

**From:** Milne-Smith, Matthew <MMilne-Smith@dwpv.com>  
**Sent:** Friday, March 13, 2015 2:22 PM  
**To:** Rocco DiPucchio; Andrew Winton  
**Cc:** 'Robert.Centa@paliareroland.com'; 'jeff.mitchell@dentons.com';  
'andy.pushalik@dentons.com'; Carlson, Andrew; kris.borg-olivier@paliareroland.com  
**Subject:** RE: Griffin Affidavit

Rocco,

As indicated in my email below, the record is in the process of being served and filed as we speak. We look forward to this matter being resolved by the Court.

Yours very truly,

Matt

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**From:** Rocco DiPucchio [mailto:rdipucchio@counsel-toronto.com]  
**Sent:** March 13, 2015 2:12 PM  
**To:** Milne-Smith, Matthew; Andrew Winton  
**Cc:** 'Robert.Centa@paliareroland.com'; 'jeff.mitchell@dentons.com'; 'andy.pushalik@dentons.com'; Carlson, Andrew; kris.borg-olivier@paliareroland.com  
**Subject:** Re: Griffin Affidavit

Matt,

With respect, you have now sent several emails repeating the same tiresome allegations. If you want to file the record despite our reasonable suggestions on the proper way forward, then do so. I'm quite confident that the court will see behind your protestations that the filing of this kind of affidavit, given your client's obvious self-interest and it's conduct to date, are nothing more than feeble excuses. Indeed, your repeated references to the media in each of your emails only reinforces my opinion that this move is part of a calculated strategy to harm Callidus through the media by filing publicly. This is especially so given that your client repeatedly refused to disclose it's research on Callidus to us when we requested it. Instead, you invited our client to launch a proceeding. It's now clear why your client wanted that to happen.

At this stage, let's let the court decide what conduct speaks volumes.

Sent from my Samsung Galaxy smartphone.

----- Original message -----

**From:** "Milne-Smith, Matthew" <MMilne-Smith@dwpv.com>  
**Date:** 03-13-2015 1:50 PM (GMT-05:00)  
**To:** Andrew Winton <awinton@counsel-toronto.com>, Rocco DiPucchio <rdipucchio@counsel-toronto.com>  
**Cc:** "'Robert.Centa@paliareroland.com'" <Robert.Centa@paliareroland.com>, "'jeff.mitchell@dentons.com'" <jeff.mitchell@dentons.com>, "'andy.pushalik@dentons.com'" <andy.pushalik@dentons.com>, "Carlson, Andrew" <acarlson@dwpv.com>, kris.borg-olivier@paliareroland.com  
**Subject:** RE: Griffin Affidavit

With Prejudice

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Andrew,

Thank you for your email. West Face denies that Mr. Griffin's affidavit contains any material misstatements of fact about Callidus.

As we have previously advised you, the affidavit responds to (among other things) Catalyst's erroneous allegation that West Face's Callidus research relied upon confidential information improperly disclosed by Brandon Moysé. West Face has refuted your client's allegations by detailing the impetus for its research, and the public sources from which the research was derived. West Face is not aware of any inaccuracy in any of the information obtained from those public sources. We note in that regard that your client has refused to particularize any alleged misstatement of facts in the affidavit, despite my request that you do so.

Furthermore, I am not aware of any basis on which the test for a sealing order under *Sierra Club of Canada v. Canada (Minister of Finance)* could be met. There can be no compelling public interest in confidentiality over Mr. Griffin's affidavit, particularly where: (a) articles appeared in the *Globe and Mail* and *National Post* shortly after your client's filings, quoting from those filings and repeating the allegations to which Mr. Griffin is responding; (b) West Face's research on Callidus, as explained in Mr. Griffin's affidavit, is based entirely on public sources; (c) Catalyst has reserved the right to file reply materials publicly even if West Face files its materials under seal; and (d) while Catalyst has made unspecified allegations that the Callidus response is inaccurate, you have proposed that the Griffin affidavit in its entirety be sealed. In the circumstances, we are in the process of serving West Face's Responding Motion Record under separate cover and will be filing it with the Court in due course.

With respect to your intention to send Mr. Griffin's affidavit to the OSC, we disagree that the OSC has any jurisdiction over materials delivered in Court proceedings such as these. West Face has responded by affidavit to a series of broad and sweeping allegations of misconduct made against it. We do not expect the OSC to have any interest in materials filed in the course of civil litigation, but would be more than pleased to discuss Callidus with them should the OSC so desire.

Yours very truly,

Matt

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**From:** Andrew Winton [<mailto:awinton@counsel-toronto.com>]  
**Sent:** March 12, 2015 4:57 PM  
**To:** Milne-Smith, Matthew; Rocco DiPucchio  
**Cc:** 'Robert.Centa@paliarerland.com'; 'jeff.mitchell@dentons.com'; 'andy.pushalik@dentons.com'; Carlson, Andrew  
**Subject:** RE: Griffin Affidavit [IWOV-CLIENT.FID45653]

Matt,

Just to clarify one thing in my previous message: the suggestion that West Face can file the Griffin affidavit under seal and Catalyst will file its reply under seal is a suggestion, not a firm offer. To the extent the email below suggests otherwise, I mis-stated Catalyst's position.

If filing under seal is of interest to your client, let me know and I'll confirm our instructions.

Regards,

Andrew

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**Andrew Winton**  
Lax O'Sullivan Scott Lisus LLP

Direct: (416) 644-5342

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**From:** Andrew Winton  
**Sent:** March-12-15 3:05 PM  
**To:** 'Milne-Smith, Matthew'; Rocco DiPucchio  
**Cc:** 'Robert.Centa@paliareroland.com'; 'jeff.mitchell@dentons.com'; 'andy.pushalik@dentons.com'; 'Carlson, Andrew'  
**Subject:** RE: Griffin Affidavit [IWOV-CLIENT.FID45653]

With Prejudice

Matt,

As we just discussed, Catalyst does not accept the offer below.

Catalyst's position is that the Griffin's affidavit contains material misstatements of fact about Callidus. If West Face proceeds to file the Griffin affidavit in the public record, Catalyst will be sending a copy of the affidavit to the OSC to deal with that matter.

I am not in a position to tell you what those misstatements are, and my client is not interested in presenting its reply position to West Face before West Face files its responding record. Catalyst tried to the out-of-court route with West Face in January when it expressed its concerns about West Face's research via correspondence. Those attempts to resolve the matter without resort to the courts were repeatedly rebuffed. It's now too late to turn the clock back.

If West Face agrees to keep the Griffin affidavit out of the public record by agreeing to a sealing order over that affidavit, then Catalyst will agree to seal its reply to that affidavit. Otherwise, West Face will have to deal with whatever consequences arise from filing the affidavit publicly.

Regards,

Andrew

**Andrew Winton**  
Lax O'Sullivan Scott Lisus LLP

Direct: (416) 644-5342

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**From:** Milne-Smith, Matthew [<mailto:MMilne-Smith@dwpv.com>]  
**Sent:** March-09-15 2:38 PM  
**To:** Rocco DiPucchio  
**Cc:** Andrew Winton; 'Robert.Centa@paliareroland.com'; [jeff.mitchell@dentons.com](mailto:jeff.mitchell@dentons.com); [andy.pushalik@dentons.com](mailto:andy.pushalik@dentons.com); Carlson, Andrew  
**Subject:** RE: Griffin Affidavit

Rocco,

Thank you for your reply. With respect, we fail to see how responding to a specific allegation made by Catalyst could constitute an "improper and collateral purpose". Your client alleged in its Notice of Motion, and again in Mr. Riley's affidavit, that "Moyses had confidential information pertaining to Callidus on his personal computer that he shared with West Face and which West Face used to prepare its research report." To rebut that allegation, West Face must disclose its research and the provenance of same, to demonstrate that it is derived entirely from public sources. That is what Mr. Griffin's affidavit has done. Were West Face to have simply made a bald denial, I have no doubt that you would have noted that the denial had little or no probative value without demonstrating the contents of the research and how it had been conducted independent of Mr. Moyses.

It is also surprising that your client would accuse West Face of improperly using Court filings to disseminate negative information about Catalyst, given that negative articles about West Face appeared in the *Globe & Mail* and the *National Post* shortly after your client's most recent filings. To the extent that the press has an interest in this matter, it has not been on the basis of anything my client has done.

If your client does not want West Face's Callidus research to be filed in response to the allegations Catalyst has made, Catalyst must forthwith (1) discontinue its Notice of Motion insofar as it relates to Callidus; (2) redact from the Court file any and all allegations relating to Callidus; and (3) pay West Face its costs forthwith, on a substantial indemnity basis, in the amount of \$25,000. As you can see from Mr. Griffin's affidavit, West Face has gone to great lengths to demonstrate that there is no merit to any of Catalyst's speculative assertions about Callidus, the AWS-3 auction, or WIND Mobile. So long as the motion persists as filed, however, our client is compelled to respond and will do so in the ordinary course. Having made allegations of misconduct against West Face, it does not lie in your client's mouth to try and restrict the Court from a full record responding to the same.

While we see no merit to your client's attempt to control the Court record, we will defer filing West Face's Responding Motion Record until Wednesday at 10:00 a.m. so that you may obtain instructions in respect of the foregoing.

Yours very truly,

MMS



Matthew Milne-Smith | Bio

155 Wellington Street West  
Toronto, ON M5V 3J7

T 416.863.5595  
mmilne-smith@dwvp.com

DAVIES WARD PHILLIPS & VINEBERG LLP

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**From:** Rocco DiPucchio [<mailto:rdipucchio@counsel-toronto.com>]

**Sent:** March 9, 2015 9:36 AM

**To:** Milne-Smith, Matthew

**Cc:** Andrew Winton

**Subject:** Re: Griffin Affidavit

Matt,

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I acknowledge receipt of the Griffin affidavit.

Having reviewed the affidavit, it appears to me that much of it has been sworn for an improper and collateral purpose. Specifically, the affidavit describes in great detail your client's "thesis" on Callidus, repeating several times the false allegation that Callidus' loan portfolio is a cause for concern. It appears that these sections of the affidavit have been included solely to harm Callidus' business in an attempt to further your client's short strategy through a public court filing. Those sections have absolutely little or no relevance to the allegations in the motion, and should be struck out.

I would request that you take steps to ensure that this material is not filed with the court until we have had an opportunity to bring a motion to strike the offending portions of the Griffin affidavit, or to seek other relief in relation to them.

In the event that you proceed to file this material notwithstanding my request, we will rely upon this conduct as further evidence of West Face's malicious conduct in this matter.

Sent from my Samsung Galaxy smartphone.