreed that the Scrubber function was not easy to get at and that knowledge of a computer's registry was limited to a small pool of computer users, which included Moyse. Musters' evidence was not speculative, it was an exercise in the expert interpretation of known information to opine on a question that could not be answered definitively due to the evasive nature of Scrubber software.

24. The trial judge made a palpable and overriding error of mixed fact and law by determining that Catalyst was required to prove that Moyse destroyed documents that no longer exist either at Catalyst or West Face. The trial judge misapprehended the significance of the possible existence of Catalyst's confidential Wind documents on Moyse's computer – the existence of those documents would have supported the allegation that the contents of those documents were communicated to West Face, even if the documents themselves were not.

25. The trial judge's conclusion that Moyse did not run the Scrubber to delete inculpatory evidence relied on this logical fallacy, which taints the trial judge's related evidentiary findings.

26. Finally, the trial judge made a palpable and overriding error of mixed fact and law by concluding that the absence of "cogent" evidence that Moyse removed evidence of his use of the Scrubber meant that there was no cogent evidence that Moyse ran the Scrubber. Musters and Lo both agreed in their evidence that it was possible to remove evidence of Moyse's use of the Scrubber without any ability to detect that removal activity.

27. The trial judge's reliance on a misapprehension of uncontested facts affected the inference-drawing exercise, such that his refusal to draw a reasonable inference is a related error of fact.

**D. Errors of Fact in Determining the Misuse of Confidential Information Claim**

28. In his review of the evidence and determination of disputed facts relating to Catalyst's misuse of confidential information claim, the trial judge made several palpable and overriding errors of fact, including, but not limited to the following:

- (a) The trial judge erred by finding that Moyse was not aware of Catalyst's negotiating strategy with the government of Canada or with VimpelCom, when contemporaneous documents establish that Moyse was privy to, worked on, and had an appreciation for those negotiations;
- (b) The trial judge erred by finding that Catalyst's explanation for why PowerPoint presentations and notes were destroyed differed from witness to witness and "made little sense", when in fact the explanations were consistent and inherently logical;
- (c) The trial judge erred by finding that documentary evidence did not support the allegation that Moyse was kept apprised of Catalyst's strategy in May 2014, when in fact documentary evidence proves the opposite;
- (d) The trial judge erred when he referred to an alleged lack of common decency or respect for individuals at Catalyst, and called these alleged facts "not surprising", without any contemporaneous documentary evidence to support these spurious allegations;
- (e) The trial judge erred by finding that West Face had a "critical need" for an analyst in March 2014 when the undisputed evidence is that Moyse did little to no work for West Face during the three weeks he was actively employed at West Face;

-9-

- (f) The trial judge engaged in improper speculation when he determined that Moyse “had to be tired” when he emailed Catalyst’s confidential deal sheet and deal memos to West Face in March 2014;
- (g) The trial judge’s speculation as to Moyse’s state of mind, combined with failing to consider Moyse’s cross-examination evidence in which he denied that the confidential memos were in fact confidential, led to a palpable and overriding error of fact by failing to find that Moyse had a cavalier attitude about Catalyst’s confidentiality;
- (h) The trial judge erred in finding that West Face “took seriously” the issue of confidentiality when the documentary and oral evidence demonstrates that in March and April 2014, Tom Dea knowingly and repeatedly distributed Catalyst’s confidential information to his partners and reviewed that information to determine if it was “helpful” to West Face;
- (i) The trial judge erred in finding that Wind was the only telecom investment West Face was working on in spring 2014 when West Face’s witnesses admitted and documentary evidence demonstrated it was also considering an investment in Mobilicity;
- (j) The trial judge erred in finding that Catalyst’s statement in late March 2014 that it was in advanced discussions with VimpelCom was “clearly misleading” when the documentary evidence shows Catalyst had engaged in such discussions up to that point;

-10-

- (k) The trial judge erred in failing to draw an inference that Moyse had a general inclination to destroy evidence when the undisputed evidence is that Moyse destroyed relevant evidence of his wrongdoing;
- (l) The trial judge erred in finding that no one at Tennenbaum Capital Partners knew the details of any offer made by Catalyst to VimpelCom when the documentary evidence demonstrates Leitner was aware of the details of Catalyst's offer;
- (m) The trial judge erred in characterizing Hamish Burt as an impressive witness when Burt was unable to recall basic facts about 64NM's offers to VimpelCom;
- (n) The trial judge erred in finding there was no direct evidence that West Face knew Catalyst was a bidder when contemporaneous emails sent in early June 2014 reveal that Griffin referred to Catalyst as a bidder and demonstrated that Griffin had insight into Catalyst's bid;
- (o) The trial judge erred in his characterization of Catalyst's Wind strategy. The trial judge held that Catalyst required the ability to sell spectrum to an incumbent in order for Wind to survive, when in fact Catalyst sought the ability to sell spectrum only in case Wind did not survive. The trial judge also erred in finding that West Face did not adopt the same strategy as Catalyst. West Face's internal deal memo revealed it engaged in the same approach to the Wind transaction as Catalyst;
- (p) The trial judge erred in finding that the thesis that no regulatory concessions were required for Wind to operate successfully was correct when in fact Wind sought,

-11-

and obtained, regulatory concessions to transfer spectrum as part of a three-way deal with Rogers and Mobilicity;

- (q) The trial judge erred in finding that Leitner's reference in his unsolicited offer to VimpelCom to a "superior proposal" was not made in comparison to Catalyst's offer, and that this reference was based on knowledge of the details of Catalyst's offer;
- (r) The trial judge erred in finding that the consortium's offer was not based on anything Catalyst was doing, when contemporaneous documents demonstrate the consortium acted as it did because of what Catalyst was doing;
- (s) The trial judge erred in finding that suing the federal government played no part in West Face's investment thesis when West Face's internal deal memo reveals this was an "exit strategy" West Face expressly contemplated; and
- (t) The trial judge erred in finding that VimpelCom would not agree to any deal that carried risk of the federal government not approving the deal when VimpelCom's own deal template contemplated this outcome.

29. These palpable and overriding errors of fact affected the trial judge's determination that West Face and Moyse were not liable for misuse of confidential information.

30. It is impossible for this Court to determine the issues of liability on this appeal. Too many errors have been made. A new trial is required in order to permit a new trial judge to hear the evidence and make fresh determinations of credibility and of fact.



**E. Denial of Procedural Fairness in Fact Findings**

30. The trial judge deprived Catalyst of procedural fairness by barring Catalyst from advancing certain claims and leading facts about these claims but then making factual findings about these claims in any event.

31. Prior to the trial, the trial judge refused to permit Catalyst to amend its Statement of Claim to include allegations that West Face had induced VimpelCom to breach a contract that provided Catalyst with an exclusive negotiating period with VimpelCom (the "Exclusivity Agreement").

32. The trial judge held that Catalyst's allegations of inducing breach of contract against West Face would not form any portion of the trial between Catalyst, West Face and Moyse (the "Moyse Litigation").

33. Catalyst issued a new Statement of Claim prior to the trial in which it alleged, *inter alia*, that West Face and other parties that were part of the "Consortium" to purchase Wind (and that were not named in the Moyse Litigation) had induced VimpelCom to breach the Exclusivity Agreement and that VimpelCom had breached the Exclusivity Agreement ("VimpelCom Litigation"). Moyse was not named in the VimpelCom Litigation.

34. West Face brought the VimpelCom Litigation to the attention of the trial judge at the trial of the Moyse Litigation. It also objected to testimony during the trial of the Moyse Litigation on the basis that the testimony may impact the VimpelCom Litigation. The trial judge granted West Face's objection.

35. Despite his prior ruling and the ruling on the objection at trial, the trial judge made the following findings of fact concerning Catalyst's dealings with VimpelCom:

-13-

- (a) The trial judge concluded that no one at Tennenbaum Capital Partner LLC or 64NM Holdings GP LLC knew the details of any offer made by Catalyst to VimpelCom during the period of the Exclusivity Agreement;
- (b) The trial judge concluded that VimpelCom had no substantive communication with the members of the Consortium, including West Face, during the term of the Exclusivity Agreement; and
- (c) The trial judge concluded that there was no evidence that VimpelCom's board of directors looked at the Consortium's proposal during the exclusivity period with Catalyst or that the Consortium's proposal played any part in the decision of VimpelCom to demand a break fee from Catalyst.

36. The trial judge erred in law and fact and denied Catalyst procedural fairness by making these findings despite having barring Catalyst from advancing claims that relate to these facts and preventing Catalyst from leading evidence on these facts.

37. After the Judgment was released, the defendants in the VimpelCom Litigation, including West Face, sought to have the VimpelCom Litigation struck on the basis of the trial judge's findings.

#### **F. Errors of Fact and Law in Determining Costs**

38. Catalyst seeks this Court's leave to appeal the Costs Order.

39. Leave to appeal should be granted to correct errors of law and errors of mixed fact and law that the trial judge made in rendering the Costs Order.

40. The trial judge erred by concluding that Catalyst's conduct in the litigation was reprehensible, scandalous or outrageous and warranted an award of costs on a substantial indemnity scale.

41. The trial judge made the following palpable and overriding errors of mixed fact and law in finding that West Face was entitled to costs on a substantial indemnity scale:

- (a) The trial judge erred in relying on the evidence given by Newton Glassman during trial to make determinations about Catalyst's conduct in the litigation;
- (b) The trial judge erred in concluding that it was improper for Catalyst to prosecute its action on the basis of the confidentiality wall that West Face erected after Moyse commenced his employment with West Face; and
- (c) The trial judge erred in concluding that Catalyst's prosecution of its action was based on unfounded allegations of West Face's conduct.

42. These palpable and overriding errors led the trial judge to improperly conclude that West Face was entitled to costs on a substantial indemnity basis.

43. The trial judge also erred in accepting the quantum of costs claimed by Moyse without deduction for excessive costs.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- 1. Sections 6(1)(b) and 133(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C-43;
- 2. The Judgment of Justice Newbould dismissing the Plaintiff's action is final; and

-15-

3. Leave to appeal the Judgment is not required;
4. Catalyst requests that the appeal of the Costs Order be joined with the appeal of the Judgment; and
5. Leave to appeal the Costs Order is required.

February 15, 2017

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
Counsel  
Suite 2750, 145 King Street West  
Toronto, Ontario M5H 1J8

**Rocco DiPucchio** LSUC#: 38185I  
Tel: (416) 598-2268  
rdipucchio@counsel-toronto.com

**Andrew Winton** LSUC#: 54473I  
Tel: (416) 644-5342  
awinton@counsel-toronto.com

**Bradley Vermeersch** LSUC#: 69004K  
Tel: (416) 646-7997  
bvermeersch@counsel-toronto.com

Fax: (416) 598-3730

Lawyers for the Plaintiff/Appellant

-16-

**TO: PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**

Barristers and Solicitors  
155 Wellington Street West  
35th Floor  
Toronto ON M5V 3H1

**Robert A. Centa** LSUC#: 44298M

Tel: (416) 646-4314

**Kristian Borg-Olivier** LSUC#: 53041R

Tel: (416) 646-7490

Fax: 416-646-4301

Lawyers for the Defendant/Respondent,  
Brandon Moyse

**AND TO: DAVIES WARD PHILLIPS & VINEBERG LLP**

Barristers and Solicitors  
40th Floor - 155 Wellington Street West  
Toronto ON M5V 3J7

**Matthew Milne-Smith** LSUC#: 44266P

Tel: (416) 863-0900

**Andrew Carlson** LSUC#: 58850N

Tel: (416) 863-0900

Fax: 416-863-0871

Lawyers for the Defendant/Respondent,  
West Face Capital Inc.

THE CATALYST CAPITAL GROUP INC.  
Plaintiff (Appellant)

-and- BRANDON MOYSE et al.  
Defendants (Respondents)

Court of Appeal File No.  
Court File No. CV-14-507120

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT  
TORONTO

**SECOND SUPPLEMENTARY NOTICE OF APPEAL**

**LAX O'SULLIVAN LISUS GOTTLIB LLP**  
Counsel

Suite 2750, 145 King Street West  
Toronto, Ontario M5H 1J8

**Rocco DiPucchio** LSUC#: 38185I  
rdipucchio@counsel-toronto.com  
Tel: (416) 598-2268

**Andrew Winton** LSUC#: 54473I  
awinton@counsel-toronto.com  
Tel: (416) 644-5342

**Bradley Vermeersch** LSUC#: 69004K  
Tel: (416) 646-7997  
bvermeersch@counsel-toronto.com

Fax: (416) 598-3730

Lawyers for the Plaintiff/Appellant

Court File No. C62655

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff  
(Appellant)

and

WEST FACE CAPITAL INC. and BRANDON MOYSE

Defendants  
(Respondents)**AFFIDAVIT OF ANDREW CARLSON**

I, Andrew Carlson, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am a Partner with the law firm of Davies Ward Phillips & Vineberg LLP ("**Davies**"), the lawyers for the Defendant (Respondent), West Face Capital Inc. ("**West Face**").
2. Since January 2015, I have been a member of the Davies litigation team acting on behalf of West Face in various proceedings involving West Face and the Plaintiff (Appellant), The Catalyst Capital Group Inc. ("**Catalyst**"). The proceedings in which I have been involved include this appeal, Catalyst's proposed motion for leave to introduce fresh evidence, and the underlying action being appealed from (the "**Moyse Action**"). Specifically with respect to this appeal, I was present during an in-person attendance before Mr. Justice Rouleau on September 25, 2017, and participated in a subsequent telephone case conference held by Justice Rouleau on November 16, 2017. I have frequently communicated with, or been copied on communications with, counsel to

Catalyst throughout this appeal. As such, I have personal knowledge of the matters contained in this Affidavit, except where such matters are based on information from others, in which instances I have named the source of my information and verily believe that information to be true.

3. My Affidavit does not refer to or rely on solicitor-client communications between West Face and its counsel, and my swearing of this Affidavit is not intended to waive any privilege enjoyed by West Face.

**A. Catalyst's "Irreconcilable Difference" With the Lax O'Sullivan Firm, and the Resulting Adjournment of the Appeal of the Moyse Action**

4. The appeal of the Moyse Action was scheduled to be heard for two days on September 26 and 27, 2017, with Justice Rouleau to preside as the President of the three-judge Panel. The dates for the argument of the appeal were fixed months before, in February 2017, by Chief Justice Strathy, at the request of counsel for West Face. West Face sought and obtained the earliest available dates for the hearing of the appeal.

5. On the morning of Monday, September 25, 2017, the day before the appeal was scheduled to commence, Brian Greenspan of the Greenspan Humphrey Weinstein firm (who had not previously appeared in any of the proceedings between West Face and Catalyst) wrote to the Court of Appeal on behalf of Catalyst and requested an urgent attendance before Justice Rouleau. In his letter, Mr. Greenspan stated that "over the weekend [of September 23 and 24], circumstances arose which have resulted in irreconcilable differences between current counsel of record [Mr. Rocco DiPucchio of the Lax O'Sullivan firm] and [Catalyst] regarding the conduct of the appeal". Mr. Greenspan further stated in his letter that these circumstances related to a "potential conflict of



interest", such that the Lax O'Sullivan firm had concluded that it had "no option but to seek to be removed as counsel of record". Mr. Greenspan stated that in his view, these circumstances made it "impossible for the appeal to proceed as scheduled". A copy of Mr. Greenspan's letter of September 25, 2017 is attached as **Exhibit "A"**.

6. The Court of Appeal granted Mr. Greenspan's request for an urgent attendance that afternoon.

7. At approximately 3:30 p.m. on the afternoon of September 25, the following counsel appeared before Justice Rouleau in Courtroom 8 at Osgoode Hall:

- (a) Mr. Greenspan;
- (b) David Moore of Moore Barristers;
- (c) Mr. DiPucchio and Eric Hoaken of the Lax O'Sullivan firm;
- (d) Kent Thomson, Matthew Milne-Smith and I from Davies, on behalf of West Face; and
- (e) Rob Centa, Kris Borg-Olivier, and Denise Cooney from the Paliare Roland firm, on behalf of Mr. Moyse.

8. During this attendance, Mr. Greenspan advised that he had been retained by Catalyst the previous week, on Thursday, September 21, 2017, to investigate bringing a potential fresh evidence motion in the appeal of the Moyse Action. Mr. Greenspan stated that he had seen the proposed fresh evidence, that he regarded it to be credible, and that he also regarded it to be relevant. He indicated that the only criterion of the *Palmer* test

that he had yet to investigate concerned the potential impact of the proposed fresh evidence on the result. Mr. Greenspan indicated that because he had not been involved in the trial of the Moyse Action, he would need additional time to arrive at a determination in respect of that issue. Finally, Mr. Greenspan advised Justice Rouleau that there were "irreconcilable differences" between Catalyst and the Lax O'Sullivan firm arising out of the potential fresh evidence motion, which had led to the firm's withdrawal from the appeal.

9. Mr. DiPucchio also made brief submissions, the substance of which were that he could not disclose the nature of the conflict that had arisen between Lax O'Sullivan and Catalyst, but that he agreed with Mr. Greenspan's submission that there was, indeed, a conflict that prevented Mr. DiPucchio from continuing to act for Catalyst in the appeal. He confirmed that the conflict pertained to the potential fresh evidence motion Mr. Greenspan had just discussed.

10. Mr. Thomson made submissions on behalf of West Face, and Mr. Centa made submissions on behalf of Mr. Moyse. They both explained that adjourning the hearing of the appeal would be prejudicial to their respective clients. Ultimately, however, Justice Rouleau granted the requested adjournment because the Lax O'Sullivan firm had withdrawn as Catalyst's counsel, and Catalyst did not have a lawyer retained to argue the appeal which was scheduled to proceed the following morning.

11. Following this attendance, Justice Rouleau issued an Endorsement adjourning the appeal to February 20 to 22, 2018. A copy of Justice Rouleau's Endorsement is attached as **Exhibit "B"**.

12. In the period between the adjournment of the appeal of the Moyse Action and today, counsel to West Face and Mr. Moyse exchanged correspondence with Mr. Greenspan on a number of occasions regarding the proposed motion for fresh evidence. Among other questions, counsel for West Face and Mr. Moyse asked that Catalyst:

- (a) produce the proposed fresh evidence; and
- (b) provide details concerning how the proposed fresh evidence came into Catalyst's possession, control or power, including "detailed information as to where, how and when that fresh evidence was allegedly discovered by Catalyst".

13. These letters are attached as **Exhibits "C" to "M"**.

14. On Tuesday, November 7, 2017, Catalyst (and its affiliate, Callidus Capital Corporation) commenced an action against West Face and a number of other Defendants (the "**Wolfpack Action**"). The Statement of Claim in the Wolfpack Action was issued by Mr. DiPucchio of the Lax O'Sullivan firm as lead counsel. A copy of the Statement of Claim in this matter is attached as **Exhibit "N"**.

## **B. Black Cube's Investigations Targeting West Face and Justice Newbould**

15. On Thursday, November 9, 2017, West Face learned that it and its current and former employees had been and were being targeted by Black Cube.

### **(i) About Black Cube**

16. According to its public website ([www.blackcube.com](http://www.blackcube.com)), Black Cube is an investigative firm comprised of "a select group of veterans from the Israeli elite

intelligence units". It has offices in Tel-Aviv, London, and Paris. Its corporate name is B.C. Strategy Ltd.

17. Black Cube was recently the subject of widespread media coverage pertaining to its involvement in the Harvey Weinstein sexual assault scandal.

18. A copy of Black Cube's public website is attached as **Exhibit "O"**. Copies of various news articles about Black Cube, including in respect of its involvement in the Weinstein scandal, are attached as **Exhibits "P", "Q", "R", "S", "T" and "U"**.

19. Ontario's Ministry of Community Safety & Correctional Services website ([http://www.mcscs.jus.gov.on.ca/english/PSIS/LicenceRegistry/licensee\\_list.aspx](http://www.mcscs.jus.gov.on.ca/english/PSIS/LicenceRegistry/licensee_list.aspx)) links to a ServiceOntario website on which one is able to search a database for the name of licensed agencies that sell the services of private investigators. Searches on this database for the terms "Black Cube", "Cube", "Black", "B.C. Strategy", "BC", and "strategy" on November 13, 2017 each resulted in no search results. Attached as **Exhibit "V"** are screen captures of these search results.

**(ii) Black Cube's Investigation of West Face**

20. On November 15, 2017 West Face delivered a Motion Record in the Wolfpack Action in which it sought an Order preserving all evidence of Black Cube's investigations in respect of West Face. That Motion Record contained six Affidavits, including five Affidavits of current or former employees of West Face who had been targeted by operatives of Black Cube in the period from September 12, 2017 to November 9, 2017. Catalyst consented immediately to the Order sought by West Face. A copy of that Order, issued by Justice Hainey on November 16, 2017, is attached as **Exhibit "W"**.

21. On Friday, November 10, 2017, at approximately 3:45 p.m., Mr. Milne-Smith sent a letter to Catalyst's counsel, including Messrs. Moore, DiPucchio, and Greenspan, advising them that West Face had just learned of Black Cube's activities. A copy of Mr. Milne-Smith's letter of November 10, 2017 is attached as **Exhibit "X"**.

22. At approximately 6:45 p.m. on Friday, November 10, the Lax O'Sullivan firm withdrew or was replaced as counsel of record on all of Catalyst's ongoing proceedings, including the Wolfpack Action (which Mr. DiPucchio had issued on behalf of Catalyst three days earlier), another proceeding against West Face (which Mr. DiPucchio had been acting as lead counsel on for over two years), as well as a third proceeding not against West Face. A copy of an email from Mr. Moore attaching the relevant Notices of Change of Lawyer is attached as **Exhibit "Y"**.

23. On Monday, November 13, 2017, Mr. Greenspan responded to Mr. Milne-Smith's letter of November 10, 2017. A copy of Mr. Greenspan's letter of November 13, 2017 is attached as **Exhibit "Z"**.

24. Mr. Milne-Smith responded to Mr. Greenspan's letter on November 14, 2017. A copy of this letter is attached as **Exhibit "AA"**.

25. Also on November 14, 2017, Mr. Milne-Smith sent a letter addressed to Mr. Moore advising that Davies had met recently with West Face's former General Counsel Alexander Singh and had learned of Black Cube's efforts to induce Mr. Singh to reveal to operatives of Black Cube confidential and privileged information of West Face concerning the hiring of Mr. Moyse, as described in the Affidavit of Mr. Singh sworn November 14, 2017. Mr. Milne-Smith sent copies of this letter to Messrs. Greenspan and DiPucchio.

26. A copy of this letter is attached as **Exhibit "BB"**. A copy of Mr. Singh's Affidavit, with its Exhibits, is attached as **Exhibit "CC"**.

27. On November 15, 2017, Mr. Matthew Gottlieb, the Managing Partner of Lax O'Sullivan, delivered a letter in response to Mr. Milne-Smith's letters of November 10 and 14, 2017 regarding Black Cube. A copy of this letter is attached as **Exhibit "DD"**.

28. To date, neither Mr. Greenspan nor Mr. Moore have provided any information concerning requests made by Mr. Milne-Smith pertaining to the activities of Black Cube in the letters referred to above.

29. On Thursday, November 16, 2017, Justice Rouleau held a case conference, by telephone, to discuss Catalyst's potential fresh evidence motion. I participated during this case conference. The following day (November 17, 2017), the Court of Appeal sent a letter to counsel advising of Justice Rouleau's directions. A copy of this letter is attached as **Exhibit "EE"**.

**(iii) West Face Learns of Black Cube's Wrongful Investigations Into Justice Newbould**

30. On the evening of Friday, November 24, 2017, the *National Post* published an article online, on its website, titled "Exclusive: The Judge, the Sting, Black Cube and Me" (the "**Sting Article**"). A copy of the Sting Article is attached as **Exhibit "FF"**.

31. Late in the evening of Friday, November 24, 2017, Mr. Milne-Smith sent letters to Catalyst's various counsel regarding the Sting Article. Copies of these letters to Messrs. Greenspan and Moore are attached as **Exhibits "GG" and "HH"**.

32. Late in the day on Monday November 27, 2017 counsel for the parties exchanged emails concern the Sting Article and this motion. A copy of this email exchange is attached as **Exhibit "II"**.

**C. Previous Statement of Catalyst Concerning Justice Newbould**

33. On August 19, 2016, the day after Justice Newbould released his Reasons for Judgment dismissing all of Catalyst's claims and allegations in the Moyse Action, Catalyst reportedly provided a written statement to the *Financial Post* concerning the Reasons of Justice Newbould. A copy of this *Financial Post* article is attached as **Exhibit "JJ"**.

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario this  
28th day of November, 2017



Commissioner for Taking Affidavits  
(or as may be)



ANDREW CARLSON

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law  
Expires March 22, 2019.

This is Exhibit "A" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.



*Sent via facsimile and email.*

September 25, 2017

Mr. Stephen Mills-Hughes  
Registrar  
Court of Appeal for Ontario  
130 Queen Street West  
Toronto, ON M5H 2N5

Dear Mr. Mills-Hughes:

**Re: The Catalyst Capital Group v. Moyse, Brandon et al**  
**Court file No. C62655**

I am writing on behalf of The Catalyst Capital Corporation to request an urgent attendance in Chambers this afternoon before Mr. Justice Rouleau, the President of the Panel assigned to hear the above-noted appeal, which is scheduled to commence tomorrow, September 26, 2017.

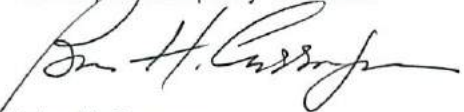
Over the weekend, circumstances arose which have resulted in irreconcilable differences between current counsel of record and The Catalyst Capital Corporation regarding the conduct of the appeal. These circumstances do not relate to any financial issue, but include a potential conflict of interest, such that Catalyst's current counsel have concluded that they have no option but to seek to be removed as counsel of record.

I have been retained by Catalyst to, *inter alia*, provide advice in respect of these issues and in my view current circumstances make it impossible for the appeal to proceed as scheduled.

I am available to attend before Justice Rouleau, together with current counsel of record, at 2:30 today or any time thereafter. I would respectfully request that you convey this request to His Honour and to advise if such an attendance can be arranged.

Thank you for your assistance.

Yours truly,  
Greenspan Humphrey Weinstein



Brian H. Greenspan

Copies to:

Appeal Scheduling unit, *via facsimile and email*

Rob Centa, *via email*

Rocco Di Puccio, *via email*

Kent Thomson, *via email*

Matthew Milne Smith, *via email*

This is Exhibit "B" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

**COURT OF APPEAL FOR ONTARIO**

**DATE: 20170927  
DOCKET: C62655**

**Rouleau J.A. (In Chambers)**

**BETWEEN**

**The Catalyst Capital Group Inc.**

**Plaintiff (Appellant)**

**and**

**Brandon Moyse and West Face Capital Inc.**

**Defendants (Respondents)**

**Rocco DiPucchio, Brian Greenspan and David Moore, for the appellant**

**Kent Thomson and Matthew Milne-Smith, for the respondent West Face Capital Inc.**

**Robert A. Centa, Kris Borg-Olivier and Denise M. Cooney, for the respondent Brandon Moyse**

**Heard: September 25, 2017**

**On appeal from the judgment of Justice F. Newbould of the Superior of Justice, dated August 18, 2016.**

**ENDORSEMENT**

[1] Mr. Greenspan for the appellant advised the parties and the court that he is seeking to adjourn the matter now scheduled to be heard starting tomorrow. He advises that on Thursday last, he was provided with information that requires immediate investigation and may well lead to the tendering of a fresh evidence

Page: 2

application with impact on the appeal. Apparently related to this, irreconcilable difference between the appellant and counsel of record, Lax O'Sullivan, have arisen such that Lax O'Sullivan has concluded that it has no option but to seek to be removed as counsel of record.

[2] The respondents oppose any adjournment as they are ready and anxious to proceed and are suffering some prejudice by the delay. Mr. Moyse has this cloud over his name and West Face is under pressure to distribute the profits it has made on the transaction.

[3] In the circumstances, I consider that it would be unfair to force the appellant on without counsel. I therefore reluctantly agree to adjourn the appeal. In order to allow for the possibility of the fresh evidence requiring additional court time I will provide the dates of February 20, 21 and 22 for the appeal. I will remain seized of any issues that may arise with respect to the potential fresh evidence. Counsel are to inform me once it is determined if a fresh evidence application will be brought. If no fresh evidence will be tendered, the appeal will be scheduled for only 2 of the days set aside.

[4] The appellant is to retain new counsel forthwith and the necessary notice of change of solicitors filed with the court. The issue of costs is left to the panel hearing the appeal.

A handwritten signature in black ink, appearing to read "Paul R. Borden J.A.", is written at the bottom of the page.

This is Exhibit "C" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.


 DAVIES

155 Wellington Street West  
 Toronto ON M5V 3J7  
 dwpv.com

September 26, 2017

Matthew Milne-Smith  
 T 416.863.5595  
 F 416.863.0871  
 mmilne-smith@dwpv.com

File No. 250486

**BY E-MAIL**

Mr. Brian H. Greenspan  
 Greenspan Humphrey Weinstein  
 15 Bedford Road  
 Toronto, ON M5R 2J7

Dear Mr. Greenspan,

**Motion for Fresh Evidence**

I am writing in respect of the potential motion for fresh evidence that you have been instructed to investigate by the appellant, The Catalyst Capital Group Inc. Before our attendance yesterday, you indicated to counsel that you expected it would take you between two and six weeks in order to determine whether such a motion was warranted.

I know that you share our desire to ensure that the threshold issue that you have been retained to investigate – whether a fresh evidence motion is to be brought – is resolved as expeditiously as possible. This will give the parties time to either address the motion if necessary, or proceed with the appeal as it stands if the fresh evidence motion is not pursued.

With this mutual goal in mind, may I please hear from you by no later than October 10, 2017 with respect to whether Catalyst will be bringing a motion for fresh evidence, and if so, when it will deliver its motion materials in that regard?

In the interim, please disclose to us immediately the proposed fresh evidence, and how it came into Catalyst's possession, in accordance with Catalyst's obligations under Rule 30.07 of the *Rules of Civil Procedure*.

Yours very truly,



Matthew Milne-Smith

MMS/

- 2 -

cc: Kent Thomson / Andrew Carlson (*Davies Ward Phillips & Vineberg LLP*)  
Robert Centa / Kris Borg-Olivier / Denise Cooney (*Paliare Roland*)  
David Moore (*Moore Barristers*)



This is Exhibit "D" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

DAVIES

155 Wellington Street West  
Toronto ON M5V 3J7  
dwpv.com

September 27, 2017

Matthew Milne-Smith  
T 416.863.5595  
F 416.863.0871  
mmilne-smith@dwpv.com

File No. 250486

**BY E-MAIL**

Mr. Brian H. Greenspan  
Greenspan Humphrey Weinstein  
15 Bedford Road  
Toronto, ON M5R 2J7

Dear Mr. Greenspan,

**Motion for Fresh Evidence**

Further to my letter of yesterday, would you please also confirm that Catalyst will preserve and gather together any and all communications, including without limitation text messages and emails, that Messrs. Glassman, Riley, De Alba, or anyone else at Catalyst may have sent or received, either internally or with third parties, and that relate directly or indirectly to the proposed fresh evidence. This includes, but is not limited to, all communications with the alleged source(s) of the fresh evidence.

If any motion to adduce fresh evidence is, in fact, brought by Catalyst, West Face will require immediate production of all such communications, as well as the delivery of a detailed privilege log, in the form of a Schedule "B", listing the dates, authors, and recipients of any communications over which Catalyst may assert privilege.

As you know, there is significant urgency to the adjudication of Catalyst's appeal. As such, any fresh evidence motion that Catalyst might bring needs to be addressed in a timely manner so as not to further delay the argument and resolution of Catalyst's appeal. We would therefore ask Catalyst to immediately take steps to address both of the foregoing requests, so that they may be resolved promptly should Catalyst proceed with its motion.

To the extent necessary, we will seek Orders from Justice Rouleau compelling the production of the materials referred to above, as well as concerning any claims of privilege that Catalyst might

make. In that regard, we reserve the right to ask Justice Rouleau to review any communications that Catalyst fails or refuses to produce on the basis of privilege.

We also reserve the right to bring this letter to the attention of Justice Rouleau in any motion that may be required as this matter proceeds.

If you would like to discuss this matter, please do not hesitate to contact me. I would be happy to discuss these requests with you at any time.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Matthew Milne-Smith', with a stylized, flowing script.

Matthew Milne-Smith

MMS/

cc: Kent Thomson / Andrew Carlson (*Davies Ward Phillips & Vineberg LLP*)  
Robert Centa / Kris Borg-Olivier / Denise Cooney (*Paliare Roland*)  
David Moore (*Moore Barristers*)

This is Exhibit "E" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

September 27, 2017

Sent via email. [mmilne-smith@dwpv.com](mailto:mmilne-smith@dwpv.com)

Matthew Milne-Smith  
Davies Ward Phillips & Vineberg LLP  
155 Wellington Street West  
Toronto, Ontario  
M5V 3J7

Dear Mr. Milne-Smith:


**Re: The Catalyst Capital Group Inc.**

I am writing in response to your letter dated September 26, 2017. I will endeavour to complete our investigation as to whether fresh evidence may be adduced with respect to the above-noted appeal as soon as possible.

Obviously the broad estimate of two to six weeks which I had provided was intended as a guideline. I find it extraordinary that you have suggested that a final determination on the issue is to be completed and communicated "no later than October 10, 2017", which represents the *minimum* period of time in my broad estimation. I can only assure you that you will receive notification of the decision as to whether a fresh evidence motion will be pursued upon the conclusion of our inquiries.

Despite my apparent inexperience in relation to the *Rules of Civil Procedure*, in my view Rule 30.07 is inapplicable to the current circumstances, unless and until such time as a decision is made with respect to the issue of the introduction of fresh evidence. Furthermore, it is my view that the information which has led to this investigation is privileged.

Yours sincerely,  
Greenspan Humphrey Weinstein

  
per Brian H. Greenspan N. Luter

cc: Kent Thomson and Andrew Carlson via email [kentthomson@dwpv.com](mailto:kentthomson@dwpv.com); [acarlson@dwpv.com](mailto:acarlson@dwpv.com)

Rob Centa, Kris Borg-Olivier, and Denise Cooney via email  
[robert.centa@paliareroland.com](mailto:robert.centa@paliareroland.com); [kris.borg-olivier@paliareroland.com](mailto:kris.borg-olivier@paliareroland.com); [denise.cooney@paliareroland.com](mailto:denise.cooney@paliareroland.com)

David Moore via email [david@moorebarristers.ca](mailto:david@moorebarristers.ca)

This is Exhibit "F" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

DAVIES

155 Wellington Street West  
Toronto ON M5V 3J7  
dwpv.com

September 28, 2017

Matthew Milne-Smith  
T 416.863.5595  
F 416.863.0871  
mmilne-smith@dwpv.com

File No. 250486

**BY E-MAIL**

Mr. Brian H. Greenspan  
Greenspan Humphrey Weinstein  
15 Bedford Road  
Toronto, ON M5R 2J7

Dear Mr. Greenspan,

**Motion for Fresh Evidence**

Thank you for your prompt reply to my letter of September 26, 2017, and for your confirmation that you will complete and communicate your investigation of the fresh evidence issue as soon as possible. We have every confidence that in view of the importance of the matter, and the directions provided by Justice Rouleau when we appeared before him on Monday, you will complete your investigation at the early end of the range you suggested.

This case was tried before Justice Newbould in the Commercial List. We trust you will agree that consistent with the "Three C's" that have long governed the operations of the Commercial List, the most co-operative and common sense approach to addressing Catalyst's potential motion for leave to adduce fresh evidence is to communicate openly with each other. If you provide us with the potential fresh evidence, we may be able to address questions you may have concerning that evidence, and in doing so to expedite the completion of your investigation. Without debating the intricacies of the *Rules of Civil Procedure*, both the "Three C's" and principles embodied in the Rules concerning the timely disclosure of relevant documents in civil litigation warrant immediate disclosure by Catalyst of the potential fresh evidence.

We can debate at a later date your claim of privilege over "the information which has led to this investigation" once you have disclosed the nature of and basis for that claim of privilege. If necessary, of course, Justice Rouleau can resolve such a claim. However, the purported fresh evidence itself cannot be privileged, and we therefore reiterate our request that it be provided immediately.

Please let me know if you would like to discuss this matter.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Matthew Milne-Smith', with a stylized, wavy flourish at the end.

Matthew Milne-Smith

MMS/

cc: Kent Thomson / Andrew Carlson (*Davies Ward Phillips & Vineberg LLP*)  
Robert Centa / Kris Borg-Olivier / Denise Cooney (*Paliare Roland*)  
David Moore (*Moore Barristers*)



This is Exhibit "G" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

# PALIARE ROLAND

BARRISTERS

Chris G. Paliare  
 Ian J. Roland  
 Ken Rosenberg  
 Linda R. Rothstein  
 Richard P. Stephenson  
 Nick Coleman  
 Donald K. Eady  
 Gordon D. Capern  
 Lily I. Harmer  
 Andrew Lokan  
 John Monger  
 Odette Soriano  
 Andrew C. Lewis  
 Megan E. Shortreed  
 Massimo Starnino  
 Karen Jones  
 Robert A. Centa  
 Nini Jones  
 Jeffrey Larry  
 Kristian Borg-Olivier  
 Emily Lawrence  
 Tina H. Lie  
 Jean-Claude Killey  
 Jodi Martin  
 Michael Fenrick  
 Ren Bucholz  
 Jessica Latimer  
 Debra McKenna  
 Lindsay Scott  
 Alysha Shore  
 Denise Cooney  
 Lauren Pearce  
 Daniel Rosenbluth  
 Glynnis Hawe  
 Emily Home

## COUNSEL

Stephen Goudge, Q.C.

## HONORARY COUNSEL

Ian G. Scott, Q.C., O.C.  
 (1934 -2006)

**Kris Borg-Olivier**

T 416.646.7490 Asst 416.646.7435  
 F 416.646.4301  
 E kris.borg-olivier@paliareroland.com  
[www.paliareroland.com](http://www.paliareroland.com)

File 23622

September 29, 2017

**VIA EMAIL****bgreenspan@15bedford.com**

Mr. Brian H. Greenspan  
 Greenspan Humphrey Weinstein  
 15 Bedford Road  
 Toronto, ON M5R 2J7

Dear Mr. Greenspan:

**Re: Brandon Moyse et al ats. The Catalyst Capital Group Inc.  
 Court of Appeal File No.: C62655**

We write further to your recent exchange of correspondence with Mr. Milne-Smith.

Based on your client's representations to Justice Rouleau, we understand that your client has already identified documents that it believes are relevant to a matter in issue in this proceeding. The question your client is now considering and investigating further, with your assistance, is whether or not it is proper or advisable to bring a motion to admit fresh evidence on the appeal.

Having raised the issue in support of its request to adjourn the appeal, and whether or not your client ultimately determines that it wishes to bring a fresh evidence motion, it is obliged to produce (at this time) all relevant documents in its possession (including the newly discovered documents) under r. 30.02. This obligation exists for all relevant documents, even if they would not meet the test to be admitted as fresh evidence on appeal and even if your client chooses not to bring its motion.

We therefore reiterate and support Mr. Milne-Smith's position that the purported fresh evidence currently being investigated should be disclosed forthwith, and that this evidence can be disclosed without the disclosure of any privileged information.

We also ask that Catalyst advise forthwith whom it has retained as new counsel on the appeal, to ensure there are no further delays of this matter.

Yours very truly,

**PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**



Kris Borg-Olivier

c: Kent Thomson / Matthew Milne-Smith / Andrew Carlson  
Robert Centa / Denise Cooney  
David Moore

Doc 2297364 v1

This is Exhibit "H" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

October 4, 2017

Matthew Milne-Smith  
Davies Ward Phillips & Vineberg LLP  
155 Wellington Street West  
Toronto, Ontario  
M5V 3J7

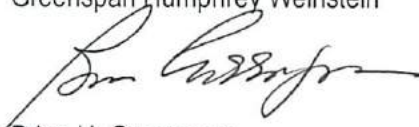
Dear Mr. Milne-Smith:

Re: **The Catalyst Capital Group Inc.**

Further to my correspondence of September 27, 2017, and in response to your subsequent letters dated September 27, 2017 and September 28, 2017, I would again confirm that I am proceeding with the investigation which I indicated I would be undertaking as to whether there is any admissible and relevant evidence which Catalyst would seek to adduce in accordance with the *Palmer* test. As soon as the outcome of that inquiry is known, I will advise you.

If a decision is made to bring such a motion, Catalyst will produce all relevant documentation and identify privileged materials, in accordance with the usual practices followed on *Palmer* applications. We can confirm that efforts will be made to preserve any such documentation in the interim. In our view, any production of material at this time would neither be productive, nor is it required by the *Rules*.

Yours sincerely,  
Greenspan Humphrey Weinstein



Brian H. Greenspan

cc.: Kent Thomson and Andrew Carlson *via email*

Rob Centa, Kris Borg-Olivier, and Denise Cooney *via email*

David Moore *via email*

This is Exhibit "I" referred to in the Affidavit of Andrew Carlson  
sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.



October 4, 2017

Kris Borg-Olivier  
Paliare Roland Rosenberg Rothstein LLP  
155 Wellington Street West  
35<sup>th</sup> Floor  
Toronto, Ontario  
M5V 3H1

Dear Mr. Borg-Olivier:

Re: **The Catalyst Capital Group Inc.**

Further to my correspondence of September 27, 2017, and in response to your subsequent letter dated September 29, our position is set out in our letter dated October 4, 2017 to Mr. Milne-Smith, a copy of which has been provided to you.

In addition, I would observe that our determination as to whether or not fresh evidence will be advanced in accordance with the *Palmer* test includes a consideration of relevance. The representation which was made to Justice Rouleau was that the material may be relevant and our consideration was not limited to merely the propriety or advisability of advancing a motion for fresh evidence on appeal. As you may recall, the adjournment was almost exclusively based upon the withdrawal of counsel for Catalyst, and not on the potential motion for fresh evidence.

Yours sincerely,  
Greenspan Humphrey Weinstein



Brian H. Greenspan

cc.: Kent Thomson, Matthew Milne-Smith, and Andrew Carlson *via email*

Rob Centa and Denise Cooney *via email*

David Moore *via email*

This is Exhibit "J" referred to in the Affidavit of Andrew Carlson  
sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.



The logo for Davies Ward Phillips & Vineberg LLP, featuring the word "DAVIES" in white capital letters on a black square background.

155 Wellington Street West  
Toronto ON M5V 3J7  
dwpv.com

November 3, 2017

Matthew Milne-Smith  
T 416.863.5595  
F 416.863.0871  
mmilne-smith@dwpv.com

File No. 250486

**BY E-MAIL**

Mr. Brian H. Greenspan  
Greenspan Humphrey Weinstein  
15 Bedford Road  
Toronto, ON M5R 2J7

Dear Mr. Greenspan,

**Motion for Fresh Evidence**

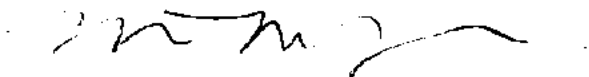
I am writing further to your letter of October 4, 2017 and our previous correspondence in this matter. When we appeared before Justice Rouleau on September 25, 2017, you advised Justice Rouleau that you would be able to complete your inquiry into whether a fresh evidence motion was warranted in the circumstance within a matter of weeks. Outside of court, and again in your letter of September 27, 2017, you estimated that you would be in a position to determine whether Catalyst will, in fact, proceed with a fresh evidence application within a period of two to six weeks.

This coming Monday, November 6, 2017 will be six weeks since our appearance before Justice Rouleau. Moreover, it will be approximately three and a half months from our scheduled appeal, with the holiday season falling in the intervening period. If Catalyst intends to bring a fresh evidence application, we need sufficient time to obtain or compel proper production from Catalyst, prepare and deliver responding materials, conduct cross-examinations, and prepare written argument in advance of the scheduled hearing dates.

In light of the foregoing, I would ask again that Catalyst advise immediately whether it intends to bring a fresh evidence application. If Catalyst intends to do so, we also require immediate disclosure of the proposed fresh evidence, as well as detailed information as to where, how and when that fresh evidence was allegedly discovered by Catalyst.

Please be advised that if Catalyst fails or refuses to provide the requested information by the end of the day next Wednesday, November 8, 2017, West Face will take immediate steps to arrange a further attendance before Justice Rouleau.

Yours very truly,



Matthew Milne-Smith

MMS/

cc: David Moore (*Moore Barristers*)  
Kent Thomson / Andrew Carlson (*Davies*)  
Robert Centa / Kris Borg-Olivier (*Paliare Roland*)

This is Exhibit "K" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

*Via email.*

November 6, 2017

Matthew Milne-Smith  
Davies Ward Phillips & Vineberg LLP  
155 Wellington Street West  
Toronto, ON  
M5V 3J7

Dear Mr. Milne-Smith:

**Re: The Catalyst Capital Group Inc.**

I write in response to your correspondence dated November 3, 2017. Mr. Greenspan has been engaged in final submissions in the Nova Scotia Supreme Court for the past week in the matter of *Regina v. Colpitts and Potter*. These final submissions are scheduled to conclude on Wednesday, November 8<sup>th</sup>. After this time, Mr. Greenspan will be in the office and will attempt to address your concerns.

As we had previously advised, as soon as the outcome of Mr. Greenspan's inquiry into whether there is any admissible and relevant evidence which Catalyst would seek to adduce as fresh evidence, you will be advised.

Yours sincerely,  
Greenspan Humphrey Weinstein

*for, Naomi M. Lutes*

cc.: Kent Thomson and Andrew Carlson *via email*

Rob Centa and Kris Borg-Olivier *via email*

David Moore *via email*

This is Exhibit "L" referred to in the Affidavit of Andrew Carlson  
sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.


 DAVIES

155 Wellington Street West  
 Toronto ON M5V 3J7  
 dwpv.com

November 6, 2017

Matthew Milne-Smith  
 T 416.863.5595  
 F 416.863.0871  
 mmilne-smith@dwpv.com

File No. 250486

**BY E-MAIL**

Ms. Naomi Lutes  
 Greenspan Humphrey Weinstein  
 15 Bedford Road  
 Toronto, ON M5R 2J7

Dear Ms. Lutes:

**Motion for Fresh Evidence**

Thank you for your letter of today. With respect, it answers none of the questions in my letter of November 3, 2017.

On September 25, 2017, Mr. Greenspan advised us and Justice Rouleau that it would take no more than six weeks to determine whether a fresh evidence motion would be brought. When he provided that assurance Mr. Greenspan must have been aware of his commitments on other matters.

David Moore acts as counsel to Catalyst in this and a related matter. On October 25, 2017, while attending before Justice Hainey on the related matter, Mr. Moore advised that Mr. Greenspan had been delayed by his responsibilities in the *Lougheed and Sorbara* matter in Sudbury, but was returning to Toronto that day and would be turning his attention to this matter immediately. I note in this regard that Justice Borenstein only sat for one day – October 10 – in the *Lougheed and Sorbara* matter between our attendance before Justice Rouleau on September 25, 2017, and releasing his Reasons on October 24, 2017.

Today, you again advise that Mr. Greenspan has been involved in another matter, and that he will "attempt to address" our concerns upon his return to the office on Thursday, November 9, 2017. This is hardly the comfort or information West Face has sought repeatedly at the time of and in the period following our attendance before Justice Rouleau on September 25.

Regrettably, we have been left with no choice but to arrange a further attendance before Justice Rouleau, and will now take the necessary steps to do so. Please advise of the availability of a member of your firm to attend before Justice Rouleau on November 9 or 10.

Yours very truly,

A handwritten signature in black ink, appearing to be 'MMS' with a long horizontal flourish extending to the right.

Matthew Milne-Smith

MMS/

cc: David Moore (*Moore Barristers*)  
Kent Thomson / Andrew Carlson (*Davies*)  
Robert Centa / Kris Borg-Olivier (*Paliare Roland*)  
Brian Greenspan (*Greenspan Humphrey Weinstein*)

This is Exhibit "M" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.



# PALIARE ROLAND

BARRISTERS

Chris G. Paliare  
Ian J. Roland  
Ken Rosenberg  
Linda R. Rothstein  
Richard P. Stephenson  
Nick Coleman  
Donald K. Eady  
Gordon D. Capern  
Lily I. Harmer  
Andrew Lokan  
John Monger  
Odette Soriano  
Andrew C. Lewis  
Megan E. Shortreed  
Massimo Starnino  
Karen Jones  
Robert A. Centa  
Nini Jones  
Jeffrey Larry  
Kristian Borg-Olivier  
Emily Lawrence  
Tina H. Lie  
Jean-Claude Killey  
Jodi Martin  
Michael Fenrick  
Ren Bucholz  
Jessica Latimer  
Debra McKenna  
Lindsay Scott  
Alysha Shore  
Denise Cooney  
Paul J. Davis  
Lauren Pearce  
Elizabeth Rathbone  
Daniel Rosenbluth  
Glynnis Hawe  
Emily Home

COUNSEL  
Stephen Goudge, Q.C.

COUNSEL  
Ian G. Scott, Q.C., O.C.  
(1934 -2006)

**Robert A. Centa**

T 416.646.4314 Asst 416.646.7418  
F 416.646.4301  
E robert.centa@paliareroland.com  
[www.paliareroland.com](http://www.paliareroland.com)

---

File 23622

November 7, 2017

Ms. Naomi Lutes and  
Mr. Brian H. Greenspan  
Greenspan Humphrey Weinstein  
15 Bedford Road  
Toronto, ON M5R 2J7

Dear Ms. Lutes and Mr. Greenspan:

**Re: Brandon Moyse et al ats. The Catalyst Capital Group Inc.  
Court of Appeal File No.: C62655**

We write to echo the concerns expressed in Mr. Milne-Smith's letter dated November 6, 2017.

As we wrote on September 29, 2017, based on your client's representations to Justice Rouleau, we understood that your client had already identified documents that it believed was relevant to a matter in issue in this proceeding. The question your client was now considering and investigating further, was whether or not it would be proper or advisable to bring a motion to admit fresh evidence on the appeal.

We have not received any substantive information on this potential issue since that time. We are very concerned that it is now early November. We do not want the potential for a fresh evidence motion to derail the February 20 to 22, 2017, hearing dates.

We will make ourselves available as required on November 9 or 10.

Yours very truly,

**PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**

Robert A. Centa  
RAC:r

c: David Moore (Moore Barristers)  
Kent Thomson / Matthew Milne-Smith / Andrew Carlson (Davies)

2330412

**PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**

155 WELLINGTON STREET WEST 35TH FLOOR TORONTO ONTARIO M5V 3H1 T 416.646.4300

This is Exhibit "N" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

CV-17-586096

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**



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

**Plaintiffs**

**and**

**WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.  
c.o.b. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC, FRIGATE  
VENTURES LP, ANSON INVESTMENTS LP, ANSON CAPITAL LP, ANSON  
INVESTMENTS MASTER FUND LP, AIMF GP, ANSON CATALYST  
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**

**STATEMENT OF CLAIM**

**TO THE DEFENDANT(S):**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.  
The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for  
you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*,  
serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the  
Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after  
this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of  
America, the period for serving and filing your Statement of Defence is forty days. If you are  
served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of  
Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to  
ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's Claim and \$400.00 for costs and have the costs assessed by the Court.

Date November 7, 2017

Issued by

Local Registrar

Address of  
court office:

TO: WEST FACE CAPITAL INC.  
2 Bloor Street E.  
Suite 3000  
Toronto, Ontario  
M4W 1A8

SUPERIOR COURT  
OF JUSTICE  
323 UNIVERSITY AVE.  
10TH FLOOR  
TORONTO, ONTARIO  
M5G 1E8

COURN SUPÉRIEURE  
DE JUSTICE  
323 AVE. UNIVERSITY  
10E ÉTAGE  
TORONTO, ONTARIO  
M5G 1E8

AND TO: GREGORY BOLAND  
c/o West Face Capital Inc.  
2 Bloor Street E.  
Suite 3000  
Toronto, Ontario  
M4W 1A8

AND TO: M5V ADVISORS INC. c.o.b. ANSON GROUP CANADA  
111 Peter Street  
Suite 904  
Toronto, Ontario  
M5V 2H1

AND TO: ADMIRALTY ADVISORS LLC  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: FRIGATE VENTURES LP  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: ANSON INVESTMENTS LP  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: ANSON CAPITAL LP  
420 Lyndon B. Johnson Freeway  
Suite 550  
Dallas, Texas, U.S.  
75240

AND TO: ANSON INVESTMENTS MASTER FUND LP  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: AIMF GP,  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: ANSON CATALYST MASTER FUND LP  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: ACF GP  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: MOEZ KASSAM  
111 Peter Street  
Suite 904  
Toronto, Ontario  
M5V 2H1

AND TO: ADAM SPEARS  
111 Peter Street  
Suite 904  
Toronto, Ontario  
M5V 2H1

AND TO: SUNNY PURI  
111 Peter Street  
Suite 904  
Toronto, Ontario  
M5V 2H1

AND TO: BRUCE LANGSTAFF  
158 St. Leonard's Ave  
North York, Ontario  
M4N 1K7

AND TO: ROB COPELAND  
63 N. 3<sup>rd</sup> St.  
Apt. 207  
Brooklyn, New York  
11249

AND TO: CLARITYSPRING INC.  
545 5th Avenue  
8th Floor  
New York, New York, U.S.  
10017

AND TO: NATHAN ANDERSON  
c/o ClaritySpring Inc.  
545 5th Avenue  
8th Floor  
New York, New York, U.S.  
10017

AND TO: KEVIN BAUMANN

AND TO: JEFFREY MCFARLANE

AND TO: DARRYL LEVITT

AND TO: RICHARD MOLYNEUX

AND TO: AND JOHN DOES #1-10

**CLAIM**

1. The Plaintiffs claim against the Defendants, on a joint and several basis, for the following:
  - (a) General and aggravated damages in the amount of \$450,000,000 for defamation, injurious falsehood, the tort of causing loss by unlawful means (intentional interference with economic relations), civil conspiracy and unjust enrichment;
  - (b) In the alternative, an accounting of any and all gains from transactions in Callidus Shares (defined *infra*) and the derivative securities thereof on or after August 9, 2017, including without limitation gains from short positions covered on or after that date; and, to the extent that such amounts are greater than any amount of general damages awarded, disgorgement or such other equitable remedy in relation to such gains;
  - (c) A Declaration that the Defendants defamed the Plaintiffs;
  - (d) A Declaration that the Defendants breached s. 126.1 and s. 126.2 of the *Securities Act* (Ontario), RSO 1990, c. S.5 (the “*Securities Act*”);
  - (e) A Declaration that the Individuals Defendants (defined *infra*) are personally liable for the unlawful actions carried out by or through the corporations and/or other entities that are named as Defendants;
  - (f) Special damages for costs associated with the “investigation” of the willful misconduct of the Defendants, or some of them;
  - (g) Punitive and/or aggravated damages as against all of the Defendants in the amount of \$5,000,000.00;
  - (h) Prejudgment and postjudgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (i) The costs of this action, plus the applicable taxes; and
  - (j) Such further and other relief as to this Honourable Court may seem just.



**(A) THE PLAINTIFFS**

2. The Plaintiff, The Catalyst Capital Group Inc. (“Catalyst”), is a corporation with its head office located in Toronto, Ontario. Catalyst is widely recognized as the leading firm in the field of investments in distressed and undervalued Canadian situations for control or influence, known as “special situations investments for control”.

3. The Plaintiff, Callidus Capital Corporation (“Callidus”), is a corporation with its head office located in Toronto, Ontario. Callidus is a publicly traded asset-based lender that provides capital on a bridge basis to meet the financing requirements of companies that cannot access traditional lending sources.

4. Callidus engages in asset-based lending by lending to corporate businesses and taking security against the assessed or appraised value of working capital and an identifiable portfolio of assets, which may include accounts receivable, inventory, equipment, real estate, and other assets.

5. In April 2014, Callidus made an initial public offering (“IPO”) of approximately forty per cent of its issued and outstanding shares. Prior to the IPO, Callidus was wholly owned by Catalyst. Investment funds managed by Catalyst continue to own or control approximately 2/3rds of the issued and outstanding shares of Callidus.

6. The shares of Callidus trade on the Toronto Stock Exchange under trade symbol CBL.TO (the “Callidus Shares”).

**(B) THE DEFENDANTS**

7. The Defendant West Face Capital Inc. (“West Face”) is a Toronto-based private equity corporation with assets under management of approximately \$2.5 billion. West Face competes

with Catalyst in the special situations for control investment industry. One of the principals of West Face is the Defendant Gregory Boland ("Boland").

8. West Face and Boland are vicariously liable for the acts or omissions of one another. In the alternative, West Face and Boland acted as agent for each other.

9. The Defendant M5V Advisors Inc. carrying on business as Anson Group Canada ("Anson Canada"), is a hedge fund incorporated in Ontario. At all relevant times, Anson Canada has entered into securities transactions on public markets, including short sales. Anson Canada is vicariously liable for the acts and omissions of its employees.

10. The Defendant Admiralty Advisors LLC ("Admiralty") is a limited liability company organized pursuant to the laws of Texas. At all relevant times, Admiralty has engaged in securities transactions, including short sales.

11. The Defendant Frigate Ventures LP ("Frigate") is a limited partnership organized pursuant to the laws of Texas. At all relevant time, Frigate was a registered investment fund manager with the Ontario Securities Commission that engaged in securities transactions, including short sales. Admiralty is the general partner of Frigate.

12. The Defendant Anson Investments LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

13. The Defendant Anson Capital LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

14. The Defendant Anson Investment Master Fund LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

15. The Defendant AIMF GP is the general partner to Anson Investment Master Fund LP. At all relevant times, AIMF GP has engaged in securities transactions, including short sales.

16. The Defendant Anson Catalyst Master Fund LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

17. The Defendant ACF GP is the general partner to Anson Catalyst Master Fund LP. At all relevant times, it has engaged in securities transactions, including short shares.

18. The parties described in paragraphs 9-17 above are a family of hedge funds that carry on business as the Anson Group ("Anson"). Those funds claim to be focussed on long-short, market-neutral and opportunistic investment strategies.

19. The Defendants Moez Kassam ("Kassam") and Adam Spears ("Spears") are principals of Anson. The Defendant Sunny Puri ("Puri") is an analyst at Anson (together, the Individual Anson Defendants").

20. The Individual Anson Defendants and the entities that comprise Anson at all material times operated, acted and marketed themselves as a single entity. The Individual Anson Defendants and Anson are vicariously liable for the acts or omissions of one another. In the alternative, each of the Individual Anson Defendants and Anson acted as agent for the others.

21. The Defendant ClaritySpring Inc. ("Clarity") is a Delaware incorporated company that is based in New York. Clarity's principal is the Defendant Nathan Anderson ("Anderson").
22. Clarity and Anderson are vicariously liable for the acts or omissions of one another. In the alternative, Clarity and Anderson acted as agent for each other.
23. West Face, Boland, Anson, Kassam, Spears, Puri, Clarity and Anderson are hereinafter referred to collectively as the "Wolfpack Conspirators".
24. The Defendant Bruce Langstaff ("Langstaff") is a former employee of Canaccord Genuity.
25. The Defendant Rob Copeland ("Copeland") is a reporter with the Wall Street Journal (the "WSJ") and resides in New York, New York.
26. The Defendants Boland, Kassam, Spears, Puri, Anderson, Langstaff and Copeland are hereinafter referred to collectively as the "Individual Defendants".
27. The Defendant Kevin Baumann ("Baumann") is an individual residing in Red Deer, Alberta.
28. The Defendant Jeffrey McFarlane ("McFarlane") is an individual residing in North Carolina, in the United States of America.
29. The Defendant Darryl Levitt ("Levitt") is an individual residing in Toronto, Ontario.
30. The Defendant Richard Molyneux ("Molyneux") is an individual residing in Toronto, Ontario.

31. Baumann, McFarlane, Levitt and Molyneux are hereinafter referred to collectively as the “Guarantor Conspirators”.

32. The Wolfpack Conspirators, the Guarantor Conspirators, Langstaff and Copeland are hereinafter referred to collectively as the “Conspirators”.

33. John Doe 1-10 are parties that participated in the Conspiracy (defined *infra*) and whose identities are presently unknown to the Plaintiffs. The Plaintiffs will substitute the actual names of these parties after they are discovered.

**(C) WOLFPACK CONSPIRATORS TARGET CALLIDUS FOR A SHORT-SELLING STRATEGY**

34. Short-selling is an investment strategy whereby an investor borrows shares in a publicly traded corporation and then sells the borrowed shares to third parties. A short sale strategy anticipates that the shares will decline in value, at which point the investor will buy back shares at the lower price and return them to the party from which it originally borrowed shares. Selling borrowed shares in this fashion is known as “selling short”. This activity may also be undertaken on what is known as a “naked short” basis, in which a party bets that the stock will go down in price without actually borrowing the stock or finding out if there is available stock to borrow in order to short it. Without an inventory of stocks to borrow, naked shorting can leave a stock open to market manipulation.

35. If the shares ultimately decline in value as anticipated, the difference between the higher price at which the investor sold the shares and the lower price at which the investor bought them back represents a profit to the short-selling investor.

36. If, instead of declining in value as anticipated by the investor, the shares appreciate in value, then the short-selling investor loses money on the investment. At some point, in order to cap its losses, the investor will buy back the shares at a higher price and return them to the lender. Because, in theory, the potential price of any stock is unlimited, the potential loss on a short-selling strategy is infinite.

37. The acts of the Defendants described herein amount to an unlawful conspiracy in that, at some point prior to the publication of the Article (defined *infra*) on August 9, 2017, the Defendants, with or without the John Doe Defendants: i) maliciously and intentionally or otherwise, entered into an agreement to injure the Plaintiffs or, alternatively, the predominant purpose of their acts as a whole was to cause injury to the Plaintiffs; ii) the Defendants used unlawful means – specifically, acts or a combination of acts that amount in law to actionable defamation, injurious falsehood, breaches of subsections 126.1 and 126.2 of the *Securities Act* and related regulations, including, but not limited to National Instrument 81-102 and unjust enrichment (each set out more specifically below) – with the knowledge that their actions were directly aimed at the Plaintiffs for the purpose of causing injury to the Plaintiffs; iii) caused the stock price of Callidus to drop; and (iv) in fact caused the Plaintiffs to suffer damages as a result of their conduct.

**(D) GUARANTORS COORDINATE EFFORTS TO HARM CALLIDUS AND CATALYST**

38. Several of the parties that received loans from Callidus were required to have their principals execute personal guarantees as a term and condition of the loan. When several of the borrowers subsequently defaulted on their loans, Callidus took steps to enforce the personal guarantees.

39. In particular, Callidus commenced actions to enforce personal guarantees against the following persons (together, the “Guarantors”):

- (a) Baumann in respect of a loan to Alken Basin Drilling Ltd.;
- (b) Andrew Levy (“Levy”) and Richard Jaross (“Jaross”) in respect of a loan to Esco Marine;
- (c) Levitt in respect of a loan to Fortress Resources;
- (d) Gary Smith (“Smith”) in respect of a loan to Fortress Resources;
- (e) Molyneux in respect of a loan to Fortress Resources; and
- (f) McFarlane in respect of a loan to Exchange Technology Group LLC.

(the “Guarantee Actions”)

40. In or around mid-2015, the Guarantors, and especially Baumann and Levy, started contacting each other to discuss and coordinate their responses to the Guarantee Actions.

41. Baumann also offered some of the Guarantors, including Levy and Jaross, substantial funding to fight the Guarantee Actions. The funding offered by Baumann was not, in fact, coming from Baumann himself, but from the Wolfpack Conspirators.

42. The Guarantors started to collectively discuss coordinating their defences to the Guarantee Actions and to do so in substantially the same fashion and with defences worded in substantially the same way.

43. In 2016, the Guarantors, except for Baumann, met in Albany, New York. During this meeting, the Guarantors discussed commencing a “RICO” action against Callidus. The Guarantors decided instead to defend the Guarantee Actions on the spurious basis of “fraudulent inducement” (or its equivalent) and to file specious counterclaims against Callidus.

44. The Guarantors thought that by defending each of the Guarantee Actions in a coordinated manner, they would have an opportunity to make it difficult for Callidus and Catalyst to succeed or embarrass Callidus and Catalyst with allegations of “fraudulent inducement” or its equivalent. The Guarantors also believed their coordinated attacks would force Callidus and Catalyst into discussing some alternative resolution.

45. The plea of fraudulent inducement is a defence typically seen in the United States pursuant to which a borrower will claim that it was induced to change its economic position in return for a promise by the lender that it will do something that the lender has no actual intention to do.

46. Such a plea was made by Smith, Levy and Jaross in connection with the Guarantee Actions against them in the United States courts. Smith was unsuccessful and his subsequent appeal was withdrawn in settlement of his case by payment of US\$10,000 to Callidus. Levy and Jaross were unsuccessful in all of the defences they asserted in the proceeding against them with the exception that the judge hearing the summary proceeding ordered a factual hearing into the fraudulent inducement issue. Before this happened, Levy and Jaross settled with Callidus and they acknowledged in the settlement that they would likely not have succeeded in their remaining plea of fraudulent inducement.

47. Similarly, Levitt and Molyneux made an exaggerated claim for \$150,000,000 against Callidus, essentially on the basis of purported fraud. When confronted with the fact that they had no such claim, they reduced the damages being sought from \$150,000,000 to \$1,000,000.

48. Baumann has made similar claims implying fraud against Callidus.



49. The actions of the Guarantors demonstrate a significant degree of coordination of their activities with a view to causing economic harm to Callidus and Catalyst.

50. The Guarantors that were primarily responsible for the coordination efforts were Levitt and to a lesser, but still important, degree, Baumann and McFarlane. While Levitt served as the overall “puppet master” of the Guarantors, Baumann also reached out to the other Guarantors and, as noted above, made the offer to fund the Levy and Jaross litigation in the amount of at least US\$250,000.

51. Catalyst and Callidus allege that funding did occur to support the Guarantors in the Guarantee Actions through several undisclosed “angels”, including the Wolfpack Conspirators. In many cases, the funders sought to keep their involvement secret through the use of non-disclosure agreements.

52. In addition to these coordinated activities, Levitt created an alter ego on Twitter known as “William Struth @Glasgow Skeptic”. William Struth was a former manager of the Glasgow Rangers football club who passed away in 1956. His image appears on the Twitter feed created by Levitt in order to mask his identity.

53. Through this alter ego, Levitt published false and defamatory statements intended to impugn Callidus and Catalyst. Essentially all of the tweets made through these aliases by Levitt are about Callidus and Catalyst and indicate a high degree of information that is not generally available to the public.

54. The use of an alias to publish false and defamatory statements about a target company is a frequent tool used by short sellers and other miscreants seeking to spread false news and manipulate market participants or other events.

55. Among the initial followers of the “William Struth @Glasgow Skeptic” Twitter feed were Brandon Moyse, a former employee of Catalyst and the subject of litigation with Catalyst, Anderson and Spears. Subsequent followers included McFarlane and Baumann.

**(E) THE WOLFPACK CONSPIRES TO HARM CALLIDUS AND CATALYST**

56. In or about late 2015, West Face retained Bruce Livesey (“Livesey”), an investigative journalist, to write an article regarding Catalyst’s principal, Newton Glassman, and Callidus/Catalyst. West Face intended to use the article to cause damage to Catalyst and Callidus and to launch a short attack.

57. During the course of Livesey’s “investigation”, he spoke to several of the Guarantors and learned that the Guarantors were coordinating their activities in response to the Guarantee Actions.

58. In or about late 2016, after learning of the Guarantor’s coordination from Livesey, West Face contacted the Guarantors to induce their participation in a wave of short attacks against Callidus.

59. Around the same time, West Face also encouraged another fund, Anson, to support its planned short attack. West Face disclosed to Anson the identity of the Guarantors and its knowledge of coordination between the Guarantors.

60. West Face also contacted Clarity, a firm that specializes in providing information to hedge funds, wealth managers and others in the financial services industry, and encouraged it to participate in the upcoming wave of short attacks against Callidus.

61. In or about December 2016, the Wolfpack Conspirators and the Guarantor Conspirators entered into a conspiracy with the intention to cause economic harm to Callidus and Catalyst (the “Conspiracy”).

62. For the Wolfpack Conspirators, the Conspiracy presented an opportunity to continue their short attacks against Callidus, which would allow them to make risk-free profits and, in the process, damage Catalyst and Callidus.

63. For the Guarantor Conspirators, the Conspiracy presented an opportunity to cause serious economic harm to Callidus and Catalyst through trying to frustrate the enforcement of substantial personal guarantees against each of them. Additionally, the Wolfpack Conspirators and others, the identity of whom the Plaintiffs are currently unaware, offered to (and did) fund the Guarantors’ defences in the Guarantee Actions.

64. The Wolfpack Conspirators and Guarantor Conspirators agreed that, in furtherance of the Conspiracy, they would execute the following plan of action: first, they spread false information through the Bay Street rumour mill. Second, certain of the Guarantor Conspirators filed false “whistleblower” complaints against Callidus through the Ontario Securities Commission (“OSC”) to “confirm” the rumours. Third, once the false whistleblower complaints were filed, the Conspirators worked together to leak the allegations contained in the complaints to the media in order to generate media interest. Fourth, the Conspirators, either directly or indirectly, took short positions in Callidus Shares. Fifth, the Conspirators timed a media report about the complaints to be released near the end of a trading day, which caused the price of Callidus Shares to rapidly decline. Finally, the Conspirators closed out their naked or other short positions at a substantial profit, all at the expense of Callidus’ market value and its shareholders.

65. The Conspiracy required very sophisticated coordination and perfect timing under the hand of the Wolfpack Conspirators. This pattern has been honed through repetition in other situations.

66. The Conspirators took steps to hide details of the Conspiracy in order to avoid detection and make it difficult to learn about the Conspiracy after the harm was done to the Plaintiffs. In particular, some of the Conspirators compelled at least some of the Guarantors to sign non-disclosure agreements to prevent them from disclosing information relating to the Conspiracy.

**(F) CONSPIRATORS ABUSE OSC'S WHISTLEBLOWER PROGRAM**

67. The first step of this very sophisticated attack required use of the OSC's "whistleblower" program. The "whistleblower" program, started in July 2016, permits persons with information about an alleged securities-related violation to report it to the OSC. The program offers anonymity to complainants and a financial reward in the event the complaint results in a penalty. The intent of the program is to encourage persons with information of alleged unfair, improper or fraudulent practices to come forward without fear of reprisal.

68. In furtherance of the Conspiracy, four of the Guarantor Conspirators, Baumann, McFarlane, Levitt (or Molyneux) and Clarity (or Anderson), agreed to file false and defamatory whistleblower complaints (the "Complaints") with the OSC relating to Callidus and Catalyst. These four "complainants" coordinated their complaints in order to portray different alleged issues with Callidus' continuous disclosure and matters relating to Catalyst to the OSC.

69. The "complainants" disclosed the Complaints, or the substance of the Complaints, to WSJ reporters in New York and Toronto. They did so knowing and intending that: (i) the Complaints were false; (ii) the fact and nature of the Complaints alleging fraud by Callidus and Catalyst would immediately be published and given widespread publicity; (iii) the publication of the existence and

substance of the Complaints (falsely) alleging fraud would injure Callidus and Catalyst; (iv) the effect of such widespread publicity would immediately cause a significant drop in the price of Callidus Shares; and (v) these steps, events and consequences would give them or their co-Conspirators an opportunity to engage in profitable short selling of Callidus Shares, all which was in furtherance of the Conspiracy.

70. Catalyst pleads and the fact is that the Complaints, which were filed in or around late 2016 and early 2017, also falsely alleged that Callidus and Catalyst were in the same line of business, which created a conflict of interest. In addition, the Complaints falsely alleged that Callidus and Catalyst had engaged in illegal accounting practices with respect to loans that related to the Guarantors.

71. The Complaints were defamatory. They falsely and maliciously state or imply that:

- (i) Callidus misled its shareholders;
- (ii) Callidus and Catalyst conduct business for nefarious purposes and do not have integrity in their business dealings; and
- (iii) Callidus and Catalyst are not reputable and do not conduct business in an ethical manner.

72. The sole motivation for filing the Complaints was in furtherance of the Conspiracy.

73. The intention of the Complaints was to enable the Conspirators to spread rumours within the financial industry that Callidus and Catalyst were the subject of *bona fide* OSC whistleblower complaints and subject to “investigations” by the OSC and the Toronto Police in order to undermine the public confidence in both firms. They were designed to feed the Bay Street rumour mill.

74. In fact, as pleaded herein, the Complaints were not *bona fide*. Rather, the Complaints were defamatory and part of the Conspiracy to harm Callidus and Catalyst and to enable the Conspirators to profit by an illegal and manipulative “short and distort” campaign against the Callidus Shares.

**(G) CONSPIRATORS ENDEAVOUR TO PUBLISH EXISTENCE OF THE COMPLAINTS AND OTHER ARTICLES CRITICAL OF CALLIDUS AND CATALYST**

75. The Wolfpack Conspirators and the Guarantor Conspirators undertook the initial steps of contacting journalists in an effort to leak the existence of the Complaints and other false allegations about Callidus and Catalyst.

76. Initially, the Wolfpack Conspirators and the Guarantor Conspirators engaged Livesey, who had a prior relationship with West Face, to write a negative story targeting Callidus, Catalyst and their principals. The Wolfpack Conspirators agreed to compensate Livesey for his drafting a negative story regarding Callidus, Catalyst and their principals.

77. Livesey drafted a story based on information fed to him by one or more of the Conspirators. The information that was provided to Livesey included information that formed the basis for the Complaints.

78. In furtherance of the Conspiracy, the Wolfpack Conspirators worked with Livesey to contact two different news outlets -- Canadian Business Magazine and the Globe and Mail newspaper -- with the goal of convincing these organizations to print Livesey’s freelance negative story about Callidus, Catalyst and their principals. However, these outlets chose not to publish the Livesey freelance story.

79. Having been frustrated by the failure of their first attempt, the Conspirators then sought to create another “story” that Callidus was under “investigation” by the authorities based on the submission of the false Complaints. In order to interest news outlets with this “story”, they disclosed the substance of the Complaints. The Conspirators intended to create the appearance of a credible news story about alleged nefarious practices at Callidus and Catalyst.

80. Callidus and Catalyst have positively denied any such “investigation”.

81. The Conspirators approached Reuters in 2017 with the existence of the Complaints and encouraged it to publish a negative story about Callidus and Catalyst. Reuters decided not to publish the story.

82. Prior to approaching Reuters, the Conspirators also sought to approach other reputable news organizations, whose identities are known only to them, in 2017, with the existence of the Complaints and encouraged those organizations to publish a negative story about Callidus and Catalyst. Those organizations also decided not to publish the story.

83. After being rejected by these credible media outlets, the Conspirators decided that they required a different approach to accomplish their goal of having a negative and false story published about Callidus and Catalyst.

84. As a result, the Conspirators contacted a different reporter, Copeland of the WSJ, with the intention of having Copeland write a story that would insinuate that Callidus and Catalyst were under “investigation” by both the OSC and the Toronto Police for fraud.

85. Copeland had a prior relationship with Anderson. Anderson recruited Copeland to join the Conspiracy and to write the story, which would assist the Conspirators to further the Conspiracy.

86. Copeland was directed by the Conspirators to “interview” McFarlane, who provided Copeland with details of his Complaint. Specifically, McFarlane detailed to Copeland that Callidus and Catalyst engaged in allegedly nefarious accounting practices concerning a loan that Callidus extended to XTG. McFarlane had filed a Complaint regarding these accounting practices but, in doing so, made false allegations that Callidus and Catalyst had engaged in false or illegal accounting practices with respect to XTG. Similar conversations occurred with Baumann, Molyneux, Levitt and Anderson.

87. During the course of writing the article requested by the Conspirators, Copeland contacted Callidus and Catalyst. Initially, Copeland refused to disclose to Callidus and Catalyst the subject of the article.

88. Despite Copeland’s refusal to disclose the subject of the article, Callidus and Catalyst agreed to meet with Copeland and his colleague, Jacquie McNish (“McNish”), to clarify the information and facts that Copeland indicated he would be relying on for the article.

89. The meeting between Copeland, McNish and representatives of Callidus and Catalyst took place on August 8, 2017. During that meeting, Callidus and Catalyst provided detailed information of the accounting surrounding XTG and confirmed that all of this information was available on the public record. This information flatly contradicted information that had been provided to Copeland and McNish by the Conspirators. Copeland disclosed that there had been four different whistleblower complaints to the OSC concerning Callidus and Catalyst, three of which had been filed by Guarantors.



90. During the meeting with Callidus and Catalyst, Copeland did not take any notes about any of the responses provided by Callidus and Catalyst including detailed explanations provided regarding the accounting practices surrounding XTG.

91. In fact, Callidus' and Catalyst's accounting for XTG was correct and properly disclosed on the public record.

92. Despite receiving information that refuted the basis for their story, and without making any further inquiries or conducting appropriate diligence, Copeland and McNish decided to publish it anyway. Copeland and McNish drafted the story in a manner that strongly implied and suggested that Catalyst and Callidus had engaged in fraudulent behavior concerning XTG, and that they were under "investigation" by the authorities for that and other matters. They also falsely reported that company representatives had declined to offer a comment.

93. On August 9, 2017, in furtherance of the Conspiracy, Copeland contacted the Conspirators before submitting the article for publication by the WSJ. The Conspirators encouraged Copeland to release the article near the end of the trading day on August 9. Copeland advised the Conspirators that he would do so and he did.

**(H) WEST FACE, ANSON AND JOHN DOES EXECUTE WAVE OF SHORT ATTACKS**

94. On or about August 9, 2017, in furtherance of the Conspiracy, the Wolfpack Conspirators and one or more of the John Doe Defendants took short positions in Callidus Shares, either directly or indirectly.

95. The Wolfpack Conspirators and one or more of the John Doe Defendants took the short positions through Langstaff and others, who are known to the Conspirators but unknown to the Plaintiffs.

96. Langstaff and others, who are known to the Conspirators but unknown to the Plaintiffs, had been previously recruited by the Wolfpack Conspirators in the Conspiracy. Langstaff, in furtherance of the Conspiracy, assisted the Wolfpack Conspirators and the John Doe Defendants to take short positions in Callidus Shares, either directly or indirectly.

97. In a typical "short", the investor borrows a company's stock from another investor, on the theory that the company's share value will decline over a period of time as described in paragraphs above.

98. On or about August 9, the Wolfpack Conspirators took "naked short" positions. This means that the Wolfpack Conspirators took a short position, betting that Callidus' stock price would decline, without actually borrowing the stock from another investor. In other words, in addition to betting that Callidus' stock price would decline, the Wolfpack Conspirators bet that they could purchase Callidus Shares to cover their short positions from the market directly without having to first borrow them.

99. This type of short is extremely risky because it requires the short selling investor to purchase the stock to cover his or her short position. The investor bets that he or she can purchase the stock for a lower price at the end of the day than it could have at the open of the market. This bet is very risky when shorting a stock that has a low trading volume, like Callidus, because the investor may not be able to purchase the stock to cover its short position, which leaves it exposed to serious losses if the share price increases. In the case of Callidus, the strategy is even more risky

because Catalyst and its related funds own more than 2/3rds of Callidus Shares and they are not made available for borrowing.

100. In addition to naked shorts, the Wolfpack Conspirators and the John Doe Defendants took other positions, the particulars of which are only known to them, to simulate a short position and profit from the damaging effects of the Article.

101. As at August 8, 2017, the average daily trading volume of Callidus's stock was (a) for the preceding 60 day period, 64,737 shares, (b) for the preceding 30 day period, 63,999 shares, and (c) for the preceding 10 day period, 48,224 shares.

102. The Wolfpack Conspirators, however, knew as a result of their activities that, at the end of the day on August 9, there would be sufficient trading volume to cover their short position.

103. At 3:29 pm EDT on August 9, 2017, Copeland's article was posted on thewallstreetjournal.com (the "Article"). The headline of the Article was "*Canadian Private-Equity Giant Accused by Whistleblowers of Fraud*". The Article was hidden behind a "pay wall", meaning that only those people who subscribe to the WSJ could see the full text of the Article. Those who were not subscribers only saw the headline and first paragraph of the Article, which read as follows:

TORONTO -- At least four individuals have filed whistleblower complaints with Canadian securities regulators alleging fraud at a multibillion-dollar investment firm and its publicly traded lending arm, according to people familiar with the matter and documents reviewed by The Wall Street Journal.

104. The headline and first paragraph of the Article contained the word "fraud" two separate times. The thrust of the Article was exactly what the Conspirators intended – it impressed upon

the general public that Callidus and Catalyst were under “investigation” by the authorities and that the “investigation” concerned fraudulent accounting transactions recorded by Callidus and Catalyst.

105. In addition to publication on [thewallstreetjournal.com](http://thewallstreetjournal.com), the Article was published on the Dow Jones Newswire and other means that caused immediate dissemination of the Article in its entirety, including the references to Catalyst and Callidus, to other market participants.

106. Just prior to the publication of the Article and the close of market at 4:00 pm EDT, the Article had the exact effect intended by the Wolfpack Conspirators. A significant number of those persons holding Callidus Shares divested them after 3:30 pm EDT which, in turn, led to a sharp decline in Callidus’ stock price. Due to stock market rules that prohibit Callidus from being in the market after 3:30pm through its Normal Course Issuer Bid, the broker administering that bid could not provide support for the stock price. These rules were known to the Conspirators.

107. Simultaneous with the publication of the Article at 3:29 p.m. and within the span of a single minute (3:29:00 – 3:29:59), the volume spiked with 13,000 shares traded, dropping the price from \$14.92 to \$14.73 on multiple individual trades. Significantly, in the preceding 30 minutes prior to 3:29 p.m., only 3,100 shares had traded in total.

108. Over the next 30 minutes (3:30 p.m. – 4:00 p.m., the close of the trading day), over 157,400 shares traded, dropping the price by the end of the trading day to \$13.41.

109. The timing of the sell-side trading activity reflected at 3:29 p.m. was designed to cause the share price to begin to decline to exaggerate the negative pressure anticipated to be caused by the Article. The timing was part of the scheme of the Wolfpack Conspirators and the John Doe

Defendants to ensure that the share price was dramatically reduced in the last 30 minutes of the trading day and to ensure a disorderly sell-off by panicked investors.

110. During the chaotic sell-off, the Wolfpack Conspirators and the John Doe Defendants were able to purchase Callidus Shares to cover their naked (and other) short positions. Because of the decline in Callidus' share price, they were able to significantly profit. The short paid out because the share price was lower when they eventually purchased the Callidus shares than it was when they secured the naked short (and other simulated short positions) at the beginning of the trading day.

111. The Conspirators' short and distort attack was successful – beginning on August 9, 2017 through August 14, 2017, Callidus' share price declined from \$15.36 to \$10.48 (reflecting a market capitalization loss of \$246,440,000 in less than 4 trading days).

**(I) ARTICLE AND COMPLAINTS ARE FALSE**

112. The Article, read as a whole, and the Complaints make false and defamatory statements (the "Defamatory Words") about Callidus and Catalyst to the effect that:

- (i) Callidus and Catalyst improperly "seize" companies to whom loans have been made;
- (ii) Callidus is engaged in illegal or improper accounting in relation to Callidus's loan portfolio;
- (iii) Callidus and Catalyst are engaged in criminal or fraudulent activities in relation to Callidus's loan portfolios;
- (iv) Callidus and Catalyst are under "investigation" for fraud or other illegal activity by the OSC and/or the Toronto Police Service;

- (v) Callidus and Catalyst are treating McFarlane unfairly or unjustly by pursuing him in a Guarantee Action;
- (vi) Callidus and Catalyst improperly file “multiple lawsuits” against borrowers
- (vii) Callidus and Catalyst dealt improperly or illegally in relation to the XTG loan;
- (viii) Callidus and Catalyst caused XTG to go into insolvency proceedings shortly after it purchased a loan from a US bank;
- (ix) Callidus and Catalyst intentionally caused Callidus to be “overpaid” for the XTG investment;
- (x) Callidus and Catalyst delayed or underreported potential losses in respect of the XTG investment;
- (xi) Callidus misled its shareholders or investors;
- (xii) Callidus and Catalyst conduct business for nefarious purposes and do not have integrity in their business dealings; and
- (xiii) Callidus and Catalyst are not reputable and do not conduct business in an ethical manner.

113. The Article as a whole, and the Defamatory Words, take on additional and further defamatory meanings and implications simply from inclusion in the same Article with each other. The plain meaning of the statements taken together is that the Plaintiffs act fraudulently with misstated financial statements and nefarious business practices. This is spurious, false and damaging to the Plaintiffs’ reputation and good will. The Plaintiffs intend to rely on the entirety of the Defamatory Words in support of this Action.

**(J) LIABILITY AND DAMAGES RELATED TO THE SHORT ATTACKS****Breaches of the *Securities Act***

114. The Defendants' unlawful short attack was intended to, and did, drive down the price of Callidus Shares to artificially low levels. Although the full details of the Defendants' conduct in this regard are known only to them, such conduct includes, without limitation:

- (a) Providing tip-offs and previews to selected investors of the Defendants' intention to disseminate false negative information into the market concerning Callidus, and of the planned timing of such dissemination;
- (b) The concerted accumulation of open short positions in advance of the publication of the Article so as to take advantage of market price declines when the Article was published;
- (c) Encouraging selected investors to do the same;
- (d) The Defendants' participation in and preparation of the Article with its false and misleading negative content concerning Callidus;
- (e) The Defendants' efforts to ensure publication of the Article; and
- (f) The Defendants' actions after the Article was published to continue the downward pressure on the price of Callidus Shares.

115. By participating in the short attack, each Defendant, directly or indirectly, engaged or participated in a course of conduct relating to the Callidus Shares that they knew and intended, or reasonably ought to have known, would result in or contribute to an artificially low price for the Callidus Shares, in violation of section 126.1 of the *Securities Act*.

116. Additionally, each Defendant, directly or indirectly, made a statement or statements that they knew or reasonably ought to have known was misleading or untrue, or that failed to state a fact that was necessary to make the statement not misleading, and that would reasonably be

expected to have a significant effect on the market price or value of the Callidus Shares, in violation of section 126.2 of the *Securities Act*.

117. The Defendants' breaches of the *Securities Act* are "unlawful acts" that, in part, form the basis of the civil conspiracy claim, as pleaded above.

**Causing loss by unlawful means/ intentional interference**

118. By participating in the publication of the Defamatory Words, the Defendants deceived third-party market participants into believing that Callidus and Catalyst were engaged in fraudulent activity and were subject to "investigation" by the OSC and the Toronto Police. The Defamatory Words were published to induce these market participants to sell their Callidus Shares, thereby lowering the Callidus share price for a prolonged period of time.

119. In so doing, the Defendants interfered with Callidus's and Catalyst's economic relations with its investors and caused harm to Callidus and Catalyst in the form of a lower price for the Callidus Shares.

120. In the alternative to damages to compensate Callidus and Catalyst for having caused them loss by unlawful means, the Defendants are liable to pay restitution, disgorgement or to otherwise account for any and all ill-gotten gains obtained as a result of their conduct.

**Personal Liability of the Individual Defendants**

121. The Individual Defendants completely dominated and controlled the corporate entities among the Defendants and caused them to engage in the tortious and unlawful conduct described above. In addition, the conduct alleged involved malice and dishonesty in which the Individual Defendants sought to use the corporate entities among the Defendants to obtain significant



personal financial benefits. As the Individual Defendants caused the corporate entities within the Defendants to direct wrongful things to be done, this is an appropriate case to pierce the corporate veil and impose personal liability on the Individual Defendants. In the alternative, the corporate entities among the Defendants acted as agents for the Individual Defendants, who ultimately profited from the unlawful conduct.

122. In addition, or in the further alternative, the defamatory and otherwise unlawful conduct that was carried out by the Individual Defendants constituted independent wrongful acts that were contrary to the best interests of the corporate entities among the Defendants. In these circumstances, they are personally liable for the damages they caused, separate and apart from the liability of the corporate entities.

#### **Liability of the John Doe Defendants**

123. John Doe Defendants 1-10 are persons or entities whose names are not known to the Plaintiffs, but who:

- (i) participated in the Conspiracy;
- (ii) were aware of the contents of the Article prior to its publication and broadcast;
- (iii) knew or ought to have known that the Article contained false and defamatory assertions about Callidus and Catalyst that would cause the market price of Callidus Shares to decline and otherwise cause damage to Callidus and Catalyst;
- (iv) decided thereby to take short positions in Callidus's Shares, and did so; and,

- (v) thereby stood to gain by covering their short positions after the Article was broadcast and the market price of Callidus's Shares had declined.

124. John Doe Defendants 1-10 are jointly and severally liable for the wrongs committed by the Defendants.

### **Unjust Enrichment**

125. The Defendants, including the John Doe Defendants 1-10, have been unjustly enriched or otherwise benefited through their participation in the unlawful short selling attack. Specifically: i) the Defendants received a benefit in the form of profit they made as a result of the short selling scheme; ii) the benefit was at Callidus's expense, as it corresponded to a decline in Callidus's market capitalization, which constitutes an injury to Callidus; and iii) there was no juristic reason for the enrichment.

126. The Defendants are liable to the Plaintiffs as a result of their unjust enrichment and should be required to disgorge their unjust gains, including their profits from selling the shares of Callidus, and to pay over such gains to the Plaintiffs. All such unjust gains should similarly be imposed with a constructive trust, effective as of August 9, 2017, pending further order of this Court.

127. In addition to the damages claimed above, as a result of the Defendants' conduct, the Plaintiffs have suffered, and continue to suffer, injury to their character and good reputation, which has further resulted in great embarrassment, loss of profits and loss of opportunity. The Plaintiffs are entitled to damages for reputational harm, disruption of their business, services and affairs, its loss of corporate opportunities, costs of investigating and correcting the false and defamatory statements, and/ or any other matter initiated resulting from the false and defamatory information, and other consequential damages resulting from the Defendants' scheme and market manipulation.

**Punitive Damages**

128. The Plaintiffs claim that an award of punitive damages is appropriate, having regard to the high-handed, wilful, wanton, reckless, contemptuous and contumelious conduct of the Defendants. Accordingly, the Defendants are liable, on a joint and several basis, to the Plaintiffs for punitive damages.

129. The Plaintiffs are entitled to damages equal to the cost of the “investigation” of the Defendants’ misconduct undertaken by Callidus and Catalyst which resulted in sworn statements, discovery of emails and other facts and evidence which form the basis on which this Action is based.

**(K) SERVICE EX JURIS**

130. The Defendants’ actions include torts committed in Ontario. At all material times, the Defendants carried on business in Ontario.

131. The Plaintiffs plead and rely upon Rule 17.02 (g) and (p) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194.

132. The Plaintiffs propose that this action be tried at Toronto.

November 7, 2017

**LAX O’SULLIVAN LISUS GOTTLIEB LLP**  
Counsel  
Suite 2750, 145 King Street West  
Toronto ON M5H 1J8

**Rocco DiPucchio** LSUC#: 38185I  
rdipucchio@counsel-toronto.com  
Tel: 416 598 2268  
**Bradley Vermeersch** LSUC#: 69004K  
bvermeersch@counsel-toronto.com  
Tel: 416 646 7997  
Fax: 416 598 3730

Lawyers for the Plaintiffs

THE CATALYST CAPITAL GROUP INC. et al.  
Plaintiffs

-and-

WEST FACE CAPITAL INC. et al.  
Defendants

Court File No.

QCM-5160916

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**TORONTO**

**STATEMENT OF CLAIM**

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
Counsel  
Suite 2750, 145 King Street West  
Toronto ON M5H 1J8

**Rocco DiPucchio** LSUC#: 38185I  
rdipucchio@counsel-toronto.com  
Tel: 416 598 2268

**Bradley Vermeersch** LSUC#: 69004K  
bvermeersch@counsel-toronto.com  
Tel: 416 646 7997  
Fax: 416 598 3730

Lawyers for the Plaintiffs

This is Exhibit "O" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

# BLACK CUBE®

A select group of veterans from the Israeli elite intelligence units that specialises in tailored solutions to complex business and litigation challenges

# Creative Intelligence

Tailor-made solutions based on high-quality intelligence, cutting-edge technology, unique expertise and out-of-the-box thinking.





## 1 **Cutting-Edge Analytical Skills**

Cutting-edge analytical and research skills are at the heart of every solid intelligence project. Highly experienced and trained in Israel's elite military and governmental intelligence units, the Black Cube team uses creative and inventive thinking to connect the dots.

## 2 **Harvesting in the Cyber World**

Black Cube has developed innovative tools and methodologies to handle massive amounts of data. We unearth useful information for our clients and map all potential sources of interest by trawling the deep web and harvesting information from typically inaccessible areas of the Internet such as the Dark Net.

## 3 **Languages & Cultures**

With its multi-lingual background, including more than 30 native speakers of different languages, and a unique understanding of many local cultures, the team is uniquely skilled to operate in Europe, the Middle East, the Former Soviet Union, Latin America and many other regions, while handling various cultural challenges. Black Cube has already operated successfully in over 70 countries.

## 4 **Extensive Database Access**



4

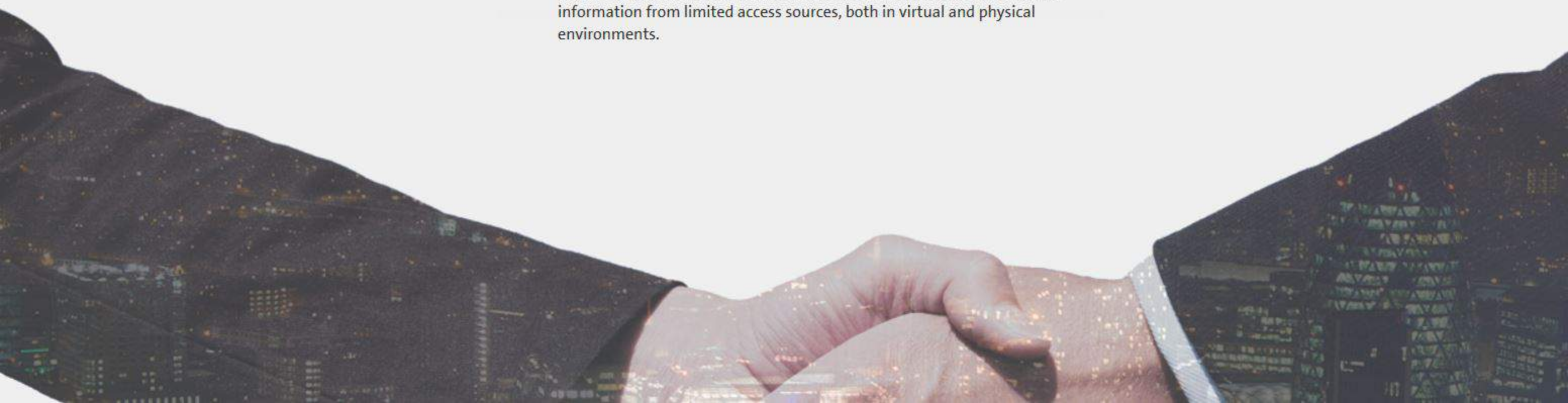
## Extensive Database Access

We have unique experience accessing and analysing information on various platforms, including more than 240 limited-access financial, commercial, regulatory, legal and technical databases, gaining lawful access to new resources in accordance with our clients' needs.

5

## Pro-Active Approach

We overcome limited-access sources by taking a can-do, dynamic approach. We have developed several unique methods, especially in the social engineering field, that allow us to move freely in and to extract valuable information from limited access sources, both in virtual and physical environments.



# Our Recipe for Success

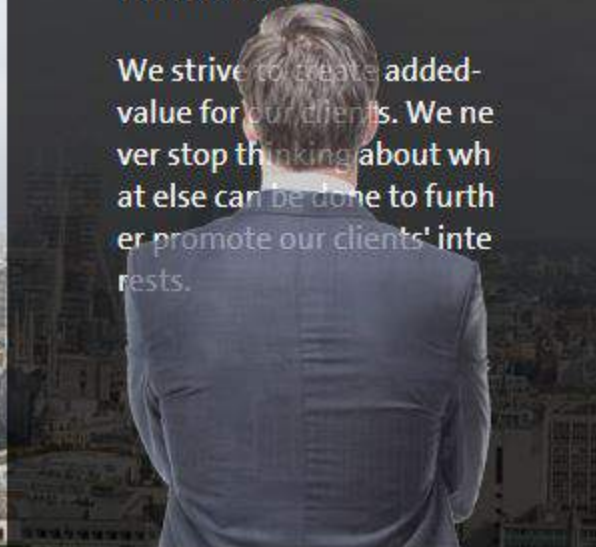
137

## Resourcefulness

We commit ourselves to devising "out of the box" solutions. We believe that any goal can be reached through creativity and an open mind.

## Enthusiasm

We strive to create added-value for our clients. We never stop thinking about what else can be done to further promote our clients' interests.





Copyright © 2010  
B.C. Strategy Ltd. (Israel).  
Rights Reserved.  
info@blackcube.com

All

**TEL-AVIV**  
3 Mazeh st.  
+972 (0)3 5755 666

## Confidentiality

**LONDON**

CityPoint, 1 Ropemaker st.  
+44 (0)203 1515 666

We see ourselves as our clients' confidants, and staunchly believe that we can achieve our goals only through complete co-operation with, and the trust of, our clients.

## Integrity

We maintain total transparency with our clients. We always provide details of our work and explain our actions, and we always operate in full coordination with our clients.

**PARIS**

10 Place Vendôme  
+33 (0)97 0733 666

## Professionalism

Professionalism is the key tone of our success. We select the best experts in each field to ensure that the service we provide is second to none.

## Efficiency

We work swiftly and efficiently to ensure timely product delivery in the format most appropriate for the client.

# Advisory Board

- **The late Meir Dagan**

- Giora Eiland
- Asher Tishler
- Paul Reyniers
- E.J.
- Golan Malka
- Itiel Maayan
- Mati Leshem



Major General (Ret.)

## Giora Eiland

Following an illustrious career in the Israeli army, Mr Eiland headed the IDF's Operation Branch, IDF's Planning Branch and eventually Israel's National Security Council. These positions placed him in the top security and intelligence echelon within Israel and internationally. He leverages his experience and international relationships built over decades in the security, intelligence and strategic planning fields in his ongoing consultancy to governments, multinational corporations and as part of large-scale arbitrations.



Honorary President

## The late Meir Dagan

As one of the most illustrious and successful directors of the Mossad (2002-2012), a post to which he was appointed by Prime Minister Ariel Sharon, Mr Dagan cemented his position as a leading thinker and innovator in the intelligence community. His strategic approach, leadership, operational skills and unique mind-set provided for his prior successes in his military career, as counter terrorism and national security advisor to the Prime Minister, and saw him awarded the medal of Gallantry in 1973.

# Advisory Board

- The late Meir Dagan
- Giora Eiland
- **Asher Tishler**
- Paul Reyniers
- E.J.
- Golan Malka
- Itiel Maayan
- Mati Leshem



Professor

**Asher Tishler**

Prof. Tishler currently serves as the President of the College of Management Academic Studies and was a faculty member of Tel Aviv University's Faculty of Management from 1976 to 2014. His main research interests are applied microeconomics, models of research and development, energy economics and defense issues relating to homeland security. Prof. Tishler is a member of several energy and defense forums, and serves as an advisor to the IDF, Ministry of Defense, and Ministry of National Infrastructures, banks and industrial, high-tech and service companies in Israel and abroad.



# Advisory Board

142

- The late Meir Dagan
- Giora Eiland
- **Asher Tishler**
- Paul Reyniers
- E.J.
- Golan Malka
- Itiel Maayan
- Mati Leshem



Professor

**Asher Tishler**

Prof. Tishler currently serves as the President of the College of Management Academic Studies and was a faculty member of Tel Aviv University's Faculty of Management from 1976 to 2014. His main research interests are applied microeconomics, models of research and development, energy economics and defense issues relating to homeland security. Prof. Tishler is a member of several energy and defense forums, and serves as an advisor to the IDF, Ministry of Defense, and Ministry of National Infrastructures, banks and industrial, high-tech and service companies in Israel and abroad.



Mr.

**Paul Reyniers**

Mr Reyniers developed the European financial services practice at A.T. Kearney and led their global capital markets operations, technology and capital management competency. He established the global financial markets practice at Price Waterhouse and the global risk competency at Coopers & Lybrand. Mr Reyniers is the author of GARP (Generally Accepted Risk Principles) as well as various other publications on strategy, finance, and risk management, and has led engagements for many of the world's largest institutions.

# Advisory Board

- The late Meir Dagan
- Giora Eiland
- Asher Tishler
- Paul Reyniers
- **E.J.**
- Golan Malka
- Hiel Maayan
- Mati Leshem



Lieutenant Colonel (res.)

**E.J.**

E.J. has over 25 years of experience in the IDF intelligence forces, most recently as head of the elite Humint unit, in charge of some of the most successful operations in recent years. E.J. has climbed the ladder through all the different roles in the Humint operations unit, and was responsible for many successful recruits. Since retiring from the IDF, E.J. has served as the director of corporate affairs in one of the biggest industry groups in Israel, taking a role in the international and specifically European activity of this group.

institutions.

143



Lieutenant Colonel (res.)

**Golan Malka**

Mr Malka has recently completed his tenure as the VP of Marketing and Business Development at NICE Systems' Intelligence and Cyber Division. Over the past fifteen years, he has held senior management positions at several major technology companies, including Azimuth and Elbit, leading large-scale business activity for both corporate and government clients in the defense, homeland security, intelligence and cyber spheres.



- Asher Tishler
- Paul Reyniers
- E.J.
- Golan Malka
- **Itiel Maayan**
- Mati Leshem



Mr.

## Itiel Maayan

Mr Maayan is one of the leading C.T.O.s in Israel, and lectures in most of Israel's professional conventions. An expert on all aspects of IT and cyber, he currently leads Mobile Marketing at Verifone and is a member of both Microsoft's consulting staff and Customer Advisory Board. Mr Maayan was the lead member of the team that transformed Tel-Aviv-Jaffa into one of the world's leading municipalities in the field of technology. His signature is his unique ability to efficiently manage large-scale projects that integrate multiple technological components.



Brigadier General (res.)

## Mati Leshem

Mati Leshem, winner of the Israel Defense Award, has over 27 years of experience in the IDF in a variety of key roles. During his IDF career, he commanded various spearhead units, and was responsible for initiating and implementing in-depth organizational changes in the IDF, as well as for redesigning methods of operational activity, strategic processes and unit structures. Since retiring from the IDF, Mati Leshem has served in several key roles in the Israeli high-tech industry.

# Litigation Support

Finding leverage in complex multi jurisdiction litigations by identifying conflicts, corruption or fraud

"Black Cube builds a body of evidence focused on a particular lawsuit, corporate attack or threat, and is known for its tenacity"

FT

26 March 2015

One of our primary services is litigation and conflict support. We apply the full scope of our intelligence, information collection, analysis and operational skills to assist our clients in promoting their business and legal interests. We help our clients adopt a pro-active approach to litigation and conflict resolution by providing intelligence that can be later used as evidence in court, while conducting closed room negotiations, or with any other third party or authority. Information of this type critically affects the strategy and advice that our clients receive from their lawyers and other advisers.

## Evidence Collection and Analysis

We offer active involvement in our clients' efforts to establish the evidential foundation of their cases. Using unique collection skills, we work together with our clients' legal teams, providing them with relevant materials and reports on specific areas of interest to help the legal team promote our clients' interests. Evidence collection also includes identifying and locating potential witnesses, and assistance in assessing the strength of adversaries' evidence and asset structure.

## Asset Tracing and Enforcement Support

Grounded in Black Cube's in-depth familiarity with relevant legislation and court procedures related to asset recovery, our asset tracing and enforcement support services produce valuable intelligence and due-diligence at a standard far beyond other, currently available, services. Black Cube has developed unique expertise as asset recovery practitioners, and we can function in different jurisdictions under different legal systems, extending all the way to analysing offshore companies and trusts.

## Analysis of Interests and Conflicts

Understanding your opponent is a key element when building a strategy for a complex situation. Black Cube supports litigation processes by identifying your opponents' vulnerabilities, interests, priorities and strategy. Using our unique intelligence methodology, Black Cube enhances its clients' decision making by providing otherwise unobtainable information. We help our clients identify their adversaries' sensitive points or vulnerabilities, or evidence of their misconduct.

## Identifying Misconduct & Developing Leverage

"Black Cube builds a body of evidence focused on a particular lawsuit, corporate attack or threat, and is known for its tenacity"

FT

26 March 2015

## Identifying Misconduct & Developing Leverage

Drawing on our experience of fraud investigation and analysing complex (often offshore) company structures, Black Cube identify instances of criminality in our clients' counterparties' operations, such as VAT fraud, involvement with organised crime or sanctions violations. We then work closely with our clients in order to ensure that the information is used to maximum effect, be it by appealing to regulatory authorities, or by bringing criminal or civil actions in cases such as fraud, bribery or terror financing.

146



# Corporate Intelligence

In-depth intelligence and due diligence for highly competitive and complex business situations

In the rapidly changing environment of today's business arena, exclusive knowledge constitutes a significant business advantage and a game-changing tool. The ability to obtain timely, relevant information, and to draw the correct conclusions from its analysis, is essential for different aspects of business development and performance, such as keeping track with main competitors, performing M&As and big investments or forming strategic partnerships. Obtaining this edge requires superior intelligence skills and a well thought out, and carefully executed, research plan.

## Competitive Intelligence

Black Cube specialises in gathering and analysing intelligence that enables our clients to better understand their business environment, enhance their ability to identify business risks and opportunities, and leverage their competitive edge. Our competitive intelligence service is based on cutting-edge methodology that includes high-end information gathering and research capabilities, bolstered by solid technical and legal acuity.

Competitive intelligence is delivered in the form of a graphic plot of the key players in the target market, accompanied by detailed information on each competitor's procedures, practices, R&D plans, products and services, and unrevealed usable leverage points of conflicts, corruption, fraud or bribery.

Any business that wishes to develop and grow requires a steady stream of information on potential markets and opportunities. Black Cube offers thorough and comprehensive market research and analysis services that offer insights to companies looking to expand and grow. At Black Cube, we are uniquely capable of operating in any language and culture, in our home markets and specifically in Europe, the Middle-East, Former Soviet Union and Latin American markets. Additionally, we are able to provide in-depth information and analysis regardless of geographic boundaries.

Black Cube identifies potential unique business opportunities, locates key players and centres of excellence, and creates detailed target profiles that assist our clients in executing well-informed business moves.

### Deep Level Due Diligence

Decisions involving significant business moves, large-scale acquisitions, new partnerships, and expanding operations into new, and foreign, countries inevitably involve trade-offs between risks and benefits. Black Cube's Deep-Level Due Diligence service supports clients' risk management and helps minimise such business risks by providing comprehensive assessments of business targets. A distinct tool to financial and legal due diligence, Black Cube's Deep-Level Due Diligence delves into the people behind the target company; their motives and interests, past behavior in other roles, and any other information that could reveal behaviour contrary to the strategy of Black Cube's clients.

"Black Cube's investigation raises serious suspicion of financial fraud through a pyramid scheme, as well as many other questions about taxes and VAT fraud"

**GLOBES**

4 February 2014

"Black Cube's investigation raises serious suspicion of financial fraud through a pyramid scheme, as well as many other questions about taxes and VAT fraud"

**GLOBES**  
GLOBES

4 February 2014

Our unique Deep-Level Due Diligence methodology produces a broad and detailed overview of the designated target, taking into account a multitude of financial, marketing, legal, and technical aspects.

## Compliance Reports

Black Cube produces compliance reports on potential business partners, suppliers, distributors, and re-sellers (individuals and companies), supporting clients' compliance efforts in accordance with the requirements of the Bribery Act, Fraud Act, Proceeds of Crime Act, and other relevant legislation.

We help our clients ensure full compliance with these laws by inspecting both legal and financial records and procedures of designated partners, in order to confirm their compliance with the requirements defined in relevant legislation, such as due-diligence reporting and risk assessment procedures. Looking into 240 unique databases, our compliance services identify involvement of existing and potential business associates in sanctions violations, money laundering incidents, terror financing and any organised crime involvement.



# Investment Intelligence

An accurate assessment of the potential for growth or risk requires looking beneath the surface of reported events

Black Cube offers fast and accurate intelligence and analysis services for hedge funds, private equity firms and large investment houses who require investigative research on their investment opportunities.

The result is a highly detailed report, carefully crafted to drive decisive trading and investment action. Whether our clients seek to identify fraud or severe mismanagement in a company with a view to taking a short position, or to decipher the true intrinsic makeup and value of a potential long position, we provide the actionable intelligence to fill the gaps in their own analysis.

Leveraging our unique experience in Deep Web and real-world human intelligence, Black Cube's Deep-Level Due Diligence methodology produces a broad and thorough overview of the designated target, taking into account a multitude of financial, legal and technical factors. Our extensive intelligence background and robust compliance systems and manuals enable us to create a truly comprehensive analysis that supports our clients' decision-making and gives them a significant advantage, while scrupulously remaining within legal and compliance boundaries.

## Strategy & Leadership Mapping

We provide in depth research and detailed profiles of key leadership members such as executives and members of the board of directors, including their interests, motivations, strategies and personal circumstances. This has become an essential tool to help provide a detailed account of the true driving force behind companies. Furthermore, Black Cube provides essential intelligence to support different investment positions, in order to support the client's trading strategies and prior to major financial actions such as IPOs.

"Black Cube's investigators asked the judge if it is possible to ensure the results of an arbitration, and taped him bragging about his ability to assure 'amazing results' for a given party"

Bloomberg

14 April 2016

## Internal Fraud and Misrepresentation

151

From financial fraud to conflicted managerial interests, there are many events that can topple a seemingly stable company. Oftentimes, in an attempt to cover up losses or mislead investors, companies will misrepresent themselves publicly. With our wide variety of information collection methodologies, from cyber intelligence to social engineering, deep forensic accounting skills and the linguistic and cultural knowledge to operate in any business jurisdiction, Black Cube is uniquely positioned to discover the truth behind company communications anywhere in the world, from financial statements to production reports.

## Asset Valuation and Impending Dissolutions

Our asset identification and valuation services produce valuable intelligence and due-diligence at a standard far beyond other currently available services, whether a client is seeking to understand a company's base asset structure, wishes to understand the value that will be released in an impending company break-up — or even understand the probability that such a break-up will occur. We operate in various jurisdictions under diverse legal systems, covering analysis of offshore companies and trusts.



"Black Cube's investigators asked the judge if it is possible to ensure the results of an arbitration, and taped him bragging about his ability to assure 'amazing results' for a given party"

Bloomberg

14 April 2016

## Forthcoming Market Changes

152

One can only derive so much from a company's own published information; careful observation and analysis of both general market information and geopolitical intelligence are required to accurately appreciate a company's true value. Beyond intelligence on the target company's competitors, we also assess the broader factors that influence a company's value. For example, the impact of a possible peace treaty on an arms manufacturer, or impending government regulation on a medical device firm.

Copyright © 2010

B.C. Strategy Ltd. (Israel).

Rights Reserved.

info@blackcube.com

All

### TEL-AVIV

3 Mazeh st.

+972 (0)3 5755 666

### LONDON

CityPoint, 1 Ropemaker st.

+44 (0)203 1515 666

### PARIS

10 Place Vendôme

+33 (0)97 0733 666

# Cyber Intelligence

Providing an active layer of defence against cyber attacks, data leakage and other threats to organisations

"Black Cube operatives [...] infiltrated a group of cyber thieves that had been circling the bank, thus helping thwart an attack"

WSJ

15 September 2015

Whilst robust defence systems are an essential foundation for any cyber-security plan, it is necessary, in today's fast-moving world of technology and diverse cyber-threats, to expand the perimeter of security in order to sufficiently safeguard your systems and data. Possession of up-to-date intelligence that allows you to know what to expect in case of an attack, and that provides an ample forewarning to prepare, is the key to an effective response system. Furthermore, swift response and forensic investigation following a cyber-security breach can reduce exposure, recover data and allow for a swift and appropriate recalibration of security measures.

## Uncovering Negative Campaigns

Oftentimes, Black Cube's clients find their reputation under online attack from adversaries operating anonymously or under an assumed identity. The statements made virtually in blogs, news article comments and on social media can have a very real effect on the reputation of an individual or company. Black Cube unmasks negative campaigns aimed at slandering its clients, including the identities, biases, motivations and conflicts of those making false statements, enabling the clients to take steps to silence them.

## Data Leakage Assessment

Perhaps the greatest risk of data leakage comes from a company's own employees, be it intentional or accidental. Black Cube works with the client to identify employees that have the potential to leak, or have leaked, information through social media or other, inadvertent, methods of distribution. Coupled with an assessment of employee satisfaction in the highest risk positions, such as IT security officers, this provides the client with a strategic map for dealing with potential data leakage, enabling a swift and appropriate response.

## Active Threat Intelligence

As a premium service, clients with greater security needs may retain Black Cube to be their 'eyes and ears' in the world of cyber-crime. By assigning teams that actively engage with the hacker community to keep a 24/7 watch for direct threats to a specific client, Black Cube is able to create a 360 degree picture of threats to the client's infrastructure. Using their innovative methodology of obtaining information, Black Cube personnel provide real-time bulletins of any critical threat information that is relevant to the client.

"Black Cube operatives [...] infiltrated a group of cyber thieves that had been circling the bank, thus helping thwart an attack"

WSJ

15 September 2015

## Cyber Forensics

154

In today's digital age, the provenance and authenticity of computerised information can be a critical factor in deciding the facts of a case. Black Cube's cyber forensics team delves deep into metadata – the DNA of digital information – in order to show when documents have been altered or manipulated, provide clues as to the existence of further information that could be discoverable, and establish timelines and patterns of behavior. Furthermore, Black Cube's cyber forensics experts have the necessary experience and credentials to act as expert witnesses when required.

Copyright © 2010

S.C. Strategy Ltd. (Israel).

Rights Reserved.

info@blackcube.com

All

### TEL-AVIV

3 Mazei st.

+972 (0)3 5755 666

### LONDON

CityPoint, 1 Ropemaker st.

+44 (0)203 1515 666

### PARIS

10 Place Vendôme

+33 (0)97 0733 666



# Sectors We Serve

"Black Cube demonstrated that a key rival orchestrated a negative media campaign against its client"

**HAARETZ**

2 May 2016

## Law firms

Law firms increasingly rely on investigative intelligence and forensic expertise to assist in complex multi jurisdiction litigations. Black Cube has vast experience in providing litigation support to prestigious international law firms and chambers. Our impressive track record includes multinational asset tracing and recovery, fraud detection, anti-money laundering investigation, exposure of corruption in governmental and financial institutions, and critical assistance to numerous civil and criminal litigations.

## Financial Institutions

In today's global economy, success depends on moving capital through a complex structure of corporations and transactions. This complex structure creates many regulatory obstacles, often compromising a company's ability to perform to its full financial potential. Black Cube's deep understanding of asset tracing and recovery, fraud detection and analysis, anti-money laundering compliance and multi-lateral sanctions compliance, combined with years-long experience in governmental intelligence services, help financial institutions accurately assess risk, and maintain a vigilant watch over the dynamics of a market or an economy.



## Public Sector

Public sector bodies around the world have a constant need for intelligence to operate their financial, homeland security and political functions. As a civilian intelligence firm composed of veterans of elite intelligence units, Black Cube combines a deep understanding of the capabilities of the public sector with the resourcefulness and creativity of the private sector. The company offers a variety of intelligence services, and operates as an elite team to tackle complex situations and supply relevant, and mission-critical, intelligence in a timely manner.



## Multinational Corporations

Corporations need detailed and varied intelligence to compete effectively in today's markets. Such intelligence includes market research, internal monitoring, analysis of geopolitical risks, vendor and partner due-diligence, competitor analysis and political risk assessment, all coupled with an understanding of real-time fluctuations in such information. Black Cube provides the full range of intelligence services a corporation requires and has built a strong track record of cooperation with corporations worldwide.

## High Net-Worth Individuals

There are a multitude of business challenges faced by today's high net worth individuals, such as commercial litigation, tax planning, reputational management and political persecution. From ensuring that due diligence is performed before a personal investment, to assisting with high-stakes personal litigation, Black Cube provides a broad range of services to individual clients, along with the bespoke level of project structure and service that such clients require. By leveraging our extensive experience in the corporate world, Black Cube ensures that the client's personal interests are protected as fully as their professional ones.



# Case Studies

Black Cube has already operated successfully in over 70 countries



## Competitive Intelligence Research for a Multi-National Corporate

EU, Australia

A multi-national medical device company wished to understand its key competitor's pricing and external funding sources...



## Identification of Bribery During Multi-Billion-Euro Arbitration

Italy, UK, US

Black Cubes client was a multi-billion-dollar American firm that entered the Italian market with the assistance...



## Investigating into Detrimental Financial Campaign

UK, France, Spain, Germany, Brazil, Israel

Following a harsh negative campaign in the financial industry that eventually led to a down-grade by international...



## Exposing Bribery in a €430m Dispute

Italy, Albania, United Kingdom, Austria, Netherlands, Belgium

Black Cube's client was an Italian multi-billion corporation specialising in the production and distribution of energy...



## Employee Data Leakage

UK, Russia

Black Cube was contracted to investigate recent data leakage by the client's employees...



## Deep Due Diligence

Germany, Austria, UK, Spain, Israel

Black Cube were contracted to prove the unsuitability of one of the individuals behind a hostile takeover attempt...



# Log In

---

1	2	3
4	5	6
7	8	9
	0	

# Contact Us

Name	<small>Required</small>
Email	<small>Required</small>
Phone	
Organization	
Message	

Send

**Tel-Aviv**  
3 Mazeh Street  
+972 (0)3 5755 666

**London**  
CityPoint, 1 Ropemaker Street  
+44 (0)203 1515 666

**Paris**  
10 Place Vendôme  
+33 (0)97 0733 666

[info@blackcube.com](mailto:info@blackcube.com)

This is Exhibit "P" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

THE  
NEW YORKER

NEWS DESK

## HARVEY WEINSTEIN'S ARMY OF SPIES

*The film executive hired private investigators, including ex-Mossad agents, to track actresses and journalists.*

By Ronan Farrow November 6, 2017

In the fall of 2016, Harvey Weinstein set out to suppress allegations that he had sexually harassed or assaulted numerous women. He began to hire private security agencies to collect information on the women and the journalists trying to expose the allegations. According to dozens of pages of documents, and seven people directly involved in the effort, the firms that Weinstein hired included Kroll, which is one of the world's largest corporate-intelligence companies, and Black Cube, an enterprise run largely by former officers of Mossad and other Israeli intelligence agencies. Black Cube, which has branches in Tel Aviv, London, and Paris, offers its clients the skills of operatives "highly experienced and trained in Israel's elite military and governmental intelligence units," according to its literature.

Two private investigators from Black Cube, using false identities, met with the actress Rose McGowan, who eventually publicly accused Weinstein of rape, to extract information from her. One of the investigators pretended to be a women's-rights advocate and secretly recorded at least four meetings with McGowan. The same operative, using a different false identity and implying that she had an allegation against Weinstein, met twice with a journalist to find out which women were talking to the press. In other cases, journalists directed by Weinstein or the private investigators interviewed women and reported back the details.

The explicit goal of the investigations, laid out in one contract with Black Cube, signed in July, was to stop the publication of the abuse allegations against Weinstein that eventually emerged in the *New York Times* and *The New Yorker*. Over the course of a year, Weinstein had the agencies “target,” or collect information on, dozens of individuals, and compile psychological profiles that sometimes focussed on their personal or sexual histories. Weinstein monitored the progress of the investigations personally. He also enlisted former employees from his film enterprises to join in the effort, collecting names and placing calls that, according to some sources who received them, felt intimidating.

In some cases, the investigative effort was run through Weinstein's lawyers, including David Boies, a celebrated attorney who represented Al Gore in the 2000 Presidential-election dispute and argued for marriage equality before the U.S. Supreme Court. Boies personally signed the contract directing Black Cube to attempt to uncover information that would stop the publication of a *Times* story about Weinstein's abuses, while his firm was also representing the *Times*, including in a libel case.

Boies confirmed that his firm contracted with and paid two of the agencies and that investigators from one of them sent him reports, which were then passed on to Weinstein. He said that he did not select the firms or direct the investigators' work. He also denied that the work regarding the *Times* story represented a conflict of interest. Boies said that his firm's involvement with the investigators was a mistake. “We should not have been contracting with and paying investigators that we did not select and direct,” he told me. “At the time, it seemed a reasonable accommodation for a client, but it was not thought through, and that was my mistake. It was a mistake at the time.”

Techniques like the ones used by the agencies on Weinstein's behalf are almost always kept secret, and, because such relationships are often run through law firms, the investigations are theoretically protected by attorney-client privilege, which could prevent them from being disclosed in court. The

documents and sources reveal the tools and tactics available to powerful individuals to suppress negative stories and, in some cases, forestall criminal investigations.

In a statement, Weinstein's spokesperson, Sallie Hofmeister, said, "It is a fiction to suggest that any individuals were targeted or suppressed at any time."

In May, 2017, McGowan received an e-mail from a literary agency introducing her to a woman who identified herself as Diana Filip, the deputy head of sustainable and responsible investments at Reuben Capital Partners, a London-based wealth-management firm. Filip told McGowan that she was launching an initiative to combat discrimination against women in the workplace, and asked McGowan, a vocal women's-rights advocate, to speak at a gala kickoff event later that year. Filip offered McGowan a fee of sixty thousand dollars. "I understand that we have a lot in common," Filip wrote to McGowan before their first meeting, in May, at the Peninsula Hotel in Beverly Hills. Filip had a U.K. cell-phone number, and she spoke with what McGowan took to be a German accent. Over the following months, the two women met at least three more times at hotel bars in Los Angeles and New York and other locations. "I took her to the Venice boardwalk and we had ice cream while we strolled," McGowan told me, adding that Filip was "very kind." The two talked at length about issues relating to women's empowerment. Filip also repeatedly told McGowan that she wanted to make a significant investment in McGowan's production company.

Filip was persistent. In one e-mail, she suggested meeting in Los Angeles and then, when McGowan said she would be in New York, Filip said she could meet there just as easily. She also began pressing McGowan for information. In a conversation in July, McGowan revealed to Filip that she had spoken to me as part of my reporting on Weinstein. A week later, I received an e-mail from Filip asking for a meeting and suggesting that I join her campaign to end professional discrimination against women. "I am very impressed with your

work as a male advocate for gender equality, and believe that you would make an invaluable addition to our activities,” she wrote, using her wealth-management firm’s e-mail address. Unsure of who she was, I did not respond.

Filip continued to meet with McGowan. In one meeting in September, Filip was joined by another Black Cube operative, who used the name Paul and claimed to be a colleague at Reuben Capital Partners. The goal, according to two sources with knowledge of the effort, was to pass McGowan to another operative to extract more information. On October 10th, the day *The New Yorker* published my story about Weinstein, Filip reached out to McGowan in an e-mail. “Hi Love,” she wrote. “How are you feeling? . . . Just wanted to tell you how brave I think you are.” She signed off with an “xx.” Filip e-mailed McGowan as recently as October 23rd.

In fact, “Diana Filip” was an alias for a former officer in the Israeli Defense Forces who originally hailed from Eastern Europe and was working for Black Cube, according to three individuals with knowledge of the situation. When I sent McGowan photos of the Black Cube agent, she recognized her instantly. “Oh my God,” she wrote back. “Reuben Capital. Diana Filip. No fucking way.”

Ben Wallace, a reporter at *New York* who was pursuing a story on Weinstein, said that the same woman met with him twice last fall. She identified herself only as Anna and suggested that she had an allegation against Weinstein. When I presented Wallace with the same photographs of Black Cube’s undercover operative, Wallace recalled her vividly. “That’s her,” he said. Like McGowan, Wallace said that the woman had what he assumed to be a German accent, as well as a U.K. cell-phone number. Wallace told me that Anna first contacted him on October 28, 2016, when he had been working on the Weinstein story for about a month and a half. Anna declined to disclose who had given her Wallace’s information. Over the course of the two meetings, Wallace grew increasingly suspicious of her motives. Anna seemed to be pushing him for information, he recalled, “about the status and

scope of my inquiry, and about who I might be talking to, without giving me any meaningful help or information.” During their second meeting, Anna requested that they sit close together, leading Wallace to suspect that she might be recording the exchange. When she recounted her experiences with Weinstein, Wallace said, “it seemed like soap-opera acting.” Wallace wasn’t the only journalist the woman contacted. In addition to her e-mails to me, Filip also e-mailed Jodi Kantor, of the *Times*, according to sources involved in the effort.

The U.K. cell-phone numbers that Filip provided to Wallace and McGowan have been disconnected. Calls to Reuben Capital Partners’ number in London went unanswered. As recently as Friday, the firm had a bare-bones Web site, with stock photos and generic text passages about asset management and an initiative called Women in Focus. The site, which has now been taken down, listed an address near Piccadilly Circus, operated by a company specializing in shared office space. That company said that it had never heard of Reuben Capital Partners. Two sources with knowledge of Weinstein’s work with Black Cube said that the firm creates fictional companies to provide cover for its operatives, and that Filip’s firm was one of them.

Black Cube declined to comment on the specifics of any work it did for Weinstein. The agency said in a statement, “It is Black Cube’s policy to never discuss its clients with any third party, and to never confirm or deny any speculation made with regard to the company’s work. Black Cube supports the work of many leading law firms around the world, especially in the US, gathering evidence for complex legal processes, involving commercial disputes, among them uncovering negative campaigns. . . . It should be highlighted that Black Cube applies high moral standards to its work, and operates in full compliance with the law of any jurisdiction in which it operates—strictly following the guidance and legal opinions provided by leading law firms from around the world.” The contract with the firm also specified that all of its work would be obtained “by legal means and in compliance with all applicable laws and regulations.”



Last fall, Weinstein began mentioning Black Cube by name in conversations with his associates and attorneys. The agency had made a name for itself digging up information for companies in Israel, Europe, and the U.S. that led to successful legal judgments against business rivals. But the firm has also faced legal questions about its employees' use of fake identities and other tactics. Last year, two of its investigators were arrested in Romania on hacking charges. In the end, the company reached an agreement with the Romanian authorities, under which the operatives admitted to hacking and were released. Two sources familiar with the agency defended its decision to work for Weinstein, saying that they originally believed that the assignment focussed on his business rivals. But even the earliest lists of names that Weinstein provided to Black Cube included actresses and journalists.

On October 28, 2016, Boies's law firm, Boies Schiller Flexner, wired to Black Cube the first hundred thousand dollars, toward what would ultimately be a six-hundred-thousand-dollar invoice. (The documents do not make clear how much of the invoice was paid.) The law firm and Black Cube signed a contract that month and several others later. One, dated July 11, 2017, and bearing Boies's signature, states that the project's "primary objectives" are to "provide intelligence which will help the Client's efforts to completely stop the publication of a new negative article in a leading NY newspaper" and to "obtain additional content of a book which currently being written and includes harmful negative information on and about the Client," who is identified as Weinstein in multiple documents. (In one e-mail, a Black Cube executive asks lawyers retained by the agency to refer to Weinstein as "the end client" or "Mr. X," noting that referring to him by name "will make him extremely angry.") The article mentioned in the contract was, according to three sources, the story that ultimately ran in the *Times* on October 5th. The book was "Brave," a memoir by McGowan, scheduled for publication by HarperCollins in January. The documents show that, in the end, the agency delivered to Weinstein more than a hundred pages of transcripts and

descriptions of the book, based on tens of hours of recorded conversations between McGowan and the female private investigator.

Weinstein's spokesperson, Hofmeister, called "the assertion that Mr. Weinstein secured any portion of a book . . . false and among the many inaccuracies and wild conspiracy theories promoted in this article."

The July agreement included several "success fees" if Black Cube met its goals. The firm would receive an additional three hundred thousand dollars if the agency "provides intelligence which will directly contribute to the efforts to completely stop the Article from being published at all in any shape or form." Black Cube would also be paid fifty thousand dollars if it secured "the other half" of McGowan's book "in readable book and legally admissible format."

The contracts also show some of the techniques that Black Cube employs. The agency promised "a dedicated team of expert intelligence officers that will operate in the USA and any other necessary country," including a project manager, intelligence analysts, linguists, and "Avatar Operators" specifically hired to create fake identities on social media, as well as "operations experts with extensive experience in social engineering." The agency also said that it would provide "a full time agent by the name of 'Anna' (hereinafter 'the Agent'), who will be based in New York and Los Angeles as per the Client's instructions and who will be available full time to assist the Client and his attorneys for the next four months." Four sources with knowledge of Weinstein's work with Black Cube confirmed that this was the same woman who met with McGowan and Wallace.

Black Cube also agreed to hire "an investigative journalist, as per the Client request," who would be required to conduct ten interviews a month for four months and be paid forty thousand dollars. Black Cube agreed to "promptly report to the Client the results of such interviews by the Journalist."

In January, 2017, a freelance journalist called McGowan and had a lengthy conversation with her that he recorded without telling her; he subsequently communicated with Black Cube about the interviews, though he denied he was reporting back to them in a formal capacity. He contacted at least two other women with allegations against Weinstein, including the actress Annabella Sciorra, who later went public in *The New Yorker* with a rape allegation against Weinstein. Sciorra, whom he called in August, said that she found the conversation suspicious and got off the phone as quickly as possible. “It struck me as B.S.,” she told me. “And it scared me that Harvey was testing to see if I would talk.” The freelancer also placed calls to Wallace, the *New York* reporter, and to me.

Two sources close to the effort and several documents show that the same freelancer received contact information for actresses, journalists, and business rivals of Weinstein from Black Cube, and that the agency ultimately passed summaries of those interviews to Weinstein’s lawyers. When contacted about his role, the freelancer, who spoke on condition of anonymity, said that he had been working on his own story about Weinstein, using contact information fed to him by Black Cube. The freelancer said that he reached out to other reporters, one of whom used material from his interviews, in the hopes of helping to expose Weinstein. He denied that he was paid by Black Cube or Weinstein.

Weinstein also enlisted other journalists to uncover information that he could use to undermine women with allegations. A December, 2016, e-mail exchange between Weinstein and Dylan Howard, the chief content officer of American Media Inc., which publishes the *National Enquirer*, shows that Howard shared with Weinstein material obtained by one of his reporters, as part of an effort to help Weinstein disprove McGowan’s allegation of rape. In one e-mail, Howard sent Weinstein a list of contacts. “Let’s discuss next steps on each,” he wrote. After Weinstein thanked him, Howard described a call that one of his reporters made to Elizabeth Avellan, the ex-wife of the director

Robert Rodriguez, whom Rodriguez left to have a relationship with McGowan.

Avellan told me that she remembered the interview. Howard's reporter "kept calling and calling and calling," she said, and also contacted others close to her. Avellan finally called back, because "I was afraid people might start calling my kids." In a long phone call, the reporter pressed her for unflattering statements about McGowan. She insisted that the call be off the record, and the reporter agreed. The reporter recorded the call, and subsequently passed the audio to Howard.

In subsequent e-mails to Weinstein, Howard said, "I have something AMAZING . . . eventually she laid into Rose pretty hard." Weinstein replied, "This is the killer. Especially if my fingerprints r not on this." Howard then reassured Weinstein, "They are not. And the conversation . . . is RECORDED." The next day, Howard added, in another e-mail, "Audio file to follow." (Howard denied sending the audio to Weinstein.) Avellan told me that she would not have agreed to coöperate in efforts to discredit McGowan. "I don't want to shame people," she said. "I wasn't interested. Women should stand together."

In a statement, Howard said that, in addition to his role as the chief content officer at American Media Inc., the *National Enquirer's* publisher, he oversaw a television-production agreement with Weinstein, which has since been terminated. He said that, at the time of the e-mails, "absent a corporate decision to terminate the agreement with The Weinstein Company, I had an obligation to protect AMI's interests by seeking out—but not publishing—truthful information about people who Mr. Weinstein insisted were making false claims against him. To the extent I provided 'off the record' information to Mr. Weinstein about one of his accusers—at a time when Mr. Weinstein was denying any harassment of any woman—it was information which I would never have allowed AMI to publish on the internet or in its magazines." Although at least one of Howard's reporters made calls related to

Weinstein's investigations, Howard insisted that he strictly divided his work with Weinstein from his work as a journalist. "I always separated those two roles carefully and completely—and resisted Mr. Weinstein's repeated efforts to have AMI titles publish favorable stories about him or negative articles about his accusers," Howard said. An A.M.I. representative noted that, at the time, Weinstein insisted that the encounter was consensual, and that the allegations were untrue.

Hofmeister, Weinstein's spokesperson, added, "In regard to Mr. Howard, he has served as the point person for American Media's long-standing business relationship with The Weinstein Company. Earlier this year, Mr. Weinstein gave Mr. Howard a news tip that Mr. Howard agreed might make a good story. Mr. Howard pursued the tip and followed up with Mr. Weinstein as a courtesy, but declined to publish any story."

**W**einstein's relationship with Kroll, one of the other agencies he contracted with, dates back years. After Ambra Battilana Gutierrez, an Italian model, accused Weinstein of sexually assaulting her, in 2015, she reached a settlement with Weinstein that required her to surrender all her personal devices to Kroll, so that they could be wiped of evidence of a conversation in which Weinstein admitted to groping her. A recording of that exchange, captured during a police sting operation, was released by *The New Yorker* last month.

During the more recent effort to shut down emerging stories, Kroll again played a central role. E-mails show that Dan Karson, the chairman of Kroll Americas' Investigations and Disputes practice, contacted Weinstein at his personal e-mail address with information about women with allegations. In one October, 2016, e-mail, Karson sent Weinstein eleven photographs of McGowan and Weinstein together at different events in the years after he allegedly assaulted her. Three hours later, Weinstein forwarded Karson's e-mail to Boies and Weinstein's criminal-defense attorney, Blair Berk, and told them to "scroll thru the extra ones." The next morning, Berk replied that

one photo, which showed McGowan warmly talking with Weinstein, “is the money shot.”

Berk defended her actions. “Any criminal-defense lawyer worth her salt would investigate unproven allegations to determine if they are credible,” she said. “And it would be dereliction of duty not to conduct a public-records search for photographs of the accuser embracing the accused taken after the time of the alleged assault.”

Another firm, the Los Angeles-based PSOPS, and its lead private investigator, Jack Palladino, as well as another one of its investigators, Sara Ness, produced detailed profiles of various individuals in the saga, sometimes of a personal nature, which included information that could be used to undermine their credibility. One report on McGowan that Ness sent to Weinstein last December ran for more than a hundred pages and featured McGowan’s address and other personal information, along with sections labelled “Lies/Exaggerations/Contradictions,” “Hypocrisy,” and “Potential Negative Character Wits,” an apparent abbreviation of “witnesses.” One subhead read “Past Lovers.” The section included details of acrimonious breakups, mentioning Avellan, and discussed Facebook posts expressing negative sentiments about McGowan. (Palladino and Ness did not respond to multiple requests for comment.)

Other firms were also involved in assembling such profiles, including ones that focussed on factors that, in theory, might make women likely to speak out against sexual abuse. One of the other firm’s profiles was of Rosanna Arquette, an actress who later, in *The New Yorker*, accused Weinstein of sexual harassment. The file mentions Arquette’s friendship with McGowan, social-media posts about sexual abuse, and the fact that a family member had gone public with an allegation that she had been molested as a child.

All of the security firms that Weinstein hired were also involved in trying to ferret out reporters’ sources and probe their backgrounds. Wallace, the

reporter for *New York*, said that he was suspicious when he received the call from the Black Cube operative using the pseudonym Anna, because Weinstein had already requested a meeting with Wallace; Adam Moss, the editor-in-chief of *New York*; David Boies; and a representative from Kroll. The intention, Wallace assumed, was to “come in with dossiers slagging various women and me.” Moss declined the meeting.

In a series of e-mails sent in the weeks before Wallace received the call from Anna, Dan Karson, of Kroll, sent Weinstein preliminary background information on Wallace and Moss. “No adverse information about Adam Moss so far (no libel/defamation cases, no court records or judgments/liens/UCC, etc.),” Karson wrote in one e-mail. Two months later, Palladino, the PSOPS investigator, sent Weinstein a detailed profile of Moss. It stated, “Our research did not yield any promising avenues for the personal impeachment of Moss.”

Similar e-mail exchanges occurred regarding Wallace. Kroll sent Weinstein a list of public criticisms of Wallace’s previous reporting and a detailed description of a U.K. libel suit filed in response to a book he wrote, in 2008, about the rare-wine market. PSOPS also profiled Wallace’s ex-wife, noting that she “might prove relevant to considerations of our response strategy when Wallace’s article on our client is finally published.”

In January, 2017, Wallace, Moss, and other editors at *New York* decided to shelve the story. Wallace had assembled a detailed list of women with allegations, but he lacked on-the-record statements from any victims. Wallace said that the decision not to run a story was made for legitimate journalistic reasons. Nevertheless, he said, “There was much more static and distraction than I’ve encountered on any other story.”

Other reporters were investigated as well. In April, 2017, Ness, of PSOPS, sent Weinstein an assessment of my own interactions with “persons of interest”—a list largely consisting of women with allegations, or those connected to them.

Later, PSOPS submitted a detailed report focussing jointly on me and Jodi Kantor, of the *Times*. Some of the observations in the report are mundane. “Kantor is NOT following Ronan Farrow,” it notes, referring to relationships on Twitter. At other times, the report reflects a detailed effort to uncover sources. One individual I interviewed, and another whom Kantor spoke to in her separate endeavor, were listed as having reported the details of the conversations back to Weinstein.

For years, Weinstein had used private security agencies to investigate reporters. In the early aughts, as the journalist David Carr, who died in 2015, worked on a report on Weinstein for *New York*, Weinstein assigned Kroll to dig up unflattering information about him, according to a source close to the matter. Carr’s widow, Jill Rooney Carr, told me that her husband believed that he was being surveilled, though he didn’t know by whom. “He thought he was being followed,” she recalled. In one document, Weinstein’s investigators wrote that Carr had learned of McGowan’s allegation in the course of his reporting. Carr “wrote a number of critical/unflattering articles about HW over the years,” the document says, “none of which touched on the topic of women (due to fear of HW’s retaliation, according to HW).”

W einstein’s relationships with the private investigators were often routed through law firms that represented him. This is designed to place investigative materials under the aegis of attorney-client privilege, which can prevent the disclosure of communications, even in court.

David Boies, who was involved in the relationships with Black Cube and PSOPS, was initially reluctant to speak with *The New Yorker*, out of concern that he might be “misinterpreted either as trying to deny or minimize mistakes that were made, or as agreeing with criticisms that I don’t agree are valid.”

But Boies did feel the need to respond to what he considered “fair and important” questions about his hiring of investigators. He said that he did not consider the contractual provisions directing Black Cube to stop the



publication of the *Times* story to be a conflict of interest, because his firm was also representing the newspaper in a libel suit. From the beginning, he said, he advised Weinstein “that the story could not be stopped by threats or influence and that the only way the story could be stopped was by convincing the *Times* that there was no rape.” Boies told me he never pressured any news outlet. “If evidence could be uncovered to convince the *Times* the charges should not be published, I did not believe, and do not believe, that that would be averse to the *Times*’ interest.”

He conceded, however, that any efforts to profile and undermine reporters, at the *Times* and elsewhere, were problematic. “In general, I don’t think it’s appropriate to try to pressure reporters,” he said. “If that did happen here, it would not have been appropriate.”

Although the agencies paid by his firm focussed on many women with allegations, Boies said that he had only been aware of their work related to McGowan, whose allegations Weinstein denied. “Given what was known at the time, I thought it was entirely appropriate to investigate precisely what he was accused of doing, and to investigate whether there were facts that would rebut those accusations,” he said.

Of his representation of Weinstein in general, he said, “I don’t believe former lawyers should criticize former clients.” But he expressed regrets. “Although he vigorously denies using physical force, Mr. Weinstein has himself recognized that his contact with women was indefensible and incredibly hurtful,” Boies told me. “In retrospect, I knew enough in 2015 that I believe I should have been on notice of a problem, and done something about it. I don’t know what, if anything, happened after 2015, but to the extent it did, I think I have some responsibility. I also think that if people had taken action earlier it would have been better for Mr. Weinstein.”

**W**einstein also drafted individuals around him into his efforts—willingly and not. In December, 2016, Weinstein asked the actress Asia

Argento, who ultimately went public in *The New Yorker* with her allegation of rape against Weinstein, to meet in Italy with his private investigators to give testimony on his behalf. Argento, who felt pressure to say yes, declined after her partner, the chef and television personality Anthony Bourdain, advised her to avoid the meeting. Another actress, who declined to be named in this story, said that Weinstein asked her to meet with reporters to extract information about other sources.

Weinstein also enlisted two former employees, Denise Doyle Chambers and Pamela Lubell, in what turned out to be an effort to identify and call people who might speak to the press about their own, or others', allegations. Weinstein secretly shared the lists they compiled with Black Cube.

Hofmeister, speaking on Weinstein's behalf, said, "Any 'lists' that were prepared included names of former employees and others who were relevant to the research and preparation of a book about Miramax. Former employees conducting interviews for the book reported receiving unwanted contacts from the media."

Doyle Chambers declined an interview request. But Lubell, a producer who worked for Weinstein at Miramax decades ago, told me that she was manipulated into participating. In July, 2017, Lubell visited Weinstein's offices to pitch him on an app that she was developing. In the middle of the meeting, Weinstein asked Lubell if they could have a private conversation in his office. Lubell told me that a lawyer working with Weinstein was already there, along with Doyle Chambers. Weinstein asked if Lubell and Doyle Chambers could write a "fun book on the old times, the heyday, of Miramax." "Pam," she recalled him saying, "write down all the employees that you know, and can you get in touch with them?"

A few weeks later, in August, after they had made the list, Weinstein "called us back into the office," Lubell recalled. "And he said, 'You know what, we're going to put a hold on the book.' " He asked Doyle Chambers and Lubell to

“call some of your friends from the list and see if they got calls from the press.” In early September, Weinstein summoned Lubell and Doyle Chambers to his office and asked them to start making calls to people connected to several actresses. “It got kind of intense,” Lubell recalled. “We didn’t know these people, and all of a sudden this was something very different from what we signed up for.” Several of the targeted women said that they felt the calls they received from Lubell and Doyle Chambers, and from Weinstein himself, were frightening.

Lubell told me that hours before the first *Times* story broke, on October 5th, Weinstein summoned her, Doyle Chambers, and others on his team, including the attorney Lisa Bloom, who has since resigned, to his office. “He was in a panic,” Lubell recalled. “He starts screaming, ‘Get so-and-so on the phone.’” After the story was published, the team scrambled to respond to it. Bloom and others pored over pictures that, like the ones featured in the Kroll e-mails, showed ongoing contact between Weinstein and women who made allegations. “He was screaming at us, ‘Send these to the board members,’” Lubell recalled. She e-mailed the photographs to the board ahead of the crisis meeting at which Weinstein’s position at his company began unravelling.

Since the allegations against Weinstein became public, Lubell hasn’t slept well. She told me that, although she knew that Weinstein “was a bully and a cheater,” she “never thought he was a predator.” Lubell has wondered if she should have known more, sooner.

After a year of concerted effort, Weinstein’s campaign to track and silence his accusers crumbled. Several of the women targeted, however, said that Weinstein’s use of private security agencies deepened the challenge of speaking out. “It scared me,” Sciorra said, “because I knew what it meant to be threatened by Harvey. I was in fear of him finding me.” McGowan said that the agencies and law firms enabled Weinstein’s behavior. As she was targeted, she felt a growing sense of paranoia. “It was like the movie ‘Gaslight,’” she

told me. “Everyone lied to me all the time.” For the past year, she said, “I’ve lived inside a mirrored fun house.”

*Ronan Farrow, a television and print reporter, is the author of the upcoming book “War on Peace: The End of Diplomacy and the Decline of American Influence.”* [Read more »](#)

---

## Video

---

*Harvey Weinstein, Caught on Tape*

*The film executive admits to groping a woman, in a recording secretly captured during an N.Y.P.D. sting operation.*

CONDÉ NAST

© 2017 Condé Nast. All rights reserved. Use of this site constitutes acceptance of our user agreement (effective 1/2/2016) and privacy policy (effective 1/2/2016). Your California privacy rights. The material on this site may not be reproduced, distributed, transmitted, cached or otherwise used, except with prior written permission of Condé Nast. The New Yorker may earn a portion of sales from products and services that are purchased through links on our site as part of our affiliate partnerships with retailers.

This is Exhibit "Q" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.



Blankets For Kids

Shop Now>>

GAMISS

- **Stella Penn, an operative at Israeli intelligence firm Black Cube bluffed her way into meetings with Rose McGowan and journalists**
- **The 30-something Israeli vet claimed to be working on women's rights advocacy and reportedly asked McGowan to speak at an upcoming event**
- **She used aliases 'Diana Filip' and 'Anna'**
- **She is a former member of the Israel Defense Forces and lives in Jaffa, Israel Penn, who was recently married, also goes by the name Stella Penn Pechanac, multiple sources told DailyMail.com**
- **Weinstein hired the ex-Mossad agents to prove he was the victim of a 'negative campaign' in what was dubbed 'Operation Parachute'**
- **Black Cube is run by former Israeli intelligence officers of Mossad**

month... amid claims she's been 'rethinking her split from Jamie'

► **Katie Price reveals she had severe allergic reaction to medication after her veneers... as she slams 'rude and patronising' mums at school gate**

► **Strictly's Debbie McGee, 59, gets VERY close to dance partner Giovanni Pernice, 27, outside rehearsals... after discussing THOSE romance rumours**

► **Alexandra Burke and Gorka Marquez put on an overly gushing display in a bid to disprove they are 'at war' due to Gemma Atkinson romance'**

► **Is Chloe Green poking fun at Jeremy's ex Melissa Meeks? Heiress appears to throw head back with laughter when**

By [ALANA GOODMAN FOR DAILYMAL.COM](#)

**PUBLISHED:** 23:49 GMT, 8 November 2017 | **UPDATED:** 19:17 GMT, 9 November 2017

676  
shares

127  
View comments

The pretty blonde spy who duped Rose McGowan into meeting privately with her while working undercover for Harvey Weinstein is a 30-something-year-old **Israeli** military veteran named Stella Penn, the DailyMail.com can exclusively reveal.



The operative at Israeli intelligence firm Black Cube – who bluffed her way into meetings with Rose McGowan and journalists while using the aliases ‘Diana Filip’ and ‘Anna’ – is a former member of the Israel Defense Forces and lives in Jaffa, Israel.

Penn, who was recently married, also goes by the name Stella Penn Pechanac, multiple sources told DailyMail.com.

The blonde spy duped McGowan into meeting with her and even managed to obtain a copy of the actress’s unpublished memoir this year, after telling the actress she was a women’s rights advocate from **London**.

Penn claimed she worked for a London-based investment company called Rueben Capital Partners.

In reality, Penn worked for the Israel-based intelligence firm Black Cube, which had been hired by Harvey Weinstein to investigate numerous women who had accused him of sexual harassment and other perceived enemies.



**The pretty blonde spy who duped Rose McGowan into meeting privately with her while working undercover for Harvey Weinstein is a 30-something-year-old Israeli military veteran named Stella Penn, the DailyMail.com can exclusively reveal**

**asked about love rival's miscarriage claims**

**► From minimal chic to warm and welcoming: Design the bathroom of your dreams with our guide to the hottest interiors trends**  
**SPONSORED**

**► PICTURE EXCLUSIVE: Stephen Bear is banned from Sheesh as Charlotte Crosby parties inside... as she is 'all over pal Pete Wicks' within the bash**

**► Big Ben blunder! Holly Willoughby slips into cat-embellished blouse for This Morning... before her and Phil's 'secret location' is ruined in awkward gaffe**

**► Game Of Thrones' Ellie Kendrick drops season eight clanger about character Meera Reed... seemingly disproving a MAJOR Jon Snow fan theory**

**► Caitlyn Jenner reveals she once cross-dressed with ex-wife Kris.. as KUWTK matriarch continues to refute claims she knew about sex change plans**

**► PICTURE EXCLUSIVE: Must be getting serious! Chloe Moretz is spotted wearing a signet ring engraved with boyfriend Brooklyn Beckham's initial in NYC**



+99

NEW  
ARTICLES

Top

Share





## Harvey Weinstein agreed to pay up to \$1.3m to Black Cube, an Israeli intelligence firm

The company was tasked with collecting information on numerous women, including McGowan. The firm also worked to obtain a copy of McGowan's unpublished memoir, to determine if the actress was going to go public with her sexual assault accusations against Weinstein.

McGowan first met with 'Diana' after the two were introduced by a literary agent last May, the New Yorker first reported this week.

The Black Cube operative claimed to be working on women's rights advocacy and reportedly asked McGowan to speak at an upcoming event she was organizing. Penn and McGowan met in person on several occasions in New York and California, and even spent time on the Venice boardwalk, according to the New Yorker.

► Victoria Beckham takes to the treadmill in HEELS and jumpsuit for collaboration with Reebok... as husband David celebrates 20 years with Adidas



► Great British Bore Off? Candice Brown looks unimpressed as she takes a break from Dancing On Ice rehearsals to host demonstration at Ideal Home Show launch



► Home run! Beyonce rocks World Series champion Houston Astros jersey as she happily poses with Jay Z and sister Solange at New Orleans restaurant



► 'We haven't celebrated Christmas since he died': Shirley Ballas discusses her brother's suicide and laments she 'never understood how sick he was'



► S Club 7's Hannah Spearritt leaves rollers in her hair for dog walk... as she steps out for first time since branding ex Paul





Penn pressed McGowan for information about her allegations against Weinstein, and eventually managed to obtain a copy of the actress's unpublished book.

The operative even kept up the ruse after the New Yorker published explosive allegations against Weinstein last month, revealing that he had been accused of sexual harassment and rape by numerous actresses and female employees over the years.

'Diana' wrote an email to McGowan after the story was published, praising the actress for her courage.

'Hi Love,' she wrote. 'How are you feeling? . . . Just wanted to tell you how brave I think you are.'

McGowan was reportedly shocked when she was later told by the New Yorker that 'Diana' was actually an undercover investigator working for Black Cube.



Weinstein hired Israeli firm Black Cube on October 24, 2016, to carry out the covert operation, known internally as 'Operation Parachute' by operatives that included ex-Mossad agents

Rose McGowan declares she is done being 'slut shamed' and 'maligned'

'Oh my God,' she told the New Yorker. 'Reuben Capital. Diana Filip. No fucking way.'

Cattermole 'broke and desperate'



► Jennifer Lopez, 48, can barely muster a smile as she goes on yet another date with A-Rod... after filming *Second Act* and plugging her song



► 'I've lost all relationship with them': Caitlyn Jenner reveals it's been TWO YEARS since she last spoke to Khloe Kardashian in candid new interview



► Dust and dirt: Kim Kardashian and Kanye West are moving into their \$20m mansion that has been renovated TWICE... but it's still not done



► Goldie Hawn sports mystery bandage on chest...as she dons all-black after performing Grease dance number at her MindUP benefit  
Mysterious ailment



► The Doctor will see you now! BBC unveils FIRST LOOK at glam Jodie Whittaker as the new Time Lord... as she struts sultrily away from the TARDIS



Advertisement



+99

NEW  
ARTICLES

Top

Share

Penn, using the alias 'Anna,' also met with New York reporter Ben Wallace earlier this year while he was working on a story about

The Black Cube operative implied to Wallace against Weinstein. But the reporter said she information on his upcoming article while re

According to a biography of her posted online, an advocacy group in Israel called Recalculating the Educational Route

The biography says she moved to Israel in 1997, became a Lieutenant in the Israeli Air Force and has worked in the U.S. and Australia.

She speaks four languages – English, Hebrew, Arabic and Spanish.

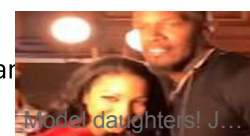
Penn is also an actress. She graduated from the theater arts program at Nissan Nativ Acting Studio in 2010, according to her biography.

Weinstein agreed to pay Black Cube up to \$1.3 million for its investigative work, according to his October 24, 2016 contract with the firm exclusively obtained by DailyMail.com.

The covert operation, known internally as 'Operation Parachute,' targeted at least 10 women, fashion designer Kenneth Cole, and a prominent AIDS charity, the DailyMail.com has learned.

Weinstein's work with Black Cube was first reported by the New Yorker on Monday, which published a July contract showing that the firm deployed undercover agents to obtain information from Weinstein's sexual assault accusers and journalists.

The initial October contract between Weinstein and Black Cube last fall shows that Weinstein was fixated on the idea that he was the victim of a 'negative campaign' orchestrated by his enemies – and he was willing to go to great lengths to stop it.



'predator' actor when he tried to take the teen, 18, to a party

Changing up his style

Changing up his style

30, at magazine bash

during her career

tour

Upside Downs

seen filming his new

+99

NEW ARTICLES

Top

Share

comedy in England as  
SECOND actress  
accuses him of rape  
Pictured

186

► Emotional Susanna  
Reid reveals how  
investigating the murder  
of teen Becky Watts left  
her distraught and  
rushing home to 'hug  
her kids'

► Nicole Scher-shimmer!  
X Factor judge  
accentuates her pert  
derrière in a gold  
jumpsuit as she returns  
to her London hotel  
following Jonathan  
Ross

► Gwen Stefani steps out  
in skinny jeans and a  
bold T-shirt... while ex  
husband Gavin  
Rossdale enjoys stroll  
with girlfriend Sophia  
Thomalla

► Did Mollie King enjoy  
wild night out with  
partner AJ Pritchard?  
Strictly star steps out in  
the SAME clothes as  
day before as the pair  
head to rehearsals

► 'I love you': Smitten  
John Terry publicly  
gushes over his sizzling  
bikini-clad wife Toni as  
she displays her  
rippling six-pack abs  
during epic Dubai  
sunset

► Sneakin' around?  
Canadian rapper Drake  
manages to keep a low  
profile during Sydney  
jaunt after wowing  
crowds at sold-out  
shows

► Suns out, guns out!  
Entourage hunk Adrian  
Grenier spotted at a  
Sydney beach with  
rumoured girlfriend  
Jordan Roemmele  
Muscle beach!

► 'Thank goodness you  
can cook because you  
can't sing!' Gordon  
Ramsay hilariously  
trolls his daughter Tilly  
on her 16th birthday  
with 'savage' throwback  
clip

► Where's your potter's  
wheel? Paint-splattered  
Demi Moore, 54, strips  
to skimpy bra... for  
steamy scene in Empire  
as 'tribute' to THAT  
iconic Ghost scene

+99

NEW  
ARTICLES

Top

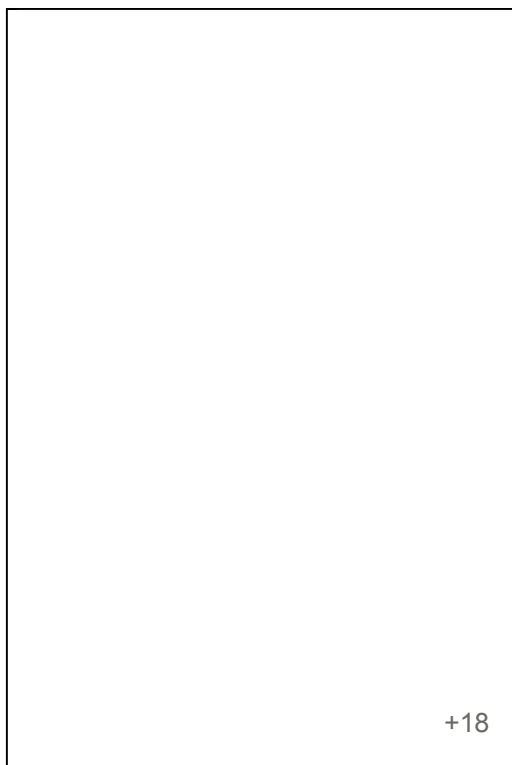
Share

+18

Harvey Weinstein's original contract with Israeli intelligence firm Black Cube, in October 2016 reveals that Weinstein agreed to pay the company as much as \$1.3 million to spy on his perceived enemies – including close friend and amfAR chairman Kenneth Cole (pictured)



+18



+18

**Actress Rose McGowan (left), who has made allegations of rape against Weinstein, and Thomas Ajamie (right), a financial fraud attorney who had been hired by amfAR to examine a suspicious financial transaction involving Weinstein, both were investigated by Black Cube**

Harvey Weinstein's original contract with an Israeli intelligence firm, published exclusively here, reveals that the disgraced movie executive agreed to pay the company as much as \$1.3 million to spy on his perceived enemies – including numerous actresses, fashion designer Kenneth Cole and a prominent **AIDS** charity.

Black Cube was first hired to 'identify the entities behind the negative campaign against [Weinstein]' and 'support [Weinstein's] efforts to put a stop to it,' according to the initial contract.

The investigation targeted actresses who accused Weinstein of sexual assault, but it also extended to Weinstein's supposed friends and allies.

A source familiar with the operation said Black Cube was asked to investigate Weinstein's long-time friend Kenneth Cole and the Foundation for AIDS Research (amfAR), a charity where Weinstein was a donor. Cole is amfAR's chairman.

Black Cube was also asked to look into Thomas Ajamie, a financial fraud attorney who had been hired by amfAR to examine a suspicious financial transaction involving Weinstein.

Another target was Commentary magazine editor John Podhoretz, who had posted a comment on Twitter in 2015 about Weinstein's rumored assault victims.

Actresses Sophie Dix and Katherine Kendall were also subjects of interest, according to the source.

Ajamie told DailyMail.com that he was not surprised he was on Black Cube's list and believed he was targeted because he had been hired by the amfAR board to investigate an unusual financial deal Weinstein had with the charity in 2015.

**A Pretty Little reunion? Ashley Benson and on-off ex Ryan Good spark romance rumors as they enjoy an ice hockey date at the New York Rangers**

► **'We are all innately confident': Emma Roberts flaunts her toned figure for Shape... as she talks about finding the 'confidence we had as kids'**

► **'She's overbearingly protective of her image': Taylor Swift is accused of diva antics ahead of new album... as she 'demands full editorial control of interviews'**

► **Sharp-suited Norman Reedus flashes a peace sign in NYC... while girlfriend Diane Kruger slips into chic mini dress to promote her new movie in LA**

► **'I feel womanly': Gemma Collins fan breaks down in tears of joy as the TOWIE star finds her a dress to fit her curves for the first time in 15 YEARS**

► **It was acceptable in the 80s! Katy Perry dons electro-pop make-up and a fluffy yellow coat as she leaves Hollywood party in the early hours**

► **Jorgie Porter shares passionate smooch with a mystery man in Hawaii... two days after they were spotted getting cosy on the beach**

► **Smitten Professor Green cosies up to chic girlfriend Fae Williams as they get into the festive spirit for The Winter Forest Fairytale launch in London**

► **Madison Beer shows off her taut stomach and edgy style in a blue cropped hoodie and checkered trousers for a night out in London**  
Check her out

► **'I'm going to f\*\*\* your brains out': Prison break star Robert Knepper 'reached up a costume designer's skirt and grabbed her crotch so hard she bled'**

+99

NEW  
ARTICLES

Top

Share

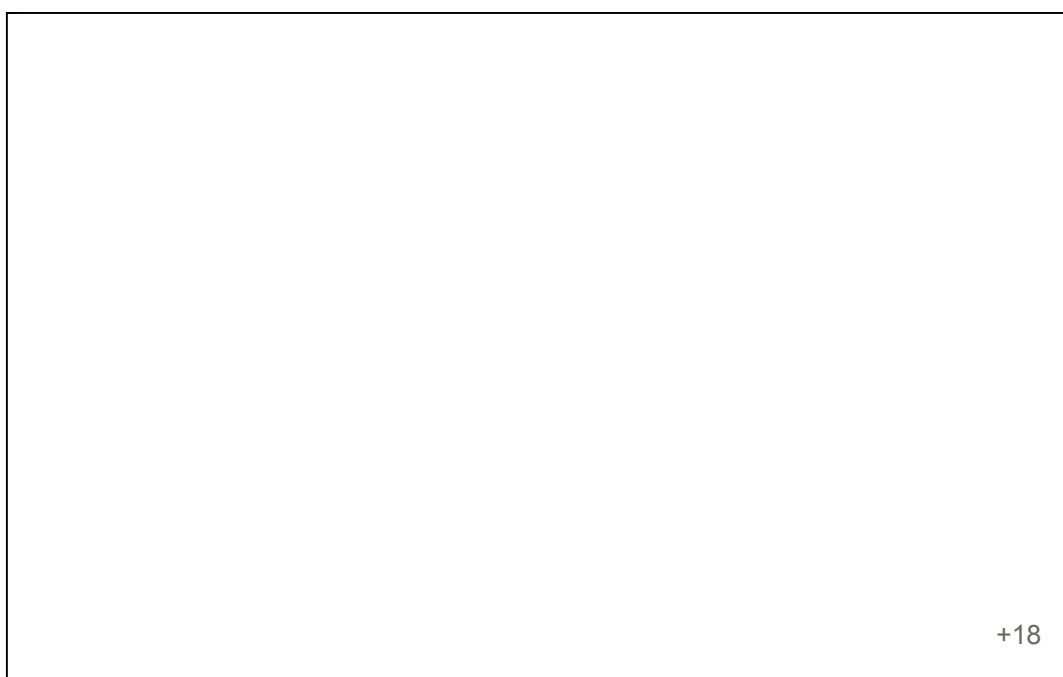


The transaction, which is currently under investigation by the Department of Justice, involved transferring profits from an amfAR auction to a theater project that Weinstein had invested in.



+18

The elaborate planning that went into the operation involved the crafting of a fake website for Reuben Partners, with a section devoted to 'Women In Focus' (above)



+18

The fake firm of Reuben Partners also had an office building listed on its website (seen above in Google street view)

Ajamie's investigation found that Weinstein's financial deal 'exposed amfAR to material risks to its financial integrity and reputation.' In the process, Ajamie also discovered some of the sexual assault allegations against Weinstein.

'I knew that Weinstein and his lawyers had hired private investigators, and his lawyers were investigating me and trying to harass me,' said Ajamie.

He said he recalled run-ins with individuals he believed may have been working for private investigators. Over the past year, he said several strangers showed up at his law office claiming they had scheduled meetings with him or stopped by his apartment unannounced.

► [Hollywood turns on Kevin Spacey: Actor is axed from Ridley Scott's new \\$40m blockbuster just SIX WEEKS before release as it's reshot with new star](#)

► [Selena Gomez flashes a hint of her pert posterior in tiny shorts as she leaves pilates session in scanty outfit... as Justin Bieber romance 'heats up'](#)

► [Little Mix's Jade Thirwall shares behind-the-scenes snap of herself rolling around on the floor with Perrie Edwards and Leigh-Anne Pinnock](#)

► [Pregnant Katie Piper flashes a hint of her blooming bump in skin-tight poloneck with statement trousers during London outing... as due date approaches](#)

► [Bella Hadid proves her quirky style in striking leather bum bag as she steps out in NYC... before taking to the skies in trendy 70s-style jumpsuit](#)

► [Vinnie Jones finally sells his sprawling Hollywood mansion for \\$2 million... after lack of interest forced him to drop the price by \\$350k](#)  
Look inside

► [Age-defying Cindy Crawford, 51, looks chic in plunging lace vest as she enjoys romantic dinner with handsome husband Rande Gerber in West Hollywood](#)

► [Olivia Culpo suffers a wardrobe malfunction as she accidentally reveals too much in a VERY daring soaring split pirate-inspired outfit in New York](#)

► ['My mum would NEVER let me go out dressed like that!' Victoria Beckham reflects on her 'inappropriate' Spice Girls outfits](#)

+99

NEW  
ARTICLES

Top

Share

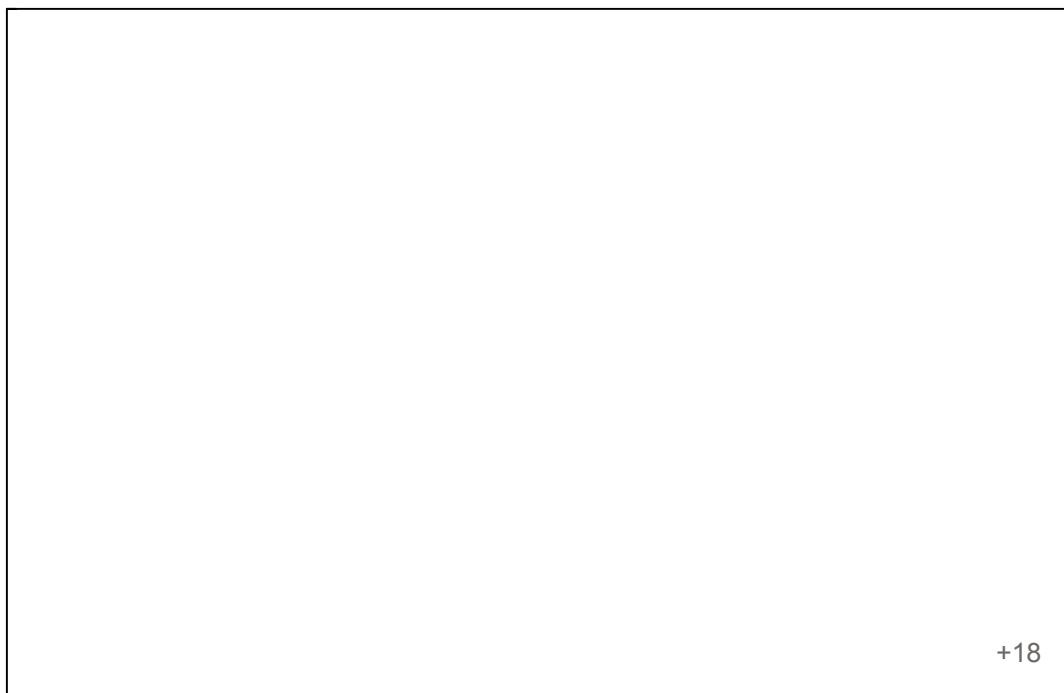
► [Purple reign! 'Pregnant' Khloe Kardashian bundles up her baby bump in a long velvet coat as she](#)

A spokesperson for amfAR declined to comment on Weinstein's spy operation.

'As has been widely reported, the Department of Justice is conducting an ongoing criminal investigation into certain transactions carried out by Mr. Weinstein,' said the spokesperson.

'In our continued effort to cooperate with this investigation we are unable to comment at this time. amfAR remains committed to pursuing its charitable mission of finding a cure for the over 30 million people living with HIV and AIDS.'

The initial October contract reveals that Weinstein promised to pay Black Cube \$200,000 for two months of work – plus up to \$600,000 in bonuses if the firm went above and beyond the scope of its assignment.



Another target was Commentary magazine editor John Podhoretz (pictured) who had posted a comment on Twitter in 2015 about Weinstein's rumored assault victims

shoots scenes for KUWTK

189

► **Lingerie-clad Paris Hilton swaps her humanitarian work for the runway as she sizzles in saucy Mexican fashion show... after charity work**

► **Emily Ratajkowski displays washboard abs and phenomenal figure in a barely-there bikini as she gives a sneak peek at her swimwear line**

► **Gossip Girl star Ed Westwick accused of rape by second actress... who was subsequently dumped by then-boyfriend sex offender Mark Salling**

► **Christina Hendricks showcases her enviable curves in sequin-embellished black dress as she cosies up to husband Geoffrey Arend at book launch**

► **Former Big Brother star Georgia Leigh Cantwell shows off her enviable curves in TINY yellow bikini as she enjoys paddle boarding session in Barbados**

► **'I've missed this face!': David Beckham shares cosy snaps with Brooklyn as they reunite in NYC... days after revealing his 'concern' for his son in the city**

► **'I am dying inside': Devastated Chanelle Hayes shares emotional post after revealing she has SPLIT Ryan Oates... just TWO MONTHS after giving birth to his child**

► **Salute to the fallen: Prince Harry visits Westminster Abbey's Field of Remembrance to lay one of 70,000 wooden crosses in memory of war heroes**

► **Sizzling Jessica Wright strips down to her underwear to reveal her incredibly ripped abs and pert behind... as she flaunts results of her fitness overhaul**

► **Leggy Busy Philipps looks radiant in a bright yellow jumper and**

+99

NEW  
ARTICLES

Top

Share

thigh-skimming mini skirt after a pampering session  
Leggy lady

► Bust move! Ariel Winter unbuttons her trendy coveralls to reveal racy bralette and flat tummy while grabbing lunch in LA  
Flashing flesh

► Bond girl Karin Dor, who played an assassin sent to kill 007 in *You Only Live Twice*, dies aged 79, at a care home in Munich  
Sad news

► Leggy Lottie Moss narrowly avoids a wardrobe malfunction as she slips into a sultry negligee-inspired frock to showcase her model frame at Jimmy Choo

► 'They're STILL a vision of beauty!' Viewers are left in awe as youthful-looking The Corrs siblings Andrea and Caroline appear on GMB to discuss comeback

► Pregnant Abbey Clancy flaunts her long legs in thigh-high boots and a leather miniskirt during Britain's Next Top Model filming  
Leggy lady

► Britain's Next Top Model star Victoria Clay puts on a VERY racy display as she flashes her underwear in daring sheer ensemble for clothing launch party

► 'He loves the fur!': Stacey Solomon makes very cheeky confession about beau Joe Swash... as the Loose Women vow to stop shaving until December

► No time for The Weeknd? Bella Hadid steps out with a male friend in New York... after her ex split with Selena Gomez  
Out and about

► Blake Harrison rocks a 70s moustache before hopping into a battered Ford Corina with Ben Wishaw... quick enough for political drama *A Very English Scandal*  
EXCLUSIVE 'He couldn't get his genitalia out quick enough'...  
BBC investigating 25 sex harassment cases: Number of probes...  
Boobs are great, morning sickness came

+18

+18

Actresses Katherine Kendall (left) and Sophie Dix (right) were also subjects of interest to the intelligence firm, a source told DailyMail.com

The cost included 'databases and software licenses, flights, travel, computers and special accessories, and out of pocket expenses.'

Black Cube would also be paid an additional \$100,000 if Weinstein used the information it collected in lawsuits, pitched it to the media or gave it to law enforcement.

The contract also included an additional \$300,000 payment to Black Cube if the firm uncovered previously unknown individuals who were involved in the 'negative campaign' against Weinstein. It also stipulated a \$200,000 'success fee.'

'[I]n the event Black Cube succeeds in achieving the objective, including putting a stop to the negative campaign, Black Cube will be paid an additional success fee of 200,000 USD,' said the contract.

The document described Black Cube as 'a select group of veterans of elite units in the Israeli intelligence community, combined with financial and legal experts' based in London, Tel-Aviv and Paris.

The October contract was signed by Amy Habie, the chief financial officer at Boies, Schiller & Flexner LLP, the law firm Weinstein used to retain Black Cube. It was also signed by Black Cube's director Avi Yanus.

## SHARE THIS ARTICLE

676 shares

## RELATED ARTICLES



Five more women come forward to accuse Roman Polanski of...



Harvey Weinstein used ex-Mossad agents and an 'army of...



LAPD investigating actress Kristina Cohen's claims that...

**back': April Love Geary reveals the ups and downs of her pregnancy at 24 weeks**  
Expecting first child

► **Sporty spice? Victoria Beckham opts for a relaxed look as she arrives in Boston wearing laid back white T-shirt and joggers**  
Low-key look

► **'I don't want to be a slave to it': Braless Dannii Minogue flaunts her ample bust in racy futuristic frocks... as she admits being a mum is still her main priority**

► **Heaven sent! Victoria's Secret darlings Romee Strijd and Josephine Skriver strip to their lingerie for beach photo shoot in Malibu**

► **From Graceland to raceland! Priscilla Presley, 72, looks youthful in a white lace ensemble and pink fascinator as she attends Oaks Day**

► **Plaid is how you do it! Blac Chyna draws attention to her plentiful cleavage and envy-inducing curves in clingy minidress and thigh-high boots**

► **Not so Fancy! Braless Iggy Azalea opts for VERY risqué ensemble complete with barely-there slogan cami and eye-wateringly tight plastic trousers**

► **Kelsey Grammer, 62, poses with wife Kayte Walsh, 37, at London musical premiere... as his ex Camille gets half of his retirement fund in their divorce**

► **TOWIE's Amber Turner flashes her lace bra in plunging playsuit while ultra bronzed Nicola Hughes shows off her Terracotta tan at star-studded fashion party**

► **Hostess with the most! Carrie Underwood is show-stopping in a DOZEN dazzling outfits while hosting the CMAs for the 10th time**  
Sensational

► **On cloud nine! Pink wows in a dreamy white**

+18

Elizabeth Avellan with ex-Robert Rodriguez, who left her to begin a relationship with McGowan, says a reporter contacted her and pressed her for dirt on McGowan

+99

NEW  
ARTICLES

Top

Share



tulle gown as she takes her sweet daughter Willow Hart to the 51st CMA Awards  
Doting mother

► Country divas Miranda Lambert, Carrie Underwood and Faith Hill lead the best dressed in glamorous gowns at star-studded Country Music Awards

► Letting him Knowles what he's missing! Pascal Craymer sizzles in VERY racy PVC mini dress with thigh-highs... after ill-fated romance with DIY SOS' Nick

► Socialite Hofit Golan shows off her eye-popping sideboob in scanty metallic swimsuit before slipping into plunging cut-out number in The Maldives

► Spot on! Ashley Graham sizzles in sexy Instagram selfie as she shows off her hourglass curves in leopard-skin bikini  
Beach babe

► A real Dame! Helen Mirren looks every inch the French femme as she films new flick Anna alongside Cillian Murphy in France  
Hard at work

► Miley Cyrus and Liam Hemsworth sport matching bands on their ring fingers as they grab coffee in Georgia... amid claims couple 'secretly wed six months ago'

► Jessica Biel keeps it simple in a cream jumper and black trousers for talk and screening of her TV mini-series The Sinner in Los Angeles

► Love Island's Camilla Thurlow unveils dramatic shorter locks as she cosies up to model beau Jamie Jewitt at MTV Staying Alive Gala

► Leona Lewis looks radiant in plunging metallic sheer dress as she entertains guests at MTV party... after revealing a notably slimmer physique

+99

NEW ARTICLES

Top

Share

+18

+18

Weinstein had the agencies compile psychological profiles on dozens of targets such as Rosanna Arquette (left) while Pamela Lubell (right) was allegedly tricked into revealing a list of her old colleagues, then forced her to call them to see who had spoken to the press

## The long list of actresses who have spoken out on Weinstein



0:00 / 0:55



In a subsequent contract in July, published on Monday by the **New Yorker**, Weinstein agreed to pay the firm another \$200,000 for four months of investigative work, and up to \$350,000 in potential bonuses.

Despite the relative success of the operation, sources said Weinstein and Black Cube ended up in a dispute over payments, which was the reason for the second contract in July.

During 'Operation Parachute,' Black Cube operatives managed to obtain several meetings with targeted journalists and actresses.

One undercover female operative working for Black Cube met with actress Rose McGowan and her agent in May 2017 in Los Angeles, according to the New Yorker.

DailyMail.com learned the operative is a blonde woman in her 30s from Jaffa, Israel, who previously worked for the Israel Defense Forces.

During the meetings, they discussed an unpublished memoir McGowan had written called Brave, which referenced Weinstein. The operative was able to obtain a full copy of the book.

The Black Cube investigation – known as 'Operation Parachute' – was led carried out by the firm's London office, according to a source familiar with the effort.

Black Cube founders Avi Yanos and Dan Zorella – a former member of the Israeli Intelligence Corps – were also involved in the project.

Insiders said the spy firm's London office went into panic mode on Monday and initially tried to destroy documents related to the Weinstein deal before their law firm Peters & Peters advised against it.

## Driver for Harvey Weinstein says he was known as 'the big pig'



**Victoria's Secret Angel Alessandra Ambrosio shows off her sensational tanned and toned figure in a tiny white bikini as she hits the beach**

193

► **Re-vamping their schedule! Twilight star Nikki Reed and Vampire Diaries actor husband Ian Somerhalder sell Kentucky Derby heist show to CW**

► **'There's no hard feelings': Stephen Bear QUITs Just Tattoo Of Us amid bitter split with ex Charlotte Crosby... days after Scotty T had been tipped to replace him**

► **'I always knew I liked girls': Marnie Simpson reveals her first sexual experience with a girl as she discusses bisexuality on Single AF Candid**

► **'A dingo ate my baby': Paris Jackson cuddles up to iconic Australian animal as she continues Hamilton Island getaway with rumoured beau Tyler Green**

► **Drew Barrymore looks dreamy in floral gown at Christian Siriano's cocktail party for his new book Dresses To Dream About in NYC**  
Blooming lovely

► **He can't keep away from her! Alex Rodriguez visits Jennifer Lopez on set as she films Second Act with Vanessa Hudgens in New York**

► **Is Chloe Lattanzi already married? Daughter of Olivia Newton-John hints she has tied the knot with fiancé 'James Driskill' by calling herself a 'wife'**

► **Hot metal! Ruby Rose steals the spotlight as she shimmers in figure-hugging gold backless gown at Country Music Awards**  
Turning heads

► **Give them a (slow) hand! Niall Horan and Maren Morris hit the CMA red carpet together before performing collaboration Seeing Blind**

+99

NEW  
ARTICLES

Top

Share

◀ ▶ ⏮ ⏭ 0:00 / 0:31



This is Exhibit "R" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

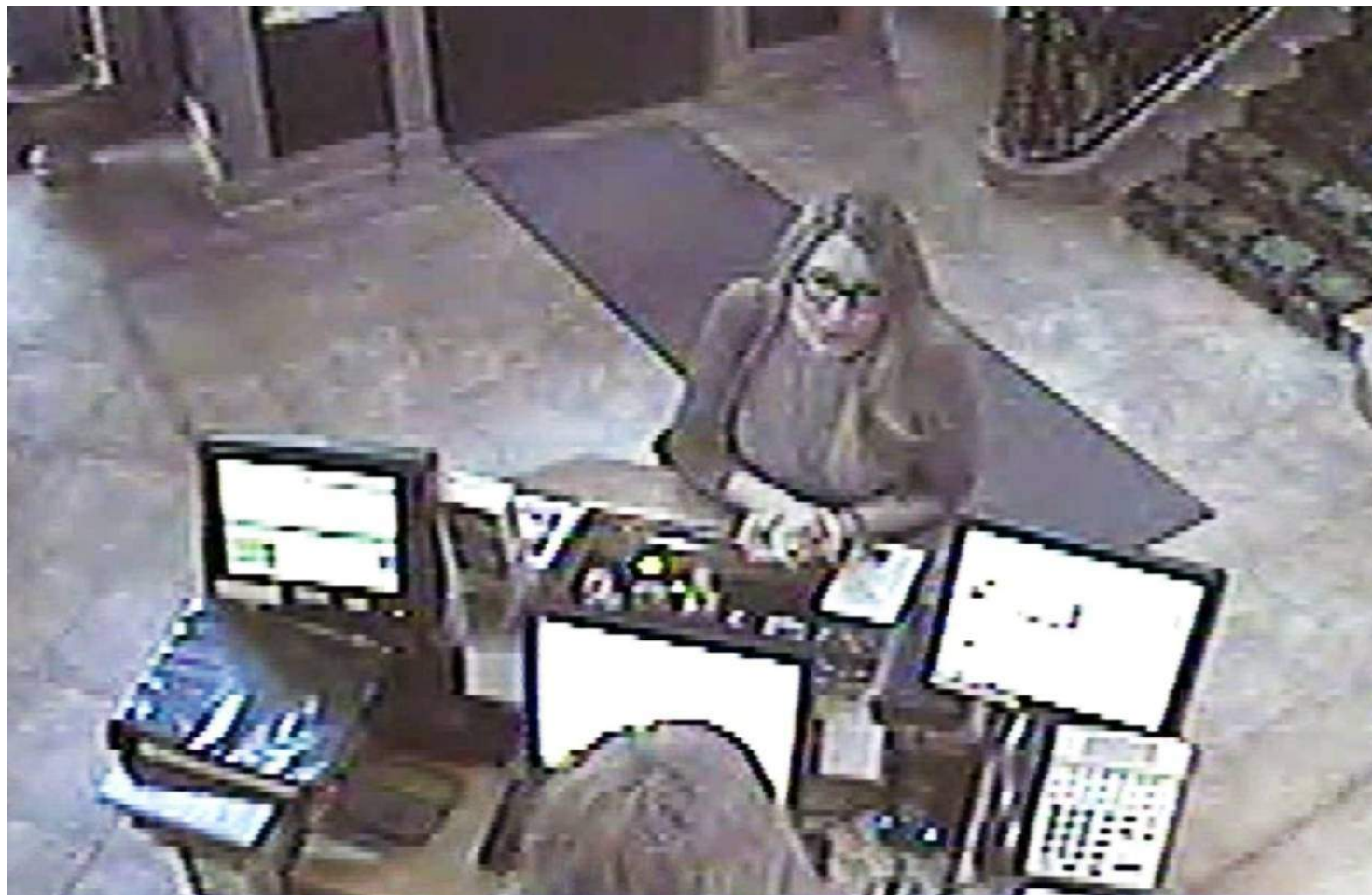
*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

# Undercover Operative Resurfaces, With a Different Alias 195

WSJ [wsj.com/articles/undercover-operative-resurfaces-with-a-different-alias-1510165378](https://www.wsj.com/articles/undercover-operative-resurfaces-with-a-different-alias-1510165378)

11/8/2017



A woman who identified herself as ‘Diana Ilic’ shown in a surveillance photo at a Philadelphia-area restaurant in July. Photo: GeoInvesting LLC

By  
Nov. 8, 2017 1:22 p.m. ET

A private investigator reported to be working undercover on behalf of film mogul Harvey Weinstein was identified by two people as the same woman that The Wall Street Journal reported over the summer had used a different alias to wring information out of a critic of a large U.S. insurer.

The woman in the [Journal article](#) had given her name as “Diana Ilic.” The New Yorker, [in an article published Monday](#) about Mr. Weinstein’s use of private investigators to counter probes into his [alleged sexual abuse](#), named “Diana Filip” as a pseudonym used by an operative for Black Cube, an Israeli investigative firm.



— ADVERTISEMENT —







The Journal, in its August article, published surveillance photos of the mystery woman, captured during a July dinner near Philadelphia with an analyst for a research firm critical of the New York-based insurer, [AmTrust Financial Services Inc.](#) [AFSI 3.11%](#)

It's "the same woman," said actress Rose McGowan, through her publicist. Ms. McGowan [has said Mr. Weinstein raped her](#). According to the New Yorker, Ms. McGowan met multiple times with "Diana Filip," the Black Cube operative, who was posing as a sympathetic London-based women's rights activist and who secretly recorded the actress.

Ms. McGowan made the identification after seeing photos of "Diana Ilic" obtained by the Journal.

An AmTrust spokeswoman didn't respond to questions sent Tuesday about Ms. McGowan's identifying "Diana Ilic" as the same woman the New Yorker said was operating for Black Cube. AmTrust has said it hired Black Cube to investigate a former Italian business partner, but it has denied hiring the firm or any private investigators to probe its U.S. critics.

In a statement, Black Cube said it is company policy "to never discuss its clients with any third party," adding that it "applies high moral standards to its work" and operates within the law. Launched in 2011, the firm describes itself as "a select group of veterans from the Israeli elite intelligence units that specializes in tailored solutions to complex business and litigation challenges."

A spokeswoman for Mr. Weinstein, who authorities say is the focus of criminal investigations into his conduct, said he "unequivocally" denies "allegations of nonconsensual sex." As for the private investigators, the spokeswoman said: "It is a fiction to suggest that any individuals were targeted or suppressed at any time."

A spokesman for Weinstein Co. didn't immediately respond to a request for comment.

Separately, a writer for New York magazine viewed photos and video footage of the woman in the Journal's AmTrust piece and said "it looks like the same woman" who he said pumped him for information in late 2016 about Mr. Weinstein when he was working on an article about Mr. Weinstein's accusers. The woman had used the name, "Anna," according to the New York writer, Ben Wallace.

The New Yorker published a copy of a contract between Black Cube and one of Mr. Weinstein's lawyers, naming an "Anna" as one of its operatives for the assignment.

In an interview Tuesday, Mr. Wallace said "Anna" pretended to be a disgruntled former mistress of Mr. Weinstein's who heard he was working on an article. Claiming to be worried about her career if she spoke out, she pushed for information about other women he was talking with, he said.

Mr. Wallace described the woman as blonde, mid-30s, with "an accent that was hard to place, possibly German." On a second meeting, he said she suggested a place that was "mood lit," already had a glass of wine, and motioned for him to sit next to her.

Harvey Weinstein at the Tribeca Film Festival in New York earlier this year. Photo: Charles Sykes/Associated Press

That was a similar experience to that of Chris Irons, the analyst with GeoInvesting LLC, who said "Diana Ilic" had plied him with drinks during a July dinner meeting. He also detected an accent; she claimed to be from Zagreb, Croatia.

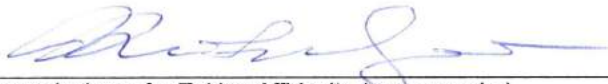
After the dinner, Mr. Irons discovered his boss also had a mysterious meeting, with a man claiming to be French, who similarly pumped him for information about AmTrust. Two other critics of AmTrust also reported mysterious contacts, the Journal reported in August.



The email address "Diana Ilic" used with Mr. Irons linked to a domain name established a few days before the meeting. The London address for her consulting firm turned out to be a mailbox drop. Calls and emails to her weren't returned.

**Write to Mark Maremont at [mark.maremont@wsj.com](mailto:mark.maremont@wsj.com)**

This is Exhibit "S" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.



NEWS

SHOWS

VIDEO

CBSN

MORE



## Trending Videos

CBSN LIVE »

CBS This Morning  
Roy Moore  
misconduct claimsCBS This Morning  
Task force on  
Hollywood abuseCBS This Morning  
Women accuse Louis  
C.K.

CBS/AP / November 8, 2017, 9:36 PM

# NYT fires attorney David Boies, who worked with Weinstein

12 Comments / Share / Tweet / Stumble / Email

**NEW YORK --** The New York Times fired lawyer **David Boies**' firm Tuesday after learning it tried to halt the newspaper's investigation into sexual harassment charges against Hollywood mogul **Harvey Weinstein** while also representing the newspaper on other matters.

Boies has disputed the Times' view that his work for Weinstein represented a conflict of interest. Still, he no longer works for Weinstein and said the task he completed for him was a mistake.

**Harvey Weinstein reportedly enlisted "army of spies" to silence accusers**

It represents the fallout from a New Yorker magazine article that reported Weinstein hired investigators to trail women who had accused him of mistreatment, including Rose McGowan and Rosanna Arquette. Journalists pursuing the story, including Jodi Kantor of the Times and Ronan Farrow, author of Tuesday's New Yorker piece, also were investigated.

It was not immediately clear how much business the Times did with the law firm Boies Schiller and Flexner.

 CBSN  
CBS News. Always On.

Watch Now &gt;

Sponsored by [schizophreniaresources.com](http://schizophreniaresources.com)

## Schizophrenia Symptoms You're Likely Ignoring

Not sure what schizophrenia is or what the symptoms are? Learn more here to understand the disease and what the symptoms look like.

## Did Harvey Weinstein enlist "army of spies" to silence accusers?

2:40

On Wednesday, it became public that two A-list attorneys had signed on with Weinstein amid the **NYPD saying it is investigating the Hollywood mogul for rape.**

He hired Ben Brafman, the attorney who represented former International Monetary Fund head **Dominique Strauss-Kahn** during a 2011 rape case that fell apart amid questions about the accuser's credibility.

Blair Berk has represented Mel Gibson, Keifer Sutherland and others.

Boies, best known for representing Al Gore in the 2000 disputed election against George W. Bush, is the second prominent attorney to take heat for representing the man accused of being one of Hollywood's biggest sexual predators. Lisa Bloom, a prominent women's rights lawyer, quit representing Weinstein when the extent of the accusations against him became known.

The article said Boies' firm hired and paid one organization with a background in Israeli intelligence agencies at the same time it was representing the Times in a libel case.

## New rape allegations against Harvey Weinstein

1:46

In a statement to his firm's employees on Tuesday, Boies noted that his contract with the newspaper made clear that his firm might do work for clients in unrelated areas that were against the Times' interests.

Times spokeswoman Danielle Rhoades Ha said the newspaper never contemplated the firm would contract with an intelligence firm to conduct a secret spying operation aimed at their reporting and reporters.

"Such an operation is reprehensible, and the Boies firm must have known that its existence would have been material to our decision whether to continue using the firm," she said. "Whatever legalistic arguments and justifications can be made, we should have been treated better by a firm that we trusted."

Boies said Weinstein had told him that the Times was considering publishing a story alleging that the mogul had raped an actress. Boies said he would not defend him against these charges, and told him the only way the story could be stopped was to prove it was untrue.

Weinstein selected private investigators to try and do that, Boies said, and asked him to draft a contract with one such group. Boies said he now believes it was a

### Watch CBSN Live



Moore Accused Of Sexual Assault



Suspect In Rand Paul Assault Pleads Not Guilty



La Nina Is Officially Here



Panel Drops Effort To Force Testimony On Trump 'Dossier'



Roy Moore Accused Of Sexual Contact With 14 Years Old

### Follow Us

### Popular on CBS News

01

Woman sentenced for fiancé's kayak death

93460 views

02

1 dead in shootout with police on busy interstate

73609 views

03

Gunman checked each aisle, shot babies at point-blank range

72814 views

04

GOP Senate candidate accused of sexual encounter with minor

60565 views

05

Watch: Plane engine catches fire as it lands at Seattle airport

56384 views

### From "60 Minutes"



12-year-old prodigy whose "first language" is Mozart



Puerto Rico's storm of misery

mistake to do this for an investigative firm he did not know.

The New Yorker said some of the investigators misrepresented themselves in contact with their subjects, compiled personal and sexual histories on some, and left some of the targets feeling intimidated. Boies said he never would have drawn up the contract had he known what it would be used for.

"I would never knowingly participate in an effort to intimidate or silence women or anyone else," he said.

A spokeswoman for Weinstein did not immediately return a message seeking comment. He has characterized his contact with actresses as consensual.



## Harvey Weinstein scandal

© 2017 CBS Interactive Inc. All Rights Reserved. This material may not be published, broadcast, rewritten, or redistributed. The Associated Press contributed to this report.

12 Comments / Share / Tweet / Stumble / Email

SHOW COMMENTS +

Sponsored Links by Taboola

### Ontario Landlines Get Replaced (But Not With Cell Phones)

Talk Tech Daily | Sponsored Links

### These Crossovers Are The Cream Of The Crop!

Yahoo Search

### Ontario: Don't Have A Hearing Test Until You Read This

Clinic Compare

### If You Still Have Any of These Old Toys, Today's Your Lucky Day

Livingly

### Ontario Mechanics Left Furious By New Device

Expert Market

### Read Ebooks? Here's The Worst Kept Secret Among Book Lovers

The Book Insider

### Do You Have Royal Blood? Your Surname May Tell You.

Ancestry

### The Last Wallet You'll Ever Use.

RidgeWallet.com



San Francisco's leaning tower of lawsuits



Defending the U.S. from North Korea's nuclear threat



Qatar's emir stands defiant in face of blockade



How a WWII-era forger saved lives, one fake document at a time



play VIDEO

Roy Moore accused

## Most Shared on CBS News



26 dead in Texas church shooting



What we know about the Texas church shooting suspect



Bergdahl spared prison time, faces dishonorable discharge



The 747 flies into the sunset

Finding a car to connect a son with his father, a fallen soldier

NYPD could arrest Harvey Weinstein

Actress alleges Harvey Weinstein raped her twice: "I just froze in fear"

You May Like

Sponsored Links by Taboola

Huge Rewards For Canadians Born Between 1941-1981

Survey Compare

Play this for 1 minute and see why everyone is addicted

Vikings: Free Online Game

"Transparent" star Jeffrey Tambor denies allegations of inappropriate behavior

ACLU slams Taylor Swift, defends blogger's free speech

You May Like

Sponsored Links by Taboola

How Thousands of Canadians Are Getting Cheap Cars Even With Bad Credit

Cheap Cars Canada

Siemens Primax hearing aid: Effortless hearing

Hear.com



124 PHOTOS  
Notable deaths in 2017

New Fire TV App

New Fire TV App

CBSNews.com

- Site Map
- Help
- Contact Us
- CBS Bios
- Careers
- CBSi Careers
- Internships
- Development Programs

CBS Interactive

- Privacy Policy
- Ad Choice
- Terms of Use
- Mobile User Agreement
- About CBS
- Advertise
- Closed Captioning
- CBS News Store

Follow Us

- Facebook
- Twitter
- RSS
- Email Newsletters
- YouTube
- CBS News Radio
- CBS Local

Copyright © 2017 CBS Interactive Inc.  
All rights reserved.

Search...



This is Exhibit "T" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.



RomaniaCorruptionWatch

[Follow](#)

Aug 14 · 5 min read

## Black Cube: How did an Israeli intelligence agency land contracts worth £1.5 million in Romania?



In the spring of 2016, conspiracy theorists had a field day. What was usually regarded as outlandish ideas spewed out by tipsy uncles over Christmas dinner turned out to be 100% true. The Director of the National Anti-Corruption Agency in Romania (DNA), Laura Codruta Kovesi, had been spied on by employees of Black Cube—an Israeli intelligence company that provides legal and intelligence services to high-profile companies, governments and individuals.

### What happened?

The Direction for the Investigation of Organised Criminal Infractions and Terrorism (DIICOT) arrested two people affiliated with the operation. In a press release published on April 6th, 2016, DIICOT highlights the main motive of the arrest, namely the means used by Black Cube to carry out the operation, not its existence as a whole.

“In March 2016, Dan Zorella and Avi Yanus [...], who had management roles at an Israeli company, Black Cube, with offices both in Tel Aviv/Israel and in London/UK, together with several other employees of the firm, including the defendants Weiner Ron and Geclowicz David, initiated and constituted a criminal group with the purpose of committing several crimes, i.e. harassment and digital crimes, such as making multiple threatening telephone calls meant to inspire fear, as well as phishing attacks meant to steal login credentials and, later on, to compromise e-mail accounts. These activities were followed by the

violation of the secret of correspondence via the unlawful copying and transfer of these accounts' content. The objective of the group's criminal activity was to compromise the image of the DNA chief prosecutor in Romania by trying to find "activities of corruption.""

Both Weiner and Geclowicz received suspended sentences of 2 years and 8 months in jail, and have returned to Israel after the conclusion of the case in early 2017. They are also under surveillance for a period of 3 years and are prohibited from communicating with the injured parties—LCK and her family. However, when one of the top managers of Black Cube, Dan Zorella, gave a deposition for DIICOT, he provided further information regarding the company's mission in Romania. They had apparently been commissioned by Daniel Dragomir, a former SRI officer (Romania's intelligence agency), and had been led to believe that this mission had been backed by the highest political powers in the country, including President Klaus Iohannis. They also denied any wrongdoings and claimed to have been working under contract.

Prosecutors indicted Daniel Dragomir in the same case. He had been the Director of the informational and operational sector under the General Direction for the Prevention and Combating of Terrorism at SRI. Since then he was in jail for six months and was later put under house arrest while also being investigated in another corruption case.

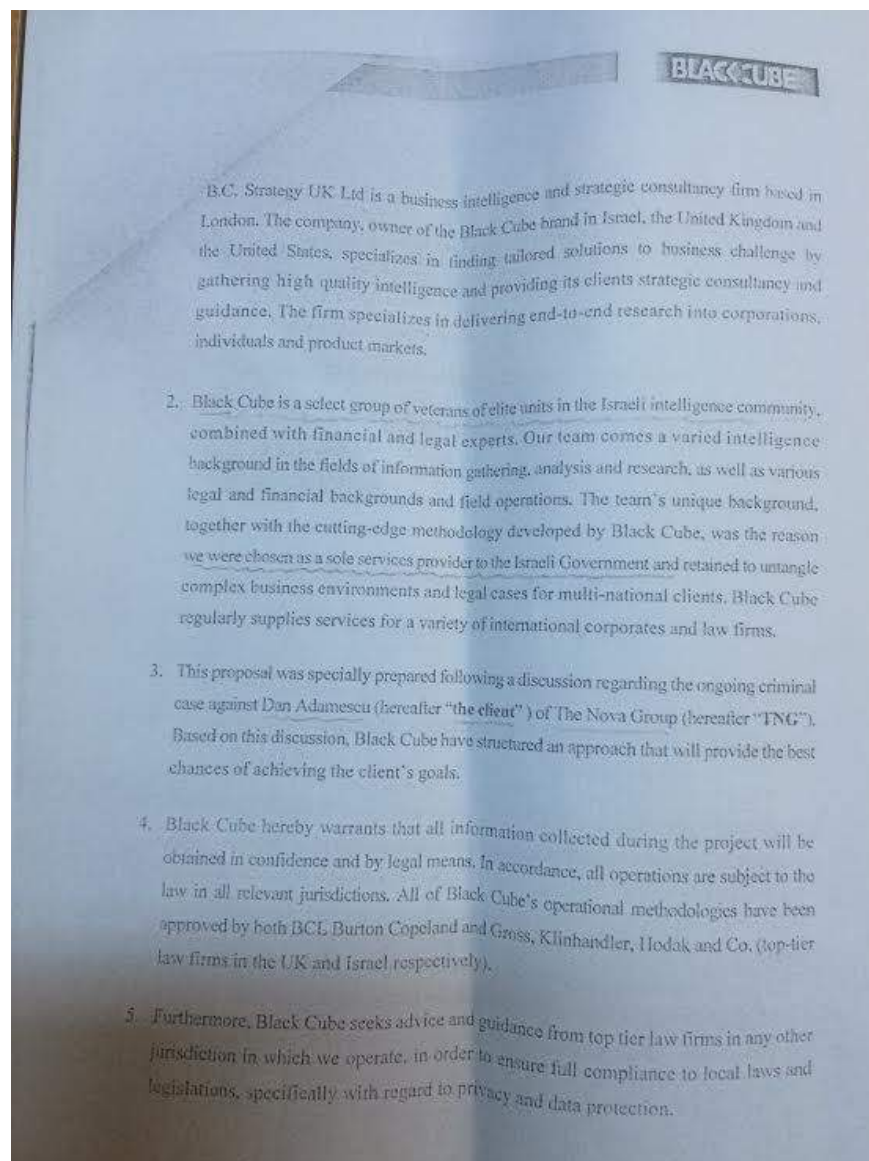
### About Black Cube

What do we know about the company that spied on LCK? Black Cube is led by former generals and colonels in Israeli espionage such as the late Meir Dagan, who before acting as honorary president of Black Cube had directed the Mossad, Israel's main spy shop. With offices in Tel Aviv, London and Paris, Black Cube supports law firms, financial institutions, the public sector, multinational corporations and high net-worth individuals with litigations, advancing business interests and cyber-crime challenges.

Kovesi's surveillance was not Black Cube's first case in Romania, nor was it the first time the company had targeted DNA. The contract signed with Daniel Dragomir in February 2016 had a value of £900,000 and was the second contract signed between Black Cube and a Romanian beneficiary. The first one was signed in March 2015 with businessman Dan Adamescu's Nova Group, for £600,000. Even if he



denied all charges, one of Romania's main news agencies, Hotnews, published the actual copy of the contract.



The contract between Black Cube and Dan Adamescu's The Nova Group

Dan Adamescu had been convicted of bribing judges to obtain favourable solutions for his companies in a number of insolvency cases. The collaboration with Black Cube aimed to bring proof to determine DNA to drop charges against him through a media campaign that would discredit DNA and allege that the institution had targeted Adamescu on the orders of certain politicians such as Victor Ponta, the prime minister of Romania at the time, as a result of incriminatory information published by the Romania Libera newspaper owned by Adamescu.

In the end, Black Cube's efforts did not amount to much. Dan Adamescu was convicted to 4 years and 4 months of jail by the High Court of Cassation and Justice. In 2013 he and his son, Alexander Adamescu, had paid 23,000 RON (£4,500) to two judges at the Bucharest Tribunal so they would enable them to benefit from insolvency claims initiated for some of the companies that belonged to Dan Adamescu. This only fuelled the family's PR efforts, both nationally and internationally. The Adamescus claimed to be political victims of the current regime, especially after Dan Adamescu passed away in prison in 2017.

It's unclear whether the second contract was also tied to Adamescu. What we do know is that Dragomir simply did not have access to those funds—prosecutors had already frozen his accounts. Journalists speculated that the £900,000 came from a collective of businessmen keen on taking the DNA down a notch.

The most interesting aspect of the case however is the sheer amount of money involved. Any industry insider will tell you that the work carried out by Black Cube was simply not worth it. The infamous dossier compiled by former MI6 spy Christopher Steele on Trump's business activities only fetched between \$12,000 and \$15,000 a month. Which leads many to believe that the contracts had covert objectives that were not carried out—as the DNA swooped in and arrested the 2 Black Cube employees. Some have suggested that the Israelis—who describe themselves as “providing *creative intelligence*—were hired not just to blackmail Kovesi, but also to extract corruption-tinged businessmen from the country and provide them with safe haven in third countries. While this might seem farfetched to some, as we have pointed out in a previous post, Sebastian Ghita, a businessmen-cum-politician-cum-media mogul, was helped by unknown actors to flee Romania and take refuge in neighbouring Serbia. Despite being tailed by law enforcement, Ghita managed to somehow disappear for nearly 5 months before being apprehended by the Serbian police on a fluke. Similarly, Puiu Popoviciu was nowhere to be found after he was found guilty by the DNA and is currently suspected of hiding out in the U.S. or the U.K. Perhaps Adamescu had a similar scenario in mind?

Declarations notwithstanding, the large amounts of money involved underline the importance of the operation for the beneficiary and raise questions as to why they deemed these efforts worthy of such an

investment. We can't know for sure, but it definitely sounds like the kind of spy story that Hollywood would be interested in.



This is Exhibit "U" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law,  
Expires March 22, 2019.

## Police Complaint Reveals Details about Black Cube Tactics

Black Cube recorded a business executive while he was out on a bike ride, and did so without a private investigator's license, the complaint says

Tomer Ganon 14:24 23.11.17

Israel's association of private investigators is accusing intelligence firm Black Cube of operating without a license.

For daily updates, subscribe to our newsletter by clicking [here](#).

In a complaint filed with police in Tel Aviv this week, The Israel Bureau of Private Investigation accused B.C. Strategy Ltd., Black Cube's corporate name, of gathering evidence on behalf of clients in violation of the law regulating the work of private investigators in Israel.



Mountain bike riding (Illustration). Photo: zachd1\_618/Flickr

The complaint names Black Cube founders Dan Zorella and Avi Yanus as well as two employees of the company.

Black Cube rejected the allegations, calling the filing of the complaint a public relations stunt by an organization representing "a tiny number of unemployed private investigators."

The private intelligence firm, which is based in Tel Aviv, received worldwide attention earlier this month after New Yorker magazine revealed that Hollywood producer Harvey Weinstein had hired Black Cube to investigate an actress who accuses him of rape.

In its complaint to police, the Bureau described two instances in which Black Cube allegedly conducted investigations without a license.

In 2014, Black Cube was hired to assist a construction aggregates company in its dispute with a competitor, according to the complaint. A Black Cube

employee recorded one of the competitor's senior executive during a bike ride, and the tape was submitted as the key piece of evidence in a lawsuit.

In the second incident, which happened in 2016, a supermarket chain executive hired Black Cube to investigate his suspicion that a rival was running a negative campaign against him, The Bureau wrote.

An attorney representing the investigators association said that he raised his clients' concerns in a conversation with Black Cube's executives two years ago. Black Cube responded, promising that it relies only on public information. In cases that require deeper investigative work, the company said it hired licensed investigators.

The lawyer, Jacob Sa'ar, accepted Black Cube's explanation and recommended that the Bureau not pursue any action against the intelligence firm.

#### More by Calcalist:

- [Spy Company Black Cube Apologizes for Accepting Weinstein Job](#)
- [Ehud Barak Linked Weinstein with Israeli Spies-for-Hire, Report Says](#)
- [Drones Are Used to Infiltrate Prisons, Says the Israel Prison Service](#)

### Black Cube

#### Description

Black Cube is a private intelligence agency, which operates out of London, Paris and Tel Aviv, and is the trading name of BC Strategy Ltd. The company was founded in 2010 by former Israeli intelligence officers Dan Zorella and Avi Yanus and draws its manpower from elite and secretive Israeli intelligence units.

#### Headquarters

Tel Aviv, Israel

#### Founded



Sources, Disclaimer

Powered by Kamidoo

"Now, it turns out the suspicions were right—Black Cub violates the law," Mr. Sa'ar said.

Through a law firm, Black Cube said that the Bureau is "turning its back on previous understandings in order get a momentary public relations spotlight."

Black Cube released a statement saying, "The company's policy is never to discuss its clients with third parties. It should be noted that Black Cube has always and will always work within the framework of the law in each and every country and in consultation the world's leading law firms. This is a false complaint that the Bureau, a private body that represents a tiny number of unemployed private investigators, decided to file with the police because of commercial and publicity reasons only."

## You Might Also Like

Recommended by



Israel Sketches Framework to Regulate Civilian Drones



Publishers Compromise on Video Quality— and We're All Paying the Price



Calcalist Launches English-Language Site Dedicated to Israeli Tech News



Robotic Exoskeleton Company ReWalk Robotics Aims to Raise \$7.2 Million

## No Comments

Write Comment

## Buzz



### Spring Ventures Buys 19% of Wellborn Ventures for \$2.1 Million

23.11.2017 Adrian Filut



### Kim Kardashian Backs Israel-Linked Fashion App

13.11.2017 Sagi Cohen



### WeWork to Build "WeGrow," an Entrepreneurial Elementary School, Report Says

08.11.2017 Amarelle Wenkert



### Lloyd's Signs Deal with Maritime Data Startup Windward

23.11.2017 Meir Orbach



### Startup Wants to Help Users Overcome the Hardships of Booking Ski Vacations

29.10.2017 Meir Orbach



### Video Sharing Company Slidely buys User-Generated Video Startup

08.10.2017 Meir Orbach





- Twitter
- Facebook
- Newsletter
- Tips

This is Exhibit "V" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

## ServiceOntario

### Search Agency Licences

[Show page help](#)

All required fields are marked with an asterisk (\*)

#### Search Agency Licences

Legal Business Name ?

No search results found

## ServiceOntario

### Search Agency Licences

[Show page help](#)

All required fields are marked with an asterisk (\*)

#### Search Agency Licences

Legal Business Name ?

No search results found

## ServiceOntario

### Search Agency Licences

[Show page help](#)

All required fields are marked with an asterisk (\*)

#### Search Agency Licences

Legal Business Name ?

No search results found

**ServiceOntario****Search Agency Licences**[Show page help](#)*All required fields are marked with an asterisk (\*)*

Search Agency Licences

Legal Business Name ? B.C. Strategy

Cancel Reset Search Search

No search results found

**ServiceOntario****Search Agency Licences**[Show page help](#)*All required fields are marked with an asterisk (\*)*

Search Agency Licences

Legal Business Name ? BC

Cancel Reset Search Search

No search results found

**ServiceOntario****Search Agency Licences**[Show page help](#)*All required fields are marked with an asterisk (\*)*

Search Agency Licences

Legal Business Name ? strategy

Cancel Reset Search Search

No search results found

This is Exhibit "W" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

Court File No. CV-17-586096

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	WEDNESDAY, THE 16 <sup>TH</sup>
	)	
MR. JUSTICE GLENN A. HAINEY	)	DAY OF NOVEMBER, 2017

BETWEEN:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.  
C.O.B. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC,  
FRIGATE VENTURES LP, ANSON INVESTMENTS LP, ANSON CAPITAL  
LP, ANSON INVESTMENTS MASTER FUND LP, AIMF GP, ANSON  
CATALYST 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

**ORDER**

THIS MOTION, made by the Defendants, West Face Capital Inc. ("**West Face**") and Gregory Boland ("**Boland**") (collectively the "**Moving Parties**") for an Order transferring this action to the Commercial List, directing and compelling the Respondents (as defined in paragraph 4 below) to preserve evidence, and for other ancillary relief, was heard this day at 330 University Avenue, Toronto, Ontario, M5G 1R7.

ON READING the Motion Record of the Moving Parties, dated November 15, 2017, filed in support of this motion;

AND ON HEARING the submissions of the lawyers for the Moving Parties and the lawyers for the Plaintiffs and UPON BEING ADVISED that the Plaintiffs, Lax O'Sullivan Lisus Gottlieb LLP, Greenspan Humphrey Weinstein and Moore Barristers LLP consent to the relief sought, no one appearing for Black Cube (as defined in paragraph 4 below):

1. THIS COURT ORDERS that this action shall be and is hereby transferred to the Commercial List and shall be listed on the Commercial List.
2. THIS COURT ORDERS that this action shall be case managed.
3. THIS COURT ORDERS that the Respondents take immediate steps to preserve all evidence (as defined in paragraph 5 below) in their possession power or control in any way related to, arising out of, or referring to investigative activities undertaken against or involving: (a) West Face Capital Inc. and its current or former employees or agents; or (b) any of the other Defendants in this proceeding, including without limitation the investigations referred to in paragraph 129 of the Statement of Claim.
4. THIS COURT ORDERS that for the purpose of this Order, "**Respondents**" include The Catalyst Capital Group Inc. ("**Catalyst**") and Callidus Capital Corporation ("**Callidus**"), Black Cube, B.C. Strategy UK Ltd., B.C. Strategy Ltd. (collectively, "**Black Cube**") Lax O'Sullivan Lisus Gottlieb LLP, Greenspan Humphrey Weinstein, Moore Barristers LLP, as well as all of their respective partners, officers, directors, employees,

and any agents, operatives, representatives, contractors, and legal counsel of the foregoing.

5. THIS COURT ORDERS that for the purpose of this Order, "**evidence**" is construed as broadly as possible to include, without limitation, all physical and electronic documents, video or audio recordings, internet browser histories, transcripts, physical evidence, or other evidence of any nature.

6. THIS COURT ORDERS that counsel for Catalyst and Callidus shall forthwith provide this Order to the Respondents, as defined above in paragraph 3(a).

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:  
NOV 20 2017

PER / PAR: C.D.





THE CATALYST CAPITAL GROUP INC. et al.  
Plaintiffs

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

Court File No. CV-17-586096

ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT  
TORONTO

ORDER

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

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

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

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

Tel: 416.863.0900  
Fax: 416.863.0871

Lawyers for the Defendants,  
WEST FACE CAPITAL INC. and Gregory Boland

This is Exhibit "X" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.


 DAVIES

155 Wellington Street West  
 Toronto ON M5V 3J7  
 dwpv.com

November 10, 2017

Matthew Milne-Smith  
 T 416.863.5595  
 F 416.863.0871  
 mmilne-smith@dwpv.com

File No. 262163

**BY E-MAIL**

David Moore  
 Moore Barristers  
 Suite 1600  
 Barristers & Solicitors  
 393 University Avenue  
 Toronto ON M5G 1E6

Rocco Di Pucchio  
 Lax O'Sullivan Lisus Gottlieb LLP  
 Suite 2750  
 145 King Street West  
 Toronto ON M5H 1J8

Mr. Brian H. Greenspan  
 Greenspan Humphrey Weinstein  
 15 Bedford Road  
 Toronto, ON M5R 2J7

Dear Sirs:

We learned yesterday that Catalyst and its principals (Newton Glassman, Gabriel De Alba and James Riley) may have retained Black Cube, a private investigative firm comprised of former Israeli intelligence operatives, to conduct an intrusive, unethical and unlawful investigation of West Face and its employees using a series of pretexts and outright lies. This conduct must immediately cease and desist. We reserve the right to bring any and all past and future conduct in this regard to the attention of the various courts before which Catalyst and West Face are currently appearing.

As you are no doubt aware, Black Cube is the firm that has recently been exposed for its conduct at the behest of Harvey Weinstein, the notorious alleged sexual predator, in an effort to silence, intimidate and defame Mr. Weinstein's victims. In that context, Black Cube operatives acted under false pretences to insinuate their way into the victims' confidences and obtain confidential information that could then be used against them in an effort to silence, intimidate, and defame those victims. Black Cube's misconduct has been the subject of widespread media coverage this week in the United States, the United Kingdom and Canada. The identity of the Black Cube operatives involved in this regrettable conduct has been revealed. And Black Cube and the Boies, Schiller & Flexner LLP law firm that retained Black Cube, have both had to issue public apologies in the past several days for their misconduct in this regard.

Regrettably, it appears that Black Cube may have been retained by Catalyst and its principals to engage in the very same kind of misconduct with respect to West Face, using the very same operatives, and despite not even being licensed in Ontario. Employees of Black Cube, including but not limited to Stella Penn (the former Israeli Defence Force and current Black Cube operative who was recently exposed publicly for lying to, harassing and intimidating victims of Mr. Weinstein) have contacted and met with a number of current and former West Face employees by lying to and deceiving them under decidedly false pretenses. This happened as recently at 6:00 p.m. yesterday at a restaurant in London, England.

At each of these meetings, Black Cube operatives lied blatantly and repeatedly in an effort to induce the disclosure by employees of West Face of confidential information concerning its historical, long-concluded investments in WIND Mobile and Callidus Capital Corporation, in breach of the employees' obligations of confidentiality to West Face. Black Cube operatives also attempted to elicit defamatory assertions about West Face and its CEO, Greg Boland.

Concurrently with these unlawful, unethical and deceitful communications with current and former West Face employees, West Face has also learned of a vicious, entirely false and well-orchestrated campaign of defamation concerning West Face and Mr. Boland that has appeared in recent months over the internet in a series of anonymous postings. West Face has reason to believe that these defamatory postings were also generated and posted using Black Cube's services.

In light of the foregoing, West Face and Mr. Boland anticipate making substantial claims against Catalyst and Callidus, as well as its officers and directors including but not necessarily limited to Newton Glassman, James Riley, and Gabriel de Alba.

By this letter we hereby demand that Catalyst and Callidus, as well as its officers, directors, employees, agents, contractors, and legal counsel, take immediate and effective steps to preserve all physical and electronic documents (defined as broadly as possible), recordings, internet browser histories, or other evidence of any nature, in any way related to, arising out of, or referring to the conduct described in this letter. In this context, Catalyst's and Callidus's officers, directors, employees, agents, contractors, and legal counsel include but are not limited to Messrs. Glassman, Riley, and De Alba (in their personal and business capacities), Black Cube, Moore Barristers, Lax O'Sullivan Lisus Gottlieb, and Greenspan Humphrey Weinstein. The agents of the foregoing include, among others, Black Cube and Nardello & Co. (another investigative firm with operatives in Canada, the United States and the United Kingdom). With respect to electronic evidence, all personal and work computers, laptops, tablets, phones, servers, cloud storage or other devices should be preserved.

We further demand that Catalyst or Callidus take immediate steps to put an end to the conduct referred to above, and confirm unequivocally in writing (through their counsel) that they have done so.

Please provide the assurances and confirmations requested by Monday, November 13, 2017 at 5:00 p.m., failing which West Face will take the appropriate steps to obtain immediate relief.

Yours very truly,



Matthew Milne-Smith

MMS/

cc: Matthew Gottlieb  
Kent Thomson  
Andrew Carlson  
Anthony Alexander  
Sarah Weingarten

This is Exhibit "Y" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

---

**From:** David Moore <david@moorebarristers.ca>  
**Sent:** November 10, 2017 6:40 PM  
**To:** Rocco DiPucchio  
**Cc:** Milne-Smith, Matthew  
**Attachments:** Catalyst - Notice of Change of Lawyer Crt File No CV-17-586096.pdf; Catalyst - Notice of Change of Lawyer Crt File No CV-17586094.pdf; Catalyst -- Notice of Change of Lawyer - Court File No CV 15 530726 (2).pdf

Please find attached Notices of Change of Lawyer in the above referenced proceedings.

David Moore

**\*\*\* Please update your records with our new firm name and email address as set out below. Our address, telephone and fax numbers remain the same. \*\*\***

---

David C. Moore  
Moore Barristers  
Professional Corporation  
393 University Avenue, Suite 1600  
Toronto, Ontario M5G 1E6  
Tel. No. (416) 581-1818 Ext. 222  
Fax No. (416) 581-1279  
e-mail: [david@moorebarristers.ca](mailto:david@moorebarristers.ca)  
Web: [www.moorebarristers.ca](http://www.moorebarristers.ca)

**CONFIDENTIALITY NOTE:** This message contains information which may be privileged or confidential, or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby NOTIFIED that any dissemination, distribution, retention, archiving, or copying of this communication is strictly prohibited. If you have received this e-mail in error, please notify us immediately by return e-mail or by telephoning the number given above, and delete the original message.

Court File No. CV-15-530726

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Commercial List**

BETWEEN:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL  
CORPORATION

Plaintiffs

and

VERITAS INVESTMENTS RESEARCH CORPORATION and  
WEST FACE CAPITAL INC.

Defendants

**NOTICE OF CHANGE OF LAWYER**

The Plaintiffs, Catalyst Capital Group Inc. and Callidus Capital Corporation, formerly represented by Lax O'Sullivan Lisus Gottlieb LLP, has appointed Moore Barristers as lawyers of record.

November 10, 2017

**MOORE BARRISTERS**

Barristers & Solicitors  
393 University Avenue  
Suite 1600  
Toronto, ON M5G 1E6

**David C. Moore** - LSUC # 16996  
Tel.: (416) 581-1818 Ext. 222  
Email: [david@moorebarristers.ca](mailto:david@moorebarristers.ca)  
Fax: 416-581-1279

Lawyers for the Plaintiffs



TO: **LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
**Counsel**  
Suite 2750, 145 King Street West  
Toronto, ON.  
M5H 1J8

**Rocco DiPucchio** (LSUC #38185D)  
Tel: 416-598-2268  
Email: [rdipucchio@counsel-toronto.com](mailto:rdipucchio@counsel-toronto.com)

**Andrew Winton** (LSUC #54473D)  
Tel: 416-644-5342  
Email: [awinton@counsel-toronto.com](mailto:awinton@counsel-toronto.com)

Former Lawyers for the Plaintiff

AND TO: **JULIAN PORTER, Q.C. PROFESSIONAL CORPORATION**  
100 King Street West  
Suite 1600  
1 First Canadian Place  
Toronto, Ontario  
M5X 1G5

Tel: (416) 862-4297  
Fax: (416) 862-7661  
Email: [Julian.porter@julianporterqc.com](mailto:Julian.porter@julianporterqc.com)

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**  
Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto, ON M5H 3P5

**J. Thomas Curry** (25740V)  
Tel: (416) 865-3096  
Fax: (416) 865-9010  
Email: [tcurry@litigate.com](mailto:tcurry@litigate.com)

**Brendan F. Morrison** (61635B)  
Tel: (416) 865-3559  
Fax: (416) 865-3731  
Email: [bmorrison@litigate.com](mailto:bmorrison@litigate.com)

Lawyers for the Defendant,  
Veritas Investments Research Corporation

AND TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**  
Barristers and Solicitors  
155 Wellington Street West  
37<sup>th</sup> Floor  
Toronto, ON M5V 3J7

Matthew Milne-Smith  
Tel: (416) 863-0900  
Fax: (416) 863-0871

Andrew Carlson  
Tel: (416) 367-7437  
Fax: (416) 863-0871

Lawyers for the Defendant,  
West Face Capital Inc.

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

**and VERITAS INVESTMENT RESEARCH CORPORATION et al.**  
**Defendants**

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**NOTICE OF CHANGE OF LAWYER**

**MOORE BARRISTERS**

393 University Avenue, Suite 1600  
Toronto, ON M5G 1E3  
Tel: 416-581-1818  
Fax: 416-581-1279

**David Moore (#16996U)**  
Ext. 222  
[david@moorebarristers.ca](mailto:david@moorebarristers.ca)

**Lawyers for the Plaintiffs,  
The Catalyst Capital Group Inc. and  
Callidus Capital Corporation**

Court File No. CV-17-586096

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL  
CORPORATION

Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.  
c.o.b. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC, FRIGATE  
VENTURES LP, ANSON INVESTMENTS LP, ANSON CAPITAL LP, ANSON  
INVESTMENTS MASTER FUND LP, AIMF GP, ANSON CATALYST  
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

**NOTICE OF CHANGE OF LAWYER**

The Plaintiffs, Catalyst Capital Group Inc. and Callidus Capital Corporation, formerly represented by Lax O'Sullivan Lisus Gottlieb LLP, has appointed Moore Barristers as lawyers of record.

November 10, 2017

**MOORE BARRISTERS**

Barristers & Solicitors  
393 University Avenue, Suite 1600  
Toronto, ON M5G 1E6

**David C. Moore** - LSUC # 16996  
Tel.: (416) 581-1818 Ext. 222  
Email: [david@moorebarristers.ca](mailto:david@moorebarristers.ca)  
Fax: 416-581-1279

Lawyers for the Plaintiffs

TO: **LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
**Counsel**  
Suite 2750, 145 King Street West  
Toronto, ON.  
M5H 1J8

**Rocco DiPucchio** (LSUC #38185D)  
Tel: 416-598-2268  
Email: [rdipucchio@counsel-toronto.com](mailto:rdipucchio@counsel-toronto.com)

**Andrew Winton** (LSUC #54473D)  
Tel: 416-644-5342  
Email: [awinton@counsel-toronto.com](mailto:awinton@counsel-toronto.com)

**Bradley Vermeersch** (LSUC #69004K)  
Tel: 416-646-7997  
Email: [bvermeersch@counsel-toronto.com](mailto:bvermeersch@counsel-toronto.com)  
Fax: 416-598-3730

Former Lawyers for the Plaintiff

AND TO: **The parties listed in Schedule A hereto**

**SCHEDULE A**

- AND TO: WEST FACE CAPITAL INC.**  
2 Bloor Street E.  
Suite 3000  
Toronto, Ontario  
M4W 1A8
- AND TO: GREGORY BOLAND**  
c/o West Face Capital Inc.  
2 Bloor Street E.  
Suite 3000  
Toronto, Ontario  
M4W 1A8
- AND TO: M5V ADVISORS INC. c.o.b. ANSON GROUP CANADA**  
111 Peter Street  
Suite 904  
Toronto, Ontario  
M5V 2H1
- AND TO: ADMIRALTY ADVISORS LLC**  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225
- AND TO: FRIGATE VENTURES LP**  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225
- AND TO: ANSON INVESTMENTS LP**  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225
- AND TO: ANSON CAPITAL LP**  
420 Lyndon B. Johnson Freeway  
Suite 550  
Dallas, Texas, U.S.  
75240

**AND TO: ANSON INVESTMENTS MASTER FUND LP**  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

**AND TO: AIMF GP**  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

**AND TO: ANSON CATALYST MASTER FUND LP**  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

**AND TO: ACF GP**  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

**AND TO: MOEZ KASSAM**  
111 Peter Street  
Suite 904  
Toronto, Ontario  
M5V 2H1

**AND TO: ADAM SPEARS**  
111 Peter Street  
Suite 904  
Toronto, Ontario  
M5V 2H1

**AND TO: SUNNY PURI**  
111 Peter Street  
Suite 904  
Toronto, Ontario  
M5V 2H1

**AND TO: BRUCE LANGSTAFF**  
158 St. Leonard's Ave  
North York, Ontario  
M4N 1K7

AND TO: **ROB COPELAND**  
63 N. 3<sup>rd</sup> St.  
Apt. 207  
Brooklyn, New York  
11249

AND TO: **CLARITYSPRING INC.**  
545 5<sup>th</sup> Avenue  
8<sup>th</sup> Floor  
New York, New York, U.S.  
10017

AND TO: **NATHAN ANDERSON**  
c/o ClaritySpring Inc.  
545 5<sup>th</sup> Avenue  
8<sup>th</sup> Floor  
New York, New York, U.S.  
10017

AND TO: **KEVIN BAUMANN**

AND TO: **JEFFREY MCFARLANE**

AND TO: **DARRYL LEVITT**

AND TO: **RICHARD MOLYNEUX**

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



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

and

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

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**NOTICE OF CHANGE OF LAWYER**

**MOORE BARRISTERS**

393 University Avenue, Suite 1600  
Toronto, ON M5G 1E3  
Tel: 416-581-1818  
Fax: 416-581-1279

**David Moore (#16996U)**  
Ext. 222  
[david@moorebarristers.ca](mailto:david@moorebarristers.ca)

**Lawyers for the Plaintiffs,  
The Catalyst Capital Group Inc. and  
Callidus Capital Corporation**

Court File No. CV-17-586094

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL  
CORPORATION

Plaintiffs

and

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

Defendants

**NOTICE OF CHANGE OF LAWYER**

The Plaintiffs, Catalyst Capital Group Inc. and Callidus Capital Corporation, formerly represented by Lax O'Sullivan Lisus Gottlieb LLP, has appointed Moore Barristers as lawyers of record.

November 10, 2017

**MOORE BARRISTERS**  
Barristers & Solicitors  
393 University Avenue  
Suite 1600  
Toronto, ON M5G 1E6

**David C. Moore** - LSUC # 16996  
Tel.: (416) 581-1818 Ext. 222  
Email: [david@moorebarristers.ca](mailto:david@moorebarristers.ca)  
Fax: 416-581-1279

Lawyers for the Plaintiffs

TO: **LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
**Counsel**  
Suite 2750, 145 King Street West  
Toronto, ON.  
M5H 1J8

**Rocco DiPucchio** (LSUC #38185D)  
Tel: 416-598-2268  
Email: [rdipucchio@counsel-toronto.com](mailto:rdipucchio@counsel-toronto.com)

**Andrew Winton** (LSUC #54473I)  
Tel: 416-644-5342  
Email: [awinton@counsel-toronto.com](mailto:awinton@counsel-toronto.com)

**Bradley Vermeersch** (LSUC #69004K)  
Tel: 416-646-7997  
Email: [bvermeersch@counsel-toronto.com](mailto:bvermeersch@counsel-toronto.com)  
Fax: 416-598-3730

Former Lawyers for the Plaintiff

AND TO: **Joseph Weissman**  
**Counsel**  
1211 Avenue of the Americas  
New York, NY  
10036

Lawyer for the Defendants, Dow Jones and Company,  
Rob Copeland and Jacquie McNish

AND TO: **Jeffrey McFarlane**  
220 Dominion Drive  
Suite B  
Morrisville, NC  
27560

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

**and**

**DOW JONES AND COMPANY et al.**  
**Defendants**

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**NOTICE OF CHANGE OF LAWYER**

**MOORE BARRISTERS**

393 University Avenue, Suite 1600  
Toronto, ON M5G 1E3  
Tel: 416-581-1818  
Fax: 416-581-1279

**David Moore (#16996U)**  
Ext. 222  
[david@moorebarristers.ca](mailto:david@moorebarristers.ca)

**Lawyers for the Plaintiffs,  
The Catalyst Capital Group Inc. and  
Callidus Capital Corporation**

This is Exhibit "Z" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

*Via email.*

November 13, 2017

Matthew Milne-Smith  
Davies Ward Phillips & Vineberg LLP  
155 Wellington Street West  
Toronto, ON  
M5V 3J7

Dear Mr. Milne-Smith:

**Re: The Catalyst Capital Group Inc.**

I write in response to your correspondence dated November 10, 2017. It is not our intention to either directly or indirectly respond to the details of the allegations set out in your letter. However, it is both defamatory and unsupportable to suggest that Catalyst, Callidus, or their principals have, or would engage, in unlawful activity. It is also scandalous that you would attempt to link Catalyst with Harvey Weinstein's behaviour, which we view as reprehensible.

We are mindful of your demand that Catalyst and Callidus as well as a series of employees and legal counsel preserve physical and electronic documents. We are aware of the principles of spoliation. As you know, that has been an issue in the litigation with West Face and Catalyst will give due consideration to those principles.

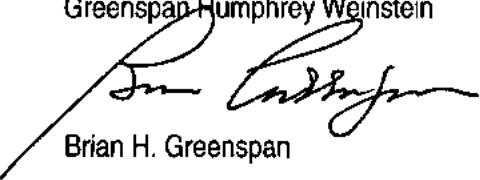
There is no basis for the allegation that Catalyst, Callidus, or their principals have had any involvement in any defamatory campaign concerning West Face and/or Mr. Boland.

You have made reference to alleged investigative actions involving private investigators. It is the belief of Catalyst and its principals that persons known to West Face have with or without the encouragement and/or the participation of West Face directly or indirectly engaged in surreptitious activities designed to attack and harm Catalyst and place the safety and security of its principals and employees in jeopardy. Such questionable activities include but are not limited to: personal and corporate cyber-attacks; attacks on personal residential security systems; clandestine intrusions, including trespassing on the property of various Catalyst principals or employees; at least one successful sabotage of a partner's residential generator in order to gain access to security and telecom systems; and threats to the safety and security of the principals of Catalyst and their families.

We demand that in relation to the above-noted activity, that West Face as well as its "officers, directors, employees, agents, contractors, and legal counsel, take immediate and effective steps to preserve all physical

and electronic documents (defined as broadly as possible), recordings, internet browser histories, or other evidence of any nature, in any way related to, arising out of, or referring to the conduct described in this letter." We understand that you also act as counsel to Anson Partners. Accordingly, we also demand that, in your role as counsel, that you direct Anson to take the same immediate steps.

Yours truly,  
Greenspan-Humphrey Weinstein



Brian H. Greenspan

cc.: Kent Thomson and Andrew Carlson *via email*

David Moore *via email*

Rocco Di Puccio and Matthew Gottlieb *via email*

Anthony Alexander *via email*

Sarah Weingarten *via email*

This is Exhibit "AA" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.




 DAVIES

155 Wellington Street West  
 Toronto ON M5V 3J7  
 dwpv.com

November 14, 2017

Matthew Milne-Smith  
 T 416.863.5595  
 F 416.863.0871  
 mmilne-smith@dwpv.com

File No. 250486

**BY E-MAIL**

Mr. Brian H. Greenspan  
 Greenspan Humphrey Weinstein  
 15 Bedford Road  
 Toronto, ON M5R 2J7

Dear Mr. Greenspan,

**The Catalyst Capital Group Inc.**

I write in response to your letter of November 13, 2017. I note that you have declined to deny Catalyst's involvement in directing the activities of Black Cube raised in my letter of November 10, 2017.

In view of information West Face has learned over the past several days concerning the conduct of operatives of Black Cube – including the conduct in this matter of the very same operative who was directly involved in insinuating herself into the lives of Harvey Weinstein's victims of sexual assault – your claims of defamation and complaints about “scandalous” linkages between operatives of Black Cube who are involved in this matter who were also involved in the Weinstein matter are entirely without merit. It was, in fact, only the widespread publicity surrounding Black Cube's activities on behalf of Mr. Weinstein that allowed West Face to learn of the role played by Catalyst and Callidus in retaining Black Cube, and utilizing operatives of Black Cube to conduct a covert investigation of West Face using systematic lies and deception.

With respect to your allegation that West Face has “directly or indirectly engaged in surreptitious activities designed to attack and harm Catalyst and place the safety and security of its principals and employees in jeopardy”, West Face unequivocally and unconditionally denies this accusation. Neither West Face nor Davies has any information concerning these alleged events. If you or your client seriously claim to have evidence to the contrary against West Face, I strongly encourage you to provide it to us immediately. Alternatively, I invite you to bring the appropriate proceeding and file the evidence in question with the Court on an immediate basis, to permit the supposed evidence to be reviewed carefully and tested through cross-examination.

Catalyst and its principals have an unfortunate but well-established track record of making false accusations of misconduct against West Face. Your letter of November 13 appears to continue down the very same path that Catalyst has travelled on repeatedly in the period since June, 2014, and will be relied upon explicitly by West Face as litigation between these parties continues to unfold, including in respect of the issue of costs.

Given West Face's lack of participation in or knowledge of any of the activities described in the fourth paragraph of your letter, your demand that West Face preserve relevant evidence in respect of these activities is baseless. West Face will, of course, preserve all relevant evidence in its possession in relation to the various actions that have been commenced against it by Catalyst and Callidus, as it has consistently done at all relevant times.

Yours very truly,



Matthew Milne-Smith

MMS/

cc: David Moore (*Moore Barristers*)  
Kent Thomson / Andrew Carlson (*Davies*)  
Rocco Di Pucchio / Matthew Gottlieb (*Lax O'Sullivan*)  
Robert Centa / Kris Borg-Olivier (*Paliare Roland*)

This is Exhibit "BB" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.



155 Wellington Street West  
 Toronto ON M5V 3J7  
 dwpv.com

November 14, 2017

Matthew Milne-Smith  
 T 416.863.5595  
 F 416.863.0871  
 mmilne-smith@dwpv.com

File No. 262163

**BY E-MAIL**

Mr. David C. Moore  
 Moore Barristers  
 393 University Avenue  
 Suite 1600  
 Toronto, ON M5G 1E6

Dear Mr. Moore,

**Court File No. CV-17-586096**

**The Catalyst Capital Group Inc. et al ats West Face Capital Inc. et al**

Further to my recent correspondence about Black Cube, we have met recently with Alex Singh.

As you are no doubt aware, Mr. Singh was the General Counsel of West Face at the time that Brandon Moyse was interviewed and hired by West Face in 2014, and at the time that Catalyst commenced litigation against West Face concerning the hiring of Mr. Moyse. Among other things, he was instrumental in the implementation of a confidentiality wall at West Face, prior to the commencement of Mr. Moyse's employment, that specifically prohibited Mr. Moyse from sharing with anyone at West Face information of Catalyst concerning Wind Mobile.

Mr. Singh was a witness for West Face in interlocutory proceedings in the Moyse action. He swore an affidavit on behalf of West Face on July 7, 2014, and was cross-examined by counsel for Catalyst on July 31, 2014. Mr. Singh's pretrial evidence was also filed with the Court at the trial of the Moyse action, and Catalyst declined to cross-examine him at trial.

We learned on Sunday that between mid-September, 2017 and last week, at least three operatives of Black Cube attempted repeatedly to, and did in fact, induce Mr. Singh to reveal to them confidential information that came to Mr. Singh's attention during the course of his duties as General Counsel at West Face. This includes information concerning advice that Mr. Singh provided to West Face pertaining to the hiring of Mr. Moyse in his capacity as the Company's General Counsel. These efforts to induce Mr. Singh to reveal the confidential information of West Face occurred during a series of meetings, as well as in emails and telephone conversations, between operatives of Black Cube and Mr. Singh including meetings in Toronto and London, England in September and October 2017 that were held under decidedly false pretences. Mr. Singh was, in fact, lied to repeatedly by representatives of Black Cube throughout these interactions.

This information is exceedingly troubling, and raises a host of legal and ethical issues concerning the reprehensible conduct engaged in by operatives of Black Cube. Black Cube no doubt acted for and on behalf of Catalyst and/or Callidus in engaging in this conduct.

I am writing to demand immediate disclosure of information concerning who at each of Catalyst, Callidus, their respective principals, Lax O'Sullivan, Lisus Gottlieb, Greenspan, Humphrey Weinstein, and Moore Barristers was or is aware of Black Cube's approaches to Mr. Singh, and when and how they became aware. This information is obviously pertinent to the remedies that West Face will pursue in respect of this matter, as well as the persons or parties against whom remedies will be sought.

This is a matter of grave urgency. Please respond no later than by 5:00 pm on Wednesday, November 15, 2017.

Please also be advised that as this matter unfolds, West Face will demand production of every physical and electronic document in the possession, custody or control of Callidus or Catalyst, their officers or directors, their current or former counsel, and Black Cube, that pertains to this matter, either directly or indirectly. With respect to any surreptitious recordings that may have been made by operatives of Black Cube of their discussions with Mr. Singh, we further demand that Catalyst and Callidus immediately provide such materials to West Face given that they contain solicitor-client confidences wrongfully and intentionally elicited from Mr. Singh by Black Cube using lies, deception and false pretences. Please also be advised that West Face will not hesitate to pursue every remedy known to law against anyone who destroys or disposes of documents or other evidence concerning this important matter.

Please take immediate steps to put each of Catalyst, Callidus, their respective principals, directors and officers, and Black Cube on notice concerning the contents of this letter, and confirm that you have done so.

Yours very truly,



Matthew Milne-Smith

MMS/

cc: Brian Greenspan (*Greenspan Humphrey Weinstein*)  
Kent Thomson / Andrew Carlson (*Davies*)  
Rocco Di Pucchio, Matthew Gottlieb (*Lax O'Sullivan*)

This is Exhibit "CC" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

Available from  
court file

This is Exhibit "DD" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.



**Matthew P. Gottlieb**

Direct 416 644 5353

mgottlieb@counsel-toronto.com

**Lax O'Sullivan Lisus Gottlieb LLP**

Suite 2750, 145 King Street W, Toronto ON M5H 1J8 Canada

T 416 598 1744 F 416 598 3730 www.counsel-toronto.com

**Lax  
O'Sullivan  
Lisus  
Gottlieb**

November 15, 2017

**VIA EMAIL**

Mr. Matthew Milne-Smith  
Davies Ward Phillips & Vineberg LLP  
Barristers and Solicitors  
155 Wellington Street West, 37th Floor  
Toronto ON M5V 3J7

Dear Mr. Milne-Smith:

**Re: West Face Capital Inc.**

We are writing in response to your letters of November 10 and November 14, 2017. We are also in receipt of Mr. Greenspan's letter of November 14, 2017. As you are aware, we are not counsel of record for Catalyst or Callidus or any of their affiliates in relation to the West Face matters or any matters.

We have no information or knowledge concerning the events described in your letter of November 14, 2017.

We will continue to comply with our obligations, including our continuing duty to maintain solicitor-client privilege, and will take all the necessary steps to preserve all relevant records in the possession of our firm.

Yours truly,

**Matthew P. Gottlieb**

Copy to: Rocco DiPucchio  
David Moore  
Brian Greenspan  
Kent Thomson

This is Exhibit "EE" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.



COURT OF APPEAL FOR ONTARIO  
COUR D'APPEL DE L'ONTARIO

PLEASE ADDRESS ALL COMMUNICATIONS TO:  
ADRESSER TOUTE CORRESPONDANCE À :

SENIOR LEGAL OFFICER/AVOCAT PRINCIPAL  
OSGOODE HALL  
130 QUEEN STREET WEST/130, RUE QUEEN OUEST  
TORONTO, ONTARIO  
M5H 2N5

November 17, 2017

Sent by e-mail

Robert A. Centa  
Paliare Roland Rosenberg Rothstein LLP  
155 Wellington Street West  
35th Floor  
Toronto, ON  
[Robert.Centa@paliareroland.com](mailto:Robert.Centa@paliareroland.com)

Kent Thompson & Matthew Milne-Smith  
Matthew Milne-Smith  
Davies, Ward Phillips & Vineberg LLP  
155 Wellington Street West  
Toronto, ON M5V 3J7  
[mmilne-smith@dwpv.com](mailto:mmilne-smith@dwpv.com)  
[kentthomson@dwpv.com](mailto:kentthomson@dwpv.com)

Brian Greenspan & Naomi Lutes  
Greenspan Humphrey Weinstein  
15 Bedford Road  
Toronto, ON M5R 2J7  
[bgreenspan@15bedford.com](mailto:bgreenspan@15bedford.com)  
[nlutes@15bedford.com](mailto:nlutes@15bedford.com)

David Moore  
Moore Barristers  
393 University Avenue  
Suite 1600  
Toronto, ON M5G 1E6  
[david@moorebarristers.ca](mailto:david@moorebarristers.ca)

Dear Counsel,

**Re: Catalyst Capital v. Moyse, B**  
**Court of Appeal for Ontario File No.: C62655**

This letter will confirm that a case conference was held on November 16, 2017 between the Justice Rouleau and counsel. As a result of the case conference Justice Rouleau has directed the following.

- The appellant is to determine whether it will proceed with a fresh evidence application by December 1, 2017. That decision is to be communicated to the respondents by that date.
- If the appellants decides to proceed with a fresh evidence application, the notice of application is to be served and filed by December 1, 2017. All of the proposed fresh evidence need not be filed by December 1, 2017 although it is desirable that it be.
- The parties are to appear before me on December 1, 2017 at 1:15 p.m. in order to set a timetable for filing of materials and setting of deadlines for cross examinations. The parties should come prepared to commit to a schedule that will ensure that the appeal can proceed on the dates set for hearing. Those dates, February 20 – 22 are peremptory to the appellant.
- If the appellant advises that it will not proceed with a fresh evidence application, counsel are to advise the parties and the court as soon as possible and the December 1, 2017 appearance will be cancelled.

Sincerely,



Lily Miranda  
Office of the Senior Legal Officer  
Court of Appeal for Ontario

CC: The Honourable Justice Rouleau

This is Exhibit "FF" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.



# EXCLUSIVE: THE JUDGE, THE STING, BLACK CUBE AND ME



ADVERTISEMENT

Christie Blatchford: How a legal battle between two ferociously competitive Toronto firms took a dark turn



CHRISTIE BLATCHFORD  
National Post

A former Ontario Superior Court judge was targeted in a sting designed to discredit him days before his decision in a controversial case with hundreds of millions of dollars at stake was scheduled to be heard at the Ontario Court of Appeal.

The sting saw the 74-year-old former judge, Frank Newbould, audiotaped and photographed surreptitiously at a posh Toronto restaurant as an agent posing as a potential client apparently tried to induce him, in vain, to make anti-Semitic remarks.

Newbould, who just left the bench in June, was the trial judge in a 2016 lawsuit between Catalyst Capital Group and West Face Capital, two ferociously competitive Toronto private-equity firms whose feud hasn't yet ended in the courtroom.

A source authorized to speak for Catalyst acknowledges that a subcontractor working for a security company it hired carried out the sting on the judge. But the source said Catalyst did not order the sting or know about it until after it happened.

The subcontractor was the Israeli intelligence firm Black Cube, recently in the news as the same private agency Hollywood film producer Harvey Weinstein hired to undermine the women accusing him of sexual assault. Black Cube later apologized for taking the job and said it would donate the fee to women's groups.

Last week in response to another lawsuit filed against it by Catalyst — the fourth since 2014 — West Face alleged in court documents that operatives from Black Cube pretended to be recruiters in an attempt to get information from some of its current and former employees.



A sting arranged by Israeli intelligence firm Black Cube saw former judge Frank Newbould audiotaped and photographed surreptitiously at a posh Toronto restaurant in September 2017.

The sting on Newbould began Sept. 18 with an appointment arranged via email with a man who said his name was Hugo Gabriel Saavedra Rodriguez. He said he was the

executive director at Victorious Group, a consultancy firm purportedly based in London, England, but with international interests.

But Companies House, the United Kingdom's government registrar of companies, has no record of a company by that name at the given address.

The two met at Newbould's downtown office. Rodriguez claimed to represent a Canadian company involved in the oil sands business that was unhappy with a competitor who "had gone behind my client's back" and allegedly used its technology to get licences to drill in Africa and Israel.

He said his client might be in the market for an arbitrator and appeared to be interested in hiring Newbould.

Three months earlier, in June, Newbould had stepped down from the bench amid a controversy over his involvement in an aboriginal land claim dispute near his family cottage at Sauble Beach on Lake Huron.

A judicial inquiry into a complaint that he had shown a "lack of sensitivity to the experiences of Aboriginal peoples" and derailed a proposed settlement of the claim by speaking out against it was stopped because Newbould resigned. However, he said at the time that he wasn't forced to quit and had decided two or three years before to retire from the bench early.

Almost immediately he joined Arbitration Place, a downtown Toronto agency for arbitrators, and also joined the law firm of Thornton Grout Finnigan as counsel.

In the first meeting at Newbould's office, Rodriguez said he thought his case might have to be heard in New York, but he expressed doubts about getting a fair hearing there because of "the Jewish lobby or influence in New York."





Four times in this conversation, Rodriguez mentioned as a potential problem for his client “the Jewish lobby or influence,” “the Jewish issue,” “the Jewish way of doing things.... All the time trying to take more than they should, and more than agreed.”

Newbould failed to rise to the bait, repeatedly responding only with such benign disclaimers as “there’s good Jewish people and there’s some bad Jewish people ... some good Spaniards and bad Spaniards” and “My experience is arbitrators aren’t influenced by that (ethnicity).”

He also tried to explain the rules of arbitration to Rodriguez and the two agreed to discuss the job over dinner that night at Scaramouche, an expensive midtown Toronto restaurant known equally for its fine food and sweeping views. Rodriguez paid.

The judge did not see a tape recorder being switched on. Nor did he notice a photographer taking his photo, careful it would seem to only capture the back of Rodriguez.

They quickly returned to that morning’s discussion. With little preamble, Rodriguez said the man heading the company that was allegedly stealing his client’s technology was “this Jewish guy.”

Newbould ignored this, told him he needed to retain both a lawyer and an arbitrator, and said it wasn’t clear to him which role Rodriguez saw for him. “If you have in mind that I would be the arbitrator,” he said, “I couldn’t give you advice on all that you’re asking me.”

To do so, he said, would be inappropriate. “I couldn’t do that,” Newbould said. “Nobody, no good arbitrator, would ever do that.”

In the course of the night, Newbould at one point made what could be described as an intemperate remark, though, seemingly to the regret of the agent’s employers, it wasn’t about Jews but about Chinese witnesses.

At one point, Rodriguez asked if a judge could make a decision on the basis of what he heard verbally, and Newbould said no, courts are document-heavy.

“The documents tell the story, for the most part,” he said, then mentioned, “I had a case a year and a half ago now I guess, a lawsuit between two hedge funds and one hedge fund was trying to acquire a telecommunications company...”



Newbould said the plaintiff in the suit was named “Glassman and he is a terrible witness.”

If it was perhaps indiscreet, it was nothing Newbould hadn’t also said in his public decision.

Newton Glassman is the founder and managing partner of Catalyst, which sued West Face, accusing it of obtaining confidential information about its bid for WIND Mobile Inc. through former Catalyst analyst Brandon Moyse.

Moyse left Catalyst for West Face in 2014, four months before a consortium of

investors led by West Face successfully acquired WIND in a deal valued at approximately \$300 million. In 2015, the group sold the wireless carrier to Shaw Communications for \$1.6 billion.

Catalyst has claimed it lost out on \$750 million in potential profit.

In his lengthy Aug. 18, 2016 decision, Newbould ruled against Catalyst. He was harshly critical of Catalyst witnesses, particularly Glassman, whom he described as “aggressive, argumentative” and more of a “salesman than an objective witness.”

He simply could not accept being “outsmarted” on the WIND deal, the judge said later, when awarding costs.

It would have been a humiliating rebuke for the proud and combative head of the successful company founded in 2002.

The judge ordered Catalyst to pay Moyse \$340,000. He also awarded costs of \$1.2 million to West Face on what’s called “a substantial indemnity basis” because, the judge said, Glassman had played such “hardball attacking the reputation and honesty of West Face.”

In fact, the judge had no idea then of what hardball really was.

\*\*\*

A day before Newbould and Rodriguez met, I received an email from a woman I didn’t know. The subject line said: “Exclusive story offer — Judge Frank Newbould’s record might unravel September 20th.”

She gave me a one-sided, six-paragraph interpretation of the Catalyst/West Face/WIND Mobile case, and offered to connect me with a spokesperson “that can prove evidence was destructed in the case and that Newbould’s ultimate ruling completely ignored it.”

She also wrote, “In addition, information is brewing about a wolf pack of companies that West Face is involved with as well — we can connect you with the investigators” and offered a meeting with her source.

(Catalyst filed a \$450-million lawsuit on Nov. 8 accusing West Face and others of being “Wolfpack conspirators” in a short-selling campaign targeting a publicly traded lender in

which it holds the majority stake. West Face denies the allegations, and called the lawsuit meritless.)

In emails over the next few days, the woman described herself as a communications/public relations professional, a Canadian from Toronto living in New York City who said she chose me because her parents were big readers of mine.

When I pressed her, she insisted that was the reason, and added she'd been asked to do a favour for a friend by finding a suitable Canadian reporter.

For several days, she peppered me with emails — there was clearly some urgency to the matter — and on Sept. 19, wrote, “I have arranged for an exclusive background meeting btw yourself and the leading figure from Catalyst.

“He is in Montreal today but will fly to Toronto — ideally tomorrow — to meet with you. I’ll come back to you on times.”

“

He knows of only one remotely comparable case in Canada, which happened almost 30 years ago, where a mining company that lost in court and, convinced the judge must have had a personal financial stake, hired a private eye.

- Christie Blatchford



The meeting with the unidentified figure from Catalyst never happened, and instead on Sept. 21, I met the woman alone at a midtown café.

There, she handed me a USB flash drive containing the photos of Newbould, audio and what appear to be edited transcripts of the two surreptitiously recorded conversations he had with Rodriguez at his office and Scaramouche.

She gave my number to the purported friend connected to the case, who texted a few days later to set up a meeting.

He is a former Israeli TV journalist and documentary filmmaker. We met on Oct. 20 at a diner in the east end of Toronto.

He said he was passing on the story because it would be of little interest to his audience in Israel. Plus, like the PR woman, he said he was doing a favour for someone close to the case. Also like the PR woman before him, he mentioned my unquestioned brilliance and experience as a reporter; flattery, however transparently and thickly ladled on, appears part of undercover tradecraft.

But where the PR woman was unequivocal that the people behind the sting were from Catalyst, the journalist seemed to be backing away from that. The movers behind this, he said, were Aborigines. When I pushed him on it, he said they were the same people who had complained about Newbould in the land claim controversy.

I knew that was ridiculous. That complaint had been brought by the Indigenous Bar Association, a professional group of lawyers unlikely to have done something like this. And their complaint was no longer a live issue as Newbould had resigned.

I told the journalist I couldn't continue unless I met one of the principals.

"You will meet the guy who is behind this project," he texted me on Oct. 26, but that soon changed to "Jessie from the operational team."

Jessie and I met on Oct. 31 in a restaurant at the Eaton Centre. An attractive woman with dark hair, who looked to be in her early 40s, Jessie said she was now doing this work after a career in an unnamed government's national security agency. She wouldn't give me her last name, was vague about where she lived, and gave me an email address that she didn't answer.

I paid the bill and left after about 30 minutes. My patience with wannabe spooks, mules and ghostly figures — and mostly, being lied to — was exhausted.

\*\*\*

The lawyers for Catalyst and West Face met at the Court of Appeal on Sept. 25, a week after the sting on the judge.

Among them were two new faces: prominent Toronto lawyer Brian Greenspan and

veteran litigator David Moore, both there for Catalyst.

They were seeking an adjournment to the appeal, which was slated to be heard the next day.

A two-page document filed with the court says Greenspan told Judge Paul Rouleau that on Sept. 21, “he was provided with information that requires immediate investigation and may well lead to the tendering of a fresh evidence application with impact on the appeal.”

What the evidence is, he did not say. But on the 21st, Catalyst received its own USB flash drive with a transcript of Newbould and Rodriguez’s conversations as well as the audio and photos.

According to the source authorized to speak for Catalyst, the company was weighing whether they had enough to dislodge the presumption of neutrality that cloaks judges as a matter of law to now argue at the appeal that Newbould was biased.

Rouleau was also told that an “irreconcilable difference” between Catalyst and its lawyers, the Lax O’Sullivan Lisus Gottlieb firm, had arisen and that Lax O’Sullivan had “concluded it has no option but to seek to be removed as counsel of record.”

The “irreconcilable difference” was that once Lax O’Sullivan was told about what Black Cube had done, its lawyers made the decision it was “unethical conduct” and they wouldn’t be a part of it.

The lawyers demanded Catalyst sign an undertaking that it would never attempt to use in any way the information covertly obtained about Newbould.

But Catalyst wouldn’t make the decision then and there, and wanted time to weigh what it had learned.

In other words, according to the source’s account, Catalyst may not have ordered the attempted setup of the judge or even wanted it to happen, but now that it was done, the company had to evaluate the fruits of the sting to see if there was enough to bring an allegation of bias against Newbould.

Such is the ruthless pragmatism attached to big money and big power.

Rouleau reluctantly granted the adjournment and set new dates for February, ordering the lawyers to tell him if there was going to be a fresh evidence application as soon as possible. He later set a deadline of Dec. 1 for any such application.

\*\*\*

According to the source authorized to speak for Catalyst, the company hired a security firm on Aug. 31 because of a variety of “security concerns.”

Among them, he said, was a belief that Catalyst had been cyber-hacked, evidence of trespassing and at least one break-in at the homes and cottages of its senior people and that their garbage was being picked through. And, said the source, some executives had received threats.

The company, he said, didn’t have sufficient evidence to go to Toronto Police, so took their concerns to the private firm instead.

The man was adamant that Catalyst never asked the main security company to set up a sting on Newbould, though he acknowledged that probably in the first briefing with the security firm, it would have been clear that Newbould and West Face were the subjects of much of the collective Catalyst ire.

Such contracts, the source said, are invariably arranged through lawyers, so as to cloak the arrangement — and protect to a limited degree any information gleaned by security operatives — with solicitor-client privilege.

He said it’s common in complex criminal matters and commercial crime cases with their enormous amounts of money at stake for parties to use private investigative firms with their covert methods.

The arrangement with Catalyst allowed the security firm to use other consultants and sub-contractors.

And it was the sub-contracted agency, Black Cube, that ran the sting on the former judge.

According to the source’s account, when the firm found out on Sept. 21 what the sub-contractor had done, “damn right there was freaking out,” he said.

At least one further sting run on a former West Face employee, he said, was the result of a miscommunication, following an attempt to call off such operations.

In an email Saturday, a Black Cube spokesman said: "It is Black Cube's policy to never discuss its clients with any third party and to never confirm or deny any speculation made with regards."

The company denied approaching any "journalist, lawyer, PR company or any other professional consultant with a view to publishing intelligence gathered."

In fact, the company had refused to make any on the record comment unless and until I submitted the story in advance of publication.

\*\*\*

On Oct. 12, I met Newbould in a boardroom at the office of his lawyer, Brian Gover, and gave them the USB to copy.

I had briefed Gover on the phone, so they knew some of what was coming, but still appeared shaken.

Though the Catalyst source maintains no laws were broken in the sting, the operation raises larger ethical questions about how common it is for companies to hire private investigators, how often they use these sorts of dirty tricks, the role of lawyers and law firms in their hiring, and if there are any boundaries beyond which the players won't go.

"Think of the collateral damage caused by well-heeled litigants who will do anything, but will stop at nothing," said Gover.

He knows of only one remotely comparable case in Canada, which happened almost 30 years ago, where a mining company that lost in court and, convinced the judge must have had a personal financial stake, hired a private eye to check him out.

Gavin MacKenzie, a Toronto litigator and leading authority on legal ethics, said the Newbould sting is shocking, and said he too was aware only of the one other case.

That case went all the way to the Supreme Court, but the investigation and surveillance of the judge never made it onto the record, though it was widely discussed in legal circles.



MacKenzie said lawyers will always “talk about a judge’s background and pre-dispositions and that sort of thing.”

In countries where judicial corruption is common, judges themselves often become targets. But Canada, he said, has “never had a judge on the take from a party.”

With a reputable and independent judiciary, MacKenzie said, talk is about as far as things get.

“It’s very rare and almost unnecessary to go beyond that.”

National Post

[cblatchford@postmedia.com](mailto:cblatchford@postmedia.com)



Published on November 24, 2017. Last updated on November 25, 2017



Classifieds

- Remembering
- Celebrating
- Classifieds Marketplace
- Careers
- FlyerCity
- Post a Classifieds ad

Advertise with Us

- Partnerships
- Solutions
- Resources
- Content Works

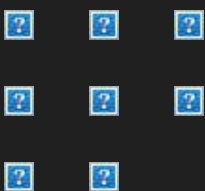
Sales Directory

About Us

My Account

- Post points
- Subscriber Self-Serve
- ePaper
- eNewsletters

Stay Connected



This is Exhibit "GG" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.  
Province of Ontario, while a Student-at-Law  
Expires March 22, 2019.



155 Wellington Street West  
Toronto ON M5V 3J7  
dwpv.com

November 24, 2017

Matthew Milne-Smith  
T 416.863.5595  
F 416.863.0871  
mmilne-smith@dwpv.com

File No. 262163

**BY E-MAIL: bhg@15bedford.com**

Dear Mr. Greenspan:

I am writing further to: (1) my letter of November 14, 2017, concerning Black Cube's unlawful activities in respect of Alexander Singh; and (2) the shocking revelations in the *National Post* tonight concerning Black Cube's failed attempt to undermine the integrity of Justice Newbould, of which West Face had no prior notice.

As you know, pursuant to Justice Hailey's Order of November 16, 2017, your firm and all security firms or other contractors involved in this misconduct are already required to preserve all evidence relating to Black Cube's activities "against or involving West Face". Black Cube's attack on the integrity of Justice Newbould is "against or involving West Face", given (among other things) the implications for the Moyse appeal.

We also have reason to believe that Catalyst, Black Cube, or contractors engaged by or behalf of one or more of them were also engaged in preparing and mounting a campaign of online defamation against West Face, Greg Boland, and even Justice Newbould (by indicating that he was the "author" of one of the defamatory posts). We demand that you, Catalyst, and any contractors retained by it, directly or indirectly, also preserve all evidence of such efforts, which we expect may also be the subject of future proceedings. Those sites have recently started being taken down and we reserve all claims for spoliation in that regard.

Black Cube's conduct on behalf of Catalyst shocks the conscience and West Face is considering what remedies are appropriate. According to the *National Post*, Catalyst received the fruits of Black Cube's investigation of Justice Newbould on September 21, 2017—the same day that you were retained in respect of supposed "fresh evidence" relevant to Catalyst's appeal of the Moyse action. You represented to Justice Rouleau on September 25, 2017 that he had seen the fresh evidence, that it was credible, and that it could not have been discovered before trial by exercise of due diligence. You claimed that you needed to investigate whether it would have affected the result. Mr. DiPucchio, Mr. Moore, and Mr. Hoaken (all of whom were present) did not contradict these submissions.

It now appears that Black Cube's investigation of Justice Newbould was entirely fruitless and was conducted in bad faith. As such, I cannot understand how there could have been a good faith basis

for seeking the admission of fresh evidence or the adjournment of the appeal. West Face reserves all of its rights in respect of Catalyst's adjournment of the Moyse appeal. It now also appears that Catalyst and Black Cube used the time obtained by the adjournment to conduct further investigations that were ongoing until November 9, 2017, when West Face finally uncovered Catalyst's schemes thanks to media coverage of Harvey Weinstein's use of Black Cube to attack his alleged sexual assault victims. Indeed, it appears that these investigations only ceased (if indeed they have ceased) because West Face uncovered them and pursuant to my letter of November 10, 2017, demanded that they cease immediately.

West Face also reserves its right in respect of the "Wolfpack" litigation commenced by the Lax O'Sullivan firm approximately three weeks after it learned of Black Cube's investigation of Justice Newbould. I note in this regard that paragraph 129 of the Claim in that matter explicitly states that it relies on an "investigation", which now appears to have been the unlawful and bad faith Black Cube investigation.

A source authorized to speak for Catalyst has made public statements through the media, published in the *National Post* article, that Black Cube's activities were not undertaken in pursuit of litigation. Rather, Catalyst's public position is that Black Cube was sub-contracted by a security firm in response to the alleged threats to personal security outlined in Mr. Greenspan's letter to me of November 13, 2017. Catalyst's position is that it came into possession of Black Cube's investigative materials inadvertently. There can therefore be no claim of privilege over any of these materials, nor should there ever have been such a claim.

In order to determine what, if any, further steps are necessary in respect of Black Cube's activities, would you please immediately advise me:

- Whether your firm or your client played any role in the retention of Black Cube, and if so, what role;
- When your firm or your client became aware of Black Cube's retainer;
- When Black Cube was retained;
- What role, if any, your firm or your client played during the course of Black Cube's retainer;
- What knowledge your firm or your client had of Black Cube's ongoing activities;
- Whether your firm or your client has any ongoing relationship with Black Cube; and
- Whether Black Cube is still acting on Catalyst's or Callidus's behalf.

We also demand immediate production of all materials relating to Black Cube's investigations of Justice Newbould, Alex Singh, or anyone else related to litigation between Catalyst/Callidus and West Face. Should your client refuse to comply by 5:00 p.m. Monday, we are prepared to seek the appropriate order from Justice Hayney and/or Justice Rouleau.

With respect to the questions and demands set out in the two preceding paragraphs, to the extent a different contractor (including without limitation the private security contractor referred to in the *National Post* article) than Black Cube was retained for the investigations of current and former West Face employees, Justice Newbould, the online defamation campaign, or any other investigations, we would ask the same questions and make the same demands in respect of any such contractor.

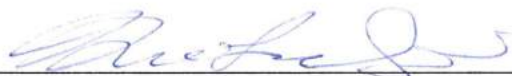
Yours very truly,

Matthew Milne-Smith

MMS/

cc: Kent Thomson, Andrew Carlson

This is Exhibit "HH" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.



155 Wellington Street West  
Toronto ON M5V 3J7  
dwpv.com

November 24, 2017

Matthew Milne-Smith  
T 416.863.5595  
F 416.863.0871  
mmilne-smith@dwpv.com

File No. 262163

**BY E-MAIL: david@moorebarristers.ca**

Dear Mr. Moore:

I am writing further to: (1) my letter of November 14, 2017, concerning Black Cube's unlawful activities in respect of Alexander Singh; and (2) the shocking revelations in the *National Post* tonight concerning Black Cube's failed attempt to undermine the integrity of Justice Newbould, of which West Face had no prior notice.

As you know, pursuant to Justice Hailey's Order of November 16, 2017, your firm and all security firms or other contractors involved in this misconduct are already required to preserve all evidence relating to Black Cube's activities "against or involving West Face". Black Cube's attack on the integrity of Justice Newbould is "against or involving West Face", given (among other things) the implications for the Moyse appeal.

We also have reason to believe that Catalyst, Black Cube, or contractors engaged by or behalf of one or more of them were also engaged in preparing and mounting a campaign of online defamation against West Face, Greg Boland, and even Justice Newbould (by indicating that he was the "author" of one of the defamatory posts). We demand that you, Catalyst, and any contractors retained by it, directly or indirectly, also preserve all evidence of such efforts, which we expect may also be the subject of future proceedings. Those sites have recently started being taken down and we reserve all claims for spoliation in that regard.

Black Cube's conduct on behalf of Catalyst shocks the conscience and West Face is considering what remedies are appropriate. According to the *National Post*, Catalyst received the fruits of Black Cube's investigation of Justice Newbould on September 21, 2017—the same day that Brian Greenspan was retained in respect of supposed "fresh evidence" relevant to Catalyst's appeal of the Moyse action. Mr. Greenspan represented to Justice Rouleau on September 25, 2017 that he had seen the fresh evidence, that it was credible, and that it could not have been discovered before trial by exercise of due diligence. He claimed that he needed to investigate whether it would have affected the result. Mr. DiPucchio, you, and Mr. Hoaken (all of whom were present) did not contradict these submissions.

It now appears that Black Cube's investigation of Justice Newbould was entirely fruitless and was conducted in bad faith. As such, there could not have been a good faith basis for seeking the

admission of fresh evidence or the adjournment of the appeal. West Face reserves all of its rights in respect of Catalyst's adjournment of the Moyse appeal. It now also appears that Catalyst and Black Cube used the time obtained by the adjournment to conduct further investigations that were ongoing until November 9, 2017, when West Face finally uncovered Catalyst's schemes thanks to media coverage of Harvey Weinstein's use of Black Cube to attack his alleged sexual assault victims. Indeed, it appears that these investigations only ceased (if indeed they have ceased) because West Face uncovered them and pursuant to my letter of November 10, 2017, demanded that they cease immediately.

West Face also reserves its right in respect of the "Wolfpack" litigation commenced by the Lax O'Sullivan firm approximately three weeks after it learned of Black Cube's investigation of Justice Newbould. I note in this regard that paragraph 129 of the Claim in that matter explicitly states that it relies on an "investigation", which now appears to have been the unlawful and bad faith Black Cube investigation.

A source authorized to speak for Catalyst has made public statements through the media, published in the *National Post* article, that Black Cube's activities were not undertaken in pursuit of litigation. Rather, Catalyst's public position is that Black Cube was sub-contracted by a security firm in response to the alleged threats to personal security outlined in Mr. Greenspan's letter to me of November 13, 2017. Catalyst's position is that it came into possession of Black Cube's investigative materials inadvertently. There can therefore be no claim of privilege over any of these materials, nor should there ever have been such a claim.

In order to determine what, if any, further steps are necessary in respect of Black Cube's activities, would you please immediately advise me:

- Whether your firm or your client played any role in the retention of Black Cube, and if so, what role;
- When your firm or your client became aware of Black Cube's retainer;
- When Black Cube was retained;
- What role, if any, your firm or your client played during the course of Black Cube's retainer;
- What knowledge your firm or your client had of Black Cube's ongoing activities;
- Whether your firm or your client has any ongoing relationship with Black Cube; and
- Whether Black Cube is still acting on Catalyst's or Callidus's behalf.

We also demand immediate production of all materials relating to Black Cube's investigations of Justice Newbould, Alex Singh, or anyone else related to litigation between Catalyst/Callidus and West Face. Should your client refuse to comply by 5:00 p.m. Monday, we are prepared to seek the appropriate order from Justice Hayney and/or Justice Rouleau.



With respect to the questions and demands set out in the two preceding paragraphs, to the extent a different contractor (including without limitation the private security contractor referred to in the *National Post* article) than Black Cube was retained for the investigations of current and former West Face employees, Justice Newbould, the online defamation campaign, or any other investigations, we would ask the same questions and make the same demands in respect of any such contractor.

Yours very truly,

Matthew Milne-Smith

MMS/

cc: Kent Thomson, Andrew Carlson

This is Exhibit "II" referred to in the Affidavit of Andrew Carlson  
sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.

---

**From:** Milne-Smith, Matthew  
**Sent:** November 27, 2017 6:22 PM  
**To:** 'David Moore'; Carlson, Andrew; Thomson, Kent  
**Cc:** 'Brian H. Greenspan'  
**Subject:** RE: Black Cube

By way of full disclosure, in the circumstances, our instructions are to bring a motion to the Court of Appeal returnable on Friday (or on such other day as may be selected by Justice Rouleau) in respect of the implications of the revelations contained in the National Post story referenced in my letters of Friday night.

We expect to serve this motion tomorrow.

Yours very truly,

Matt

-----Original Message-----

From: Milne-Smith, Matthew  
Sent: November 27, 2017 6:08 PM  
To: 'David Moore'; Carlson, Andrew; Thomson, Kent  
Cc: Brian H. Greenspan  
Subject: RE: Black Cube

Thank you, we look forward to receiving your response as soon as possible.

-----Original Message-----

From: David Moore [<mailto:david@moorebarristers.ca>]  
Sent: November 27, 2017 5:40 PM  
To: Milne-Smith, Matthew; Carlson, Andrew; Thomson, Kent  
Cc: Brian H. Greenspan  
Subject: RE: Black Cube

Mr Greenspan and I will answer your letters to each of us as soon as possible.

David Moore

-----Original Message-----

From: Milne-Smith, Matthew [<mailto:MMilne-Smith@dwpv.com>]  
Sent: Friday, November 24, 2017 10:56 PM  
To: David Moore  
Cc: Carlson, Andrew; Thomson, Kent  
Subject: Black Cube

David, please find attached my letter of today's date.

Matt

Matthew Milne-Smith

155 Wellington Street West

Toronto, ON M5V 3J7

T 416.863.5595

<mailto:mmilne-smith@dwpv.com>

DAVIES WARD PHILLIPS & VINEBERG LLP

This e-mail may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify us by reply e-mail or by telephone (collect if necessary), delete this e-mail and destroy any copies.

This is Exhibit "JJ" referred to in the Affidavit of Andrew Carlson sworn November 28, 2017



---

*Commissioner for Taking Affidavits (or as may be)*

Rui Zhe Gao, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2019.



Set your business up for success when making and receiving international payments.



Babbel gives you everything you need to speak, write, and understand a new language. Start today!



Chinese Government Will Never Show This To The Public! Be Were This System Will Make You Breathless.

Advertisement

## FINANCIAL POST

August 19, 2016

# Catalyst Capital Group Inc to appeal after judge dismisses Wind Mobile lawsuit

By Emily Jackson

*The appeal continues Capital's extensive legal battle for a share of the wireless startup now owned by Shaw Communications Inc.*

TORONTO - Private equity firm Catalyst Capital Group Inc. will appeal an Ontario court ruling that tossed out its claim for a chunk of Wind Mobile, continuing its extensive legal battle for a share of the wireless startup now owned by Shaw Communications Inc.

The Ontario Superior Court of Justice dismissed in its entirety Catalyst's lawsuit that alleged rival Bay Street firm West Face Capital Inc. used confidential information from a former Catalyst employee to buy a stake in Wind Mobile, a deal both firms were chasing in 2014.

West Face and a consortium of buyers ultimately bought Wind from Amsterdam-based telecom Vimpelcom that fall, less than a month after Catalyst's exclusive negotiations failed. Catalyst argued West Face couldn't have landed the deal without confidential information from analyst Brandon Moyse, who was working on Catalyst's telecom file before he quit in May 2014 and joined West Face in June. It asked the court to order<sup>1</sup> West Face to hold its ownership of Wind in a trust for Catalyst.

But Justice Frank Newbould ruled this week that Moyse did not provide any information to West Face that enabled it to offer a better deal than Catalyst.

The judge believed Moyse's assertion that he never discussed Wind with his new employer, which assigned him to other files before he was placed on leave after three and a half weeks in light of Catalyst's non-compete clause.

Moyse did email West Face confidential memos unrelated to Wind during the hiring process, but the judge ruled it was an error and did not indicate he revealed details about Wind. The junior analyst also wiped his BlackBerry before returning it to Catalyst and deleted his browser history before turning his computer over to lawyers, but the judge said his intent was simply to get rid of personal information.

The judge went on to chastise Catalyst owner Newton Glassman, stating he had "considerable difficulty" accepting his evidence as reliable.

"He was aggressive, argumentative, refused to make concessions that should have been made and contradicted his own statements made contemporaneously in emails," Newbould wrote.

On the other hand, he praised the West Face witnesses as "straightforward" and "impressive." He stated they "did not engage in overstatement."

After Catalyst filed its initial lawsuit against West Face, Shaw bought Wind Mobile for \$1.6 billion in late 2015. In June 2016, Catalyst sued West Face and the consortium of buyers<sup>2</sup> including Globalive for \$750 million, the amount it estimates it would have made if it had owned Wind at the time of the sale.

Catalyst will continue to pursue the second lawsuit as it appeals this decision, a spokesperson said Friday. Additional evidence has come out since the Moyse litigation that supports the new case that alleges conspiracy and breach of contract, the spokesperson said.

"We are deeply disappointed by the decision and the severe indications of possible bias displayed by Judge Newbold. We believe that he did not give fair consideration to all of the evidence presented, ignored contradictory statements made by the defendants that are part of the court record and delivered a judgement containing clear misstatements of fact," Catalyst said in a written statement.

"Among other things, we are particularly concerned that the decision selectively ignores or discounts key testimony as it relates to the critical issue of possible destruction of evidence."

West Face is "grateful for the vindication" the judge provided, according to a news release that highlighted the judge's conclusions about the witnesses.

"The reasons for the complete dismissal of the case make clear that the lawsuit launched by Catalyst was without merit. We are confident that Catalyst's other lawsuits against West Face and various other parties face similar obstacles," CEO Greg Boland said in a statement.

## References

1. [business.financialpost.com/news/fp-street/wind-mobile-ownership-under-threat-as-bay-street-hiring-tiff-spirals-into-legal-brawl](http://business.financialpost.com/news/fp-street/wind-mobile-ownership-under-threat-as-bay-street-hiring-tiff-spirals-into-legal-brawl)
2. [business.financialpost.com/fp-tech-desk/catalyst-capital-sues-former-wind-mobile-owners-for-750m-over-alleged-conspiracy-breach-of-contract](http://business.financialpost.com/fp-tech-desk/catalyst-capital-sues-former-wind-mobile-owners-for-750m-over-alleged-conspiracy-breach-of-contract)

National Post



2016 National Post. Permission granted for up to 5 copies. All rights reserved.

You may forward this article or get additional permissions by typing [http://license.icopyright.net/3.12385?icx\\_id=688191](http://license.icopyright.net/3.12385?icx_id=688191) into any web browser. National Post and Financial Post logos are registered trademarks of National Post. The iCopyright logo is a registered trademark of iCopyright, Inc.

THE CATALYST CAPITAL GROUP INC.  
Plaintiff  
(Appellant)

-and- WEST FACE CAPITAL INC. et al.  
Defendants  
(Respondents)

Court File No. C62655

**COURT OF APPEAL FOR ONTARIO**  
**PROCEEDING COMMENCED AT**  
**TORONTO**

**AFFIDAVIT OF ANDREW CARLSON**  
**SWORN NOVEMBER 28, 2017**

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

**Kent Thomson (LSUC# 24264J)**  
Tel: 416.863.5566  
Email: kethomson@dwpv.com

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

Tel: 416.863.0900  
Fax: 416.863.0871

Lawyers for the Defendant (Respondent)  
West Face Capital Inc.



THE CATALYST CAPITAL GROUP INC.  
Plaintiff  
(Appellant)

-and- WEST FACE CAPITAL INC. et al.  
Defendants  
(Respondents)

Court File No. C62655

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT  
TORONTO

**MOTION RECORD**

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

**Kent Thomson (LSUC# 24264J)**  
Tel: 416.863.5566  
Email: kethomson@dwpv.com

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

Tel: 416.863.0900  
Fax: 416.863.0871

Lawyers for the Defendant (Respondent)  
West Face Capital Inc.