



ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN BAUMANN

Plaintiff

-And-

Defendants

**NEWTON GLASSMAN, JAMES RILEY, CRAIG BOYER, DAVID REESE, JAMES HALL,
DUSTIN WHITE, MARK WILK, KEVIN SCHMIDT, STRIDE MANAGEMENT SOLUTIONS,
MATHEW SCOTT SINCLAIR AND SINCLAIR RANGE INC, CALLIDUS CAPITAL
CORPORATION, CATALYST CAPITAL GROUP INC., CATALYST FUND III LIMITED
PARTNERSHIP, CATALYST FUND IV LIMITED. PARTNERSHIP
B.C, STRATEGY LTD. D/B/A BLACK CUBE, B.C. STRATEGY UK LTD., D/B/A BLACK
CUBE, ONTARIO SECURITIES COMMISSION**

STATEMENT OF CLAIM

TO THE DEFENDANTS

The Plaintiff HAS COMMENCED a LEGAL PROCEEDING AGAINST YOU.

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.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date

Issued by

Local Registrar

Address of
Court office

STATEMENT OF CLAIM

1. This Statement of Claim replaces the Statement of Claim CV-21-00666776-0000 filed on 08-August 2021. All the following Defendants and all allegations related to them are excised from the Amended Statement of Claim as the plaintiff no longer pursues any cause of action against them.
 1. **Toronto Police Service**
 2. **City of Toronto**
 3. **Detective Gail Regan and Detective Diane Kelly**
 4. **Royal Canadian Mounted Police**
 5. **Sergeant Steven Frazer and Constable Jonathan Yu**
 6. **Norton Rose Fulbright Canada LLP as part of (Norton Rose Fulbright Verein)**
 7. **Orestes Pasparakis**
 8. **Joseph Bricker**
 9. **Aditya Badami**
 10. **Rob Rakochey**
 11. **John Does 1 – 20 and Jane Does 1 -20**

2. The following remaining defendants and new defendants are added to this Statement of claim.
 1. **Newton Glassman (“Glassman”)**
 2. **James Riley (“Riley”)**
 3. **Craig Boyer (“Boyer”)**
 4. **David Reese (“Reese”)**
 5. **James Hall (“Hall”)**
 6. **Dustin White (“White”)**
 7. **Mark Wilk (“Wilk”)**
 8. **Kevin Schmidt and Stride Management Solutions Inc. (“Schmidt”)**
 9. **Mathew Scott Sinclair and Sinclair Range Inc. (“Sinclair”)**
 10. **Callidus Capital Corporation (“Callidus”)**
 11. **Catalyst Capital Group Inc., et al (“Catalyst”)**
 12. **CATALYST FUND LIMITED. PARTNERSHIP III**
 13. **CATALYST FUND LIMITED. PARTNERSHIP IV.**
 14. **B.C, Strategy Ltd. D/B/A Black Cube, B.C. Strategy UK Ltd.,
D/B/A Black Cube (“Black Cube”)**
 15. **Ontario Securities Commission**

INTRODUCTION

This is a case about conspiracy, fraud and deception by a lender and its associates against a borrower and guarantor.

THE CLAIM

3. The plaintiff claims against the defendants, on a joint and several basis, for the following:
 - a. General and aggravated damages for \$6,000,000.00 being the amount of the plaintiff's guarantee; or,
 - b. In the alternative, the removal of the Callidus mortgage of \$4,500,000.00 from the plaintiff's Red Deer lands; and,
 - c. General and aggravated damages for \$4,000,000.00 intentional infliction of harm to the plaintiff's reputation and credit worthiness; and,
 - d. A Declaration that the defendants (described *infra*), are personally liable for the unlawful acts conducted by or through the corporations and/or other entities named as defendants; and,
 - e. A Declaration that Catalyst and Callidus through the directing mind of Newton Glassman engaged in an unlawful "loan to own" scheme disguised as a bridge loan; and,
 - f. A Declaration that Catalyst and Callidus through the other members of the Rat Pack breached contractual constituents of good faith and honesty, engaged in fraudulent inducement, arbitrarily and capriciously misused terms of the contract, deceptively incubated their agent into the company for the sole purpose of enriching themselves; and, utilized their contacts within the Ontario Securities Commission to deploy a scheme described by Glassman as Yield Enhancements,
 - g. Sinclair and Riley knowingly engaged in conduct to cause harm to the Plaintiff; with the full knowledge of the Rat Pack; (described *infra*); and,
 - h. Punitive damages for \$1,000,000.00 for the unlawful and reprehensible conduct of the Rat Pack; and,
 - i. Post judgment and prejudgment interest following sections 128 and 129 Of the *Courts of Justice Act*, R.S.O. 1990, C, 43, as amended.
 - j. Costs of this Action, plus all applicable taxes; and,
 - k. Such further and other relief as this Honorable Court may consider just.

The Parties

4. Glassman is the majority shareholder and managing partner of Catalyst and the Executive Chairman, CEO, Director and Chair of the Credit committee and the de facto directing mind of Callidus' "loan to own" conspiracy perpetuated on unsuspecting borrowers including the plaintiff here.
5. Reese was Glassman's right hand who put into action the loan to own conspiracy. He had a direct hand in the Baumann guarantee, as he and Boyer were co-signers of the guarantee.
6. Riley was the lawyer and vice president of Callidus. He is the quarterback of the conspiracy.
7. Boyer was a vice-president of Callidus and responsible for controlling the outflow of money to the borrowers through the revolving loan facility in the conspiracy. Reese, Glassman, and Riley were all directly or indirectly instructing Boyer on all matters relating to the takeover of Alken.
8. Sinclair personally and through his company, Sinclair Range, was Callidus' direct designate responsible for limiting the payments and requests for availability to Alken, particularly, for third party goods and services. Kevin Schmidt was Sinclair's right hand man, which aided in harming Alken's suppliers and shareholders.
9. Glassman, Riley, Reese, Boyer, Hall, Wilk, White, Sinclair, and Schmidt, are cumulatively referred to as the "**Rat Pack Conspirators**." (RPC). All and each of them had knowledge of and took part in the conspiracy to do harm to Baumann's company, Alken Basin Drilling Ltd., and to Baumann personally.
10. Catalyst limited partnership III and IV are Catalyst investment funds. Glassman transferred capital from these investment funds to Catalyst and Callidus for making loans to distressed businesses, allegedly as bridge financing, to aid these companies to the point where they could re-establish themselves with conventional lenders. Capital transferred from the partnerships to Catalyst and Callidus was for the sole purpose of deceiving and defrauding the Plaintiff and his business. Unfortunately, the limited partnerships were as well deceived and defrauded by the Catalyst, Callidus parties.
11. The Ontario Securities Commission is a body which purports to regulate Canada's capital markets.

The Components of the Conspiracy

12. The Ontario Securities Commission (OSC) purports to be an independent crown agency that regulates Ontario's capital markets. The Ontario Securities Commission due to the Callidus, Catalyst parties influence did not properly regulate and enforce the conduct within Callidus. During the time leading up to the loan, during the loan, and after the loan Callidus was a public company listed on the Toronto Stock Exchange which is regulated by the Ontario Securities

Commission. During the oppression dished out on the plaintiff by the defendants, Callidus was desperate to maintain or increase its stock price. It was during this time within Callidus's Q1 & Q2 2016 earnings call transcripts that Glassman first announced his scheme of yield enhancements to the public. Glassman explained a yield enhancement as the gain which Callidus would obtain after taking over borrowers' companies. In total Callidus reported more than \$300 million in yield enhancements which they obtained from unsuspecting borrower's; therefore, it was beneficial for Callidus to withhold funds, oppress borrowers, and obtain fictitious yield enhancements. The Ontario Securities Commission had a duty of care to the plaintiff starting on the first complaint by the plaintiff, and other Callidus borrowers and concerned parties. The Ontario Securities Commission, rather than investigate the Callidus yield enhancement scheme, allowed Callidus twenty meetings with the OSC. It was during these meetings that Callidus and Catalyst representatives convinced the OSC that the numerous complaints were merely disgruntled borrowers complaining. The lack of proper enforcement by the OSC has cost the plaintiff, other Callidus borrowers, the suppliers of borrowers and Catalyst investors hundreds of millions of dollars to date. Rather than the OSC taking the Callidus bait, the yield enhancement matter should have been referred to the Royal Canadian Mounted Police Commercial Crimes Unit.

13. Baumann purchased Alken Basin Drilling Ltd., ("Alken"), in 2013. He bought more rigs to augment Alken's fleet when Baumann was awarded a drilling contract in the Oil Sands near Ft. McMurray. Unfortunately, the breadth of the drilling contract was reduced. This reduction put Baumann in a position where he needed more flexible financing during the winter drilling season.
14. His usual conventional lender, Servus Credit Union, was apprehensive about the state duration of the oilfield slowdown in Alberta and did not wish to increase the size of the Alken Basin loan. They encouraged Baumann to seek other financing. Baumann decided to do so.
15. In the fall of 2013, Baumann was introduced to Callidus through Dustin White of Dynamic Capital. Dustin White promoted Callidus and turned Baumann over to Mark Wilk, who was a vice president of Callidus. Wilk extolled the high caliber lending protocols of Callidus and its practices towards ensuring a positive outcome for those companies needing bridge financing. A while later Boyer and Hall joined Wilk in convincing Baumann of the positive virtues of the Callidus lending platform.

Fraudulent Inducement

16. To buttress their high praise of Callidus' lending practices Wilk and Boyer provided Baumann with assurance that the pamphlet from White and the information on Callidus's website embodied their lending strategy. Of utmost importance to Baumann was the following:
 - a) Callidus would lend capital for a term of one year at a rate of 18%. While the interest was high, Callidus offset the high interest rate with considerable financial flexibility. If necessary, the borrower could get the loan extended for another year.
 - b) Their loan was asset based only. Thus, there was no need for personal guarantees

- c) Their loans had few if any covenants with the loans tailored to a distressed company's needs.

17. These provisions were significant to Baumann. First, financing flexibility was exactly what Baumann needed so he could access funds during the spring and sometimes summer to prepare for the drilling season, which was usually during the winter months in this slowdown period in the oilfield. Secondly, Servus Credit Union had a lien on his property in Red Deer that he wanted removed. By taking this loan, he envisioned that he would solve both Issues. Therefore, he cancelled all further endeavors on other financing options that could be available to him. Unfortunately, for Baumann, the position espoused by Wilks and Boyer was just the “con” before the storm.

Callidus changes position on personal guarantee

18. Within a brief period after Baumann withdrew from all negotiations with all the other potential lenders and committed to the taking a loan through Callidus, Boyer informed Baumann that they could not loan all the money promised without Baumann entering a guarantee in the sum of \$6,000,000 (six million dollars). As collateral for the guarantee, he would have to put up his land in Red Deer, on which Callidus would place a mortgage for \$4,500,000, (Four million, and five hundred thousand dollars). Callidus has a reputation amongst numerous borrowers relating to the insistence of personal guarantees at the last minute.
19. Baumann was now in a position where he could not refuse. He had cut all his ties with the other prospective lenders and needed the money to continue working and pay off Servus Credit Union. Therefore, he had to accede to their demand. Indeed, this was not an extraordinary demand by Callidus.
20. The demand of a guarantee was their last step in capturing all the company's and the shareholder's assets. This step was played out repeatedly in Callidus' “loan to own scheme” thereby, entrapping all the companies, they made loans to in their conspiratorial web. This introduction of the late demand for personal guarantees will be amplified later in the claim so this Court can fully understand the breadth of the scheme.
21. The contract was riddled with covenants about what Alken, the borrower, and Baumann, the guarantor, could not do, and what Callidus could do during the currency to the contract. These covenants were designed to completely restrict or void borrower or guarantors' rights under the contract. Of the myriad of these covenants, two deserve special comments

Controlling the money

22. The first of these covenants revolves around the control of Alken's revenue. All revenue was to be paid into a blocked account over which Callidus had singular control. Alken could access a part of the revenue gained from oilfield related work for the purpose of paying expenses and obligations. However, Alken's revenue from water well drilling was not accessible by the

company for any purpose, whatsoever. To this day Baumann is unable to discern what happened to the money from the water well drilling paid into the Callidus account.

23. Callidus' Facility A was a revolving account from which Alken could allegedly access 90% to the limit of \$5,000,000.00, (five million dollars).

24. To do so, a request specifically telling how much money was needed and the parties to whom it was owed was to be supplied to Callidus on a weekly basis. Callidus would deposit the requested amount into Alken's account. Alken would then pay the required parties owed. The foregoing was how it was supposed to work, but that is not how it happened.

Sole discretion used to severely restrict Alken's ability to function as a going concern

25. Callidus had one little covenant in the contract, positive for them, but, devastatingly negative to Alken. That covenant said whether Alken got the amount asked, or not, was subject to Callidus' "sole discretion."

26. Prior to finishing the contract, Baumann, apprehensive about this clause, queried Boyer about the problems the misuse of this clause could cause. Boyer's retort was two-fold. His first retort was said in the form of a question; "why would we do anything to screw our borrowers?" Secondly, he said, "we are going on the stock exchange. We must have the greatest honor and integrity." Boyer's comments were little more than hyperbole. Immediately upon Baumann signing the agreement Callidus, Glassman and Boyer placed a \$1,250,000 (one million two hundred fifty thousand dollar) block on Facility A. The net effect of this maneuver was before Alken could receive any money from Facility A, there had to be more than \$1,250,000 (one million two hundred fifty thousand dollars) in the blocked account, thereby limiting the availability in Facility A to \$3,750,000 (three million seven hundred and fifty thousand dollars). Throughout this period, Alken continued to pay interest on \$5,000,000 (five million dollars).

27. Upon Baumann signing the contract Callidus made it, clear that "at their sole discretion" was not just a term used in their contracts. The first contact from Callidus informed Baumann that he owed money to White for his efforts relating to the Callidus contract and that he would not be able to access Facility A until he paid White. Baumann was aghast; this direction was clearly outside the terms of the contract. Nevertheless, Baumann could do nothing but follow the direction. Although White's first demand was for \$250,000.00, Baumann was able to get White to accept \$160,000.00. (One hundred sixty thousand dollars). A hefty sum indeed for an introduction. This action, however, was not the last Baumann would feel the brunt of. It was just how the Rat Pack played the game.

28. Honesty and integrity were nonexistent in Glassman's world and that of his Rat Pack. Callidus used the discretion clause to hamstring Alken from accessing money from the facility such that it could only pay those debts necessary to keep the company barely functional. The debts, believed by Callidus to be unnecessary to Alken's function was third party goods and services, unless and until, Baumann or a member of Alken's staff proved that it was critical to Alken's ongoing function. From the very beginning, Baumann

was in a constant fight with Hall and later Boyer to get money to pay the third-party suppliers. From Baumann's research, he learned the third-party payables that Callidus left unpaid relating to borrowers enriched Callidus by \$15,000,000 (fifteen million dollars).

29. As the one-year anniversary of the loan loomed closer, Boyer, undoubtedly at the behest of Glassman and Reese, despite that there was money available in Facility A, on December 22, 2014, refused to remit any money to Alken because Sinclair had not approved the request. Later, an email from a Callidus accountant indicated Callidus would fund the payroll, but Callidus would supply the money directly to the payroll provider.
30. Still closer to the end of the contract, on February 25th, 2015, of the \$903,280 available a request for \$499,999 was made and \$110,936 was sent. On March 3rd, 2015, one third of the requested amount was sent, and of course on the 20th of the same month of the \$600,000 asked for nothing was sent. The last request was an effort of futility as Callidus gave Alken notice on March 18th, 2015, that it was calling its loan.

Mathew Scott Sinclair

31. On or about the first week of December 2014, during another tumultuous battle for money, Boyer indicated that he knew a person who had worked on earlier occasions with Callidus who may be of help to Alken. He assured Baumann this person knew how Callidus operated, and he would be able to help with accessing money for Alken. By this time, Baumann had exhausted himself trying to extract money from Callidus to pay Alken third party suppliers. He was open to any avenue available that would make accessing capital to pay his suppliers easier. At this stage, Alken's repeated failure to pay Alken's third-party debts had caused a deterioration of his relationship with his suppliers and his customers. Therefore, he told Boyer to give him the person's number. When he called, one Scott Sinclair answered and said, "I have been waiting for your call."
32. Sinclair, assured Baumann that he could help Alken in several ways:
- a. Advise the company generally,
 - b. Consult with Callidus regarding the issues relating to the need for payment to the suppliers.
 - c. Aid in putting together a turnaround plan so Alken could get alternative financing and pay out Callidus.

On that basis, Baumann hired Sinclair on December 3rd, 2014. However, Sinclair did not do any of the things he said he would do. In fact, he was another stooge for Callidus. It soon became clear that Sinclair was not there to help Alken in the least.

- 33.** His job was to ensure that Alken did not enhance its position. Sinclair and Boyer worked hand in hand to ensure that Alken's position declined. Boyer made Baumann aware that all requests for money from Facility A were to go through Sinclair. However, when Baumann or other personnel approached Sinclair with prepared requests, Sinclair would reject them or, cut out the requests that pertained to third party payables. Therefore, on January 31, 2015, Baumann ended Sinclair's services. Obviously, Sinclair knew what would happen when Callidus found out that he had been terminated, his final words sent by email were, "I will be back."
- 34.** After he terminated Sinclair, Baumann decided to check the internet to see if he could garner any information about him. What he found was Scott Sinclair's full name was Matthew Scott Sinclair, an unsavory character indeed. He was an accountant from Ontario and who had a company, which was regulated by the Ontario Securities Commission. The Commission censored him for improper conduct relating to his investors.
- 35.** Sinclair, was banned from trading on the stock exchange for 10 years, ordered to pay a \$10,000.00, (ten thousand dollar) fine and barred from running any publicly traded company for life. The search also showed that he had been censored by the Ontario Accountants Association and banned from practicing in Ontario. Baumann also found out that Sinclair was already working for Callidus as a chief recovery officer winding up Leader Energy, another oilfield company in southern Alberta. That company was eventually signed over to Callidus. He now lives in British Columbia.
- In one of his quarterly reports to his investors, Glassman indicated to them that Callidus tries to get their people into the companies who have taken out loans "as soon as possible," either by having the companies hire them or have Callidus place them into the companies. It is Baumann's position and Sinclair's actions demonstrate that he was a Callidus operative, which Callidus managed to insert into Alken by falsely claiming Sinclair would assist in making the relationship better. While true that at all material times, he was paid by Alken, it is also true that he did not work in Alken's best interest. Other than collecting a cheque from Alken through Range, there is no evidence that he did anything for Alken or Baumann's benefit.
- 36.** The first thing Sinclair did upon being hired by Alken was compose a report to Boyer indicating that Alken was in worse shape than Callidus thought it was. Throughout the one-month stint Sinclair was at Alken, he did nothing to convince Baumann that he was there to assist the company better its relationship with Callidus. All that changed was Baumann now constantly fought on Alken's behalf with Sinclair rather than Boyer. That is the reason Baumann terminated him on January 31, 2015.
- 37.** Once Sinclair was engaged, Boyer would not accept any Facility A requests unless and until Sinclair reviewed and approved the request. Within four days of Sinclair being terminated, Boyer informed Baumann that, "Range, (Sinclair), must be re-engaged" and all money requests would be rejected until he was. Baumann had no choice but rehire Sinclair, notwithstanding, that he was there at Callidus' behest for the purpose of furthering the conspiracy to ensure Alken never was able to move beyond the Callidus loan. Sinclair's initial billing from Range to Alken was \$15,000 per month.

Baumann breaches the Blocked Account provisions

- 38.** On February 28th, 2015, following the repeated failure to advance funding for the third-party payables, notwithstanding receivables far exceeding the requests, Baumann notified Callidus that he intended to enter Alken into CCAA protection. Following this notification, when Sinclair refused to validate the third-party payable request on March 11th, 2015, Baumann advised Sinclair he was seeking legal advice on March 16th, 2015, regarding CCAA protection. Two days later Callidus notified Alken that it was calling its loan on March 31.
- 39.** It was obvious to Baumann that Callidus would not release funds for the purposes of paying the third-party debts and certainly not for the application for CCAA protection. Therefore, he opened a separate account at the RBC and diverted \$1,269,951 (one million two thousand, nine hundred fifty-one dollars) earmarked for the blocked account into the RBC account. With that money, he retained a lawyer in Calgary and one in Edmonton. With the remainder, he made cheques payable to third parties and sent them to the parties. In addition, when Baumann put up the Red Deer lands as collateral, on his accountant's advice, he put a 2% (two percent) per annum interest payment payable by Alken Basin Drilling to Pekisko Ranch Ltd, the then owner of the lands. At the time he moved the money to the new RBC account, Alken owed Pekisko \$287,000, (two hundred eighty-seven thousand dollars). Baumann paid Pekisko \$100,000.00. (One hundred thousand dollars), leaving the remainder as a debt owed to Pekisko.
- 40.** Sinclair, by whatever means, was notified of what Baumann was doing and immediately took action to repatriate the money on Callidus' behalf. Baumann admits that Sinclair did a yeoman's job in that he repatriated all the money but for the \$100,000 (one hundred thousand dollars) received by Pekisko and \$1,173.00 (One thousand, one hundred seventy-three dollars) of the third-party payables.
- 41.** Because of Baumann breaching the blocked account provision of the contract, Callidus demanded through their lawyer that Baumann be removed as President and as a director of Alken and that, Sinclair be appointed as President and as a director. On April 21st, 2015, by letter from Baumann's lawyer he resigned his position as director and officer of Alken and confirmed that Sinclair was appointed in his stead. Sinclair occupied these positions until Alken was sold by receivership in May of 2016. However, it was not that Baumann did not try his best to have Sinclair removed.
- 42.** Once Baumann was told by Callidus that he had to resign, both as President and as a director and install Sinclair in the positions, Baumann tried to use his shareholder powers to get Sinclair to act in Alken's best interest. By email him, on multiple occasions. Admonished Sinclair for continuing to purchase third party goods and services without attempting to pay for any of them. Secondly, Baumann was of the view that Sinclair should be making substantial efforts to sell the redundant equipment to lower Alken's liability under the contract. Further, he, on multiple occasions, expressed the view that these sales should be open and transparent.
- 43.** Callidus refused to do so. Notwithstanding that Sinclair's stated area of expertise, both in his self-portrayal and the title of CRO under which he insisted he be hired, he made no attempt to market redundant equipment or seek out buyers for a portion or all the equipment. From the time he was hired by Alken until the receivership, he sold \$31,000.00 dollars' worth of junk pipe and little else. During the year Sinclair operated Alken on behalf of Callidus Range billed out and was paid in excess of \$500,000 without Baumann's consent or knowledge.

- 44.** Callidus and Sinclair are both culpable for the demise of Alken. The contract clearly states that Callidus could run the company for a year. The key word is “could.” When they took control of the company, they decided to install Sinclair as the Chief Operating Officer. When they exercised their right under the share pledge agreement, they installed him as the sole director. In doing both things, Callidus had a duty to install a prudent person who would exercise care diligence and skill to the best of their ability. In this case, Sinclair’s background was that of a Chartered Accountant. Even appreciating that he was a censored accountant, he, nevertheless, would know what was expected of him and indeed know what was in the best interest of the company. However, that is not what occurred.
- 45.** Firstly, Callidus “should,” (the other key word), never have taken control of the company because they had no intention of being fair and honest, and equally, had no intention of installing a responsible, prudent person who would exercise care, diligence, and skill to the best of his ability. Likewise, although he was a perfect person for Callidus, he was the worst of all choices possible for a director or Chief Operating Officer, because he never intended to do anything, but those things dictated by or through Glassman to one of his co-conspirators, namely Boyer. Thus, Callidus was in breach of its common law duty of fairness, honesty, and Sinclair, was in statutory breach of Alberta, Ontario, and the Canadian Business Corporations Acts.
- 46.** In any event, at this stage Sinclair chose to simply ignore Baumann. Finally, Baumann, frustrated with the complete lack of any attention being given to these issues, called a shareholders meeting.
- 47.** Although not previously stated herein, in addition to Baumann holding 60% of the shares in Alken, two other shareholders held 20% each. These two shareholders each signed guarantee for \$250,000, (two hundred-fifty thousand dollars). The shares were given to them as a term of their employment. However, Callidus did not pursue any claim against them and, the Limitations of Actions Act provisions for doing so has long since passed. Baumann is the only guarantor who Callidus pursued under a guarantee. One of the minority shareholders is Baumann’s brother Mike and the other is Kevin Schmidt.
- 48.** Baumann called a shareholder meeting to discuss the inaction of Callidus and Sinclair. Baumann and his brother Mike were the only ones to attend the meeting. Schmidt decided to align himself with Sinclair and Callidus because Sinclair promised him that to so align himself could result in Callidus not pursuing him on his guarantee. Of importance, Schmidt was given 20% of Alken and at all material times he was paid through his management company. Notwithstanding all this Schmidt was quick to jump into the arms of the Rat Pack. As early as January of 2015, he emailed Sinclair to inform him that he was ready to work with Sinclair on any plan Sinclair had for Alken. From that point forward, he was Sinclair’s man and at all material times he took direction from Sinclair. Although he may have been on the bottom rung of the Rat Pack, he, nevertheless, was still one of them.
- 49.** In any event, because of that meeting, Baumann emailed Sinclair saying to him that majority of the shareholders were not satisfied with his performance, which he was not working in the best interests of Alken and asked that Sinclair resign. That email caused a storm of activity within Callidus.

The Share Pledge Agreement

- 50.** Another covenant the Alken shareholders had to agree to be the share pledge agreements in favor of Callidus as further security for the credit facilities granted by Callidus to Alken. Coupled with the pledge agreement was an irrevocable power of attorney under which, upon notice to the shareholders, Callidus could demand all the shares of the company and exercise all the rights of the shareholders through the power of attorney.
- 51.** On May 26, 2015, by letter through its lawyer, Callidus gave each of Alken shareholders formal notice that Callidus was exercising its rights by the share pledge agreements and the Power of Attorney dated March 31st, and May 15th, 2014. They further told the shareholders they no longer had any rights as shareholders and the right to vote. Further, Callidus advised. As the holder of those rights, they appointed Scott Sinclair as the sole Director of Alken.
- 52.** From that point forward, Sinclair absolutely refused to respond to Baumann's emails except for one occasion where he sent an email to Baumann saying that as a shareholder, Baumann would get information when it was proper. In addition to the email blackout, Sinclair forbade Baumann from entering Alken's yard or property, and if he did so, the police would be called. Moreover, he gave orders that no person working for Alken could converse with Baumann and anyone doing so would be fired at once.
- 53.** These dictates were not in jest. Shortly after laying down these edicts, he followed through by firing an 18-year employee for telling Baumann that he was trying to get information from Sinclair about the sale of a portion of Alken's equipment that Baumann's brother Doug was interested in. That move resulted in Alken having to pay out a huge severance package to the employee. As addressed, hereunder, he also called the police on Baumann.

Sinclair knowingly causes Baumann harm

- 54.** When Baumann purchased Alken, he personally put up \$2,000,000.00, (two million dollars) as part of the purchase of the company. That amount was shown within the accounting records as an unsecured shareholder's loan. The books of account also showed the interest owed to Pekisko for land put up as security on Baumann's guarantee. In addition, there was \$1,000,000 (one million dollars) booked as suspense items. One of the first things Sinclair did upon Callidus seizing control of the company was to redact those liabilities from the books of account. As a result, Baumann nor, Pekisko were listed as part of the unsecured creditors. However, that was not the end of Sinclair's endeavors.
- 55.** After buying Alken, it was clear to Baumann that the company was short of pickups. However, Alken was not in the position to finance a multiple truck purchase. Therefore, Baumann stepped in and personally guaranteed the financial agreements for the vehicles the company needed. The company used the pickups and made the payments on them. As part of the loan agreement Callidus undertook to continue those payments. As they were allowed encumbrances. While Baumann was in charge that is what occurred. However, when Sinclair took over, he at once stopped the payments on the vehicles and allowed the loans to fall into default.
- 56.** Obviously, the finance company went ahead to repossess the vehicles. However, Sinclair would not allow access to the yard to anyone for the purposes of repossession. When Baumann was advised of what was occurring, he decided to provide the finance company with a bit "self help." Baumann entered the yard, appropriated one of the vehicles, and delivered it up to the

dealership. As said above, Sinclair called the RCMP and laid a complaint of theft of motor vehicle against Baumann. Once Baumann told the police what occurred, the investigation was closed. It is unknown what, if anything, the police said to Sinclair, but he thereafter offered up the other vehicles without any further confrontation. Sinclair decided to not try to involve the police further, however, when Sinclair's attempt failed another member of the Rat Pack decided to try it.

57. As previously said, with the money he put into the RBC account he paid Pekisko one hundred thousand dollars as a partial payment on the interest owed by Alken while the Pekisko land was used as collateral. Callidus brought an action against Baumann and Pekisko claiming misappropriation of Callidus' money. Once Sinclair's effort at launching a criminal action against Baumann failed; Riley laid a complaint of criminal fraud against Baumann. Again, after hearing from Baumann, the police took no action. Unfortunately, the Callidus charade did not end here.

The Rat Packs "loan to own" conspiracy takes further steps

58. The Callidus contract said the contract could be extended at an interest rate of 21%. However, that is not what was presented to Baumann. Instead, Callidus presented Baumann with a different contract, so completely in Callidus' favor that to accept would be complete and utter capitulation to Callidus' loan to own strategy. Interestingly, one of the first terms of the contract was that Baumann would say that Callidus had done nothing "wrong" during the originating contract. Baumann refused the contract outright. After he was removed as President and director, Sinclair and Callidus were free to scheme without thought of prejudice.

59. When Callidus called the loan on March 31st, 2015, Callidus' own accounting showed that Facility B had been paid down from \$19,000,000, (nineteen million dollars) to \$17,961,500.00, (seventeen million nine hundred sixty-one thousand five hundred dollars), and Facility C. was paid down from \$4,500,000.00 (four million five hundred thousand dollars) to \$3,430,000. (Three million four hundred thirty thousand dollars) Facility A was at net zero because, any money loaned out through the facility was guaranteed by the cheques already in the blocked account. In February of 2015, Alken showed a profit for the year of three million dollars. If Baumann had not handed Alken over to Callidus, he would have had the loan paid off or paid off without affecting the guarantee.

60. When Baumann was removed from Alken, he believed steps would be taken towards an orderly sale of Alken's assets, however, that did not occur. After repeated demands that an orderly sale of the assets be put in motion, Sinclair told Baumann that "we" are waiting until the Oilfield picks up before selling the assets. Again, this proves that Sinclair was working for Callidus and its interests rather than Alken's and its shareholders. This too was a ruse, whereby, Callidus could in addition, did jack up the debt. When Alken was sold, allegedly through a bankruptcy auction, the loan had increased to \$28,500,000.00 dollars from \$20,300,000 million dollars, net of receivables when Baumann was effectively locked out. Moreover, in its wake, Callidus left more than a million dollars of unpaid third-party debt. This is a fact and a travesty that all third-party payables were not paid. As Alken had surplus receivables to pay all third-party payables.

61. One of the first things instituted by the Rat Pack was an ongoing \$600,000.00, (six hundred thousand dollar), revolving loan outside of the parameters of Facility A. This meant that Sinclair could ask for money and Callidus would advance it even if there were no money with which to repay the amount asked for. Obviously, such a concession was outside the contract Callidus was

enforcing on Baumann. Between April 21st, 2015, and the receivership, Callidus advanced money to Alken forty-six times. Secondly, Callidus parked the interest part of the contract throughout the time Sinclair had stewardship over the company, thereby, driving up the debt further. Callidus sued Baumann for the Red Deer lands.

62. The facts prove that Callidus and the Rat Pack, all, and each of them, engaged in a plan of deceit, falsehood, and other unlawful means to ensure that Callidus would end up owning Alken and the lands. The statements of Wilk and Boyer and Hall were made to induce him into pursuing a loan through Callidus fully knowing that their statements were false and were made with the intention of deceiving. These false statements were not only material in Baumann dropping his other options and pushing forward with a Callidus Loan, but they were also the entire reason he did so. By the time Baumann was confronted with the guaranteed requirement, it was too late to stop the process as he had cut his ties with the other lending facilities.
63. Canadian business runs on the premise that their counterparts run their business honestly and in good faith. In most cases, business relationships are proven over the years. Alken was a company with a thirty-year history of being a company that paid its third-party bills. Baumann was a respected businessperson in oilfield endeavors for at least the same amount of time and was known for ensuring his third-party suppliers were paid. It is fair to say that those who do not pay their bills, do not last long in the oilpatch, effects Baumann today.
64. When Baumann took the Callidus loan, he expected that Callidus would extend the same honest and fair play as he received in his past financial relationships. However, honesty, ethics, and fair play was non-existent in the Rat Pack world. Glassman and his underlings believed that “sole discretion” meant sole discretion absolutely; however, they are wrong in this regard. Sole discretion does not include capricious and arbitrary actions and decisions knowing that doing so will cause harm to the persons against whom these actions are directed, particularly, when that capricious arbitrary action is solely done for the improper purpose of unfairly enriching the actor of the capricious conduct. In short, the lender cannot withhold money from the borrower because the lender wants to cheat the third parties out of their money, thereby, enriching itself.

Rat Pack’s actions Cause Real Harm to Baumann.

65. Callidus and the Rat Pack owed Alken and Baumann a duty of honesty and fairness. That duty includes telling the truth. They neglected that duty or, more precisely, they intentionally ignored it. They did not tell Baumann of Sinclair’s colorful background, which would lead any person to the conclusion that he is not trustworthy. Nor did they tell him at the time Sinclair was already working for Callidus as a CRO for the purpose of extracting as much money from Leader Energy as possible before having the owner of Leader sign what remained of the company over to Callidus.
66. Baumann was told Sinclair would be useful in helping Alken access money from Callidus, as he was familiar with their process. That, of course, was an outright untruth which Boyer used to have a Callidus operative as their frontline agent whose job was to ensure that as much money as possible remained within the blocked account thereby, unfairly, and dishonestly enriching Callidus. Enriching Callidus in this manner caused great harm to Alken and Baumann.
67. Even more insidious was Callidus’ breach of contract in not paying for the vehicles. It may have been a small breach to Callidus, but the failure to pay for those vehicles as they had contracted seriously affected Baumann’s credit and the ill caused by Callidus and Sinclair still remain.

- 68.** The oilfield business is like every other business sector. In many cases, oilfield companies have a 6 month no work policy for start-up businesses. The rationale for this policy is to not inadvertently hire “fly by night” companies who will, (a) not have the capital to complete the job and, (b) not have properly serviced equipment and knowledgeable personal to complete the contract and, (c) That they are indeed a going concern. A going concern is a business that can get whatever supplies or services needed for the job and can pay their bills as they come due, in short, third-party bills must be paid. In the instant case, Alken went from a going concern to a “watch list” company in the oilfield.
- 69.** In the oilfield, to be downgraded to a watch list is the most serious of downgrades. The inability to get credit stymies the company’s ability to function. An oilfield company needs to have first class equipment that is fully functional. That is, repairs must be made when needed and that takes credit. However, under Callidus’ policy of “never ever paying third parties unless absolutely necessary,” Alken’s ability to function was seriously impaired, but impairment of function is not the only harm that was caused by the inability to meet the third-party payables.
- 70.** These third parties trumpet the company’s inability to pay other like third parties and whatever other entities who may or may not be interested. In the present case, Baumann, the other two shareholders and their office personally had to field a myriad of complaints and even threats from third parties. These complaints only increased after Callidus, and Sinclair wrested control from Baumann. Of equal concern there were myriad of companies who called Alken wanting to be assured that the company would be able to finish the contract or start and finish the contracts that Alken had contracted to start and complete. Further, the contracts that Alken sought began to diminish, which in turn, further diminished Alken’s financial position.
- Baumann makes no argument regarding the term of the contract stating Callidus could run Alken for a year. However, Callidus also had the duty to be honest and fair regarding whether it should do so. In this case, their main reason for calling the loan was the depressed state of the oilfield forecasted to last well into 2020. Secondly, they did not have anyone with the expertise to run an oilfield drilling operation. Third, their conspiratorial actions had caused Alken’s position in the oilfield to flounder and fourth, failing to pay third parties stymied their ability to get credit.
- 71.** As a result, the operation was bush league at best. To keep the equipment running the personnel were scavenging parts from one machine to fix another thereby, diminishing the overall worth of the machinery. Although there is no way of knowing, as Sinclair did not keep any books of account, it appears his and Callidus’ ineptness resulted in a dismal year. At one stage, they virtually obtained no work for four months. Despite all of this, their stated goal was to sell Alken as a going concern.
- 72.** Such a goal was more Callidus fiction. Their actions showed that Callidus wished to gain outright control of Baumann’s company and the Red Deer lands. However, while Alken floundered in the Alberta oilfield there was some indication that persons in the Middle East had opened discussions with Sinclair regarding utilization of Alken equipment in Egypt.
- 73.** Sinclair informed Boyer that there were discussions with some representatives from the Middle East who were interested in contracting with Alken to drill water wells in Egypt. Several months later, he notified Callidus that these people had signed a Memorandum of Agreement regarding the project. Soon after this announcement, he put out another one stating that Alken had signed a Memorandum of Understanding with this group. Some weeks later, he, by circular, announced that, (a) he had been made “head of all water well drilling operations in Egypt and (b), Range Operations had opened two offices, one on Bay Street and the other on Wall Street. In addition,

correspondence between Sinclair and the rest of the Rat Pack discloses that as early as January of 2017, there were efforts by Callidus to open a bank account with the Deutsch Bank in Europe for Alken. However, after Callidus acquired Alken in the receivership Sinclair learned that his Arab partners did not have a contract in Egypt or anywhere else in the Middle East.

74. While Sinclair was touting these major developments, a company out of Calgary had offered Alken a contract for the next drilling season which the Company valued at \$5,000,000.00, (five million dollars). Sinclair was delaying signing the contract; therefore, the company contacted him by email wanting to know why he had not signed the contract. His response was he was delaying doing so because “we” are going to be purchasing the company within the next little while and he did not want any contractual complications with after the sale.
75. By this time, Sinclair had hired a receiver first to advise him and later to oversee the Alken receivership. However, until Baumann was made aware of these matters Sinclair, who allegedly was advertising the Alken receivership, did not say one word about these matters. In fact, it was the second week of the three weeks’ notice period before he notified the receiver of these important developments, and he did so only because Baumann demanded he do so. However, he only allowed the receiver to share these developments with those parties who already signed a confidentiality agreement, not that it would make any difference because, other than a small advertisement in the local newspaper, the advertisement was limited to advertising on Sinclair’s database and the receiver’s database. In any event, the sale result already known, Callidus was purchasing Alken.
76. As it turned out, the quick turnaround and the lack of advertising resulted in only five bids. Four of them were from junk dealers. Their bids were in the low millions. Callidus’ bid was for \$28,500,000.00, (twenty-eight million five hundred thousand dollars), minus \$4,500,000.00, (four million five hundred thousand dollars), the amount of Callidus’ mortgage on Baumann’s Red Deer lands. Conspiracy completed; well not quite.

The Conspiracy continues

77. The other part of Callidus’ *modus operandi* is to bring a deluge of lawsuits against persons like Baumann who “don’t go quite into the good night.” They brought a lawsuit against him for his land, another against him for the \$100,000,00 he paid to Pekisko, still another for defamation and finally the one in Ontario where Callidus included him in the Wolf Pack claim which recently found its demise in a SLAPP application brought by the defendants, but which Callidus has appealed.
78. Baumann has defended each action brought against him. Callidus has dragged Baumann into countless discoveries for no other reason than to try to break him. In addition, when Glassman paid Black Cube to gather dirt against the highly respected justice of the Ontario Superior Court, he was not Callidus’ only target. In fact, Glassman had a target list of sixty-eight people of which Baumann was one.
79. Beyond taking pictures of him in Alberta, the Black Cube conspirators attempted to set up a sting against Baumann, which he believes, was for the purpose of Callidus getting a hold of his entire file. Baumann received two emails, one on November 9th, 2017, and another November 15th, 2017.

Dear Mr. Baumann,

I am writing on behalf of Mr. Echevverria, the CEO of Arrow fund. We would like to connect to explore the possibility of mutual collaboration between you and our litigation fund. I would like to verify this is the right email address for you [sic] use prior to sending any further information. Please advise whether this is the right channel, we can reach you at.

Best, Maria

The email of November 15th stated

Dear Mr. Baumann,

I am checking in to see if you received our last email [sic] regarding a cooperation between our litigation fund and yourself. Please advise us if there is a better channel to reach you.

Best, Maria

Baumann was skeptical of the bona fides of these emails, so he did not respond. As it turned out, Black Cubes records as disclosed after a judge's order showed that it was all a ruse set up by them. This scheme was Callidus' way of obtaining information protected by litigation privilege.

80. It may well be that Callidus started out to be a bridge loan lender, but, by 2013, Glassman and his Rat Pack were fully into their loan to own method. Glassman, no longer happy with gaining just the interest from the loans, he wanted to realize equity like returns on the money heloaned. In fact, he bragged to his investors on several earnings calls how he got equity like returns that did not cost him anything. This Court, however, should know that claims of unheard-of profits are not as accurate as Glassman claims.

Justice Newbould accurately described Glassman as "more of a salesman than an objective witness." A perfect case in point is the Callidus takeover of Xchange Technologies Group. Glassman informed his investors that Callidus sold the company to fund IV at a substantial profit. However, Moser's, (fund IV funding partner), in their statement of claim alleged that Glassman reported to them that he had lost \$153,000.000,00, (one hundred fifty-three million dollars), on the loan and Moser fund IV was paying for it. However, when Boyer resigned from Callidus and sued it for bonuses and other benefits that Callidus would not pay, Callidus counterclaimed that Boyer stole \$150,000.000.00, (one hundred-fifty million dollars), and then told the investors at a subsequent meeting that the loss was the result of theft. After this incident, when Reese deserted the ship and sued Callidus for his benefit package, Glassman brought a counterclaim against him, alleging Reese stole \$50,000.000 dollars, (Fifty million dollars). To the best of Baumann's knowledge, Glassman has not yet attached this money to any of the funds. There are many other incidents relating to the manipulation of facts depending on who Glassmanis speaking to that may be produced at the at trial but to relate them all would over strain conciseness, The Dalton Report, however, provides a detailed analysis that Glassman himself brought down Callidus.

81. Prior to taking Callidus public, its proffered share value was \$3.00, (three dollars) although, the estimate of the marketplace had Callidus' share value as low as \$1,00(one dollar) as Callidusdid not have any real asset value. Thus, in many respects there was a real need for acquiring asset

value. It is Baumann's position that the need to do so was the genesis of Glassman's loan to own strategy. This strategy, together with other Glassman directed actions relating to going public and the resulting catastrophe of doing so caused the demise of Callidus.

- 82.** The Dalton Report written by a consultant brought in to analyze what went wrong concludes that Callidus transformed from an "asset base lender to a distressed private equity business." Secondly, Callidus did not have the requisite skill set, resources, or capital to effectively manage owned subsidiary assets.
- 83.** The problems that Callidus caused itself and its clients, including Baumann, is they masqueraded as an asset-based lender when their intent was loan to own each borrower's business. Further, when they got the business, they did not have the skills to run it. Alken was the perfect poster child for the outcome that occurred. What was required for Alken to be successful was an experienced, solid oilfield manager. Instead, Callidus put in a disgraced ex-accountant and Bay Street loser, to manage the company with disastrous results.
- 84.** Baumann states the foregoing is only an overview of the conspiracy, the full extent of each conspirator's complicity can only be fully known upon discovery.

Other Companies brought down by the Rat Pack

- 85.** Through his extensive research into Callidus, Baumann could not find one company that took a loan from it that successfully exited the Rat Pack loan to own scheme. What Baumann did uncover, however, is that the Callidus Rat Pack followed a similar pattern consistent with their conduct in the instant case. Of the many that fell prey to the Rat Pack's fraudulent conduct Baumann anticipates he will be, calling evidence of three other companies that fell prey to Callidus' loan to own scheme. They are the Texas Company, Esco Marine, the Kentucky coal mining company, Fortress Resources, and the Quebec Company, Bluberie Gaming.
- 86.** The facts surrounding Esco, and Fortress will show that Callidus treats like scenarios differently depending on the laws that govern fraudulent conduct in the United States as opposed to the Canadian laws governing the same conduct.
- 87.** In the case of Esco Marine, the majority shareholder and guarantor brought an action against Callidus alleging that Callidus' conduct was such that it exempted him of liability as a guarantor. Callidus, of course, brought an application to strike the claim as it was without merit. The Judge hearing the application found that there was evidence whereby Callidus' inducement was fraudulent and dismissed their application. On the other hand, the Callidus application brought in response to an action brought by one of Fortress guarantors for fraudulent inducement resulted in guarantor's action being struck by the learned judge. The guarantor appealed that decision. These two scenarios, however, were not the only actions in process.
- 88.** Esco and Fortress had hired lawyers who believed that Callidus' actions relating to the two United States companies were such that they fell under the ambit of the United States RICO statute. The lawyer who did the assessment of the case was of the view that Callidus' actions fit into the RICO ambit, and there were only several legal hurdles that would have to be proven, which, would not be a yeoman's task. An international law firm of which the Canadian base is in Toronto, Ontario became aware of this prospect as the firm represented two parties in Canada; Baumann and one Daryl Levit, the other partner in Fortress who also signed a personal guarantee with

Callidus.

- 89.** This law firm pressed the lawyers in the United States to pursue the RICO claim and that they would join in through a class action on behalf of its Canadian clients. However, they were not the only party aware of the potential action under RICO.
- 90.** Callidus also was aware of the real hazards they faced and the havoc and potential costs to its activities if the prospective claim was filed. Self-preservation obviously became paramount for Callidus. Within weeks, Callidus contacted the guarantors of ESCO and Fortress in the United States, both of whom had signed guarantees for millions of dollars. Callidus made them an offer the guarantors could not refuse.
- 91.** The offer made by Callidus was that upon payment of \$10,000.00 (ten thousand dollars) and a upon signing a document prepared by Callidus stating that Callidus had not conducted themselves in any nefarious manner and, upon naming all the persons they had contact with, Callidus would stop all attempts to collect on the guarantees from the two parties. How could the parties do anything other than hold their nose and agree to the offer. However, such an agreement was not extended to Mr. Levitt
- 92.** The problem for Mr. Levitt is he is a Canadian, works in Canada, and signed the guarantee in Canada. For Callidus, there is no RICO in Canada, so onward and upward with our economic thuggery. Thus, they continue to pursue Mr. Levitt from every legal alley possible including, but not limited to dragging him into court in their ill-fated Wolf Pack claim.
- 93.** Bluberie is another company that had an unfortunate encounter with Callidus. Again, the same fraudulent inducement followed by changing the terms of the loan, and withholding the money borrowed so that Bluberie could not maintain itself as a going concern, followed by the immediate insertion of Callidus "people," followed by the removal of the principal of Bluberie, followed by the purchase via credit bid. Same story, same ending. In addition, a Quebec court has stated that the Bluberie receivership was for an improper purpose.
- 94.** These matters will be put forward at the trial of this matter for establishing evidence of similar fact. The acts of the Rat Pack, all, and each of them has caused great harm to Baumann. In addition, the defendants have infringed upon the plaintiff's rights and freedoms under the Canadian Charter of rights and freedoms.

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