

INTRODUCTION

Ironman New Zealand is one of only 27 annual Ironman events worldwide, including the world championship in Kona, Hawaii. Full Ironman events include a 3.8km swim, a 180.2km cycle, and a 42.2km marathon run.

In 2006 Ironman New Zealand was disrupted by inclement weather and a lack of preparedness to cope with the weather. Although 1400 participants were effected by this situation, as far as I know I am the only person who has proceeded to hold the organisers accountable; this may be because of pressure from the World Triathlon Corporation who has banned me from events worldwide, and did so two weeks before I was due to participate in the 2007 Ironman event.

While Ironman New Zealand's participation had been growing in recent years, the 2007 event had significantly fewer participants than 2006. The current Ironman New Zealand has a strongly revised risk management strategy and contingency plan; I believe it is hoping to rebuild faith in the participants. The revised contingency plan appears to have addressed many of the points I will raise about the 2006 event. I will show that The Patter was responsible for taking a duty of care as they were subcontracted to provide event organisation. This is a similar situation to a contract with a property developer who subcontracts the electrical work out; the property developer and the electrician are jointly and solely responsible under the Consumer Guarantees Act (1993).

I will also show that the Patter or it agents appeared to breach the requisite standard of care. They did this by not implementing best practice in risk management – this best practice has been identified by the Australian Standard/New Zealand Standard AS/NZS 4360:2004 Risk Management. The most commonly understood implementation of the standard is in Health and Safety, but it also applies to all other risks and opportunities of a business. The most practical guideline to best practice in this case is Guidelines for Managing Risk in Sport and Recreation. HB 246- 2004 by Standards Australia.

I will show that the detail inherent in the contingency plans was sub-standard, and compare them to some generic templates which display best practice.

I will also show that the contingency plan appeared to make some non-safety related changes to the event. This safety criterion has been stated by The Patter to be what all changes were based on – this means that the changes breached their own standards as well as reasonable standards.

Finally, I will show that the actions and inactions of The Patter caused the inclement weather to impact on the event more than it had to. In particular the bike might have been longer if reasonable steps had been taken to minimise reliance on the Lake Terrace, and the full marathon should definitely have been run. Other things like the poor communication and lack of food while waiting for the start also impacted on reducing the quality of the event and the experience for me.

CONTENTS

I. The existence of a duty of care

- 1) Country of Purchase (and jurisdiction)
- 2) Responsible Party (or principle respondent to this action)
- 3) The event was a service provided by a business to a consumer

II. Breach of the requisite standard of care

- 4) Australian Standard/New Zealand Standard AS/NZS 4360:2004 Risk management
- 5) Timing and approval of risk mitigation plans
- 6) Details inherent in contingency plans
- 7) The importance of safety
- 8) Food and shelter in contingency plans

III. Resulting loss or damages

- 9) Food, shelter, and communications
- 10) The endurance event
- 11) Compensation sought

I. THE EXISTANCE OF A DUTY OF CARE

1) Country of purchase (and jurisdiction)

- a) I understand that the Consumer Guarantees Act 1993 only applies to transactions that take place in New Zealand. The only way to enter Ironman New Zealand is through purchasing and registering your entry over the internet. I interpret this as a New Zealand based transaction for 4 reasons:
- i) I was in New Zealand at the time of purchase;
 - ii) The service purchased was only able to be redeemed in New Zealand, and it would constitute a different service if it took place outside of New Zealand – this is very different from purchasing a product originating from another country;
 - iii) I do not know of any precedent which has been set based on the above details, but I believe it is in the intention of the law for a transaction of this nature to be bound by the Consumer Guarantees Act.
 - iv) The most similar case was between an Australian Supplier and New Zealand purchaser (*Edwards v Southcoast Services Pty Ltd*, High Court Wellington AP 134/00). The judge chose to assume that the Consumer Guarantees Act applied even though the actual time of supply would have been at the dispatch of the product in Australia.
- b) Please find attached the receipt for this purchase of \$629.80 (see Appendix B p32)

2) Responsible party (or principle respondent to this action)

This action is based on section 32 (b-ii) of the Consumer Guarantees Act 1993. As the supplier is unable to remedy the supply of the service I am asking for compensation for the reduction in value of the service below what I paid for it.

- a) The Patter Ltd should be the principle respondent because
 - i) When contacting Ironman New Zealand you are always contacting a representative of The Patter Ltd (at least since 2003 – my first contact); and
 - ii) The Patter Ltd is best described as the Supplier of the service
 - iii) If International Management Group is the Supplier of the service then The Patter Ltd would be their subcontractor; if I was able to sue International Management Group then they could sue The Patter Ltd (based on my next point);
 - iv) The Patter Ltd was the organiser of the event and it was in the organisation of the event that I believe reasonable care and skill was not exercised.
- b) The Patter, as the event organisers and directors, has legal responsibility for any action of its agents or subcontractors. This would include, but not be limited to, those involved in the development of risk management strategies and contingency plans.
- c) The consumer guarantees act states that the contractor and subcontractor can be held legally responsible for the subcontractor's actions, just as it delegates responsibility to Supplier of goods that are of unacceptable quality due to a fault in the Manufacture of the goods. This avoids diffusion of responsibility within business networks depriving consumers of their rights.

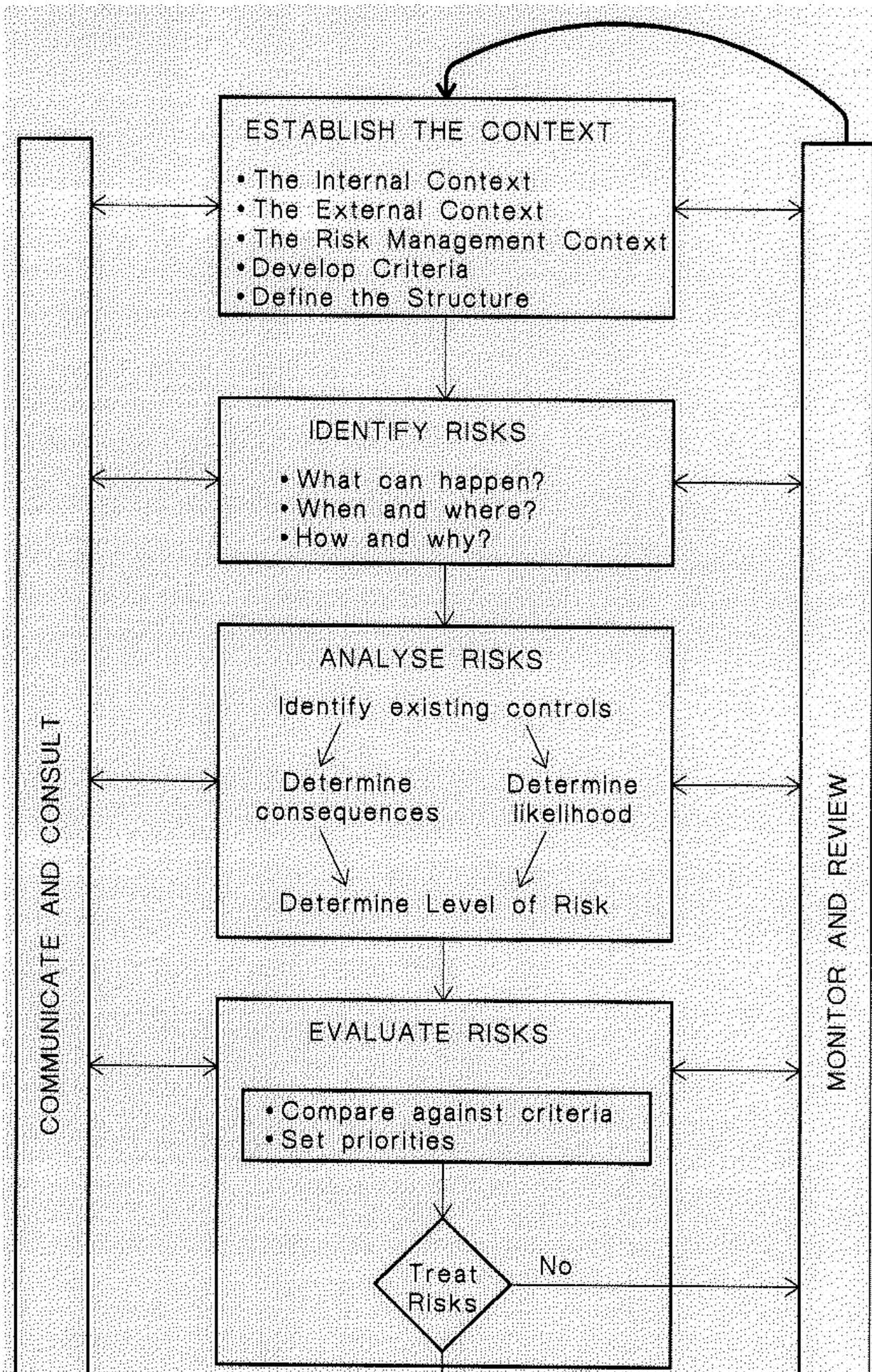
3) The event was a service provided by a business to a consumer

It has been suggested to me that when the Consumer Guarantees Act (1993) was written that it didn't have events in mind; it isn't a goods like a toaster is, and isn't a service like unblocking your toilet. I have been unable to find applicable precedent but have reviewed the Act and found the following to be pertinent:

- a) The act was written to cover the contracts where a businesses provide something to a consumer in exchange for money – these are generally considered goods and services
- b) The act is very specific about what things are not covered by the act – land for goods and barrister services
- c) Very specific kinds of contracts are not covered by the act – auctions or competitive tender; all other kinds of transaction are covered.
- d) Events are difficult to classify as a goods and services but definitely have the characteristics which are considered under due care and skill. In particular
 - i) It is the events that go into producing and supplying of a product which determine whether a breach of an implicit contract has been committed – for example it was not fit for the purpose it was sold to fulfil, and
 - ii) It is the events that go into the providing of a service that determine whether that service acceptable – provided with reasonable care and skill, and
 - iii) The only difference between event and other goods and services is that the consumer is part in the final production or supply or provision of the event; in the provision of the event it is not only whether you win or lose but how you do it that counts
- e) Because there is no precedent to guide the adjudicator in this point, and because of the act already explicitly states what transactions are not covered by it, I request that the question be put to the district court before declining my claim on these grounds.

II. BREACH OF THE REQUISITE STANDARD OF CARE

4) Australian Standard/New Zealand Standard AS/NZS 4360:2004 Risk management



- a) An overview of the risk management process is pictured above (and in Appendix A p11)
- b) The purpose of the Risk Management Guidelines is to
 - i) Provide a nationally accepted framework to guide the management of risks and opportunities, and
 - ii) Provide a common platform to support strategies and resources that address risk management issues, and
 - iii) Provide an understanding of the risk management principles and process, and their application.
- c) It is taught as part of the Graduate Diploma in Event Management at Christchurch Polytechnic (see Appendix B p1)

5) Timing and approval of risk mitigation plans

- a) Jane Patterson (of The Patter Ltd) wrote:
 - i) "... a bike-run would be held over the Ironman distance of 180km bike and 42km run. Our written plan was presented and approved by WTC on Wednesday of race week." (see appendix B p4)
- b) Ironman is 1400 athletes competing over 226km. This is a very large event to manage and a contingency plan being approved within 3 day of this event seems very peculiar, especially when this was the 5th year the event has been run over the same course. This is compounded by Jane Patterson's statement:
 - i) "We have always had (and will continue to have) a detailed contingency plan for this race." (see appendix B p4)
- c) Why wasn't the contingency plan approved when the standard course was approved, or at least during the following year?
- d) Maybe they rushed another plan through because their previous contingency plans didn't cover the unexpected problems that could be faced this year. But the direction of the wind on the day was the same as it was for 2003, 2004, and 2005. The wind was stronger than previous years but my understanding is that strong winds (especially from that direction) have always been the most likely problem a Taupo Ironman would face.
 - i) "A southerly wind in Taupo is not out of the norm! We have been talking about the possibility of this [since] the race went to Taupo it's a really great shame others had not!" (threat – see appendix D p6)
- e) The effect of strong winds on the erosion of the Lake Taupo shoreline has even been studied:
 - i) "Strong winds on the lake cause storm waves which refract and break on the shoreline at an angle, transporting sediment in the direction of the incident wave." (see Appendix E p5 – from the Lake Taupo Shoreline Erosion Study attached)
- f) Maybe they decided that, although it was the most likely cause of disruption, strong winds were not likely enough to cause problems to develop advanced contingency plans to minimise damage. As Jane Patterson put it:
 - i) "And I think they will respect the odds – once in 22 years." (see Appendix B p4)
- g) This sounds reasonable until you consider the impact on the event and all those involved (occurring almost 5% of the time). There are well established ways that risk management can minimise the impact of these sorts of low odds, high impact occurrences (see Appendix C p1-7 "Risk Response Planning – selecting the right strategy", and Appendix A p1 onwards).
- h) There are four basic strategies in contingency planning: risk avoidance, risk transfer,

risk mitigation, and risk acceptance. The right strategy should be based on the level of impact of an occurrence combined with the likelihood of it occurring. We will first consider the level of impact.

- i) Many of the participants in Ironman New Zealand 2006 were emotionally devastated by the event. It is hard to put the importance of the event into a context outside of Ironman – the closest I can come to in terms of events is a wedding, for these reasons:
 - i) Many (and possibly most) people who complete an Ironman will do it only once in their lifetime, and
 - ii) They invest a very large amount of their life leading up to the event in preparation for it – this includes time, money, and emotional capital, and
 - iii) It is the level of the participants' commitment to the event that makes the event special (it is very different from a concert or rugby game).
- j) While participating in an Ironman event isn't a perfect fit for the wedding analogy, I think the differences do not detract from its relevance. The Ironman competitor often makes significant sacrifices in term of time with their family and building their career to prepare for the event.
- k) The seriousness of the impact of these events on some of the major stakeholders means that risk acceptance would not be an acceptable contingency strategy. It is more like the kind of consequences requiring a risk avoidance strategy, but implementing this kind of strategy would be unpractical; therefore risk transfer and risk mitigation strategies should be implemented.
- l) The contingency plan that was approved by WTC on the Wednesday of race week is a risk mitigation strategy; the content of, and the care and skill take in the development of this strategy will be discussed later. Because this strategy cannot completely eliminate the risk it has to be used in conjunction with either a risk transfer or risk acceptance strategy.
- m) In combination with a risk mitigation strategy, Ironman New Zealand organisers, The Patter, decided to use a risk transfer strategy. This would normally require a financial arrangement ("risk premium") between the organisers and a third party (e.g. an insurance premium). It appears that they decided to transfer the risk to the participants – the waiver signed by all participants' states:
 - i) "I agree that in the event of a race cancellation due to conditions beyond the control of Ironman New Zealand including but not limited to a storm, rain, inclement seas or weather, winds, "Acts of God", "acts of Terrorism" or other conditions, my entry fee shall be non-refundable." (see Appendix B p9)
- n) Given the numerous external expenses that were absorbed by the participants, including travel and accommodation, a more reasonable risk transfer would be to use an insurance company (spreading this expense over all Ironman events and competitors). This does not detract from the power of the waiver any more than the power of the waiver detracts from its subservience to the Consumer Guarantees Act (1993).
- o) There are two aspects to the waiver that cannot be ignored (beyond any conflict with the right guaranteed under the CGA).

- i) It transfers liability for things that are beyond the control of Ironman New Zealand or its agents. It doesn't transfer liability of things that can be addressed with a risk mitigation strategy, as this would be under the control of Ironman New Zealand.
 - ii) In signing this contract the participants could reasonably be expected to believe that a risk mitigation strategy would be developed and implemented to reduce any disruptions because that would be within the control of Ironman New Zealand.
- p) The contingency plan being accepted only three days before the event makes it reasonable to question whether Ironman New Zealand through The Patter had been relying on a risk transfer strategy without due consideration to risk mitigation. Notwithstanding the planning of the risk mitigation, it appears that their implementation of the risk mitigation strategy was inadequate.
- i) "To be considering contingency plans in the week prior to Ironman (as discussed in a recent interview with Jane Patterson) in my opinion is too late." (Crash – see Appendix D p15)
- q) It is very important to note that the process of selecting risk management strategies must be documented. This best practice for any strategic decisions is
- i) Explicitly stated in the Risk Management Standard and Handbook (see Appendix A p1 onwards), and
 - ii) Is upheld by legislation when applied to Health and Safety in the Workplace, and
 - iii) Similar types of evidence are required at other Tribunals. For example, in the Employment Tribunal the employer must provide records of their short-listing process if it is being challenged.

6) Details inherent in contingency plans

- a) Ian Hepenstall claims to have been contracted to the event and explains:
 - i) "...there was most definitely a contingency plan for Taupo – an in-depth one in writing. Why do I know it? Because I was responsible for completing it." (see appendix D p2)

- b) Jane explains that what the plan covers could be described as a master plan for a number of scenarios:
 - i) "Obviously the contingency plan covers basic scenarios and requires fine-tuning and task allocations depending on the detailed requirements." (see Appendix B p4)

- c) It is hard to conceive of planning all contingencies in the same document – I suppose the fine-tuning and task allocations were left out of the plan for this reason. Peoples' reports suggest that these details were not able to be resolved during the execution of the plan, for example:
 - i) "...I was one of the senior marshals on the course that day, I was consulted, and told them that the swim (and this was at 0530) should not take place. Little did I know that there were NO contingency plans in place. I only found out afterwards." (Big Iron Dude – see Appendix D p18)
 - ii) "...it seems there was a fair bit of disorganisation" (dude – see Appendix D p17)
 - iii) "...lack of planning really does seem to be the key problem here." (Dan – see Appendix D p9)
 - iv) "It seems to me... ..it just compounded and by the end of the day it was a shambles." (Jakib – see Appendix D p4)

- d) There was the appearance of a lack of organisation suggesting that the fine-tuning and task allocation required to implement the contingency plan was unable to be done. This could be due to either a lack of skill on the part of the organisers in implementing the contingency plan, or the plan being inadequate. The tasks needed to be incorporated in the contingency plan.
 - i) "A good contingency plan should be established well in advance of the event (a number of plans may be required for a number of possible adverse events), and the alternative options planned in as much detail as the original event." (Crash – see Appendix D p15)
 - ii) "Fundamental event management involves contingency plans that are given the same level of detail and forward planning as your master plan." (shwaa – see Appendix D p8)

- e) I found a large amount of contingency planning material based on generic businesses and the sorts of situations they would face. (I have attached a generic template and examples of how it would be used – see Appendix C p8-13)

- f) Of particular concern was Jane Patterson's statement that the contingency plan

required "task allocation depending on the detailed requirement". The detailed allocation of tasks, responsibilities, and resources was a common thread in all the contingency plans I reviewed. This is summarised below (and examples are given in Appendix C p14-18)

- i) **Notification**
 - (1) Responsible person**
 - (a) *Internal people list*
 - (b) *External people list*
 - (c) *Resources required*
 - Response**
 - (2) Monitoring tasks**
 - (a) *Responsible person*
 - (b) *Task list and staff allocation*
 - (c) *Resources Required*
 - (3) Initiation tasks**
 - (a) *Responsible person*
 - (b) *Task list and staff allocation*
 - (c) *Resources required*
 - (4) Sustaining tasks**
 - (a) *Responsible person*
 - (b) *Task list and staff allocation*
 - (c) *Resources required*

- g) A contingency plan prepared with reasonable care and skill would include all of these aspects of the response.

- h) Given that wind is the most likely cause of a major disruption then we could expect a number of these plans to cover different scenarios, for example:
 - i) The swim to be cancelled due to safety – decision made at 6.30am
 - ii) A change in the cycle course – decision made at 7.30 or before (as is in the current contingency plan for Ironman New Zealand – Appendix B p11)
 - iii) A shortening of the cycle course – decision made at 8.30 or before
 - iv) Cancellation of the bike - decision made at 10.30 or before

- i) Some of the contingencies could also cover other events which could foreseeably disrupt the event. For example, a change in the cycle course or delay in the start of the event could be a response to a blocking of part of the course by an overturned truck or a motor vehicle accident. Given that the course is on the state highway and not closed to traffic this is a future possibility.

- j) Any contingency planning should include the decision making process that leads to the implementation of a contingency plan. This should include the person or persons responsible for making a decision (e.g. the contingency committee), what resources they need to make that decision (e.g. observation of conditions, weather reports, police report, etc), and the possible decisions that could be made (and their corresponding contingency plans).

- k) On February 5th 2007 the Ironman New Zealand website made available a Race Manual containing the "Ironman NZ Contingency Plan" – this is a plan which was not available for the 2006 event and appears to address many of its shortcomings (see Appendix B p11):
 - i) It partially set timings for particular decisions and changes to the event,

- ii) It suggests when and how participants will be informed of changes,
 - iii) It allocates decision making to certain people,
 - iv) It includes an alternative bike course and what appears to be an improved starting procedure,
 - v) It contains a single contingency – one that would cope with conditions such as those experienced in Ironman New Zealand 2006.
- l) This contingency plan is significantly different to that which was implemented during Ironman New Zealand 2006. I only hope that they have the details of the plan (e.g. task allocation) available to the senior marshals and organisers, and that they have similarly detailed plans for other risks.
- m) I noticed a couple of things not mentioned in their plan and changes:
- i) They have not banned disk wheels – these are banned at the Ironman World Championship due to the danger they pose in strong winds. I would be interested in the discussion surrounding this, and whether they would run the race if it was safe for everyone except those using disks wheels?
 - ii) There is no planned timing for a half bike and full run. A risk mitigation plan should minimise the disruption to the race even if the start time is significantly delayed.
 - iii) There is no alternative to the main marquee in the plan – in 2006 the competitor briefing was moved due to problems with the marquee, and it had structural problems which caused safety concerns (requiring competitors to wait outside for further announcements). And wind is not the only thing that could also compromise the marquee.
- n) Once again, best practice and the Risk Management Standard advises that all options considered and decisions made should be documented (see Appendix A p1 onwards – e.g. p18).

7) The importance of safety

- a) Graham Fraser (President of Ironman North America) wrote about the decisions to be made in a contingency plan. He suggests seven questions that make up the decision making process:
 - i) The first six questions amount to "Is the weather [or situation] safe?" for the participants, lifeguards, volunteers, and medical team; will it get worse and if it does can we get everyone home safely? and
 - ii) The seventh question is "How long can you wait it out without losing the ability to do a full race? Or a full bike and run?" (see Appendix B p6)
- b) Jane Patterson goes a step further and with the importance of safety for the athletes:
 - i) "Athlete safety is the foremost and the only consideration in this situation" (see Appendix B p4)
- c) Ian Hepenstall runs us through the decision making process – everyone (almost) that I have talked to is in agreement about the swim:
 - i) "...swim was not possible. Not a tough call." (see Appendix D p2)
- d) Ian Hepenstall then suggests the decision making process for the bike:
 - i) "The committee ruled that the winds were too strong [for the bike ride] along the lakefront" (see Appendix D p2)
- e) This is where there is some disagreement – some people believe that the bike was safe. This is a judgement call and Jane Patterson rightly suggests (full text attached to original claim) that organisers must have the ability to make this call; this decision cannot be questioned but the parameters, timing, and results of that decision should be set out in the risk management plan. I would ask two questions about the delay of the bike ride:
 - i) Which weather reports suggested that the wind would subside? I ask this because
 - (1) It appeared to spectators as if the delay was more due to disorganisation, and
 - (2) The wind in Taupo generally increases during the morning to peak in the early afternoon (especially from the direction the wind was coming from).
 - ii) Could reasonable care and skill in the contingency plan have reduced the disruption, and in particular
 - (1) Could the full bike ride have taken place if the alternative cycle route planned for 2007 had been available, and
 - (2) Why was there not a contingency plan similar to that available in 2007, given that strong winds or a blockage of the lakefront would benefit from an alternative route?
 - (3) "A southerly wind in Taupo is not out of the norm! We have been talking about the possibility of this [since] the race went to Taupo it's a really great shame others had not!" (threat – see Appendix D p6)

- f) Hindsight was not required for the development of the alternative route – there was every reason to believe that the biggest threat to Ironman New Zealand was the use of Lake Terrace – strong wind or the road blocked by an accident are only two manifestations of this.
- g) Ian Hepenstall continues:
- i) “When the winds began to ease towards 30kph the contingency committee made the decision that the event could start. Hence the 11am start time. By that time a two-lap bike-run was not possible. And the plan called for a single lap bike-run.” (see Appendix D p2)
- h) Given the starting time it was very unlikely that anyone would miss the bike cut-off time when completing a single lap – this was confirmed by every participant completing the event:
- i) DNF (0,0%) (see Appendix B p13-14 – printout of 2006 Results: Age Group and Country from the Ironman New Zealand website; DNF = did not finish)
- i) It is common sense that if it is safe to ride in the wind then it is also safe to run in the wind (lower centre of gravity, lower speed, and lower surface area). I don’t believe that the contingency plan or its implementation considered the full run – this is an obvious lack of care and skill in its preparation as it did not minimise the disruption to the event. This is also echoed by others:
- i) “My observation is that the organisers lost perspective and to get the whole thing over as quickly as possible and move on” (geoffh – see Appendix D p17)
- j) Some people have suggested that they did not have the full run because many people would not have finished before the midnight cut-off:
- i) “The run can be done in most weather. But to finish at midnight, because of temporary traffic Management Plans...” (bluetogs – see Appendix D p20)
- k) Given the shortened bike I believe that very few people would not have completed the marathon. It is to be expected that some people will not complete an Ironman event, but that is part of what makes the completion of it so desirable and special. In the previous three years of Ironman New Zealand those that did not finish (DNF) ranged between 12 and 16 percent:
- i) DNF (185, 14%) (2005 – Ironman New Zealand Website – see Appendix B p16)
- ii) DNF (158, 12%) (2004 – Ironman New Zealand Website – see Appendix B p17)
- iii) DNF (173, 16%) (2003 – Ironman New Zealand Website – see Appendix B p18)
- l) Graham Fraser suggests in the seven questions that make up the decision making process that “You have to make your [safety] decisions based on the weakest 25% of the race...” (see Appendix B p6)
- m) The full run may have knocked DNF above 0%, but not to record levels, and without compromising safety! Jane Patterson and Graeme Fraser both agree that safety is the criterion on which contingency plans are based; both of them along with Ben Fertic

(president of the World Triathlon Corporation – see Appendix B p19) claim that all the changes to the event were made in the interests of safety. Safety does not explain why there was no alternative bike route available, or why the marathon was not staged.

8) Food and shelter in contingency plans

- a) The contingency plan did not appear to contain any procedure to follow in the event that the main marquee was compromised. This was surprising, especially given that the race briefing had been moved earlier in the week due to problems with the marquee. This appeared to lead to several other shortcomings:
- b) There was no safe and sheltered place to wait for the sporadic announcements about contingency plans. After it was decided that the marquee was unsafe we were ushered outside into the cold to wait for further instructions. The announcements appeared to come at unorganised intervals – we were told when they would be and then waited for up to 45 minutes after that for any information.(see Appendix D generally)
 - i) “The fact that the marquee was falling down around us should have been a clear indicator that it was going to be a bad day of weather...” (new girl – see Appendix D p14)
 - ii) “These organisational glitches (for want of a better word) I believe had a cumulative effect on the athletes morale before, during and after the race.” (geoffh – see Appendix D p16)
- c) There was a very small and apparently disorganised space for post-race services. There were 2 massage tables for the 1400 competitors, a small amount of food, and the tent was too crowded with people trying to get their finishers t-shirt for me to get close to either.
 - i) “...i didn’t even get a finishers shirt because they “couldn’t find it” apparently...” (new girl – see Appendix D p16)
 - ii) “I just hope... that we receive a massage and post race photo [next time].” (trispoke – see appendix D p10)
 - iii) “...limited space for massage/food and not to mention my finishers t-shirt being 2 sizes larger than the one I ordered...” (Triathlete – see Appendix D p21)
 - iv) “I did notice at the finish that the recovery tent was a mess.” (jakib – see Appendix D p5)
- d) The contingency plan appeared to have no way of looking after the athletes nutritionally either – food and drink was in short supply. Given the reduction in the amount of food that would be needed on the course, why wasn’t it planned to bring some of that to the start/transition?
 - i) “...but also the lack of food/drink in transition while we were waiting to start, the lack of information...” (Triathlete – see Appendix D p21)
 - ii) “So.. by the start of the race I was already quite dehydrated. I was beginning to cramp up just after the first hour...” (dude – diabetic talking about the effects of high blood sugar and lack of fluid intake – see Appendix D p17)
- e) Food and shelter are usually considered the necessities of life, and has always been provided before and after the race (or at least in 2003, 2004, and 2005 Ironman New

Zealand events). Given that they were either absent or in very low supply it is not surprising that most athletes felt that there was no contingency plan (which effected their mood accordingly). (see appendix D generally)

III. RESULTING LOSS OR DAMAGE

9) Food, shelter, and communications

- a) The food, shelter, and communications on the day effected my mood and wellbeing in a negative way.
 - i) Atmosphere plays a big role in the pleasure of an Ironman event and this felt very disorganised.
 - ii) I felt that the organisers had no contingency plan and waiting around in the cold meant that I felt both very sad and very cold. This was compounded by having to wait until 9.15am for an announcement scheduled for 8.30am.
 - iii) When the announcement was made we were told that a Sunday race was not available due to a lack of medical cover – the Army medics. This seemed peculiar to me, and this feeling was later confirmed by an Army GP who travelled to and completed the Kepler Challenge with me, and by Jane Patterson and Ian Hepenstall (see Appendix B p4 and p6 respectively).
 - iv) The lack of food and drink in the transition area while waiting to start gave me another thing to worry about; it also reinforced my feeling that the organisers didn't have a contingency plan.
 - v) Entering the disorganisation of the finishing area summed up the feeling of the day with what appeared to be under-prepared mayhem.
 - vi) I didn't need the massage or food at the finish line, but it would have improved the day considerably.

10)The endurance event

- a) The significant difference in the nature of the Ironman New Zealand 2006 event was evident in the results – everyone finished the race.
- i) The Ironman New Zealand website list how many people did not finish (DNF) in 2006:
- (1) DNF (0,0%) (2006 Results – see Appendix B p13-14)
 - ii) As opposed to the previous three years:
 - (1) DNF (185, 14%) (2005 Results – see Appendix B p16)
 - (2) DNF (158, 12%) (2004 Results – see Appendix B p17)
 - (3) DNF (173, 16%) (2003 Results – see Appendix B p18)
 - iii) This is a sentiment echoed by other competitors:
 - (1) “Ironman is about pace judgement, nutrition, physical and mental strength...” and “The race we ended up having was about none of those things.” (threat – see Appendix D p6)
 - (2) “It’s the toughest day in sport for a reason.” (Big Iron Dude – see Appendix D p19)
 - (3) “Ironman is an extreme endurance test, not a special K tri (which has its own place)! You need to expect some hardship – whether it is wind, rain, distance, heat, cold etc. A hard event is memorable!” (tonyoh – see Appendix D p11)
- b) The halving of the bike and run had a significant effect on the event. The halving of the bike might have been unavoidably caused by the weather or it might have been avoided by the sort of contingency planning that has been put in place for the 2007 event – the race organiser has refused to supply me with the sort of information which would clarify this point.
- c) The halving of the marathon was enough to significantly change the nature of the event.
- i) Marathons are very different to half Marathons – most people who have run a half marathon have never run a marathon. I run half marathons in training all the time – and I can run another one the next day and the next day; this is a stark contrast to a marathon which I only complete one or two times per year, and never in training.
- ii) This is reflected in how many people complete these events:
- | | |
|---|--------------|
| (1) Auckland 2006 Marathon | 1068 results |
| Auckland 2006 Half Marathon | 6405 results |
| (printout from their website – see Appendix B p23-26) | |
| (2) Buller 2006 Marathon | 117 results |
| Buller 2006 Half Marathon | 1194 results |
| (printout from their website – see Appendix B p27-31) | |
- iii) And in the opinion of other contestants:
- (1) “...a marathon... ..should of happened. That is what makes the Ironman tuff!!” (Triathlete – see Appendix D p21))
- d) The halving of the marathon changed the event in a very significant way. Ironman has always been a test of endurance – one endurance event following another,

seamlessly. Although the swim and (debatably) half the bike needed to be cancelled, if a full marathon was included to finish the event, although different from a standard Ironman, it would have tested my endurance and I would have been fulfilled.

11) Compensation sought

- a) I am seeking a partial refund of my entry fees, although I understand that if the Tribunal finds that there was a lack of care then I could also have claimed many other expenses including accommodation and travel.
- b) I looked into the cost of events like the 2006 Ironman New Zealand and, while I couldn't find a perfect match, I found that a half Ironman was my best reference point. Two examples are
 - i) Auckland Half Ironman at a cost of \$120 (see Appendix B p33), and
 - ii) Tauranga Half Ironman at a cost of \$185 (see Appendix B p34)
- c) The event provided was much less than a half marathon, particularly in atmosphere. Some of this was caused by the weather which is why I believe it is reasonable to consider the best Half Ironman as my point of reference. I am seeking
 - i) my entry fee minus the most expensive half Ironman fee available in 2007, and this amounts to
 - ii) 629.80 (see Appendix B p32) minus \$185, or
 - iii) \$444.80

CONCLUSION

Because as a consumer I purchased the event service from Ironman New Zealand then both its owners and agents have a duty of care to me. The Patter was contracted to provide organisational services to Ironman New Zealand, and International Management Group was the owners of Ironman New Zealand.

The Patter has breached the requisite standard of care by not providing reasonable risk management and contingency planning. In particular they failed to follow best professional practice as defined in Australian Standard/New Zealand Standard AS/NZS 4360:2004 Risk management, and in the templates in Appendix C. This standard of risk management is taught in the Graduate Diploma in Event Management at Christchurch Polytechnic.

I have not questioned the rights of the Contingency Committee or Race Referee to make judgement calls on race day. Judgement calls are essential to the safe and effective running of this kind of event. They cannot be questioned without crippling event management.

The judgement calls require resources such as weather reports and on site observation – the resources required to make these calls should be specified and provided by the contingency plan. The contingency plan should also specify the contingency options available to the committee, and specify the resources and actions required, as well as the people responsible for each activity, and any critical times associate with that contingency option. Any decisions that are not supported by these resources are inherently risky (as discussed in the guidelines for managing risk in sport and recreation).

Because of poor risk management and planning in the lead up to Ironman New Zealand 2006 the Contingency Committee, the Race Referee, and all the other officials did not have the resources to provide a reasonable level of service to my self and the other competitors. This lead to an event which was first effected by the weather and then devastated by inadequate contingency planning.

If it had been organised with reasonable care by The Patter then it would have been a shortened Ironman race – either a half or full bike followed by a full marathon. Services such as food would have been provided at the start and finish, and though disappointed by the impact of the weather I wouldn't have felt robbed.

Although my loss on the day amounted to far more than the \$444.80, I believe that the \$444.80 reflects the amount of damage which is directly attributable to the lack of care displayed by The Patter in the planning and organisation of the event. Please reflect this in your decision.