

# Appeal Court Upholds Dismissal of Abusive Catalyst Lawsuit

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## FULL TEXT

TORONTO, May 2, 2018 /CNW/ - West Face Capital Inc. issued the following statement regarding today's decision of the Court of Appeal for Ontario affirming the dismissal of a lawsuit by The Catalyst Capital Group Inc.:

"The Court of Appeal upheld today the dismissal by Mr. Justice Hainey in April 2018 of a second lawsuit filed by Catalyst against West Face in May 2016. The appeal court confirmed that the lawsuit was an abuse of process and an attempt to re-litigate the same issues that were dismissed in their entirety in the earlier Brandon Moyse litigation," said Greg Boland, Chief Executive Officer. "This decision is yet another independent confirmation of lack of merit to the serial litigation being pursued by Catalyst against West Face for almost five years."

Over the past five years, Catalyst has launched a total of four vexatious and meritless lawsuits against West Face. West Face believes that each of the cases is unfounded and, with today's decision, two of the cases have been dismissed in court and upheld on appeal.

This past March, the Supreme Court of Canada refused to hear Catalyst's application for leave to appeal the trial decision in the Brandon Moyse litigation. The trial judge dismissed Catalyst's claims, summarizing the lawsuit as follows: "This law suit was driven by Mr. Glassman. He was not able to accept that he lost his chance to acquire Wind by being outsmarted by someone else. He set out to prove his belief that the West Face witnesses were lying and that West Face had obtained confidential Catalyst information from Mr. Moyse that they used to defeat Catalyst's bid to acquire Wind. He was certainly playing hardball attacking the reputation and honesty of West Face. However, in spite of the best efforts of Catalyst's very able and skilled lawyers, he utterly failed."

In the May 2016 lawsuit that was dismissed today by the Court of Appeal, West Face and the other defendants had moved to dismiss the lawsuit as an abusive attempt to re-litigate issues decided in the Moyse Action. The motions judge found in April 2018 that the findings against Catalyst in the Moyse litigation were "equally essential and fundamental" to Catalyst's claims in its May 2016 litigation about the WIND Mobile transaction, and meant that Catalyst's allegations could not succeed at trial. In upholding the motions judge today, the Court of Appeal noted that "Catalyst's behaviour exhibits the classic signs of re-litigation".

Moreover, in the course of these two lawsuits, the Ontario courts have made several important findings against both Catalyst and its principals, including:

- In his 2016 decision on the Moyse litigation, the trial judge provided the following summary of the evidence of Mr. Newton Glassman, the CEO of Catalyst: "...I must say that I had considerable difficulty accepting as reliable much of the evidence of Mr. Newton Glassman. He was aggressive, argumentative, refused to make concessions that should have been made and contradicted his own statements made contemporaneously in emails. I viewed him

more as a salesman than an objective witness."

- In an earlier 2016 proceeding related to the Moyses lawsuit, the same trial judge found that Mr. James Riley, the COO of Catalyst, made an untrue statement in affidavit evidence, in which he denied knowing an important event, which in fact he knew a year earlier.
- In that same 2016 proceeding, the judge found that Catalyst had not acted in good faith in the proceedings, by lying in the weeds for strategic reasons and then springing a new theory at the last moment. The Court of Appeal identified this conduct as a "classic sign" of Catalyst engaging in re-litigation.
- The trial judge in the Moyses litigation found that Catalyst had no chance of concluding its acquisition of Wind Mobile.
- The March 2018 decision of the Court of Appeal for Ontario in the Moyses litigation was rendered from the bench, without even the need for submissions on the merits of the case by West Face's or Brandon Moyses's counsel.

Catalyst's remaining litigation against West Face involves two claims. The first claim was filed in June 2015 and alleges that West Face defamed Callidus Capital, a public company controlled by investment funds managed by Catalyst, by making defamatory statements between November 2014 and March 2015 regarding the financial prospects of Callidus. Neither Catalyst nor Callidus has engaged in meaningful steps to advance that litigation since at least February 2017.

The second claim relates to allegations of an entirely fictitious conspiracy involving West Face to manipulate the share price of Callidus. Contrary to Catalyst's allegations, West Face did not have a short position during the relevant period, has not met with many of the co-defendants, and did not participate in any conspiracy.

"Catalyst has been pursuing, and losing, a series of vexatious lawsuits against West Face for almost five years. But no amount of litigation can distract from the evaporation of Callidus's shareholders equity as a result of Callidus's own loan underwriting decisions," said Mr. Boland. "West Face is certainly not responsible for the dire situation that Callidus finds itself in."

West Face is no more responsible for Callidus' financial performance than it was for Catalyst's failure to acquire Wind Mobile:

- The Callidus share price has fallen from a high of over \$22 per share to its current level below \$0.70 per share.
- Callidus has lost over \$500 million of shareholders equity from June 2016 to December 2018, according to Callidus' own financial statements, largely due to poor performance in Callidus loans. In the most recent financial statements at the end of 2018, Callidus had negative shareholders' equity.
- The loan losses were experienced by Callidus despite public disclosure by Callidus repeatedly claiming full collateralization of its loan book.
- Investment funds managed by Catalyst have recently had to provide additional financing to Callidus to ensure adequate liquidity.

- Catalyst has admitted in its own court filings in yet another litigation proceeding (not involving West Face) that Callidus was victim of fraud in its loan book, causing damage to Callidus of at least \$150m.
- Callidus has been forced by securities regulators to change its approach to financial disclosure.

West Face continues to be confident that in any further legal proceedings with Catalyst, where Catalyst's allegations will be fully explored through production of internal Catalyst and Callidus documents and through cross-examination, those allegations will continue to be found lacking and that the full scope of conduct by Catalyst and its agents will be publicly revealed.

Finally, in December 2017, West Face commenced a counterclaim against Catalyst, its principals and its agents. During the Fall of 2017, West Face discovered that an Israeli private investigative firm called Black Cube had approached current and former West Face employees on false pretenses and sought unlawfully to extract confidential information about West Face's business. Even more shockingly, Black Cube was uncovered to have approached the trial judge in the Moysse lawsuit on false pretenses in an unprecedented –and ultimately failed –attempt to attack the judge's integrity. In their defence to the counterclaim, Catalyst has admitted that an intermediary that it engaged in August 2017 subsequently engaged Black Cube. West Face intends to pursue its counterclaim vigorously and to shed light on Catalyst's conduct in these matters.

Additional information on these litigation matters, including the court decisions and court filings of the parties, is available at [catalystlitigation.com](http://catalystlitigation.com).

About West Face Capital Inc.

West Face Capital Inc. is one of Canada's leading alternative investment managers combining control-through-distressed, high-yield, negotiated finance, proactive equity, and private equity activities. West Face's capabilities are underpinned by a seasoned multi-disciplinary investment team, proprietary origination channels, deep sector expertise, and the ability to address investment targets in domestic and international markets.

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## DETAILS

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