



13 September 2007

Glen Williams  
74 Kelburn Parade  
Kelburn  
Wellington

Dear Sir/Madam

**RE: DT CIV-2007-085-001063 - Williams v The Patter Ltd**

Enclosed please find a copy of the Referees report with respect to this matter together with  
**NOTICE OF HEARING OF APPEAL.**

The Appeal is to the District Court and will be heard by a District Court Judge. You are entitled to be represented by a lawyer if you wish. If you do not wish to have a lawyer represent you, you may appear in person. The Judge will be concerned with whether the Referee conducted the hearing in a manner that was unfair to you and prejudicially affected the result of the proceedings.

The Appeal will proceed at the date and time notified, whether you are present or not. The Judge has the discretion to award costs with respect to the outcome of the Appeal.

Please contact me if you have any queries, or if your case has any special requirements (for example, an interpreter is needed).

Yours faithfully

Raewyn Dempsey  
Case Officer  
Phone: (04) 918 8146  
Email: raewyn.dempsey@justice.govt.nz

Copy To: The Patter Ltd  
International Management Group (NZ) Ltd

DISTRICT COURT

Ballance Street, Wellington, 6145, Private Bag 5094, Wellington, New Zealand.  
Telephone: (04) 918 8000 Fax: (04) 918 8241

**APPEAL REPORT BY REFEREE**

District Court: Wellington

Case number: CIV-2006-085-001490

**APPLICANT** Glen Williams  
74 Kelburn Parade  
Kelburn  
Wellington

**RESPONDENT** The Patter Ltd  
(1) PO Box 77-061  
Mt Albert  
Auckland

**RESPONDENT** International Management Group Ltd  
(2) Level 14  
263 Clarence Street  
Sydney, NSW, Australia

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**Appeal Report**

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**Procedure**

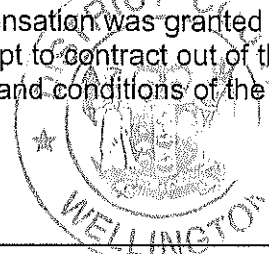
The hearing was held by way of teleconference with the first respondents represented by Jane Patterson bring at the Auckland District Court and the second respondent by connecting from his office in Australia. AS can be seen from the file it had been set down several times before it came to me and was finally heard.

The hearing was relatively length at three and half-hours. The decision was reserved and posted to the parties dated 3 August 2007.

**The Claim**

Mr. William's claim was for a proportion of his entry fee for the 2006 Ironman to be refunded on the basis the respondent did not exercise due care in planning for adverse weather conditions and this lack lead to the event being shortened unnecessarily. He said that if they had planned properly, the run and cycle sections could still have been run at their planned length. The respondents disputed the applicability of the Consumer Guarantees Act (CGA) to the event and that they did not exercise reasonable care and skill.

The reasons for the decision are on the file. In essence I found that the applicant had not proved his claim that the second respondent breached its duty to take reasonable and care. I also found that The Patter was not subject to the CGA and that the applicant did not it have a contract with The Patter. (NB. The Tribunal only has a restricted jurisdiction in relation to tort claims.) Compensation was granted for a minor aspect of the claim, that it was a breach of the Fair Trading Act to attempt to contract out of the CGA in the entry form and in continuing to assert the prevalence of the terms and conditions of the entry over the CGA provisions.



## **The Grounds of Appeal**

I will use the headings in the appeal to structure my report.

### **Weather Conditions**

My comment was referring to both parties' submissions about the severity of the weather on the day. My recall is that I was left not being sure which party was more correct in their descriptions of the weather and actual wind conditions on the day as opposed to looking at the argument that wind conditions that might prevent the cycle being section being run, were common.

### **Shortening of the Run**

I was unimpressed with the respondents' explanation about the reason for shortening the run relating to rule(s) or principles about proportionality of length of events. They said that if the length were not reduced proportionately it would mean that competitors could not use that event to qualify for other events for the reasons given by the appellant. I cannot recall if the respondent only gave this reason as support for the decision made. I am unsure whether it follows that if there was no such rule or principle that the lack of a viable contingency plan was the only reason other possible reason for shortening the event.

### **Contingency Planning and Decision making**

#### Point 15

My only comment is that, yes, I did not view those document as sufficient to tell me or provide an accepted standard as to what the organizers of this event should have done around planning for adverse weather. I accept that the applicant was in a difficult position because of the lack of information provided to him by the respondent as to what was pre-planned.

#### Point 13

No comment or dispute with this statement.

#### Point 11

Yes, the applicant did bring evidence about the changes made for the next year, which presumably had been influenced by the problems in 2006.

#### Point 13

I don't necessarily disagree with the points made under this heading.

#### Point 14

Possibly this point relates to the main point on the appeal form that the burden of proof was placed on the applicant. I agree I did do that.

#### Point 12 & 13

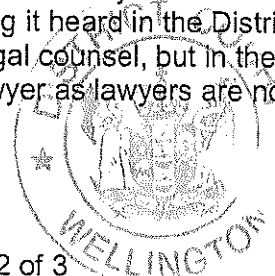
My only comment is that I recall the parties did discuss the identity, experience and role of the people that made the decision on the day.

### **Lack of Established Precedent of a Standard of Skill and Care**

I did view the lack of evidence from either party about what planning was done for similar events as making my decision difficult. Without a reference to what might be generally considered acceptable, it was difficult to assess the reasonableness of the pre-planning of this event.

### **Conclusion**

The matter was heard in the Tribunal because it was lodged in the Tribunal and within its jurisdiction. I would agree that there might be advantages (along with disadvantages) of having it heard in the District Court. As a decision maker there are times I would appreciate involvement of legal counsel, but in the Tribunal, this only happens if a party produces submissions constructed by a lawyer as lawyers are not permitted to represent clients at hearings.



Neither party requested it be transferred to the District Court but The Patter's representative did suggest a higher Court should decide whether its services were subject to the Consumer Guarantees Act. I explained that I could not refer particular questions to the District Court. I did, as it happens, accept the argument that event management services were outside the ambit of the Consumer Guarantees Act.



Referee: Robyn Wilson  
Date: 12 September 2007

