

Dispute of Summary of Events for The Patter

1. Objection on page 1 and 2

“Rather, the decisions were made by the Contingency Committee”

1. None of the decisions made on the day, which are judgement calls are being questioned by me – I believe that it is important for that to remain unchallenged. I understand that the Contingency Committee makes decisions on the day which are based on Contingency plans that are produce beforehand.

“Also, it is quite clear that the event is run by Ironman NZ Ltd, not The Patter.”

“...The Patter Ltd, a company that specializes in managing and organizing sporting events”

2. My understanding is that The Patter is the patter is the company which was contracted to manage and organise the event. I’m unsure what the distinction Jane Patterson has made with running an event, but my case is against those that managed and organized the event.

2. Contingencies on pages 2 and 3

“Term 15 is important. Firstly, it makes it clear that IMNZ could cancel the event. It shows that there is discretion with the organizers for this to occur.”

1. I have no doubt that term 15 is important. It underpins the participants underwriting of the event, but it does not supersede the organisers obligation to use due care under the Consumer Guarantees Act (1993)

“The committee used the Contingency Plan prepared by the Race Organizers for World Triathlon Corporation. This is a mandatory process for any qualifying event.”

2. Again it is important to note here that my dispute is with the Race Organizers for the lack of care that was taken in producing the contingency plan.
3. I also recognise that the way the event was run on the day does not match the contingency plan provided by The Patter to this hearing. (see appendix G p10-13 and F p25-27) The starting time was different, the distances were different, and the way the elite competitors started was top seeded first rather than in a groups.
4. To vary from the contingency plan is very risky management because the implications would not have been fully assessed (see AS/NZS 4360:2004 Appendix A).
5. If the committee varying from the contingency plan appears to be against the mandatory process for any qualifying event then I believe that the full run should have been conducted (even if it was against the rules).

6. I still hold The Patter responsible because I believe that any variation from the contingency plan was designed to overcome the lack of care in its production.

3. Taupo 2006 on pages 3, 4, and 5.

“...Taupo was hit by the worst storm it had experienced in 44 years”

1. I have asked The Patter to provide me with evidence of how often this sort of weather takes place, Unfortunately they have been unwilling to supply me with this information, which would be required in defining their risk management strategies.
 - iv. I believe that there was always a small, but significant and foreseeable chance of the sort of wind experienced in Taupo in 2006. The chances of disruption may be even higher if smaller storms are capable of causing similar disruptions.
2. The actions of the contingency committee show that they felt a race should take place under those conditions.
 - i. The contingency committee consists of World Triathlon Corporation and Triathlon New Zealand representatives.
 - ii. The committee decided that the conditions were not harsh enough to cancel the race, and decided to put on the event even without a contingency plan that addressed the conditions.
 - iii. They put on an event in harsh conditions without detailed planning, and felt comfortable that they were not putting participants at risk; this suggests to me that it was reasonable to have pre-prepared contingencies for these conditions.
3. The contingency planning for the 2007 event minimised the effects of the wind, and
 - i. I believe would have been adequate for the 2006 event (in that it could be followed by the contingency committee without the risk of ad-libbing).
 - ii. It was made public after the initial deadline for late entries (so it was unlikely to be primarily a marketing initiative).
 - iii. It was instigated in spite of the fact that the chances of the same conditions taking place in the future has not measurably increased.

“...forecasts were that the winds would gradually ease starting later in the morning.”

4. I have asked The Patter a number of times to provide me with the forecasts they used to make decisions on the day – they have refused to provide that or any other evidence unless compelled by the Tribunal.
5. Originally I wanted the forecasts to verify that the problem was the weather but, since I have seen the evidence provided, I feel sure that the effect of the weather was heavily magnified by the lack of care in developing the contingency plans.

“...under the race rules we are unable to hold a (say) one bike leg, two lap run type event – the legs must be consistent.”

6. I have tried to find reference to this rule both in World Triathlon Corporation Rules and Triathlon New Zealand Rules. I could find neither; in fact any change to the basic format requires prior approval for a violation of the rules. (see Appendix E for these rules)
7. The Patter has verbally declined to provide me with a source document for this rule (see my email to their representative, Richard Upton, in appendix F p1-2)

“Among others, firstly, the timing system for the event had to be reconfigured and secondly the entire traffic management plan which involved the use of State Highway 1, had to be prepared and signed off”

8. The contingency planned didn't mention reconfiguring the timing system which you would expect, if required, would need to be done whether the full bike and run were completed or only half of each. This support my belief the plan was not prepared with due care and skill.
9. I don't understand the requirement for a new traffic management plan when it was being held over a single lap of the same course, and in the same timeframe.

“Another relevant factor, which contributed to (but did not cause) delay was that the top competitors from Ironman event qualify for the World Championships...”

10. This problems is probably due to the Contingency Committee not following the contingency plan (due to its inadequacy – see point 2)

4. The Marquee pages 5 and 6

“However, because the event was catered that food was still there.”

“It was allocated new, less prominent sites, in other tents but was still available”

1. I did not know that there was food available in other tents and neither did my brother (also a competitor) or anyone else I talked to. (also see Appendix D for multiple mentions of the “recovery tent” – singular)
2. I asked The Patter to provide information about the communication plan that was implemented to let people know about this, but they declined (see Appendix F p1-2)

5. Potential Consequences pages 6 and 7

“...the Coast to Coast challenge, held in the South Island, has been impacted by extreme weather before.”

“On the first, the kayaking leg and the mountain run were cancelled due to extreme weather conditions, And in 2004, the race was cancelled mid way through for two thirds of the field”

1. As far as I’m aware the management of the Coast to Coast has never breached the duty of care required by the Consumer Guarantees Act (1993). They have acted solely in the interest of safety, and any reasonable contingencies had been dealt with. I have a reasonably good knowledge of the 2004 event because I was coaching two good friends who competed – only one was able to finish and, while we were gutted, none of us felt robbed.
2. I do agree that potential consequences of the decision are important; it would impact on Event Management and its obligations to consumers. Currently it appears many event managers don’t feel this standard applies.

“I do not believe that the Consumer Guarantees Act has any application to elite event management.” (The Patter – this document under General on page 8)

3. The disregard for some event have for consumer rights might be curbed by a decision against The Patter, for example

“Last weekend as well as Ironman Moehau Man was run. In the race regs and website it stated that there was a 3pm cut-off for starting the ocean kayak leg.

“...at the race briefing the organisers advised that they were going to bring the cut-off forward an hour to 2pm – not due to weather concerns, but because if you didn’t get to the paddle before 2 you might not get off the water until 5 and to the finish until 7 and they wanted to be able to send their officials home.

“To give you an idea of how tough it would be to make the cut-off – only 3 women (1/2 the field) did.” (see JC in Appendix F p3)

“On JC’s comment’s I did the “little” moehau was not affected by cutoff’s but thought it was a bit rough changing it on the day before, I feel that anyone that prepares for a race reads the website/entry makes a call about ability to make cutoffs based on the information provided and enters accordingly, changing it the day before is just plain unfair.” (see Macguyver in Appendix F p4-5)

6. General pages 8 and 9

[If Mr Williams’ claim was successful] “It would effectively mean that a well prepared event such as Taupo was, could not be managed as the conditions dictated”

1. Again I have to reiterate that the opportunities to deal with risk in an event should be defined within the contingency plans, and the contingency plans should be developed through best practice as outlined in the AS/NZS 4360:2004 standard (see Appendix A).
2. No on-the-fly contingency planning should take place on race day as this could compromise safe and effective risk management. This means that contingency planning should cover all scenarios where the event should take place, and define

when it should be cancelled.

7. General pages 8 and 9

“I wish to make it clear that I have involved my lawyers in defending this claim. The reason for this is because Mr Williams has published a variety of confidential emails and documents on the internet.”

1. I posted my claim against The Patter, as lodged in the District Court, in a discussion group thread. I do not believe that this was illegal or unreasonable.
2. I published four emails from The Patter and the World Triathlon Corporation in the same forum. This was just after The Patter got an adjournment of this case on the grounds that I gave them evidence just before the hearing; the evidence I gave them was in the public domain and they had giving me no evidence (and they gave me less than 48hrs to review their evidence for the next one). I did so without malicious intent – I was after help – and felt that I had the right to because:
 - i. The first was from the World Triathlon Corporation threatening to ban me from Ironman events worldwide if I didn't withdraw my claim (see Appendix F p6). This was an action being taken against me rather than confidential email; because it included the 2007 Ironman which I had been accepted to I also believe it was a threat of breach of contract and thus actionable under the Tort of Intimidation.
 - ii. The second email was Jane Patterson's response to the action taken by the World Triathlon Corporation, which again I feel is an action being taken rather than a confidential email. (see Appendix F p7)
 - iii. The third is the World Triathlon Corporation's act of banning me worldwide and breaching my contract for the 2007 Ironman – they did this one week after the intimidation and two weeks before Ironman. (see Appendix F p7-8)
 - iv. The final email I published was from The Patter's lawyers informing me that they felt that my publishing of the letters was unlawful, and that because of it they would make an application for costs. (see Appendix F p8)

“He has also sent me emails that, I believe, make his motives for pursuing this claim highly questionable. I have clarified that I was not involved in the decisions made and yet he has continued to involve me in this claim.”

3. I believe that the emails that The Patter has attached (Appendix G p14-16) show many things, and none of them is a highly questionable motive in myself
 - i. I believe that The Patter did not fulfil its obligations under the Consumer Guarantees Act (1993).
 - ii. I was angry that The Patter's director would not accept any responsibility for its lack of care in the planning of the event.
 - iii. I felt The Patter was being unreasonable in not providing me with the evidence

they were to present to the tribunal while seeking adjournment for me providing them with evidence 48hrs prior to the first hearing date.

- iv. I was unsure of the exact mechanism for the failures of due care – whether they were planning or implementation but felt that they were likely to be planning and that The Patter was the appropriate respondent.
 - v. I was not after money, but rather an explanation if reasonable care had been taken, or an acceptance of fault and apology if they hadn't.
 - vi. On reviewing the emails it is clear that I have stated that I was not asking for a lay day, and that I wasn't questioning judgement calls being made by the contingency committee on the day. It is clear from The Patter's responses that they have repeatedly misunderstood my communications, and that I continued to try and correct those misunderstandings.
4. I believe I have a legitimate case against The Patter and that is the primary motive for this claim. A secondary and subservient motive is the hope that it will encourage event organiser to take reasonable care in the future.
 5. Appendix F p17 onwards contains all of the emails sent to The Patter before they involved their lawyers, as well as The Patters replies. I believe these show that I feel I have a just claim against The Patter, and had tried unsuccessfully to communicate what I felt they had done wrong, and had tried to achieve an agreement outside the Disputes Tribunal. The Patter have however refused to enter negotiations that would lead to a win – win solution.