

Court File No. CV-21-00655838-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Plaintiffs

- and -

**B.C. STRATEGY LTD. D/B/A BLACK CUBE and
B.C. STRATEGY UK LTD. D/B/A BLACK CUBE**

Defendants

STATEMENT OF CLAIM
(Notice of Action issued January 28, 2021)

1. The Plaintiffs claim from the Defendants:
 - (a) damages for all losses sustained by the Plaintiffs resulting from the negligence and breaches of duty alleged herein;
 - (b) contribution and indemnity for any and all damages and any other relief awarded against them, if any, resulting from the misconduct and other allegations arising from the alleged misconduct of the Defendants, advanced by way of counterclaim in Court File No. CV-17-587463-00CL (Commercial List, Toronto);
 - (c) disgorgement and recovery of any and all fees paid by or on behalf of the Plaintiffs to the Defendants on account of any investigative services performed by the Defendants which are the subject of this action;
 - (d) in the alternative, damages for breach of contract as third party beneficiaries of the retainer agreement applicable to the Defendants' investigative services;

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- (e) pre-judgment and post-judgment interest pursuant to the provisions of the Courts of Justice Act;
- (f) costs on a substantial indemnity basis, and
- (g) such further and other relief as counsel may advise and this Honourable Court deems appropriate.

2. The Plaintiff, The Catalyst Capital Group (“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. Until late 2019, Callidus was a publicly traded asset-based lender that provided capital on a bridge basis to meet the financing requirements of companies that cannot access traditional lending sources.

4. B.C. Strategy Ltd. is an Israeli company that provides intelligence, litigation support, and similar services to its clients. B.C. Strategy UK Ltd. is a separate company that also provides the same services to its clients. The two B.C. Strategy companies occasionally provide services to one another’s clients through subcontract arrangements, and hold themselves out as having extensive experience and special expertise in conducting complex commercial business investigations, including discreet services in respect of litigious matters.

5. In September 2017, B.C. Strategy Ltd. and B.C. Strategy UK Ltd. (cumulatively referred to hereinafter as “Black Cube” or the “Defendants”) were retained by Tamara Global Holdings Ltd. (“Tamara Global”) to provide investigative services.

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6. The investigative services to be performed by Black Cube related to existing and future litigation involving the Plaintiffs. The services also related to a series of threats, attacks, and defamatory publications which had been directed at the Plaintiffs and that were harmful to them and their businesses.

7. The purpose of the investigative services was to obtain information and evidence which would be used by counsel for the Plaintiffs to (i) provide the Plaintiffs with general legal advice, including about the threats, attacks and defamatory publications which had harmed the Plaintiffs, (ii) to assist in existing litigation where the Plaintiffs were parties, and (iii) to assist counsel in giving legal advice about alternatives open to them, including prospective litigation being contemplated by the Plaintiffs.

8. Black Cube's retainer came about in the following circumstances. In early September 2017, Yossi Tanuri, of Tamara Global, introduced the Plaintiffs to Black Cube and recommended that Black Cube be retained as a subcontractor of Tamara Global to conduct investigations relating to ongoing and potential litigation of the Plaintiffs, including litigation between the Plaintiffs and West Face Capital Inc. and Gregory Boland (collectively, "West Face") involving Brandon Moyse.

9. The context was that the Plaintiffs and their principals, including Newton Glassman, had been subjected to a series of threats and attacks to damage their businesses. These threats and attacks included cyberattacks, publication of false and malicious tweets and other social media posts, threats by the mainstream media to publish defamatory articles, a short and distort campaign accompanied by an August 9, 2017 defamatory article in the Wall Street Journal falsely

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accusing the Plaintiffs of (among other things) fraudulent accounting practices, physical threats to their persons and several other indicia of a wrongful conspiracy to harm them.

10. The above context and pending litigation were made known to Black Cube. Black Cube assured the Plaintiffs that Black Cube had the expertise and experience necessary to conduct investigations into the above matters and in connection with current and prospective litigation in which the Plaintiffs were involved. Black Cube assured the Plaintiffs that they would conduct their investigations in a professional and confidential manner, that they had access to the best legal advice available to ensure that their investigative activities would be conducted in a lawful manner, that Black Cube would ensure that the results of its investigative activities would be in accordance with all local laws, and, if successful would result in evidence that would be admissible in court in Ontario.

11. As a result of the above representations, on or about September 11, 2017, Black Cube was retained to provide investigative services in accordance with the above principles. This retainer confirmed that Black Cube had sole responsibility to determine how to conduct its investigations, and that it was required to do so in accordance with its best professional judgment and in compliance with all local laws. Said retainer pertained to, among other things, investigative activities in connection with litigation involving the substance of allegations made in the legal proceedings involving West Face and Brandon Moyse, and the possibility that the trial judge who had ruled against the Plaintiffs in that action may have been biased.

12. The Plaintiffs were dependent upon and expected the Defendants to investigate the above matters in a competent, professional, and lawful manner, including by,

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- (a) conducting their investigations on a confidential basis and in such a manner that their actions would remain confidential;
- (b) conducting the investigations in a manner that complied with the laws of the Province of Ontario;
- (c) acting in manner that did not expose the Plaintiffs to lawsuits at the instance of any of the persons or entities to be investigated, and,
- (d) obtaining information and evidence in a manner that would make such admissible in a court of law in Ontario, including in the existing and prospective litigation involving the Plaintiffs.

13. The Defendants were aware of all of the facts, expectations, and circumstances described in paragraphs 5 - 12 herein. The Defendants were also aware that:

- (a) the fruits of their investigations would be provided to the Plaintiffs and their legal counsel to enable the Plaintiffs to seek and obtain legal advice about the matters referred to above;
- (b) the Plaintiffs, or persons on their behalf, were or would be paying substantial compensation to the Defendants for their investigative services, and,
- (c) it was essential to the interests of the Plaintiffs that Black Cube's investigations would be in accordance with paragraphs 10, 11 and 12 herein, failing which the Plaintiffs would suffer additional harm.

14. The Defendants owed a duty of care to the Plaintiffs to conduct themselves and undertake the investigations referred to above in a manner which conformed to the principles and expectations referred to in paragraphs 5 - 13 herein.

15. The Defendants did not conduct themselves or undertake the investigations in that manner. Rather, they acted recklessly and negligently, including by:

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- (a) failing to maintain confidentiality over their investigative activities;
- (b) failing to seek appropriate legal advice to ensure that their activities conformed to the laws of Ontario;
- (c) acting in a manner which exposed the Plaintiffs to claims for damages and other relief by reason of the investigation services rendered by the Defendants, and,
- (d) failing to act in a professional and competent manner.

16. The Plaintiffs have suffered significant damages as a result of the negligence of the Defendants and have been sued for damages by West Face Capital Inc. and Gregory Boland (the “West Face Parties”) by reason of the investigative services undertaken by the Defendants.

17. In particular, the damages incurred by the Plaintiffs include the costs of defending themselves against claims advanced against them by West Face in a counterclaim in Court File No. CV-17-587463-00CL (Commercial List, Toronto) (“**Action CV-17-587463-00CL**”). In that counterclaim, West Face has alleged that Black Cube acted illegally and improperly in its investigations of former Justice Frank Newbould and of numerous West Face employees in relation to the Moyse litigation. West Face has contended that the Plaintiffs are liable for the alleged improper activities of Black Cube and have sued the Plaintiffs for hundreds of millions of dollars in alleged damages.

18. The Plaintiffs are entitled to (i) recover compensation from the Defendants for all of the damages and expenses caused or contributed to by the Defendants’ negligence, including the costs of defending the counterclaim in Action No. CV-17-587463-00CL, and (ii) indemnity for and/or contribution from the Defendants on account of any damages and other relief, if any,

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awarded against them by reason of Black Cube's alleged improper conduct in the counterclaim instituted against the Plaintiffs by West Face.

19. Several Anti-SLAPP motions are currently pending in Action CV-17-587463-00CL which prevent any interlocutory motions or other steps in that proceeding. At the appropriate time, the Plaintiffs reserve the right to either (i) amend their pleadings in that proceeding to seek contribution and indemnity from the Defendants or (ii) amalgamate this action, or parts of this action, with the proceeding in Action CV-17-587463-00CL.

20. The Plaintiffs also seek recovery of all fees paid by them or paid on their behalf to the Defendants for the investigative services performed by them, for money improperly had and received by the Defendants. They claim that there was a total failure of consideration and a fundamental breach of the contractual provisions applicable to the performance of the investigative services for which the Defendants were paid.

21. In addition to, or in the alternative to the claims for negligence referred to herein, the Plaintiffs also seek damages as third party beneficiaries of the retainer agreement entered into between Tamara Global and Black Cube, for breach of the terms of that retainer.

22. The causes of action asserted herein and the damages sustained are a result of actions and activities which fall within the provisions of Rules 17.02(f)(i) and (ii), 17.02(g), and 17.02(q) of the Ontario Rules of Civil Procedure.

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March 1, 2021

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THE CATALYST CAPITAL GROUP et al.

- and - B.C. STRATEGY LTD., dba BLACK CUBE

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PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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