

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

THE CATALYST CAPITAL GROUP INC.

Plaintiff/Moving Party

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants/Responding Parties

ANSWERS TO UNDERTAKINGS, UNDER ADVISEMENTS, AND REFUSALS

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**ANSWERS TO UNDERTAKINGS, UNDER ADVISEMENTS, AND REFUSALS
(Cross-examination of Anthony Griffin held May 8, 2015)**

No.	Category	Page No.	Question / Undertaking	Answer or precise basis for refusal
1	U/T	19	To make best efforts to determine the date of Mr. Griffin's interview of Mr. Moyse.	Mr. Griffin's interview of Mr. Moyse took place on April 15, 2014. This fact is reflected in Mr. Moyse's emails, which were provided to Catalyst on March 13, 2015 in conjunction with West Face's responding motion materials.
2	U/A	20	To advise whether Mr. Singh's departure from West Face had anything to do with this action.	Mr. Singh's departure had nothing to do with this action – he resigned to pursue other interests. His last day at work at West Face was August 22, 2014.
3	U/A	26	To produce a copy of the email dated June 23,	The email in question was sent on June 24, 2014, at

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			2014 that Mr. Griffin sent to other members of West Face regarding his analysis on the Arcan/Aspenleaf transaction prior to sending the email attached as Exhibit "15" to the Griffin Affidavit.	10:06 a.m. A copy of this email is attached as Exhibit "1".
4	U/T	30	To advise over what period of time West Face transacted its investment in Arcan's unsecured debentures.	West Face accumulated its position in Arcan debentures from June 24, 2014 to January 29, 2015.
5	U/A	31, 195	To produce Mr. Moyses's work product between June 24 and June 26, 2014 as it relates to Arcan.	Mr. Moyses's work product related to Arcan was produced to Catalyst's counsel on the morning of Monday, May 11, 2015. For completeness, copies of these documents are attached as Exhibit "2".
6	U/A	35	To ask Mr. Singh whether he has a recollection as to when the conversation referred to in paragraph 55 of the Griffin Affidavit occurred between he and Mr. Griffin.	This conversation occurred on March 5, 2015 in the course of preparing the Griffin Affidavit. The conversation occurred in the presence of counsel on a privileged occasion.
7	R/F	39	To advise whether Mr. Griffin agrees that the conversation between Mr. Singh and Mr. Moyses referred to in paragraph 55 of the Griffin Affidavit must have occurred only after Mr. Singh received the March 27, 2014 email.	Mr. Singh may have learned that Mr. Moyses prepared an analysis of Arcan's public financial information while at Catalyst without having seen the March 27, 2014 email. In any event, Mr. Singh received a copy of the March 27, 2014 email by no later than June 26, 2014 (see the response to No. 8 below).
8	U/A	40, 42	To produce any emails relating to how Mr. Singh came to learn that Mr. Moyses had done work in relation to Arcan on behalf of Catalyst.	There are no non-privileged emails responsive to this question. Mr. Singh received the March 27, 2014 email and its attachments through a series of privileged emails on June 26, 2014.
9	U/T	45	To advise whether West Face has previously disclosed to the Court that Mr. Moyses had done	West Face first disclosed this fact in the Griffin Affidavit. Catalyst had never alleged any interest in Arcan, and has

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			work in relation to Arcan on behalf of West Face.	now confirmed in Mr. Riley's cross-examination that it never pursued an investment in Arcan's securities, but West Face's work in relation to Arcan was included in the Griffin Affidavit out of an abundance of caution and to show that West Face never made any use of the information in the March 27, 2014 email (other than to evaluate Mr. Moyse's job application).
10	U/A	75	To produce any emails involving any West Face personnel in respect of Callidus between April 2014 and the time that West Face first took a short position in Callidus in October 2014.	<p>Based on preliminary searches of West Face's emails for the terms "Callidus" and "CBL" in the period from March to October 2014, responding to this question would not be proportionate to the issues raised on this motion. These preliminary searches resulted in over 1600 emails. It would not be proportionate for West Face to incur the cost of cataloguing and reviewing these emails for relevance, privilege, and confidentiality prior to the hearing of this motion. West Face has already provided detailed evidence concerning its research into Callidus.</p> <p>As set out in paragraph 128 of the Griffin Affidavit, a search for the term "Callidus" in any of the over 1,000 emails sent or received by Mr. Moyse at his West Face email address retrieved only one email. This email was sent by West Face's summer intern to a number of individuals at West Face, including Mr. Moyse, on the day Mr. Moyse ceased working at West Face, and the only reference to Callidus in that email was public information about Callidus' market capitalization and stock price movement. This email was attached as Exhibit "48" to the Griffin Affidavit.</p>

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11	U/A	76	To produce any emails evidencing West Face's decision to take a short position in Callidus in October 2014.	See the response to No. 10 above.
12	U/A	78, 89	To produce all documents relating to West Face's research into Callidus prior to October 2014.	<p>It is not possible for West Face to determine what was viewed at what time. Documents were simply viewed online or, on occasion, printed without a date stamp. Mr. Griffin was following Callidus from its IPO and recalls reviewing its prospectus, quarterly financial statements, and analysts' reports as they were released. As set out in the response to No. 14 below, Mr. Wang commenced research into the identity of Callidus' borrowers on instructions from Mr. Griffin on October 23, 2014.</p> <p>None of the documents relating to West Face's research into Callidus on West Face's "Callidus" drive (as described by Mr. Griffin during his cross-examination) were saved to that drive prior to October 2014.</p> <p>West Face does not systematically preserve its Internet browsing history. It has no proportionate means of retrieving its Internet browsing history, or assessing the reliability of that data, for the period prior to October 2014.</p> <p>In any event, West Face's research was performed primarily through online public resources and, given that Callidus was not the subject-matter of any actual or anticipated litigation prior to January 2015, there was no reason for West Face to have saved any of these documents to its drive.</p>
13	U/A	79,	To produce West Face's trading records relating	West Face began shorting Callidus shares in October

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		105	to its accumulation, and closing out, of its short position in Callidus.	<p>2014, shortly after the public share price of Callidus' shares peaked, and at a time when the shares were trading at a significant premium to their book value based on the assets and liabilities reported in Callidus' public financial statements. West Face completed the majority of its short sales by early December 2014.</p> <p>West Face closed its short position over a period that ended in late April, 2015, after Callidus had announced disappointing earnings for reasons predicted in West Face's analysis and analysts began to downgrade the shares.</p>
14	U/T	80	To make best efforts to determine when Mr. Wang first became involved in the Callidus opportunity.	<p>Mr. Wang first became involved in the Callidus opportunity on October 23, 2014. On that day, Mr. Griffin met with Mr. Wang and assigned him some analysis and research tasks related to Callidus, including to: "identify credits in [Callidus' loan] book". Mr. Wang had to do so as a preliminary step because Callidus did not disclose the identity of its borrowers, and West Face had no non-public source for that information. This fact is reflected in Mr. Wang's handwritten note from this meeting, a copy of which is attached as Exhibit "3". Mr. Griffin sent Mr. Wang a follow-up email on October 24, 2014 noting the "key issues" Mr. Wang was to address. A copy of this email is attached as Exhibit "4".</p> <p>Notably, on October 28, 2014 (early in the period during which West Face accumulated its short position), Mr. Wang sent Mr. Griffin an email that included a chart of the loans in Callidus' loan book that West Face had already been able to identify by that date. As indicated in his email, by that point Mr. Wang had already conducted</p>

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				<p>reverse site searches of both the CIPO and USPTO websites (Mr. Wang's reference to a "reverse inquiry" indicates that he was conducting searches for patent/trademark registrations in which a security interest was held by Callidus, as opposed to conducting searches for patent/trademark registrations by the name of the patent/trademark owner). A copy of this email is attached as Exhibit "5".</p> <p>As set out in detail in Appendix "B" to the Griffin Affidavit, the loans included in Mr. Wang's October 28, 2014 email that were identified through searches of the CIPO and USPTO websites were (using the numbering from Appendix "B" to the Griffin Affidavit):</p> <ol style="list-style-type: none">1. the loan to DEP Distribution Exclusive Ltee;2. the loan to Total Security Management Services;3. the loan to Entertainment World Holdings Inc.;5. the loan to Satpanth Capital Inc. (formerly Bedford Furniture Industries Inc.);6. the loan to Magnussen International Corp.;8. the loan to Great Slave Helicopters (a subsidiary of Discovery Air);12. the loan to Encore Sales (formerly UWG Global Inc.);13. the loan to Roadtrek Motorhomes Inc.;14. the loan to Educator Supplies Ltd.;16. the loan to T. Litzen Sports Limited (formerly Performance Sports Inc.);

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No.	Category	Page No.	Question / Undertaking	Answer or precise basis for refusal
				<p>17. the loan to Tabi International; 18. the loan to Pon Bicycle I B.V.; 20. the loan to Sher-wood Hockey Inc.; 25. the loan to Bluberi Gaming Technologies Inc.; 26. the loan to Xchange Technology Group LLC; 27. the loan to Viceroy Homes Limited; 28. the loan to St. Raymond Veneers Inc. / The Penrod Company; 29. the loan to C&C Wood Products Ltd.; 31. the loan to Quality One Wireless Inc.; 33. the loan to Smardt Inc.; 35. the loan to Manor Resources, LLC;</p> <p>As set out in detail in Appendix "B" to the Griffin Affidavit, the loans included in Mr. Wang's October 28, 2014 email that were identified through various other public sources (including (i) caselaw databases; (ii) press releases and articles published on news websites; and (iii) websites of accounting and advisory firms who serve as monitors, receivers, and trustees in bankruptcy) were:</p> <p>4. the loan to TPS Sports Group Corporation; 9. the loan to Active Control Technology; 10. the loan to Infinity Rubber;</p>

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				<p>11. the loan to Synergex Corp.;</p> <p>15. the loan to Terrace Bay Pulp Inc.;</p> <p>19. the loan to Forefront Innovative Technologies;</p> <p>21. the loan to Kaptor Group entities;</p> <p>23. the loan to Steels Industrial Products Ltd.;</p> <p>32. the loan to Arthon Industries Limited;</p> <p>34. the loan to North American Tungsten Corporation Ltd.;</p> <p>Thus, of the 40 Callidus loans ultimately identified by West Face, the only nine loans that West Face had not yet identified by October 28, 2014 were:</p> <p>7. the loan to Blockbuster Canada Co.;</p> <p>22. the loan to Natura World Inc.;</p> <p>24. the loan to Dynetek Industries Ltd.;</p> <p>30. the loan to Leader Energy Services Ltd.;</p> <p>36. the loan to Great Lakes Aviation, Ltd.;</p> <p>37. the loan to Netricom Inc.;</p> <p>38. the loan to Esco Marine;</p> <p>39. the loan to Midwest Asphalt;</p> <p>40. the loan to Deepak International.</p> <p>Of these nine loans, the public information enabling West Face to identify three of them only came into existence</p>

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				<p>after October 28, 2014, as follows:</p> <p>36. the loan to Great Lakes Aviation, Ltd. (through the company's Form 8-K dated December 22, 2014);</p> <p>39. the loan to Midwest Asphalt (through an article dated January 28, 2015);</p> <p>40. the loan to Deepak International (through Callidus' own public filings on SEDAR dated February 17, 2015).</p> <p>Notably absent from Mr. Wang's October 28, 2014 email are Callidus' loans to Natura World Inc. and Leader Energy Services Ltd. – West Face only learned of these loans later, despite the fact that these are two of the nine loans that West Face believes match the loans listed by Callidus in its IPO prospectus and which, therefore, were part of Callidus' loan book at the time Mr. Moyses was still working at Catalyst. Presumably, had Mr. Moyses known and informed West Face of the names of Callidus' borrowers, these loans <u>would have</u> been included in Mr. Wang's October 28, 2014 email.</p> <p>It is also notable that the chart included in Mr. Wang's email includes various discrepancies. For example, the chart identifies a loan to Triax Pharmaceuticals. Mr. Wang advises that he had learned that a company called "Callidus Capital Finance" had a security interest in Triax Pharmaceuticals' intellectual property. At the time, Mr. Wang mistakenly believed that Callidus Capital Finance was the same company as Callidus. Again, presumably, had Mr. Moyses informed West Face of the names of Callidus' borrowers, West Face's research would not</p>

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				<p>have included this discrepancy (among others).</p> <p>In sum, (i) by October 28, 2014, West Face had already identified 31 out of the 40 loans that it was ultimately able to identify by March 7, 2015 (the date Mr. Griffin swore his Affidavit); (ii) of the nine loans that West Face had yet to identify, three of them had not yet been publicly disclosed; (iii) of the remaining six loans that West Face had yet to identify, two of them match the loans disclosed by Callidus in its IPO prospectus, and were part of Callidus' loan book at the time Mr. Moyses was still working at Catalyst.</p> <p>Note that the date of the chart in Mr. Wang's October 28, 2014 email is "as of June 30, 2014". Mr. Wang advises that he had copied the template of this chart from a capital structure table he had previously created and that the date is erroneous.</p>
15	U/A	81	To produce copies of West Face's report on Callidus that pre-date the March 2015 version attached as Exhibit "46" to the Griffin Affidavit.	Copies of earlier versions of West Face's Callidus Report that were saved to West Face's "Callidus" drive (as described by Mr. Griffin during his cross-examination) are attached as Exhibits "6" to "16".
16	U/A	83	To advise whether West Face shared its report on Callidus (either the March 2015 version or any earlier version) with third parties.	Refused on the grounds of relevance. The only issue relating to Callidus on this motion concerns the sources of West Face's research, which were entirely public.
17	U/A	104	To produce documents evidencing any internal presentations made to West Face's Investment Committee regarding Callidus.	The earlier versions of West Face's Callidus Report (see the response to No. 15 above) were circulated to West Face's Investment Committee. See also the document attached as Exhibit "17".
18	U/A	107	To advise of the amount of West Face's profits	Refused on the grounds of relevance. See the response

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			from closing out its short position in Callidus.	to No. 16 above.
19	U/A	126	To produce the original hard copies of the exhibits attached to the Griffin Affidavit relating to West Face's research into Callidus.	As explained in response to No. 12 above, before Catalyst commenced this motion, documents were generally viewed online. Mr. Griffin reviewed Callidus' public disclosure but did not systematically maintain copies of those documents. While he occasionally may have printed certain documents, it is not possible to determine when this occurred. West Face only systematically printed copies of documents that had been relied on in preparing its Callidus research in the course of preparing the Griffin Affidavit. Those documents have been produced.
20	U/T	152	To determine the date of the meeting between West Face and Veritas.	December 17, 2014.
21	U/A	153	To provide the names of the individuals at Veritas who were at the meeting between West Face and Veritas.	Anthony Scilipoti, Taso Georgopoulos, Dimitry Khmelnsky.
22	U/T	155	To make best efforts to produce the document(s) that were sent by Mr. Wang to Veritas identifying Callidus' borrowers.	See the response to No. 23 below.
23	U/A	156	To produce any correspondence between West Face and Veritas that relates to Callidus.	All of the correspondence between West Face and Veritas relating to Callidus is attached as Exhibit "18".
24	U/T	157	To ask Mr. Boland what his rationale was for having Mr. Wang send Veritas West Face's list identifying Callidus' borrowers.	Mr. Boland advises that, contrary to Mr. Griffin's recollection, he did not actually instruct Mr. Wang to send West Face's list of Callidus' borrowers to Veritas. Rather, after Mr. Boland had left the meeting, one of the individuals from Veritas expressed an interest in looking further into Callidus, and asked Mr. Wang for the list. Mr.

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				Wang sent it without checking with Mr. Boland.
25	U/A	159	To make inquiries of West Face's Partners to determine whether they were involved in presenting a short case on Callidus to third parties.	Refused on the grounds of relevance. See the response to No. 16 above.
26	U/T	185	To advise whether West Face learns of any additional evidence concerning West Face's communications with Mr. Moyse following Mr. Moyse's departure.	West Face is not aware of any communications with Mr. Moyse other than what has been disclosed.
27	U/A	185	To provide all of the phone numbers (including direct business lines and mobile numbers) for West Face's Partners.	The requested phone numbers have been provided to Mr. Moyse's counsel for review against Mr. Moyse's phone records.
28	U/T	187	To make inquiries of Mr. Boland to determine how he came to know that Catalyst's concern regarding a "telecom deal" related to WIND, and specifically whether this information came from Mr. Moyse.	Mr. Boland made a common-sense inference that Catalyst's concern regarding a "telecom deal" related to WIND, given the highly public sale for WIND that was being conducted by VimpelCom at the time.
29	U/A	189	To advise whether any of the redactions to Mr. Moyse's notebook (attached as Exhibit "16" to the Griffin Affidavit) related to Arcan.	Copies of the pages from Mr. Moyse's notebook with the Arcan-related portions unredacted are attached as Exhibit "19".

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May 25, 2015

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Court File No: CV-14-507120

Plaintiff

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Proceeding commenced at Toronto

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