

Neutral Citation Number: [2021] EWHC 2396 (QB)

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION



Claim No: QB-2019-002803

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Thursday, 26 August 2021

Before:

HIS HONOUR JUDGE FREEDMAN  
(Sitting as a Judge of the High Court)

B E T W E E N :

MARGOT ERAINE HARRISON

Claimant

- and -

INTUITIVE BUSINESS CONSULTANTS LIMITED  
(Successor in title to SR UK Ventures Limited [t/a 'BEAR GRYLLS SURVIVAL RACE'])  
First Defendant/Part 20 Claimant

- and -

BIG BANG PROMOTIONS INTERNATIONAL LIMITED

Second Defendant

- and -

BEYOND the ULTIMATE LIMITED

Part 20 Defendant

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**(Dates of hearing: 7, 8, 9, 12 and 13 July 2021)**

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**J U D G M E N T**

Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed to be 10:00am on 26 August 2021

## APPEARANCES

MR B. CUMMINS (instructed by Irwin Mitchell) appeared on behalf of the Claimant.

MR J. CANDLIN (instructed by Hextalls Law) appeared on behalf of the First Defendant.

MR A. WITHINGTON QC (instructed by Harrison Clark Rickerbys) appeared on behalf of the  
Second Defendant.

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JUDGMENT  
HIS HONOUR JUDGE FREEDMAN

**INTRODUCTION**

- 1 On 8 October 2016, the Claimant was a participant in a Bear Grylls Survival Race which took place at Trent Park in Enfield, North London. Whilst attempting an elevated monkey ring obstacle (otherwise known as “the Jungle”), she fell to the ground and suffered serious injuries to her right leg and right shoulder. The Claimant was born on 20 August 1962 and she was therefore aged fifty-four at the time of the accident.
  
- 2 The Claimant claims damages against both Defendants for her injuries and consequential loss, alleging breach of s.2 of the Occupiers Liability Act 1957, on the grounds that they failed to take reasonable care for her safety. Liability and causation are firmly denied by both Defendants. In the alternative, and in the event of a finding of liability, it is contended that the Claimant should be held contributory negligent.
  
- 3 Counsel have very helpfully agreed quantum of General Damages. The agreed sum is £65,000. The majority of the other heads of damage – in particular, the claim for loss of earnings arising out of the Claimant’s inability to pursue her career as a Chartered Accountant – remain in issue.
  
- 4 The First Defendant was the overall organiser of the event and the body to whom the Claimant paid her entry fee. The Second Defendant and the Part 20 Defendant were subcontractors of the First Defendant. They were, *inter alia*, responsible for the design of the course, its obstacles, the planning and management of the race, the provision of staff and the risk assessment of the obstacles. The Part 20 proceedings were compromised in advance of the Trial.

5 As between the First and Second Defendants, there were no contribution proceedings. Neither party sought to blame the other, whether wholly or in part, for the Claimant's accident. Accordingly, it was accepted that in the event of a finding of liability, both Defendants should be held to be jointly and severally liable, albeit that no formal concession was made in this regard. For present purposes, therefore, the First and Second Defendants are to be treated as one and the same and, in the main, I shall refer to them simply as "the Defendants" although certain witnesses may be identified as being connected either to the First or Second Defendants.

6 The "live" evidence was restricted to witnesses of fact. Whilst all three parties had instructed their own experts, in the event, and in the light of the joint statement prepared by the experts, it proved unnecessary to receive any oral evidence from them. Nevertheless, I have had due regard to their written reports and to the joint statement, insofar as such material was of assistance. The medical evidence was agreed and, in any event, (as noted above), General Damages were agreed.

7 Perhaps unsurprisingly, given the background to, and circumstances of this accident, I received a huge volume of written material, as well as a substantial amount of oral evidence. I make it clear, at this stage, that it is not my intention to rehearse all of that material but, rather, simply to focus on the evidence which is germane to the issues which fall to be resolved.

8 Finally, at this stage, I should record the fact that this trial was conducted exclusively by Teams, that is to say it was a fully remote hearing. The fact that this was not an attended

hearing did not create any difficulties; and I am satisfied that no injustice was caused to any party as a result of the hearing being conducted remotely.

## **BEAR GRYLLS EVENTS**

- 9 The Bear Grylls Survival Races are themed obstacle and survival events over distances of 5km and 10km. They comprise a mixture of obstacles and survival challenges combined with other events, including music and entertainment. The obstacle races are designed for people of mixed ability, with the range being from *novices* to *seasoned competitors*. The first such event took place in October 2015 in the grounds of Trent Park, London.
- 10 A website was established to market and promote the events and to enable members of the public to sign up online. A promotional video was available showing the types of challenges that competitors could expect to face.
- 11 In 2016, four such events were held: on 20 August at Wimpole Hall in Cambridge, on 3 September at Winton House in Edinburgh, on 23 September at Tatton Park in Manchester and on 8 and 9 October at Trent Park. There were thirty obstacles for the 10km race and twenty obstacles for the 5km race. The obstacles included challenges involving the ability to climb, crawl, and carry items, as well as survival challenges such as using air rifles, fire lighting and weight carrying. There were between 2,000 and 2,500 participants in each of the four race events, with additional members of the public attending the festival area which contained a variety of attractions.
- 12 Morgan Sindall Group Plc, through its subsidiary Overbury Plc, was engaged to design and construct four “flagship” obstacles. These obstacles were variously, “The Mountain”, “The

Jungle”, “The Desert” and “The Arctic”. The designs of these obstacles were approved by Andrew Ridell, the technical director of the Second Defendant, and he was responsible for the Health and Safety Risk Assessments.

- 13 Staff on the day of each event included twenty department managers, volunteer marshals and a team of medics supplied by Exile Medics. Additionally, various individuals within the Defendants’ organisations, including the director of the First defendant, Mark Ussher, and Kristian King, Race Director, performed a supervisory role. The course was broken up into a number of zones with a leader for each zone and a manager for each of the flagship obstacles. Marshals and volunteers were positioned in each zone and at the flagship obstacles. There were also instructors from the Bear Grylls Survival Academy whose role was to assist with the survival challenges.

## **THE JUNGLE**

- 14 The trial bundle contains a plethora of photographs illustrating the monkey rings and I also have the benefit of detailed descriptions provided by each of the three experts. The primary purpose of the obstacle was to test grip and upper body strength. It comprised a rectangular scaffold structure (approximately 4m in height) with rings attached at different heights which were suspended from the top of the structure by ropes. The rings hung between 1.7m and 2m from the ground. To commence the race, participants climbed up onto a platform which was approximately 2m high (although later reduced to approximately 1.5m in height). There was a similar platform at the far end of the structure. There were six rows of rings suspended from the roof and the rows contained approximately eight or nine rings running from the start platform to the end platform.

- 15 The Jungle was erected on grassland. Hay covered the grass in an attempt to provide a softer landing, in the event of a fall from the rings. According to Mr Ridell, bundles of hay of approximately 30-40cm in height were placed under the first ring in each row and then partially broken up leaving a deposit of loose hay.
- 16 To complete the obstacle, participants positioned themselves on the platform (whether sitting, standing or squatting), grabbed hold of the first ring and then swung between rings, like monkey bars, until reaching the end platform. When swinging from the rings a person of average height (approximately 5ft 7in) would be suspended approximately 10-20cm from the hay when at full stretch. It follows that a taller person would need to bend their knees to some extent to prevent their feet coming into contact with the hay below.
- 17 It is clear that this was a particularly challenging obstacle course. Virtually every witness from whom I heard, who attempted the challenge, fell off one or other of the rings before reaching the end. Indeed, the only witness from whom I heard evidence, who completed the course, was Michael Adeniran who has participated in more than a hundred obstacle races and described the monkey rings as his *favourite obstacle*. At paragraph 21 of his witness statement he said:

*“I virtually always manage to do the monkey rings because I tend to get good grip strength. As I have said, that is the key to this obstacle. In my experience lots of people fall off because they do not have the grip strength to swing from ring to ring. These are not easy obstacles to complete but that is the point of these obstacle course races; they are a challenge”.*

## **RISK ASSESSMENTS**

- 18 For reasons which will become apparent, the risk assessments are of considerable importance, in the context of this claim. It is, therefore, necessary to set out in full the content of the risk assessments insofar as they applied to the Jungle and the particular circumstances of the claimant's accident. The risk assessments were compiled by Andrew Ridell. The assessments were carried out respectively on 19 August 2016 and 24 September 2016 and are contained in version number 1.3. The "Risk Assessment Brief" in relation to the Jungle describes: "*A climb up onto 1.5m ledge, sit on the side and swing from a series of hoops to a ledge on the other side, a distance of approx. 10m. Final exit from the ledge via a plastic tube/slide*".
- 19 In the body of the risk assessment, two hazards, in particular, are identified which are potentially of relevance to the circumstances of the Claimant's accident. The first is said to be "*Hard-landings from initial rings*" which is described as "*participants suffering injury from initial rings and hard-fall (initially taking load on their arms)*." The likelihood of this injury occurring is assessed as being a 4 with the severity being at 3, making an overall risk rating of 12. A risk rating of 12 on the *Risk Assessment Matrix* is interpreted as meaning that the likelihood of harm occurring is *high* with the severity of harm being assessed as being *medium*. The control measures were said to reduce the risk rating to 6 meaning that the likelihood of harm occurring was low but the severity of harm remained medium.
- 20 The control measures for the purposes of reducing the level of risk were identified as follows:

*"Two marshals are located on the first deck to brief participants to sit on the deck-edge and reach for the first ring to swing out (rather than standing to swing out and down).  
The floor is padded with straw.  
Initial deck is only 1.5m in height.*



*Heel-bar is positioned on the inner wall below the deck-level to aid with the first swing.  
Initially rings are set at a height of 2.4m to position an average person close to the floor.”*

- 21 The second relevant hazard was said to be “*movement of straw padding*” which was considered to increase the risk of injury when falling from the rings. The control measure to be put in place was as follows:

*“Straw to be re-distributed in between waves of runners, or during waves as and when required (lane(s) can be closed off by Marshals to allow for this).”*

- 22 In essence, it is the Claimant’s case that the Defendants failed to implement the control measures, set out in the risk assessment and that they were thereby in breach of their duty of care under the Occupiers Liability Act 1957. The Defendants maintain that there was full compliance with the control measures and, in any event, and insofar as there was any failure to put in place the control measures, as a matter of Law, such did not constitute a breach of duty.

## **CLAIMANT’S PARTICIPATION IN THE EVENT**

- 23 The Claimant signed up for the event through the auspices of West London Fitness where she was a Member and a regular attendee. There were a number of other members of the Gym who chose to take part and, in addition, the Claimant’s daughter, Ella Harrison, registered for the event.

- 24 At the time when the Claimant registered for this event, she was, as she described herself, “*a very fit and active person, enjoying running, cycling and taking long walks*”. She attended the Gym regularly. She was a keen snow skier and water skier, having participated

in the English and British ski school championships. She had also participated in gymnastics in her youth.

25 For the purposes of preparing for the event, the Claimant attended a training day organised by West London Fitness. Jamie Lea, the owner of the Gym and the Claimant's Personal Trainer, described the training day as an attempt "*to recreate the obstacles*" and with a focus on "*upper body strength work, crawling, squats*" as well as practising jumping off structures. Jamie Lea described the Claimant in this way: "*For a woman in her age category, Margot is very fit. She is very strong, athletic and flexible. I had every confidence that she would be able to cope with the obstacles*". His assessment of the Claimant mirrored her assessment of herself: she considered herself to be physically very fit and well equipped to deal with the physical challenges presented by the race.

26 In advance of the event, and along with all the other competitors, the Claimant signed a waiver form, the material parts of which read as follows:

*"A risk of injury and/or death from the activities involved in the Bear Grylls Survival Race ... is significant including, but not limited to the following: ... strains ... fractures ... While particular rules, equipment, and personal discipline may reduce this risk, the risk of serious injury does exist ... I knowingly and freely assume all such risks, both known and unknown, even if arising from the negligence of the Releases or others and assume full responsibility for my participation ..."*

It is, of course, trite law that liability cannot be excluded where personal injury has been caused as a result of negligence on the part of the occupier: see Section 2(1) of the Unfair Contract Terms Act 1977.

- 27 On the day of the event, the Claimant met up with other participants from West London Fitness, together with her daughter. There was a warm-up session before they attended a pre-race briefing. The Claimant specifically recalls that at the briefing, they were told that if they did not wish to attempt a particular obstacle, they could take a forfeit instead. The official forfeit was a bear crawl.
- 28 Together with her daughter, they started the race at approximately 10am. The first obstacle involved carrying a backpack to a specific point. The Claimant appears to have completed this exercise without any particular difficulty, albeit that she says that there was a lack of instruction.
- 29 The next obstacle was the Jungle. The Claimant describes running towards the obstacle with her daughter, with participants ahead of her, waiting in several different lines. She says that there were no marshals on the approach to the obstacle giving either advice or instruction. When she arrived at the obstacle, she chose the lane on the far left-hand side and joined the queue with her daughter standing next to her. The Claimant then climbed onto the platform with her daughter behind her. There are a number of photographs showing her kneeling on the platform before she moves into the “take-off” position. She describes a female marshal standing on the platform on the left-hand side. She says that at no time, whilst waiting on the platform, did the marshal (or anybody else) shout or speak loudly to attract her attention. Specifically, she says she did not hear any instruction or guidance as to how to set out from the platform or to complete the challenge.
- 30 At paragraph 47 of her witness statement, she said this:

*“I knew that there was a risk of falling off the monkey rings but had not given any great thought to the risk in the moments leading up to*

*the accident and what I could do to reduce the risks. It did not occur to me that I should start from a sitting position or use the heel-bar. I do not know whether I could have reached the rings from a sitting position. I accepted some risk of falling as I thought the landing surface would have been sufficient to have cushioned any fall”.*

She went on to say that she was unaware of the presence of a heel-bar (this can clearly be seen on the photographs at a point approximately 3 feet below the surface of the outer edge of the platform).

31 She goes on to describe how she watched other participants starting the obstacle from a standing position. She says that this was permitted by the marshal on the left-hand side of the platform. It is correct that the photographs do show some participants setting off from a standing position but also others setting off from a squatting and, on occasion, sitting position.

32 Potentially, of some significance, the Claimant stated at paragraph 52 of her statement:

*“I did not feel the need to ask for advice on what to do. I could see what I was required to do by watching what the other participants were doing”.*

(She added that a forfeit was not offered by the marshal),

*“... I felt no need to do a forfeit as I had no doubt in my strength and ability to maintain grip and to traverse the monkey rings”.*

## **THE ACCIDENT**

33 In the moments prior to the accident, there is photographic evidence showing the Claimant standing up on the platform, with the marshal, Dr Prathapan standing on her left. The claimant says that even though the marshal was standing very close to her and she was about to take her turn, she did not receive any advice or instruction, whether to sit down, to use the

heel-bar or otherwise. The photographs show that the two participants who set off immediately before the claimant went from a standing position.

- 34 The photographs also show the Claimant setting off from a standing position. They show the Claimant taking hold of the first ring with her right hand, and her arm bent whilst standing at the edge of the platform. Within a second or two, she fell to the ground. At paragraphs 65 and 67 of her witness statement, she describes the accident in these terms:

*“From a static standing position, I reached across for the first ring. With the transfer of body weight coming down onto the ring from a standing position and the force of gravity, I could not keep hold of the ring.*

*I let go of the ring and fell to the ground. The ground felt extremely hard when I landed, with no cushioning of my fall. The hay was uneven and bumpy and there were areas where there was less hay coverage than others”.*

- 35 The injuries were undoubtedly severe necessitating treatment from the emergency team before the Claimant was taken by her husband to hospital. I should observe that the Claimant (and others) have registered complaints about the promptness and quality of the medical attention following her accident but, for the purposes of the claim, these matters are of no import.

- 36 This description of the accident is somewhat at variance with a description given by the Claimant in an email to Exile Medics in the early aftermath of the accident (the email was in fact never sent). What the Claimant describes in this email is as follows:

*“I remember grabbing hold of the first monkey ring and swinging to get close to the second ring. I missed grabbing the second ring and then fell to the ground. The landing surface was very hard and I recall hearing and feeling a loud clunk in my right lower limb and I screamed because of the pain”.*

37 That description of the accident accords broadly with what Georgia Wilmot described in her witness statement. She stated that the Claimant “... *made it to the second ring before falling awkwardly to the ground*”. Similarly, the Claimant’s daughter, Ella, describes her mother having swung from the first ring and then *flying off the ring* and falling to the ground.

38 For reasons which will become apparent and given, in particular, the submissions made by Mr Withington QC in relation to causation, it will be necessary to make a finding as to the point at which the claimant fell from the rings.

## **PREVIOUS ACCIDENTS**

39 In his opening written argument, for understandable reasons, Mr Cummins placed considerable importance on the happening of two earlier accidents which occurred respectively at the Cambridge event on 20 August 2016 and the Edinburgh event on 3 September 2016. Specifically, he argues that additional safety measures should have been adopted following each of the 2 accidents.

40 At the Cambridge event, Lesley McCarthy fell from the monkey rings and suffered a double open fracture of the ankle. At the Edinburgh event, Lorna Bruce describes how she managed to hang on from the first ring but when she swung to reach the second ring, she fell to the ground. She too suffered a fracture to her ankle. She reached for the first ring from a standing position. She describes the ground as being *very hard*.

41 After that Cambridge event the construction company, Overbury was asked to consider structural alterations to the Jungle. Their proposals which were implemented were to reduce

the height of the overall structure by 500mm and to reduce the height of the entry platform by 500mm. Additionally, a heel-bar was installed for the purposes of making a push-off from a sitting position easier. Mr Ridell observed that: *“These amendments were intended to improve the prospects of participants of varying levels of fitness and strength completing the obstacle”*.

42 Additionally, there was a suggestion that the Jungle should be relocated on the course so that it became the third main obstacle and not part of the 5km race. The purpose of this suggestion was to reduce the flow rates on the obstacle and reduce the number of less experienced competitors attempting the obstacle. This proposal was not acted upon: it was the opinion of Mr Ridell and other organisers of the event that the Jungle obstacle was safe wherever it was placed on the course and that it should be available as a challenge for participants in the 5km race as well as the 10km race. Overbury also made suggestions in relation to staffing levels, in particular that four marshals should be assigned to the Jungle but Mr Ridell concluded that this was not necessary, having regard to the staffing levels already in place.

43 Following the Edinburgh event, it was not deemed necessary to alter the structure of the Jungle or to put in place any additional measures. Nevertheless, Mr Ridell made it clear that following this event, as with all events, a thorough review was undertaken including an informal risk assessment. His evidence was that the Jungle was deemed to be a suitable and safe obstacle for all participants in the race and no adaptations were reasonably required.

44 Mr Cummins, on behalf of the claimant, sought to argue in his opening skeleton argument that, in the light of the recommendations made by Overbury, following the Cambridge event, the 5km race should not have incorporated the Jungle. Thus, it was contended that

the Claimant should not have been permitted to take part in the Jungle, as someone who had entered the 5km race. He also argued that in the event that it was reasonable for the Jungle to be part of the 5km race, Overbury's suggestions in relation to staffing levels should have been put in place. Coupled with these matters, Mr Cummins was highly critical of the Defendants' apparent failure to make any adjustments or modifications following the serious incident on the Jungle at the Edinburgh event.

45 In my judgment, the submission that it was somehow in breach of the Defendants' duty to permit the Claimant (and other participants in the 5 km race) to take part in the Jungle is wholly unsustainable. Andrew Ridell's observation to the effect that the Jungle was considered to be intrinsically safe cannot be properly challenged. None of the independent experts suggested otherwise. The mere fact that accidents occurred on the Jungle at both the Cambridge and the Edinburgh events did not render participation in this obstacle race inherently unsafe, even for the uninitiated. Of course, it carried a degree of risk; and that is why it was necessary and appropriate to carry out a detailed risk assessment and put in place suitable control measures.

46 Following the Cambridge event, as I have noted, certain adjustments were made but some of the recommendations made by Overbury were not accepted. The Defendants were entitled to make a judgment about whether, for example, it was necessary to increase staffing levels. That they decided, after full consultation, that the existing staffing levels were adequate cannot conceivably amount to a breach of duty.

47 In relation to the incident at the Edinburgh event, I accept the evidence of Messrs. Ridell and Ussher to the effect that an internal review took place, albeit that nothing was documented. I also accept Mark Ussher's observation to the effect that just because an accident occurred, it does not follow that changes were required. It is worth emphasising



that there were approximately 2000 people registered for each event. The Defendants were entitled to conclude that the control measures already in place were sufficient to ensure that reasonable care was being taken for the safety of the participants.

48 It is, perhaps, convenient, at this point, to mention one particular measure which Mr Cummins submits should have been adopted, namely the use of signs instructing participants to set off from a seated position. Andrew Ridell confirmed that signs were used for one of the other flagship obstacles, the Mountain, but he described this obstacle as being *very unusual*. He said that signs were deemed appropriate for this obstacle because participants would not know how to approach it. In contrast, the Jungle was viewed as being nothing out of the ordinary, a *run of the mill* obstacle. Again, as it seems to me, a decision not to erect signs outside the Jungle was within a range of reasonable decision making. It hardly needs to be stressed that the Defendants' duty did not extend beyond taking reasonable steps for the safety of participants: they were not obliged to put in place every *possible* safety measure.

49 Generally, whilst discussing precautions, it is worth stating what may seem an obvious (but, nonetheless, very important) point: a balance has to be struck between an obstacle course which is testing, challenging and demanding and one which is not unduly hazardous. To attempt to achieve that balance requires consideration of a whole host of factors by experienced and well qualified personnel. The judgments which are made by the organisers of such events can, of course, be challenged in the context of a Personal Injury Claim but they will only be found to be wanting, if it can properly be said that they were so deficient as to amount to a failure to have reasonable regard for the safety of the participants. In my view, the judgments made by the organisers of these events, in attempting to achieve the correct balance, were entirely reasonable. Of course, decisions need to be reviewed on a regular basis and it may well be that (as happened here) different recommendations are

made at some later date but that does not serve to invalidate decisions which were made at the time.

## **THE CLAIMANT'S CASE**

50 Having discussed matters generally and made certain observations about the Defendants' approach to matters of health and safety, I now turn to what seems to me to be the core of the Claimant's case, namely that there was a failure properly to implement their own risk assessment. Specifically, it is alleged that the Defendants, as part of their duty of care, were obliged to inform those taking part in the Jungle race that they should start from a sitting position and use the heel-bar on the side of the platform. It is contended that this was an obvious safety measure which, if appropriately implemented, would have avoided the risk of an accident or materially reduced the risk of serious injury, when embarking on the monkey ring course. It is the Claimant's case that no such instruction was given to her, nor to others who were on the platform, at or about the same time as the Claimant, waiting to set off on the course. The Claimant says that if she had been given such instruction, she would have adopted a seated position. In that event, it is argued that her serious injuries would have been avoided.

51 Mr Cummins also maintains his complaint about the landing surface, albeit with less enthusiasm than he did at the outset of the trial. Nevertheless, he seeks to argue that there was a failure to do that which was recommended in relation to the hay lying on top of the grass, namely to ensure that it was levelled out from time to time so that the landing surface was, to some extent, cushioned throughout the course of the monkey rings. Whilst he does argue that an alternative landing material could have been used, he accepts that the use of

hay, if appropriately distributed, was within a range of reasonable options to provide an appropriate landing surface beneath the rings.

## **THE DEFENDANTS' CASE ON THE LAW**

52 It is contended by the Defendants that their duty of care to the claimant was discharged by the provision of an obstacle course which was designed, constructed and maintained so that it was reasonably safe for participants to engage in the activity. To put it another way, absent any design fault or defect in the construction of the Jungle, it is argued that no liability can devolve upon the Defendants for the Claimant's accident.

53 Specifically, what is said is that there was no duty on the Defendants to provide training, supervision or instruction. Mr Candlin submits that where the occupier does not assume the duty or responsibility of providing instruction or training, there is no requirement in Law to provide training or instruction. Such a duty, it is submitted, can only arise if there is an express or implied promise or offer on the part of the occupier to provide supervision or guidance, so as to reduce the risks inherent in the activity.

54 Heavy reliance is placed by both Defendants on the case of *Trustees of the Portsmouth Youth Activities Committee (a Charity) v Poppleton* [2008] EWCA Civ 646. That case involved an activity known as "bouldering" at the defendants' indoor climbing premises in Portsmouth. In effect, the activity involved low-level simulated rock climbing without ropes. Whilst leaping from the back wall to grab hold of the buttress on the opposite wall, the Claimant lost his grip and fell to the matting below landing on his head. He suffered very serious injuries rendering him tetraplegic. Unquestionably, the manoeuvre which he was attempting was highly dangerous and fraught with risk for a novice climber such as the Claimant.

55 The claim was brought on the basis that the Defendants were at fault in failing to provide the Claimant with instruction or any or any adequate explanation of the risks involved in the activity. At first instance, the Claimant succeeded (subject to contributory fault of 75 per cent) on the basis that the Defendants were in breach of their duty of care to warn the Claimant that safety matting did not make a climbing wall safe. The Court of Appeal overturned the Judge's finding at first instance, concluding that the Judge's finding that the Claimant should have been warned that matting would not always afford protection was unsustainable. May L.J. at [18] said this:

*“... It is to my mind quite obvious that no amount of matting will avoid absolutely the risk of possible severe injury from an awkward fall and that the possibility of an awkward fall is an obvious and inherent risk of this kind of climbing.”*

56 Understandably, the Defendants' counsel highlight what May L.J. said at [20]:

*“There being inherent and obvious risks in the activity which Mr Poppleton was voluntarily undertaking, the law did not in my view require the appellants to prevent him from undertaking it, nor to train him or supervise him while he did it, or see that others did so. If the law required training or supervision in this case, it would equally be required for a multitude of other common place leisure activities which nevertheless carry with them a degree of obvious inherent risk – as for instance bathing in the sea. It makes no difference to this analysis that the appellants charged Mr Poppleton to use the climbing wall, nor that the rules which they displayed could have been more prominent”.*

57 In the light of the observations of May L.J., it is said that there is no basis for contending that the Defendants owed a duty to provide guidance or supervision and, specifically, in the context of this case, to give instruction that participants should set off from a seated position. It is further said that it makes no difference that the Defendants had compiled their own risk assessment and identified control measures to be adopted when taking part in the

Jungle. The Defendants' position is that whilst it may be good practice to risk assess such an activity, it does not follow that there is a requirement in Law to communicate the guidance contained in the risk assessment to participants. It is also contended by Mr Candlin that it cannot be fair or just for an occupier who carries out a risk assessment to be subject to a higher or different standard of care, as compared to an occupier who does not undertake a risk assessment.

### **THE SCOPE OF THE DEFENDANTS' DUTY**

58 In relation to this last matter, as it seems to me, the answer is clear and obvious: not to undertake some form of risk assessment in the context of an activity such as the Bear Grylls obstacle race would, of itself, constitute a breach of duty to the participants. The use of an indoor climbing wall is a markedly different activity from the participation of a "one-off" organised obstacle race attracting participants of all ages, all levels of fitness and all levels of competence. If the organisers of this obstacle course were asked whether they considered that they were under an obligation to carry out a risk assessment, their response would have been emphatically in the affirmative. Whilst it may be that the Management of Health & Safety at Work Regulations are not of a strict application, it seems to me that, at least by analogy, there was a legal obligation to risk assess the health and safety of the participants whilst engaging in this activity.

59 In my view, once the Defendants themselves stipulate that *clear and concise instructions must be given to all participants taking part* as to various matters including an instruction to *swing out from a seated position*, then they have assumed a responsibility to give such instruction, as part and parcel of their obligation to take reasonable steps for the safety of the participants in the obstacle race. It matters not that the Defendants did not specifically

inform the participants that instruction or supervision would be provided to them; the duty to provide such instruction can be assumed, without any warranty being given to the participants that they will be given instruction and supervision.

60 Further, and although Mr Candlin strenuously argues that there was no duty on the Defendants to give instruction or advice, it is not without note that at paragraph 9(d) of the defence of the First Defendant, the following averment is made:

*“Positioning of fully briefed marshals highlighting the appropriate method of crossing the monkey bars from an initially seated position along with the design of the Jungle obstacle and the surface beneath the rings was sufficient to discharge the duty of care ...”.*

Such seems to me to be an implicit recognition that the Defendants’ duty of care included a requirement, at least, to point out the appropriate method of transferring from the platform to the monkey rings.

61 At all events, I am satisfied that the Defendants owed a duty of care under s.2 of the Occupiers Liability Act 1957, *inter alia*, to give instruction as to the appropriate method to be adopted when setting out from the platform onto the monkey rings. That, however, does not equate to a duty to mandate the Claimant (or other participants) to adopt a seated position, merely to give instruction to that effect.

62 Additionally, it cannot be sensibly argued that the Defendants did not owe a duty to provide a reasonably safe landing surface, in the event a participant came off the monkey rings.

## **THE ISSUES**

63 Having determined the issue of law which arises and having considered more general matters at [45-49], it seems to me that, essentially, there are four factual issues which fall to be determined, namely:

- (1) The precise circumstances of the claimant's accident.
- (2) Whether instruction was given to her by the marshal as to the method to be employed when leaving the platform.
- (3) If no instruction was given, whether the absence of such instruction materially contributed to the happening of the accident and/or the severity of her injuries.
- (4) Whether there was a failure to level out the hay; and, if so, whether this was in any way causative of her injuries.

#### **PRECISE CIRCUMSTANCES OF THE CLAIMANT'S FALL**

64 On two important matters, the Claimant was somewhat vague, namely whether she used two hands to take hold of the first ring and, perhaps more significantly, whether she fell from the first or second ring. It is understandable that, given the enormity of the trauma which befell her, the Claimant is somewhat uncertain about what occurred in the moments immediately prior to her fall. Nevertheless, and not least because of potential arguments about causation, it is necessary for the Court to make precise findings as to how, and at what stage, the Claimant came to fall from the monkey rings.

65 In relation to the first matter, it is perhaps a little odd that her very detailed witness statement does not make any reference as to whether she took hold of the first ring with one or two hands. In her oral testimony, she was unclear whether she reached out with one or both hands. The photographic evidence, such as it is, suggests that she took hold of the ring

with only one hand. However, it seems to me, that would be counter-intuitive, in view of what was required in terms of transfer of the weight of the body from the platform onto the rings. At one stage, she did say that she might have used two hands on the first ring before taking one hand off to reach for the second ring.

66 At all events, as it seems to me, the most accurate account of the circumstances of her fall is likely to be contained in the email which she wrote to Brett Rocos. What she said in this email is consistent with what her daughter, Ella Harrison, observed: “*As soon as mum swung from the first ring, she went flying off the ring and fell to the ground ...*”. It is also broadly consistent with the observations of Georgia Wilmot who was directly behind the claimant when the incident occurred. She says: “*She made it to the second ring before falling awkwardly to the ground ...*”.

67 Thus, I conclude that the Claimant had successfully grabbed hold of the first ring (probably using both hands) and that she was in the process of taking hold of the second ring when she fell to the ground.

68 Without pre-empting a discussion about causation at this stage in the Judgment, it is perhaps, nevertheless, pertinent to point out the significance of the fall occurring as she attempted to grab hold of the second ring. This forms the bedrock of Mr Withington’s closing submissions. What he says, in outline, is that once the claimant had secured a grip on the first ring, she had effectively transferred onto the obstacle and her movement from the platform had been completed. That being so, whether she started from a standing or sitting position ceases to be of relevance. To put it another way, he says that the fall which subsequently occurred was occasioned by loss of grip or impaired strength rather than the movement from a standing position on the platform onto the first ring.



## WAS INSTRUCTION GIVEN?

69 As I observed on more than one occasion during the course of the evidence, it seems to me that this is the crux of the case in relation to breach of duty. Given my findings in relation to the duty owed by the Defendants, if the Claimant establishes, on the balance of probabilities, that no instruction was given then liability will be proved but, of course, factual causation remains a highly contentious issue. At all events, plainly, this issue requires a detailed and objective analysis of the available evidence.

70 Before undertaking such an analysis, three separate and different points need to be made. First, there is no doubt that the reason why the risk assessment required the marshals to give advice about setting off from a sitting position was to lessen the load on the upper body at the time of transfer from the platform onto the rings. Most conveniently, the matter can be summarised by the agreement reached by the three experts in relation to this specific matter. In the joint statement at paras.2.7.4 and 2.7.5, the experts agreed the following:

*“Given the design of the Jungle obstacle on the day of the event, based on photographic evidence, we AGREE that taking off from a standing position places an increased physical demand on the participant compared to taking off from a seated position. A crouched position would be a halfway house.*

*We also AGREE that taking off from the heel-bar would lower the body’s position relative to the first ring and place less physical demand on a participant’s upper limbs in grasping hold of the ring”.*

71 On the other hand, it was by no means obligatory to take off from either a seated or a squatting position. Various witnesses talked in terms of not achieving sufficient momentum

if setting off from a sitting position and that would carry risks of its own. Mr Adeniran put the matter in this way:

*“I have never seen anyone start sitting down. In my experience if you started off sitting down you would probably not be able to grab the rings on many races and you would not get the momentum to swing from one ring to another. I have marshalled monkey rings on multiple Spartan Races all over the country and I would never tell anyone to start seated. ... In my experience of marshalling and doing these obstacles no marshal would ever tell you to start from a seated position as it simply does not make sense. You would not be able to reach it from a seated position.”*

- 72 It follows that whilst the organisers of this event deemed it appropriate to give advice to participants that they should start from a sitting position, it was not the universal practice to do so. Mr Adeniran’s further point about not being able to reach the rings from a seated position was also made by a number of witnesses.
- 73 The second point which arises, at this stage, is that whilst I find that the Defendants were obliged to tender such advice or instruction, it does not follow that they were required to speak, individually, to each participant and to satisfy themselves that each individual had received the appropriate instruction. To give such specific instruction to each individual was not reasonably practicable, bearing in mind the numbers involved and the circumstances surrounding the event. In my view, it was sufficient for the Defendants to discharge their duty of care by the marshals giving instruction, generally, to those standing on the platform waiting to set off on the rings. Clearly, the intention had to be that each individual would be alerted to the instruction and advice which was being offered but there was no requirement for the marshals to satisfy themselves that in each and every case, the instruction had been heard.

74 Moreover, thirdly, there was no obligation on the marshals to ensure that there was compliance with the advice or instruction which was being offered. If participants elected to leave the platform from a standing or squatting position, notwithstanding the advice which was being offered by the marshals, then that was entirely their prerogative. In this regard, it is to be remembered that all competitors were taking part on a voluntary basis and, indeed, there was no obligation to participate in this particular obstacle. There was always an option of a forfeit. This serves to underline the voluntary basis of the activity in which they were engaging.

75 I turn then to the evidence in relation to this crucial aspect of the case. Unsurprisingly, there is a body of evidence which supports the proposition that no instruction was given in relation to adopting a seated position and, equally, there is other evidence which would point to the contrary. It is necessary to weigh up the competing evidence and come to a view on a balance of probabilities.

76 The starting point must necessarily be the evidence which comes from the Claimant herself. At this point, given the stark conflicts in the evidence, it is appropriate to say something about the quality of the Claimant's evidence. I say at the outset that I do not think that she was in any way attempting to mislead the court or that she was deliberately attempting to create a false impression. In short, I have no doubt that she genuinely believed that what she said to me in her oral evidence was an accurate account of what occurred. It does not follow that what she said falls to be accepted at face value.

77 I stress that she was not an unreliable witness in the conventional sense of the word but I am inclined to agree with the observations of Mr Candlin to the effect that, at times, she was somewhat evasive in her replies. She was unwilling to make concessions which might

reasonably have been expected: for example, she was unwilling to accept that the photographic evidence was at least capable of suggesting that the marshal was giving some instruction to a lady who was wearing a grey outfit. Equally, she was unwilling to accept that whatever instruction was given, there was a residual risk of an awkward landing and that there was a residual risk of injury whatever landing surface was provided. Another illustration of her being a little unconvincing was when it was pointed out to her that Georgia Jones had adopted a squatting position, she said she must have turned away because she was clear that Georgia Jones was standing when she left the platform.

78 Coupled with those matters, what stood out in her evidence was her determination, at every turn, to tell the Court that she received no instruction that she should take off from a sitting position. She volunteered this on a number of occasions even when being asked questions relating to entirely different matters. At times, it seemed to me that she had become an *advocate in her own cause*. This is understandable but it means that the Court must approach her evidence about these crucial matters with some caution.

79 Nevertheless, there is undoubtedly support for the contention that appropriate instruction was not given whilst participants were on the platform. Georgia Jones said in her evidence that she did not recall any instruction being given as to how to set off from the platform. She was also unaware of the presence of the heel-bar. But she did add that she was familiar with this type of obstacle course and she knew that it was better to go from a low position rather than from a standing position. As Mr Candlin submitted, it may well be that if a participant has had previous experience and is clear in her own mind as to the way in which the obstacle should be approached, then she may well take less interest in any advice being offered by a marshal.

80 Georgia Wilmot also had no memory of receiving any instruction or information from the marshal. She in fact did not do the monkey rings, having seen the Claimant fall. She said that she intended to go from a standing position. She recalled a member of staff standing on the platform but considered that her role was more to observe the participants rather than offering supervision or guidance.

81 The Claimant's daughter, Ella Harrison also confirms that she did not receive any instruction from the marshal. Like her mother, she was watching others and she had resolved to leave the platform from a standing position. Curiously, she did not see Georgina Jones leave from a squatting position: that chimes with the evidence of her mother. Yet the photographic evidence is very clear. She did also accept that she had never been in the "ready to go" position and that, therefore, it was possible that if instructions were given, they were not being directed to her.

82 For the sake of completeness, I should mention the evidence of Jamie Lea, the owner of the gym. Whilst he had a number of criticisms to make of the event itself, he could not assist the Court about the immediate circumstances of the Claimant's accident. Specifically, he could not shed any light upon whether instruction was given by the marshals as to how to set off on the monkey rings.

83 Mr Cummins also places heavy reliance upon the photographic evidence which appears to demonstrate that, in the moments prior to the Claimant's accident, other participants were adopting a standing position. He says that if contrary instruction was given, it is surprising that participants were not complying with such instruction. Similarly, of course, he makes the point that if the Claimant had received instructions to sit down and use the heel-bar, she would have done so. That, of course, was the thrust of her evidence. Mr Cummins makes

the further point that, subsequent to the Claimant's accident, the evidence would tend to suggest that appropriate instruction was given, with the result that most of the participants set off from a sitting position.

84 The evidence relied upon most heavily by the Defendants to gainsay the assertions made by the Claimant and her witnesses comes from the marshal who was on the platform at the material time, Dr Janaki Prathapan. Her statement was produced at a very late stage in the litigation but that, as I understand it, was as a result of difficulties in tracking her down. At all events, she was able to confirm that at the time of this event, she was a student at University College London's Medical School. She had an interest in expeditionary medicine and, to that end, she had visited the Exile Medics website. On that website, she saw the Bear Grylls event advertised and she then completed an on-line application to act as a volunteer.

85 She attended only the event in London. She was on duty on both the 8 and 9 October 2016. She is to be seen as the person wearing a burgundy tracksuit top in close proximity to the Claimant, on the two photographs attached to the Claimant's witness statement.

86 Before scrutinising her evidence, I should observe that I found her to be a most impressive witness. She was almost disarming in her frankness. Where she was unable to recall matters, she candidly accepted that such was the case. She was manifestly doing her very best to assist the court in her recollections of what occurred. Further, I formed the view that she was entirely open-handed and straightforward in her evidence; and that she had no axe to grind. She is also plainly a very conscientious and capable individual; she is now a junior doctor working in a Paediatric Unit.

87 She told me that on arrival at the event, she received an initial induction. This covered a description of the event, information on the obstacles and what was expected of the volunteers. She was assigned to the Jungle obstacle with a friend of hers who was also a medic.

88 At paragraph 8 of her witness statement (which tallied with her oral evidence) she said this:

*“On reporting to the Jungle obstacle, I was given a specific briefing on how the obstacle should be undertaken safely and on what instructions I should give to participants as they came to it. We were told to tell the participants to take a seated position before setting out across the rings. There was a footrest on the side of the platform and participants would start the obstacle by pushing off from there. We would not speak directly to every single participant as that was not practical but the other marshal, who was on the other side of the platform, and I would regularly repeat that instruction so everyone could hear. I speak in a very clear audible manner so I am confident the claimant would have been aware of the instructions I was giving. I very clearly remember telling competitors to sit before setting across the rings throughout the day”.*

89 When looking at one of the photographs appended to the Claimant’s statement, she said that it looked as if she was giving instructions to a woman dressed in blue. Whilst, of course, she cannot now recall exactly what was said, she believes that the only instruction she would have been giving would have been that she should start from a seated position. That seems to me to be highly plausible, not least because Dr Prathapan is pointing downwards as she appears to address this lady.

90 That such instruction was given is corroborated by two of the Defendants’ witnesses. Of course, it may be said that they are not independent but nevertheless their evidence can properly be taken into account. Mr Ashenden, a Project Manager employed by Overbury, says that he was in the wave of competitors that set off about 11am. His account is as follows: *“I recall that I was asked to sit down on the platform with my heels on the heel-bar.*

*The volunteer passed me the first ring so I started with it in my hand. I made it to the fourth ring before I fell off*". Similarly, Mr Robert Phillips, a Customer Experience Manager employed by Overbury, says that he recalls the marshals telling participants to "sit down". Mr Cummins, of course, makes the point that these two participants took part in the Jungle after the Claimant's accident when, he says, an inference should be drawn that instructions were being given appropriately, as compared with what was happening prior to the Claimant's accident.

91 In the end, and whilst having proper regard to all of the evidence which may suggest that no instruction was given to the claimant, I am satisfied, on the balance of probabilities, that Dr Prathapan was indeed performing her duties appropriately, at the material time, and this involved telling participants to set off from a sitting position and to use the heel-bar. It is the evidence of Dr Prathapan herself which I find particularly compelling. I also ask myself if she had been briefed to give such instruction to participants, is it likely that she would simply fail to do so? The short answer is that I think it is highly improbable that she would have ignored the instructions which she herself was given. To the contrary, I think it highly probable that she would have complied with the instructions which were given to her. I am fortified in this conclusion by the photograph attached to the Claimant's statement which, to my mind, demonstrates that Dr Prathapan was giving instruction to the lady in blue with the claimant kneeling nearby.

92 It is, of course, legitimate to pose the question, why, if appropriate instruction was given it was apparently not heard by the Claimant and others; and why it was not acted upon. To attempt to answer these questions is to venture into the realms of speculation and that is not an exercise in which I can properly engage. I simply observe that it is perfectly conceivable that the Claimant (and others) saw a participant setting off from a standing position and



decided that that was the way to proceed and, accordingly, paid little or no heed to any instruction which was forthcoming from the marshal. In the alternative, and for whatever reason, it may be that they were not concentrating on, or listening to, what the marshal had to say. Whatever be the position, I am satisfied that Dr Prathapan gave the instruction which she was required to do, albeit that it was apparently neither heard nor acted upon by the Claimant.

### **THE LANDING SURFACE**

93 I have previously noted that Mr Cummins accepts that the use of hay to cover the ground beneath the Jungle was within the range of reasonable options for the purposes of providing a suitable landing surface. However, he does argue that there remained an obligation on the Defendants to ensure that the hay was evenly spread so that there were not *bare* patches. Obviously, re-distribution of the hay could only be done periodically so that, inevitably, there would be times when the layer of hay would be a little *patchy*.

94 Whilst none of the Claimant's witnesses observed the hay being re-distributed, (and despite the comments of the Claimant herself at Paragraph 67 of her Witness Statement) it does not follow that it did not happen. It is, of course, very difficult to prove a negative. At all events, again, I have no reason to doubt the veracity or reliability of Dr Prathapan's evidence. In her witness statement, she confirmed that the marshals were "*told to redistribute the hay whenever... felt it had started to separate.*" She went on to say that they "*were vigilant about doing*" it. This evidence was unchallenged.

95 In any event, even if it could be demonstrated that there was a culpable failure to re-distribute the hay, it has not been established that such had any causative potency in the context of this accident.

#### **FACTUAL CAUSATION RE. ALLEGED LACK OF INSTRUCTION**

96 This issue becomes somewhat academic in the light of my findings on whether instruction was given in relation to adopting a seated position. For the sake of completeness, however, I make it clear that even if I had been satisfied that appropriate instruction had not been given, I would not have found that the absence of such instruction was causative of this accident.

97 In short, I accept the submissions of Mr Withington to the effect that, by the time the Claimant was grasping hold of the second ring or attempting to do so, she had effectively completed the “arc” and the transition from the platform onto the rings had been achieved. In other words, whatever increased physical demand was placed upon the Claimant’s upper body when setting off from a standing position had effectively dissipated by the time she was reaching towards the second ring. It may be that a person would still be moving at a greater velocity, if starting from a standing position, when attempting to take hold of the second ring, but it does not necessarily follow that any fall thereafter would occur in a less controlled way. That seems to me to be a matter of mere chance.

98 Nevertheless, Mr Cummins seeks to rely on the observation of Mr Wilkinson (Orthopaedic Surgeon): *“It is my opinion that her injuries are consistent with and caused by the accident as stated. Had she started from a sitting position using the heel bar or had there been adequate padding or mats on the ground, then I consider that either she may not have fallen in the way that she did ,or if she had, would have sustained much less severe*

*injuries...*” This, he says, is unchallenged expert evidence. But it calls for a number of comments. First, logically, Mr Wilkinson would appear to be saying that even if the Claimant had started from a standing position, if there had been a softer landing surface, she would have fallen differently and/or sustained less severe injuries. That scarcely assists the Claimant’s argument on causation in relation to the failure to adopt a seated position. In any event, it is not known what (if any) questions were put to Mr Wilkinson to elicit this observation. Moreover, it would appear that Mr Wilkinson has relied entirely on the Claimant’s account of the incident. In particular, he has not inspected the Jungle, far less has he seen it being attempted or seen anyone fall from the rings. I am, therefore, unconvinced that Mr Wilkinson had the necessary information or experience to express an expert opinion on the issue of causation. Certainly, his comment is wholly insufficient to make good the Claimant’s case on causation.

99 Moreover, in relation to the shoulder injury, and despite the submissions of Mr Cummins, it seems to me that the medical evidence on this point is equivocal: whilst Mr Perez described a strain to the right shoulder when falling, he also noted that the *twinging sensation of pain in the right shoulder* occurred whilst she was on the ground. In short, the medical evidence goes nowhere close to establishing that the shoulder injury occurred or was made appreciably worse because the Claimant set off from a standing position.

100 The reality is that the majority of participants fell off the monkey rings at some stage during the course of the obstacle; and they fell whether they started from a sitting or standing position. The vast majority, of course, suffered no injury but, in the end, it is a matter of chance as to how well or badly an individual may land on the ground. In any event, since, as I find, the accident occurred not on the first ring but as the claimant was grasping the second ring, any connection between her departure from the platform in a standing position and her injuries can best be described as tenuous. Certainly, it cannot be said that setting off from a

standing position either caused (as a matter of probabilities) her to fall or to suffer more serious injury than otherwise would have been the case.

## **CONTRIBUTORY NEGLIGENCE**

101 Obviously, this does not arise but were it to do so, I would not find that the Claimant failed to take reasonable care for her own safety. Despite the guidance which was given, it was both legitimate and reasonably safe for the Claimant to set off from a standing position, following the technique of others who went before her. Equally, she is not to be criticised because she failed to maintain her grip on the rings: as noted above, in falling off the Jungle, she was part of the vast majority of the participants.

## **QUANTUM**

102 This issue, too, is somewhat academic in the light of my findings. In the circumstances, I do not propose to address in detail each head of claim. It is also the case that I did not receive any oral submissions on quantum: the Claimant relied upon a preliminary skeleton argument as well as the schedule of loss whilst the Defendants relied purely on their counter-schedule.

103 The two principal areas of disagreement relate to the claim for loss of earnings and the claim for cost of future therapies and aids and equipment. As to the former, it is of note that the Claimant had not worked as an accountant for a period of almost ten years prior to the accident. That being the case, a conservative approach is mandated in relation to the claim for past loss of earnings. It seems to me that, in broad terms, the approach adopted in the counter-schedule is realistic but there is scope for further argument as to what would have been the likely rate of remuneration.

- 104 In relation to therapies, a sum for past loss in excess of £30,000 is presented. This is justified. The claim for future costs is accepted, insofar as it relates to the cost of knee replacement surgery, surgery to the rotator cuff and some physiotherapy. The claims for ongoing physiotherapy seem to me to be somewhat overstated and, equally, the claims for sports massage and rehabilitation. I also agree with the assertion in the counter-schedule that the claims for future aids and equipment which are not supported by the medical experts are difficult to justify.
- 105 The above amounts to no more than passing observations on the schedule and counter-schedule of loss. If it were to become necessary, I would be agreeable to hearing oral submissions on Quantum; and assessing each head of claim.

## **CONCLUSION**

- 106 This was a most unfortunate accident resulting in very serious injuries. It goes without saying that the Claimant is deserving of much sympathy. I am satisfied, however, that her accident and the resultant injuries were not occasioned by any fault on the part of the Defendants. Accidents of this type are an inherent risk of participation in activities such as obstacle races; and no amount of care and vigilance on the part of the organisers and planners of such events can eliminate the possibility of such risks materialising from time to time. The Claimant elected to participate in the Bear Grylls Race and, whilst, of course, she did not expect to suffer any injury when doing so, nevertheless, it was a risk of which she was well aware when she registered for the event and signed the indemnity. Her confidence in her ability to complete this obstacle was not misplaced; it was simply a matter of grave misfortune that she was the victim of a serious accident.

107 Finally, I should like to thank all three Counsel for their very considerable assistance in their conduct of this case and the presentation of their respective arguments.

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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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