

# Blaneys Lawyers have Successful Court Result

Date: April 19, 2013

[Jason P. Mangano](#) successfully represented Innisfil racetrack, Georgian Downs Limited, in an application brought before the Honourable Justice G.M. Mulligan at the Ontario Superior Court of Justice in Barrie, Ontario on March 13, 2013. The resulting endorsement establishes law in the first instance on the novel issue of the limitations period applicable to coverage applications.

At issue was whether Georgian Downs was entitled to reimbursement for defence costs it incurred defending a slip and fall action. The action was brought against both Georgian Downs and its winter maintenance contractor, North-Gate Contractors. Georgian Downs was added as an additional insured to a commercial general liability policy issued to North-Gate by State Farm Insurance. State Farm settled the action based on North-Gate's admission of liability but refused to honour its obligations under the insurance contract to defend, or pay defence costs to, Georgian Downs.

State Farm opposed and argued the application was brought more than two years after its initial denial and therefore outside the limitations period. Justice Mulligan found "when there is an absence of a clear and unequivocal denial of a duty to defend or a duty to indemnify, a limitation period commences on the day of judgment or settlement." The application was commenced within two years of the date of settlement in the slip and fall action and was therefore within the limitations period. This decision helps bring clarity to a previously un-litigated issue in Ontario.

Justice Mulligan went on to apply the "true nature" test from *Riocan Real Estate Investment Trust v. Lombard General Insurance Co. of Canada* and found the true nature of the claim was North-Gate's negligence in failing to maintain an ice free parking lot. Accordingly, Georgian Downs was entitled to be indemnified by State Farm for all of its defence costs.

## PEOPLE

- Jason Mangano

## PRACTICES

- Insurance Litigation

