

HARPER GREY LLP  
3200 – 650 West Georgia Street  
Vancouver, British Columbia, V6B  
4P7  
Canada

Tel: 604 687 0411  
Fax: 604 669 9385

## CASE SUMMARY: BREACH OF CONTRACT CLAIM FOR FAILING TO ADD PARTY AS AN ADDITIONAL INSURED IN CONTRACTOR'S LIABILITY POLICY FOUND TO BE TIME-BARRED

A breach of contract claim for failing to add a party as an additional insured in a contractor's liability policy was time-barred by virtue of the operation of Ontario's Limitation Act.

**Insurance law – Liability insurance – Additional named insured – Duty to defend – Contracts – Privity of contract – Limitation of actions**

*Brookstreet v. Economical Mutual Insurance Company*, [2018] OJ No 122, 2018 ONSC 80, Ontario Superior Court of Justice, January 10, 2018, Di Luca J.

Brookstreet Hotel Corporation ("Brookstreet"), Kanata Research Park Corporation ("Kanata"), and Thunderbolt Contracting Limited ("Thunderbolt") were sued by an individual who slipped and fell at Brookstreet's hotel. Thunderbolt was a contractor hired by Brookstreet to provide snow and ice removal services. Under the terms of the contract, Thunderbolt was obligated to add Brookstreet as an additional insured on its insurance policy with Economical Mutual Insurance Company ("Economical"). Thunderbolt failed to do so. Brookstreet and Kanata brought an application seeking a declaration that Economical must defend them in the underlying lawsuit. They based this claim on Thunderbolt's breach of contract, with damages determined by way of a duty to defend analysis.

The court questioned whether this application could ever succeed against Economical as it was clear there was no privity of contract between Economical and Brookstreet. The court did not decide this question and ultimately dismissed the application on the basis that the claim was time-barred by virtue of the operation of Ontario's *Limitation Act*. Brookstreet should have become aware of the breach of contract by Thunderbolt at the time the claims were being reported to the parties' respective insurers.

This case was digested by [Kora V. Paciorek](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Kora V. Paciorek at [kpaciorek@harpergrey.com](mailto:kpaciorek@harpergrey.com).