

## 1. APPLICANT

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Glen Williams  
74 Kelburn Parade  
Kelburn  
Wellington

(Ironman New Zealand 2006 participant)

Phone New Zealand (021) 348 349

## 2. RESPONDENT

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The Patter Ltd  
PO Box 77-061  
Mt Albert  
Auckland  
New Zealand

(Ironman New Zealand Management)

Phone New Zealand (09) 815 9566

## 3. OTHER PARTY (IF ANY)

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International Management Group (IMG)  
Level 4  
263 Clarence Street  
Sydney NSW  
Australia

(Ironman New Zealand Owners)

Phone Australia (02) 9285 8000

## 4. APPLICANT'S INSURANCE

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None applicable

## 5. DETAILS OF YOUR CLAIM

### SUMMARY OF SERVICE IN DISPUTE - TAUPO IRONMAN 06

**I am seeking either compensation in the amount of \$444.80 or evidence that reasonable care and skill was exercised in the planning and management of Ironman NZ 2006.**

An Ironman event usually takes between 8 and 17hrs (depending on the participant), and consists of a 3.8km swim, 180km ride, and a full marathon run. This Ironman event run on the 4<sup>th</sup> March 2006 needed to be shortened due to poor weather, however the management and/or planning of the event appeared to cause a much shorter event than was necessary, as well as other shortcomings. There appeared to be

significant confusion and a lack of organisation on the morning of the event which led many to believe there was no contingency plan.

I believe that the event run by the respondent/other party in place of the New Zealand Ironman on the 4<sup>th</sup> March 2006 presented a “failure of substantial character” of an Ironman event. I believe, and there has been no evidence provided to the contrary, that this was largely due to a “lack of care or skill” on the part of the respondent/other party. This is based on the observations of participants and supporters (including myself); the respondent has refused to provide information to dispute this belief. If my claim is upheld in full the Consumer Guarantees Act (1993) provides for a full refund and other expenses that were “reasonably foreseeable”. This would amount to something in excess of \$1000.

- I paid \$629.80 on 26<sup>th</sup> Nov 2005 as the entry fee for Ironman New Zealand 2006. Receipt No 7749470 (see attached documentation)
- The New Zealand half Ironman fees vary between \$120 and \$185 (see attached documentation)

I am seeking a compromised compensation based on the entry fee I paid of \$629.80 minus the largest New Zealand half Ironman entry fee I could find of \$185.00. This comes to a total of \$444.80.

#### COMPLAINT - BREACH OF THE CONSUMER GUARANTEES ACT 1993 (CGA)

1. It appeared to me and many present (both participants and supporters) that there were problems with planning, administration, and/or management which led to a substandard event. In particular it appears that one of three things may have happened:
  - a. There was no contingency plan in place - this would breach the CGA (section 28) in that “reasonable skill and care” was not used in planning this event, or
  - b. The contingency planning was poor and not adequate to minimise the disruption of the event - breaching the CGA in that reasonable skill and care was not used in running this event, or
  - c. The execution of the contingency was faulty (again leading a breach in the CGA in that reasonable skill and care was not used in running this event)
2. More specific detail about the way in which the CGA was breached cannot be provided in this application because the respondent/other party have not responded to my requests for information about their contingency plans and the actions that followed them. It is therefore unclear if the problem lay in the planning or in the execution of that plan. I have attached copies of some of my information requests, which included:

*“Please supply me with your contingency plan and a description of how it was followed on the day. This information is required by me for my case (and by you to defend the case)...”*

*“[If] I decided after reviewing the information that you showed due diligence and skill then I will not continue to pursue compensation.”*

3. I believe that the respondent/other party's breach of the CGA lead to the following avoidable shortcomings in the event:
- a. Massages and food not being available at the end of the event. The respondent claim that these services were available (see attached correspondence), but I feel that they were available in too small a quantity for that statement to be reasonable
    - I. There were approximately 2 massage tables available for 1400 participants finishing in quick succession due to the shortened event, and
    - II. To claim availability of this service would constitute a breach of the Fair Trading Act (1986 - section 19 - Bait advertising); the claim is equally misleading here.
  - b. The event was substantially shorter than the weather necessitated, which effected a "failure of substantial character" under the CGA (section 36). The essential nature of an Ironman event is to do a series of endurance events back to back; most participants have trained to the extent that a half marathon would be considered a training rather than an endurance event. The essential character of Ironman is dependent in no small part on completion of a marathon; it is often said that the race doesn't start until the second lap of the run. To quote professional Ironman competitor Cameron Brown

*"...If a decision had been made earlier (after all they knew the day before there was a high possibility of this happening), would they have gone with the 180km bike and 42km marathon?..."(full text attached)*

Completing the full ride may not have been feasible (although as yet the respondent/other party haven't supplied me with any information that would dispute it), but even if the halving of the bike distance is defensible it would be very difficult to defend also halving the marathon.

The event started at 11:00am - 4 hours after the planned swim start was and only 1hr 40min after the swim cut-off time of 09:20am. Organisers appeared disorganised and displayed poor management and communication (see attached text from other people present) - for example participants were not told of the postponement and cancellation of the swim until after it was due to start. It appears that if the event had been managed adequately then it could have included a marathon.

If the wind didn't pose a large enough danger to cancel the whole bike then it is hard to see it posing a risk on the run. Although the marathon (given the conditions) may have presented a significant challenge for some members of the field to complete, this is in keeping with the essential nature of an Ironman event - some people don't even finish.

If only completing half the bike ride (with a normal cut off of 17:30) then the slowest participant could have started as late as 13:25. This would equate to half of the normal time allowed for the bike after the swim cut off (but without a swim and 90km bike to slow the participant down). On the day some competitors started as late as 14:00 - POSSIBLY too late to finish the race within the cut offs. At least three reasonable contingencies with the same start time have been identified (without access to the respondent's contingency plans).

- I. Reverse ordering based on fastest estimated finish time. Though elegant, it is recognised that this would have caused problems with faster participants continually catching slower participants. This could have been reduced to manageable levels by sending the slowest half of the field off first without reversing their order, and the fastest half of the field second - thereby reducing bunching.
- II. A duathlon format - run/bike/run - could have avoided the problem of the start in much the way the swim does normally.
- III. Even with the alphabetically ordered start almost all (98% or more) competitors would have been expected to finish the event within the cut off time of midnight. It is difficult to see, then, that it was a reasonable decision to halve the marathon depriving over a thousand people of the substantial character of an Ironman event.

The way the event was started was also a concern for the elite participants, and fuels the belief that there was no contingency plan, or one which wasn't either constructed or executed with due care and skill. Cameron Brown is again quoted on this matter:

*"In time trials the number one seed always starts last (out of the professionals), but they decided to do the opposite. Greg Fraine, a fellow professional athlete and also an ex- NZ Olympic cyclist, queried their decision but was very quickly put in his place."* (full text attached)

4. The waiver I signed as a participant that does not hold the respondent/other party responsible for negligence does not exempt them from their obligations under the CGA (section 43 - No contracting out except for business transactions), and any suggestion it could would also breach of the Fair Trading Act 1986 (section 13 i - False representations).

## **6. CONTACT WITH RESPONDENT**

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I first took up this matter with event management on the 13<sup>th</sup> June 2006. My email included (full text attached):

*"I haven't heard about the team at Ironman offering any of last year's disappointed compensation for the lack of a plan B, or any enticement to return to Taupo."*

*"Will you have a plan B this year?"*

Janette Blyth (as the Respondent - full text attached) replied to this email:

*"The office is currently negotiating arrangements which will have a direct and positive bearing on the questions you have raised and you will receive a full answer to these as soon as possible."*

As yet I haven't received any correspondence from the responded that could reasonably be described by this statement.

I have continued to try to communicate and settle this matter without burdening the Disputes Tribunal but have received no communication from any party in more than 2 weeks (since 12<sup>th</sup> December 2006). In the last correspondence (full text attached) Jane Patterson (as the respondent) says:

*“We must have the ability to alter or, potentially, even cancel the event if conditions and safety considerations dictate that this must occur...”*

*“That discretion must continue to exist”*

I agree with both of these statements from the Respondent. I also believe that they have responsibilities under the Consumer Guarantees Act (1993) to take reasonable care and skill in the provision of the event - there was over \$800,000.00 taken in entry fees for the event as well as the support provided by sponsors and volunteers. The care and skill exercised should reflect this; given what I know presently there is reason to believe that this did not happen.

Most of the work on the day is done by 2000 volunteers. I believe that it should be transparent to these generous people that their efforts were managed with reasonable skill and care.

Jane Patterson (as the respondent) went on to say (full text attached):

*“...we will not agree to settling this matter outside of the Tribunal...”*

*“...debating the situation further will just increase frustration...”*

*“I see little benefit in corresponding further about this and request that any further correspondence is sent to my lawyer. His address is Don Mackinnon, Mackinnon & Associates, PO Box 8729, Symonds St, Auckland.”*

Since then I have tried to correspond with The World Triathlon Corporation (WTC), International Management Group (Other party - IMG), and Jane Patterson (Respondent - The Patter, with carbon copies to Mackinnon and Associates). I have had no responses.

## **7. APPLICANT'S SIGNATURE**

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