2023 PENNSYLVANIA STATEWIDE HIGH SCHOOL MOCK TRIAL COMPETITION

Estate of Alejandro Desafios

v.

Storm Chase LLC

SPONSORED BY THE YOUNG LAWYERS DIVISION OF THE PENNSYLVANIA BAR ASSOCIATION

Adapted by Jon Grode, Paul Kaufman, and Jonathan Koltash from materials originally written by the Iowa State Bar Association Center for Law & Civic Education
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Message from the Chairs

On behalf of the Pennsylvania Bar Association, Young Lawyers’ Division Mock Trial Executive Committee, welcome to the 2023 Pennsylvania Statewide High School Mock Trial Competition. This is the 40th year of one of the top secondary level academic competitions in the nation! The competition, which commenced in 1984, is sponsored by the Young Lawyers Division of the Pennsylvania Bar Association (PBA/YLD). This competition provides high school students with firsthand experience of the American judicial system. The Mock Trial Competition is one of a series of law-related and civic education (LRCE) programs conducted by the PBA to demystify the law for Pennsylvanians, including Freedom’s Answer, I Signed the Constitution, Project PEACE, Law Day, and Stepping Out for Seniors (called “Adulting” in some locations). As Pennsylvania looks to fulfill the civic assessment requirements of Act 35 come the 2022-23 school year, these programs, along with the Mock Trial Competition, may provide opportunities for students to “pass” their civic assessment. Questions about LRCE programs may be directed to PBA staffer Susan Etter at Susan.Etter@pabar.org.

We are all excited to be back for another year of mock trial, and we are committed to doing as much of this year’s competition as possible in person once again. We have missed you as much as you have missed this.

A few thank yous are in order. First, Paul W. Kaufman and Jonathan A. Grode. Mr. Grode and Mr. Kaufman have cowritten the Pennsylvania problems since 2011, and they co-wrote the national problems in 2010, 2012, 2014 and 2015. Mr. Grode also adapted and modified the 2007 mock trial problem and wrote the 2008, 2009, and 2010 mock trial problems. Mr. Kaufman was a four-time Delaware state champion mock trialer in high school.

To the Mock Trial Executive Committee, they are the heart and soul (and brain) of our competition. Their tireless effort and dedication to make this competition the best in the nation is again on display in this year’s problem. Together, they have spent countless hours preparing a vibrant problem that we hope you all enjoy. Unless you are present to witness them write a problem, you cannot fully comprehend what they do. There simply are not enough words or space provided to truly express our gratitude to them. Thank you both.

We thank the amazing PBA, including Maria Engles, who work to support this program year-round.

And last, but certainly not least, we thank the hundreds of volunteers – such as our regional and district coordinators – who have already begun to embrace the changes that face us again this year head on. Our regional and district coordinators have already started meeting with us, asking questions, and thinking about how they will make this competition as good as ever. Without their spirit, this show could not go on. We do ask, however, as you work through this year’s competition, please be mindful that these volunteers, many of them young lawyers starting their careers, are giving their time to make this competition happen. They love the legal profession and want you, our competitors, to see it as they do. There will be challenges, but together we can overcome them.

To our competitors, good luck! We hope you enjoy this year’s problem.
Message from the Case Authors

This year’s case, *Estate of Alejandro Desafios v. Storm Chase LLC*, returns us to the familiar environs of Wisawee to litigate yet another in the long line of misadventures that seem to befall that benighted locale. This time, the jurors of Laurel County are called upon to determine just how extreme an extreme race can be before its organizers bear liability for a death on site.

Mr. Kaufman, who is also the Chair of the National High School Mock Trial Championship, again thanks Sarah, for putting up with ever more mock trial, and he apologizes to Daniel and Joshua for cutting into *Madden* and *Mario Kart* time and Ginger and Izzy for belly rubs denied. Mr. Kaufman also thanks the Jons, for everything, always. He gratefully acknowledges the attorneys of the United States Attorney’s Office for the Eastern District of Pennsylvania, and in particular to Civil Division Chief Gregory B. David and United States Attorney Jacqueline Romero, for their remarkable, continuing support of mock trial and civics education.

Mr. Grode would like to thank his loving wife, Jayne Bird, for being a rider on the mock trial storm for the umpteenth year. In addition, Mr. Grode thanks his Firm, Green and Spiegel, LLC, for their ongoing and continued support of both state and federal high school mock trial competitions. Mr. Grode, provides special thanks to Sophia Otero for helping review this year’s case materials.

This year, we stand on the shoulders of a giant in the mock trial community, John Wheeler, former Chair of the National High School Mock Trial Championships, winner of the Justice Gene Franchini Golden Gavel Award, and longtime state coordinator of Iowa. John is a dear friend to the Pennsylvania program, and we gratefully acknowledge the original authorship of this case problem by John and the Iowa State Bar Association Center for Law & Civic Education, which was kind enough to provide it on an emergent basis. We wouldn’t trust just anyone’s case, John, but we absolutely trust yours.

We thank this year’s Competition Co-Chairs, Jonathan D. Koltash and Jennifer Menichini Drahus, for their efforts in organizing and implementing the many facets of this competition. Additionally, we thank David Trevaskis, PBA Pro Bono Coordinator, and the incomparable Jane Meyer, for their reviews of drafts, organizational counsel, yeoman’s labor to schedule, coordinate, and execute the State Championships, and their unceasing, tireless efforts to improve the lives of students in this program.

The authors and the entire Executive Committee extend their heartfelt thanks to our informal team of reviewers, inspirers, and mock trial gurus, Veronica Finkelstein and Donna Adelsberger.

We thank the hundreds of volunteers who annually contribute their time and energy to the overall organization and running of the program. And last, but certainly not least, we thank the PBA staff, headed by Executive Director Barry Simpson and Deputy Executive Director Fran O’Rourke, and the many PBA staff members who provide valuable time and talent throughout the mock trial season. Without their assistance, this competition would not be the tremendous success that it is each year. Special thanks go to Maria Engles, the PBA/YLD Coordinator, whose contributions to the program are so numerous as to defy description. We hope you find these materials interesting, and wish you all the best of luck in this year’s competition.

We hope you will enjoy trying the case as much as we enjoyed writing it. Welcome to the Abandon Ship!
Case Questions and Final Case Posting

Questions concerning these case materials should be sent using the email below to David Keller Trevaskis at the Pennsylvania Bar Association (PBA). Case material questions will be answered by the Mock Trial Executive Committee. Questions regarding mock trial procedure, including any questions involving the Rules of Competition or Rules of Evidence, should be directed to your District or Regional Mock Trial Coordinators.

Answers to appropriate questions will be posted periodically in a supplemental memo on the mock trial website www.pabar.org, under the Young Lawyers Division (YLD) link.

You may begin submitting questions anytime. The deadline for submitting questions is noon on Wednesday, January 4, 2023. The final update will be posted no later than Monday, January 9th, 2023.

Questions must be sent in writing using email. Please be sure to include return contact information in the event we need to reach you to clarify a question. No questions will be considered unless submitted under this procedure. Questions E-mail:

david.trevaskis@pabar.org

Note on Names (and Disclaimer)

All characters in this case are fictitious. While the names of characters bear names reflecting important figures and certain other aspects of the case have been chosen to honor individuals, any further similarity to those persons or characters, and/or to any other actual persons is strictly coincidental.

As always, we’ve buried nuggets for you throughout the case.
COMPLAINT

AND NOW COMES Beatrice Desafios (Desafios), in their capacity as the Administrator of the Estate of the Decedent Alejandro Desafios (Estate), and alleges and avers the following:

FACTS

1. Alejandro Desafios (Decedent) died on or about October 25, 2021, in Potter County, Pennsylvania.

2. At the time of his death, Decedent was a resident of Laurel County, Pennsylvania.

3. Desafios is the duly qualified, appointed, and acting personal representative of Estate, in which Decedent died intestate.

4. Desafios was issued Letters of Administration and was duly and legally appointed Administrator of the Estate pursuant to the laws of the Commonwealth of Pennsylvania by the Orphan’s Court of Laurel County on November 22, 2021.

5. Accordingly, Desafios has the authority to bring all claims on behalf of Estate, including claims for wrongful death.

6. Storm Chase, LLC (Defendant), is incorporated in the State of Hawaii.

7. Upon information and belief, at all times relevant hereto, Defendant is permitted to do business in Pennsylvania and has done so on at least the relevant occasion.

8. Defendant solely owned and operated an Obstacle Course Race in Laurel County, Pennsylvania on or about October 23, 2021 (the “Event”).
9. Defendant was fully aware of the safety concerns, and other matters which were part of Event and, in fact, collected data and statistics regarding injuries on various event elements. Defendant was aware of its duty of care and failed to exercise same.

10. Defendant oversold the Event, permitting more individuals to participate that the course could handle.

11. Defendant also failed to ensure that unregistered participants or spectators were not able to access the course with registered participants.

12. On numerous occasions Defendant had knowledge of violations of safety protocols such as understaffing, overcrowding, and other dangerous conditions and took no ameliorative acts.

13. On numerous occasions, Defendant was made aware of the deficiencies of its safety protocols but chose to move forward with the Event anyways with those deficient and dangerous conditions in place.

14. Defendant failed to adequately supervise participants to ensure that they were starting the race at designated times.

15. Defendant designed the course at issue in this claim and had direct knowledge of the nature and type of danger.

16. Specifically, Defendant failed to design the course in a manner that could accommodate the number of participants it allowed to register for the Event. This resulted in participants unable to run the course in the intended manner.

17. Defendant failed to supervise unauthorized individuals from entering the course, resulting in overcrowding and dangerous conditions to occur.
18. The overcrowding and understaffing of the Event created conditions where participants were required to wait for long periods of time in conditions that created hazards for the participants.

19. Decedent was present on the day of October 23, 2021, for Event.

20. At one of Event’s obstacles, the “Abandon Ship”, participants were expected to climb a twenty (20) foot wall with cargo netting and ropes and, at the top of the platform, jump into a deep pool of mud and swim out to the other side.

21. Defendant designed “Abandon Ship” to have a pool of muddy water which was so deep, it was over the competitor’s head.

22. Because Defendant permitted the Event to become overcrowded, the top of the platform at one of the obstacles became congested with participants.

23. Decedent jumped off the platform at his designated time into the deep pit of muddy water.

24. As a result of Defendant’s failure to properly supervise the platform at issue, other participants began jumping off the platform before Decedent could clear the pit.

25. Participants continued to jump into the pit before Decedent had gotten clear of the area in question.

26. Although Defendant was alerted that Decedent had not emerged from the pit, it failed to take any action to stop other participants from continuing to jump into the pit.

27. Although Defendant was alerted that Decedent had not emerged from the pit, it failed immediately to take action to rescue him.

28. Without rescue, Decedent was left in the water, during which time he ceased breathing.
29. Despite the fact that Decedent had stopped breathing, Defendant and others in its employ or acting as its agents failed to act promptly or properly to resuscitate Decedent.

30. Participants jumping into the pit, as a result of Defendant’s failure to properly supervise the event, were the direct and proximate result of negligence, gross negligence, or recklessness of Defendant.

**COUNT I
NEGligence**

31. The preceding paragraphs are hereby incorporated herein as if restated in their entirety.

32. Storm Chase LLC was negligent and reckless at the time and place above mentioned in at least one or more of the following particulars:

   a. In failing to properly monitor occupancy of the course;
   
   b. In allowing unregistered racers to participate;
   
   c. In failing to maintain and properly train a sufficient staff to provide for safety of those participating in the event;
   
   d. In failing to supervise the event which involved known danger;
   
   e. In failing to design reasonable safety features;
   
   f. In failing to notify and fully train participants of procedures and processes; and
   
   g. In failing to render prompt, effective, and timely emergency assistance.

33. Storm Chase LLC knew or in the exercise of reasonable care should have known that Decedent and others present at the event would not realize that the conditions of the event posed an unreasonable risk of injury and that Decedent would be unable to protect himself from this condition due in part to the encouragement of Storm Chase LLC in creation of the conditions.
34. Storm Chase LLC was negligent in failing to prevent the creation of such conditions, in failing to warn Decedent of the creation of the conditions, and in failing to enforce its own rules and policies regarding such conditions.

35. Such negligence and carelessness on the part of Storm Chase LLC was the sole, direct, actual and proximate cause of the Decedent’s death.

**COUNT II**

**GROSS NEGLIGENCE/RECKLESSNESS**

36. The preceding paragraphs are hereby incorporated herein as if restated in their entirety.

37. Storm Chase LLC was grossly negligent and reckless at the time and place above mentioned in at least one or more of the following particulars:

   a. In failing to properly monitor occupancy of the course;
   
   b. In allowing unregistered racers to participate;
   
   c. In failing to maintain and properly train a sufficient staff to provide for safety of those participating in the event;
   
   d. In failing to supervise the event which involved known danger;
   
   e. In failing to design reasonable safety features;
   
   f. In failing to notify and fully train participants of procedures and processes; and
   
   g. In failing to render prompt, effective, and timely emergency assistance.

38. Storm Chase LLC was grossly negligent and reckless at the time and place above-mentioned, in that it knew or should have known of the serious danger its OCR posed to the participants involved, and consciously chose to continue with the Event in spite of that knowledge,
without providing adequate warning or information to participants, including Decedent, in these ways:

a. In deliberately disregarding its own safety protocols in intentional indifference to the consequence of such acts as it relates to the competitors’ safety, including Decedent;

b. In deliberately failing to provide adequate and appropriate emergency services, including its decision to not have sufficient lifeguards or other dive personnel near a known water obstacle like Abandon Ship;

c. In deliberately acting in a manner which is contrary to its known responsibility for the safety of its participants, including Decedent, who had a reasonable expectation that the Event would be conducted in conformity with a reasonable standard of care for such events, and would not be conducted in a manner which purposefully disregarded those standards for profit;

d. In purposefully creating an Obstacle Course Race with reckless disregard of the safety of its competitors, resulting in a substantial risk of harm to those competitors, including Decedent;

e. In deciding to continue with the conduct of the Event, despite knowledge that it posed substantial and unjustifiable risks to its participants, including Decedent;

f. In disregarding appropriate suggestions for medical care tent placement and emergency services, such that the conscious decision to not only disregard reasonable suggestions for the appropriate level of emergency services, but to provide less than those services, especially around an obstacle like Abandon Ship.

39. Storm Chase LLC knew or in the exercise of reasonable care should have known that Decedent and others present at the event would not realize that the conditions of the event posed an unreasonable risk of injury and that Decedent would be unable to protect himself from this condition due in part to the encouragement of Storm Chase LLC in creation of the conditions.

40. Storm Chase LLC was grossly negligent and reckless in its decision to fail to prevent the creation of such conditions, in failing to warn Decedent of the creation of the conditions, and in
failing to enforce its own rules and policies regarding such conditions, despite knowledge that such conditions posed a serious and substantial risk to its participants, including Decedent.

41. Such negligence and carelessness on the part of Storm Chase LLC was the sole, direct, actual and proximate cause of the Decedent’s death.

WHEREFORE, Estate demands judgment in its favor against Storm Chase LLC and further demands that actual and punitive damages be awarded in favor of Estate in an amount to be determined by the jury.

COUNT III
SURVIVAL ACTION

42. The preceding paragraphs are hereby incorporated herein as if restated in their entirety.

43. Plaintiff brings this action on behalf of the Estate of their son Alejandro Desafios, pursuant to 20 Pa. C.S.A. §3373 and 42 Pa. C.S. §8302 for damages suffered by the Estate of Alejandro Desafios as a result of his death, as well as pain and suffering suffered by the Decedent prior to his death.

44. As a direct and proximate result of the negligence, gross negligence and recklessness of the Defendant as set forth herein, Alejandro Desafios died.

45. As a direct and proximate result of the negligence, carelessness, gross negligence, willful and wanton conduct of the Defendant, Alejandro Desafios suffered physical pain, mental anguish, emotional distress, discomfort, medical costs and expenses, loss of future earnings and income and other benefits, including loss of life's pleasures

46. As a further result of the death of Alejandro Desafios there has been a loss of earning capacity, value of household services, retirement income and all other economic losses for which damages are claimed by Plaintiff on behalf of Decedent's Estate.
47. Beatrice Desafios, Administrator of the Estate of Alejandro Desafios, makes a claim, therefore, together with all other damages recoverable pursuant to Pennsylvania law.

**WHEREFORE**, the Administrator of the Estate of Alejandro Desafios, Deceased, pursuant to the Survival Statute, 42 Pa. C.S. §8302, demands judgment against the Defendant in an amount which exceeds the amount requiring compulsory arbitration, pursuant to Pa. R.Civ.P. 102l(c), together with interest, costs of suit, delay damages, punitive damages and all other damages as allowed by Pennsylvania law.

**COUNT IV**

**WRONGFUL DEATH ACTION**

48. The preceding paragraphs are incorporated herein as if restated in their entirety.

49. Beatrice Desafios brings this action pursuant to 42 Pa.C.S.A. §8301 and Pa. R.Civ.P. 2202 as the personal representative of her son, Alejandro Desafios, to recover for his wrongful death.

50. As a direct and proximate result of the Defendant's conduct as set forth herein, Plaintiff has suffered and Defendant is liable for the following damages, including but not limited to:

   (a) Funeral expenses for the Decedent;
   
   (c) Expenses of administration related to the Decedent's Estate;
   
   (d) Plaintiff’s loss of contributions for support, care, and services which would have been provided to his mother.

51. Beatrice Desafios, as Administrator of the Estate of Alejandro Desafios, bring this action on behalf of the following persons who are entitled to recover damages in this action:

   Beatrice Desafios          Mother
52. By reason of the death of the Decedent, his survivors have suffered pecuniary loss, including but not limited to funeral expenses and loss of economic benefits, as described herein.

WHEREFORE, Beatrice Desafios as Administrator of the Estate of Alejandro Desafios, Deceased, pursuant to the Wrongful Death Statute, 42 Pa. C.S. §8301, demands judgment against the Defendant in an amount which exceeds the amount requiring compulsory arbitration, pursuant to Pa. R.Civ.P. 1021(c), together with interest, costs of suit, delay damages, and all other damages as allowed by Pennsylvania law.

____________________________
ATTORNEY FOR PLAINTIFF
ESTATE OF ALEJANDRO DESAFIOS, by and through its Administrator, Beatrice Desafios, Plaintiff, 

v.

STORM CHASE, LLC, Defendant.

THE COURT OF COMMON PLEAS OF THE 61ST JUDICIAL DISTRICT OF THE COMMONWEALTH OF PENNSYLVANIA 

Docket No.: CP-64-CV-0159-2021

ANSWER

AND NOW COMES Storm Chase LLC, (Storm Chase) and in response to Plaintiff’s Complaint, respectfully states to the Court as follows:

FACT

1. ADMITTED.

2. Based on information available to Storm Chase, the allegations are ADMITTED.

3. Based on information available to Storm Chase, the allegations are ADMITTED.

4. Based on information available to Storm Chase, the allegations are ADMITTED.

5. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is DENIED.

6. ADMITTED.

7. ADMITTED.

8. ADMITTED.

9. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is DENIED.

10. The averment is a conclusion of law for which no answer is required. To the extent the averment is deemed factual, the averment is DENIED. By way of further answer, Storm Chase did not oversell the event on or about October 23, 2021.
11. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

12. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

13. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

14. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

15. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

16. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

17. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

18. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

19. **ADMITTED**.

20. **ADMITTED**.

21. **ADMITTED**.

22. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

23. **ADMITTED**.
24. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

25. **DENIED** as stated. By way of further answer, participants continued to jump without instruction to jump.

26. **DENIED**. By way of further answer, staff attempted to react appropriately in accordance with their training.

27. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

28. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

29. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

30. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

**COUNT I**
**NEGLIGENCE**

31. The preceding paragraphs are hereby incorporated herein as if restated in their entirety.

32. The averment and all of its subparts are conclusions of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

33. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

34. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.
35. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

**COUNT II**

**GROSS NEGLIGENCE/RECKLESSNESS**

36. The preceding paragraphs are hereby incorporated herein as if restated in their entirety.

37. The averment and all of its subparts are conclusions of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

38. The averment and all of its subparts are conclusions of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

39. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

40. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

41. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

**COUNT III**

**SURVIVAL ACTION**

42. The preceding paragraphs are hereby incorporated herein as if restated in their entirety.

43. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

44. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.
45. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

46. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

47. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

**COUNT IV**

**WRONGFUL DEATH ACTION**

48. The preceding paragraphs are hereby incorporated herein as if restated in their entirety.

49. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

50. The averment and all of its subparts are conclusions of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

51. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

52. The averment is a conclusion of law to which no answer is required. To the extent the averment is deemed factual, the averment is **DENIED**.

**NEW MATTER**¹

53. The preceding paragraphs are hereby incorporated herein as if restated in their entirety.

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¹ For brevity, the case materials do not include a Reply to New Matter. Assume that all of the New Matter paragraphs were properly denied and that the relevant pleadings are closed.
54. Alejandro Desafios (Decedent) signed a waiver to participate in the Event acknowledging and accepting any and all risk associated with any injury that resulted during his participation in the event.

55. Decedent knew or should have known that that the Event was a physical, athletic activity designed for those who were in peak physical condition.

56. Decedent knew or should have known that participating in the Event if they were not physically able to do so could lead to physical injury up to and including death.

57. Any and all injuries or damages sustained by Plaintiff were caused by the negligence or willfulness of the Decedent.

58. The injuries and damages sustained by Plaintiff were caused by the negligence or willfulness of the Decedent combining, concurring, and contributing with the negligence or willfulness, if any, on the part of Defendant. Because the Decedent’s negligence or willfulness is greater than the alleged negligence or willfulness of the Defendant, Plaintiff is barred from recovery against the Defendant.

59. Any injuries and damages sustained by Plaintiff were caused by the negligence or willfulness of Decedent combining, concurring and contributing with the negligence or willfulness, if any, on the part of Storm Chase LLC. Therefore, the Court should reduce any recovery awarded to the Plaintiff for the alleged injury and damages based upon the percentage of negligence or willfulness attributed to Decedent.

60. Decedent was aware of the conditions of the course and assumed the risk of ultimate injury and death.

61. Decedent voluntarily placed himself in a position of risk, assuming all risk, which is a complete bar to recovery.
62. Decedent was aware of and voluntarily assumed the risk of the activity by knowingly and voluntarily signing a waiver which is a complete bar to Decedent’s and Plaintiff’s recovery.

63. Whatever injuries or damages may have been sustained by Plaintiff of Plaintiff’s Decedent while denying the same were due solely to, caused wholly by, and were a direct proximate result of the negligence of a third party not under Storm Chase LLC’s control. Therefore, Plaintiff is barred from recovery against Storm Chase LLC. Storm Chase LLC gives notice that they will further assert any other defenses that arise during the course of this trial.

64. Decedent unreasonably failed to avoid injury by failing to exercise ordinary care under the circumstances.

65. Storm Chase LLC’s actions were not a factual or proximate cause of the injuries and/or death suffered by Decedent.

WHEREFORE, Storm Chase LLC demands judgment in its favor against Plaintiff.

________________________
ATTORNEY FOR DEFENDANT
Presently before the Court is Defendant Storm Chase LLC’s motion for summary judgment based on plaintiff’s decedent’s execution of a waiver prior to undertaking the Storm Chase World Championship 2021 obstacle race (the “Event”) in October 2021. Following review of the submissions of the parties and the evidence of record, the Court grants in part and denies in part Defendant’s motion.

Plaintiff claims negligence, gross negligence, and recklessness led to its decedent’s death during the Event. Defendant responds that Plaintiff waived these claims or, in the alternative, that the evidence shows at most negligence, and Plaintiff’s decedent, Alejandro Desafios, waived that claim.

With respect to Count 1, averring negligence, Defendant is correct that the waiver determines the outcome. Mr. Desafios executed a waiver online as part of registration, well before the day of the Event. The waiver was carefully drawn and explained the risks of the Event in, at least, sufficient detail to put him on notice of the core and most salient of them. Mr. Desafios was an adult and an educated man, one more than capable of making the decision to engage in a somewhat dangerous activity for pleasure and to accept the risks of so doing. Plaintiff argues that some small number of these risks could have been defined more clearly by the waiver. Even assuming this is true, the Court finds it vanishingly unlikely that they would have made a difference here: Mr. Desafios was happy to climb heights, plumb depths, and face down electric shock or burns – all parts of real, identified and pictured obstacles – in pursuit of his enjoyment. Whether some other risk might have been articulated more perfectly, Desafios assumed those that mattered most, and he did so as far as the record reflects in the company of his teammates and coworkers while all involved were sober and had adequate time to consider the consequences of their actions. Defendant is therefore entitled to judgment on Count 1.

However, of course, there are limits to waiver. No individual may waive the right to be free from gross negligence or recklessness. “[W]ere we to sanction releases for reckless conduct, parties would escape liability for consciously disregarding substantial risks of harm to others; indeed, liability would be waivable for all conduct except where the actor specifically intended harm to occur. There is near unanimity across jurisdictions that such releases are unenforceable, as such releases would jeopardize the health, safety, and welfare of the people by removing any incentive for parties to adhere to minimal standards of safe conduct.” Tayar v. Camelback Ski Corp., 616 Pa. 385, 405, 47 A.3d 1190, 1203 (2012).
In other words, the law of contract cannot be allowed to protect those who consciously disregard substantial risks of harm to others. Rather, all Pennsylvanians are permitted to assume that even in voluntary recreational settings, the individuals establishing the recreation will at worst act unreasonably, not with deliberate indifference to their needs.

Until recently, there was an open question whether gross negligence claims could be waived. The Supreme Court of Pennsylvania resolved this debate three years ago, holding that the “lack [even] of slight diligence or care” or conduct that is “significantly worse than ordinary negligence” requiring proof that the actor “significantly departed from how a reasonably careful person would act under the circumstances” (emphasis added) could not be waived.\(^2\) *Feleccia v. Lackawanna Coll.*, 654 Pa. 324, 351, 215 A.3d 3, 19 (2019). We follow this sound decision, as we must. If Plaintiff can prove *either* that Defendant consciously disregarded substantial risks of harm to Alejandro Desafios or that it “extremely” departed from ordinary care, then Mr. Desafios could not waive the liability.

Determining Count 2 therefore requires fact finding. Defendant argues that its actions were at most negligent, departing from ordinary care at most a little. Plaintiff counters that Defendant’s failures were well beyond that hazy line separating an ordinary departure from an extreme one and/or that Defendant consciously ignored substantial risks. The Court is unconvinced that its job is to sort out exactly how bad this bad was. That is why we have juries. Rather, it is enough to say that there is a material issue of fact, that Plaintiff could prove facts that a reasonable juror could find cross that line. Accordingly, this matter is left for trial.

As to Count 3, Defendant argues that there is no evidence that Mr. Desafios suffered at all, that he might have been unconscious as soon as he hit the mud beneath the Abandon Ship obstacle. Plaintiff counters that he might have suffered for minutes in the muddy water, evoking the horrors that could have occurred. The Court is skeptical that Plaintiff can show specific suffering, but again, this is a matter best left for the factfinder, after the evidence has been adduced at trial. Defendant’s motion is therefore denied

Defendant’s Motion for Summary Judgment is granted with respect to Count 1 and denied with respect to Counts 2, 3 and 4. The Prothonotary shall list this matter for trial forthwith.

**SO ORDERED.**

*Blake Barklage, J.*

\(^2\) *Feleccia*, 654 Pa. at 351-52 somewhat helpfully summarized gross negligence as follows:

In essence, gross negligence is merely negligence with a vituperative epithet. It constitutes conduct more egregious than ordinary negligence but does not rise to the level of intentional indifference to the consequences of one’s acts. It may also be deemed to be a lack of slight diligence or care comprising a conscious, voluntary act or omission in reckless disregard of a legal duty and the consequences to another party. The term has also been found to mean a form of negligence where the facts support substantially more than ordinary carelessness, inadvertence, laxity, or indifference. The behavior of the defendant must be flagrant, grossly deviating from the ordinary standard of care.
PRELIMINARY INSTRUCTIONS

• Role of the Jury

Now that you have been sworn, I have the following preliminary instructions for your guidance as jurors in this case.

You will hear the evidence, decide what the facts are, and then apply those facts to the law that I will give to you.

You and only you will be the judges of the facts. You will have to decide what happened. I play no part in judging the facts. You should not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be. My role is to be the judge of the law. I make whatever legal decisions have to be made during the course of the trial, and I will explain to you the legal principles that must guide you in your decisions. You must follow that law whether you agree with it or not.

Moreover, although the lawyers may have called your attention to certain facts or factual conclusions that they thought were important, what the lawyers said is not evidence and is not binding on you. It is your own recollection and interpretation of the evidence that controls your decision in this case.

Neither sympathy nor prejudice should influence your verdict. You are to apply the law as stated in these instructions to the facts as you find them, and in this way decide the case.

• Evidence

The evidence from which you are to find the facts consists of the following:

1. The testimony of the witnesses;
2. Documents and other things received as exhibits;
3. Any facts that are stipulated— that is, formally agreed to by the parties; and
4. [Any facts that are judicially noticed— that is, facts I say you must accept as true even without other evidence.]

The following things are not evidence:

1. Statements, arguments, and questions of the lawyers for the parties in this case;
2. Objections by lawyers;
3. Any testimony I tell you to disregard; and
4. Anything you may see or hear about this case outside the courtroom.

You must make your decision based only on the evidence that you see and hear in court. Do not let rumors, suspicions, or anything else that you may see or hear outside of court influence your decision in any way.

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

There are rules that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence, and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. This simply means that the lawyer is requesting that I make a decision on a particular rule of evidence. You should not be influenced by the fact that an objection is made. Objections to questions are not evidence. Lawyers have an obligation to their clients to make objections when they believe that evidence being offered is improper. You should not be influenced by the objection or by the court’s ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other.

Also, certain testimony or other evidence may be ordered struck from the record and you will be instructed to disregard this evidence. Do not consider any testimony or other evidence that gets struck or excluded. Do not speculate about what a witness might have said or what an exhibit might have shown.

- **Direct and Circumstantial Evidence**

  Evidence may either be direct evidence or circumstantial evidence. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw, heard, or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give. You may decide the case solely based on circumstantial evidence.

- **Credibility**

  In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You are the sole judges of the credibility of the witnesses. “Credibility” means whether a witness is worthy of belief. You may believe everything a witness says or only part of it or none of it. In deciding what to believe, you may consider a number of factors, including the following:

  1. the opportunity and ability of the witness to see or hear or know the things the witness testifies to;
  2. the quality of the witness's understanding and memory;
  3. the witness's manner while testifying;
  4. whether the witness has an interest in the outcome of the case or any motive, bias or prejudice;
5. whether the witness is contradicted by anything the witness said or wrote before trial or by other evidence;
6. how reasonable the witness's testimony is when considered in the light of other evidence that you believe; and
7. any other factors that bear on believability.

In deciding the question of credibility, remember to use your common sense, your good judgment, and your experience. Inconsistencies or discrepancies in a witness' testimony or between the testimonies of different witnesses may or may not cause you to disbelieve a witness' testimony. Two or more persons witnessing an event may simply see or hear it differently. Mistaken recollection, like failure to recall, is a common human experience. In weighing the effect of an inconsistency, you should also consider whether it was about a matter of importance or an insignificant detail. You should also consider whether the inconsistency was innocent or intentional.

After you make your own judgment about the believability of a witness, you can then attach to that witness' testimony the importance or weight that you think it deserves.

The weight of the evidence to prove a fact does not necessarily depend on the number of witnesses who testified or the quantity of evidence that was presented. What is more important than numbers or quantity is how believable the witnesses were, and how much weight you think their testimony deserves.

**POST-TRIAL INSTRUCTIONS**

- **Wrongful Death**
  
  In this wrongful death action, the Plaintiff, as personal representative of the Decedent's estate, claims that the Decedent wrongfully died as a result of the intentional act of the Defendant.

  Whenever the death of a person is caused by the wrongful act of another, and the act is one which would have entitled the Decedent to recover damages if the Decedent had not died, the personal representative of the estate of the Decedent may bring an action for wrongful death. The personal representative has a right to recover compensatory damages for the wrongful death.

- **Burden of Proof**

  This is a civil case in which the plaintiff seeks damages.

  The Plaintiff has the burden of proving its case by what is called the “preponderance of the evidence.” That means Plaintiff has to prove to you, in light of all the evidence, that what it claims is more likely so than not so. To say it differently: if you were to put the evidence favorable to Plaintiff and the evidence favorable to Defendant on opposite sides of the scales, the Plaintiff would have to make the scales tip ever so slightly to its side. If the Plaintiff fails to meet this burden, the verdict must be for Defendant. If you find after considering all the evidence that a claim or fact is more likely so than not so, then the claim or fact has been proved by a preponderance of the evidence.

  You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard of proof and it applies only to criminal cases. It does not apply in civil cases such as this, so you should put it out of your mind.
In determining whether any fact has been proved by a preponderance of evidence in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

This case is bifurcated, so damages are not at issue. As such, the Plaintiff need not prove the extent of the injuries or damages at this time.

In determining whether any fact has been proved by a preponderance of evidence in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

- Issue in the Case

The Plaintiff claims that the defendant, Storm Chase LLC ran an obstacle course in a manner that was grossly negligent or reckless, to the point that even though the Plaintiff’s decedent agreed to participate in it, Storm Chase LLC is responsible for his death. Storm Chase LLC contends that it was, at most, negligent. Storm Chase also claims that plaintiff’s decedent was himself negligent and partly or fully responsible for his own death. The Estate has the burden of proving its claims, and the Defendant has the burden of proving any responsibility by decedent.

Thus, the issue for you to decide, in accordance with the law as I give it to you, is:

Was Defendant’s conduct grossly negligent or reckless, in a way that caused Alejandro Desafios’ death? If so, how much – if at all – did Alejandro Desafios’ conduct contribute to his own death?

- Factual Cause

In order for the Plaintiff to recover in this case, the Defendant’s conduct must have been a factual cause in bringing about harm. Conduct is a factual cause of harm when the harm would not have occurred absent the conduct. To be a factual cause, the conduct must have been an actual, real factor in causing the harm, even if the result is unusual or unexpected. A factual cause cannot be an imaginary or fanciful factor having no connection or only an insignificant connection with the harm.

To be a factual cause, the Defendant’s conduct need not be the only factual cause. The fact that some other causes concur with the actions of the Defendant in producing an injury does not relieve the Defendant from liability as long as the Defendant’s own actions are a factual cause of the injury.

- Actions of Agents

All individuals are liable if they instruct others to act on their behalf and the others do so. It is not a defense that the defendant did not personally harm, if the defendant provided the means for another to do so. Similarly, corporations and other entities can only act through their agents, and corporations such as Storm Chase LLC is responsible for the actions its employees and agents took in the scope of their employment, that is to say while acting on behalf of the corporation.
• **Corporate Party.**

The fact that a plaintiff or defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

• **Fault - Defined.**

In these instructions I will be using the term "fault". Fault means one or more acts or omissions toward either the actor or of another which constitutes negligence, recklessness, or unreasonable assumption of the risk not constituting an enforceable express consent.

• **Recklessness Required**

In order to recover in this matter, the Plaintiff must prove that the Defendant acted more than just unreasonably. Showing that the Defendant acted unreasonably is sufficient to prove ordinary negligence, but to recover in this matter, the Plaintiff must show that the Defendant acted grossly negligent or that the Defendant acted recklessly, or both.

• **Gross Negligence – Defined.**

Gross negligence is significantly worse than ordinary negligence. To prove a party's conduct was grossly negligent, the conduct must significantly be departed from how a reasonably careful person would act under the circumstances. A person can be grossly negligent by acting or by failing to act.

• **Reckless Conduct – Defined.**

Reckless conduct is significantly worse than negligent conduct. The risk that harm will be caused by conduct that is reckless is higher than the risk that harm will be caused by conduct that is negligent. A person can be reckless by acting or by failing to act.

To prove that one's conduct was reckless, a party must prove that the offending party:

1. Knew a danger exists and;

2. Intentionally acted or failed to act in conscious disregard of the likelihood of harm to others.

Or, alternatively,

1. Should have known harm was certain to occur or reasonably certain to occur; and

2. Intentionally acted or failed to act in conscious disregard of the likelihood of harm to others.
• **Comparative Fault.**

As a defense, the defendant may claim that the plaintiff decedent’s own negligence was a factual cause of their injury or harm. In that case, the defendant has the burden to prove both of the following:

1. that the plaintiff’s decedent was negligent; and
2. that the plaintiff’s decedent’s negligence was a factual cause of their own injury or harm.

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the plaintiff and the defendant and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage of fault, if any, is attributable to Plaintiff Alejandro Desafios and what percentage of fault, if any, is attributable to Defendant Storm Chase LLC.

• **Unreasonable Failure to Avoid an Injury - Defined.**

A party is required to exercise reasonable care for their own safety. This means that, if, in the exercise of ordinary care under the circumstances, a party could have taken some particular action after an act of fault of another party, in order to avoid an injury, then they are under a duty to take such action.

• **Unreasonable Assumption of Risk - Defined.**

The defendant has asserted unreasonable assumption of the risk as an affirmative defense to plaintiff’s claim. In so doing, the defendant claims that plaintiff unreasonably assumed the risk of his injuries by 1. Being aware of the conditions of the course and the risk of ultimate injury and death and placing himself in a position of said risk, and 2. Knowingly and voluntarily signing a waiver.

In order to bar plaintiff’s recovery based on assumption of risk, the defendant must prove all of the following propositions:

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3 The case authors are aware that Pennsylvania law does not typically allow comparative fault (negligence) to reduce the damages from willful or wanton (i.e. reckless or grossly negligent) conduct. See generally Summit Fasteners, Inc. v. Harleysville Nat’l Bank & Trust Co., 599 A.2d 203, 207 (Pa. Super. 1991), appeal den., 606 A.2d 902 (Pa. 1992); Krivijanski v. Union R. Co., 515 A.2d 933 (Pa. Super. 1986); Wikert v. Kleppick, 8 Pa. D.&C.4th 193, 197 (Allegheny C.P. 1990) (J. Wettick) (“the Comparative Negligence Law does not apply where the defendant's conduct constitutes a reckless disregard for the safety of others”).

However, from time to time, we depart from a strict reading of Pennsylvania law in order to make the competition more fun, more interesting, or better balanced. This is such a time, and thus for purposes of this year's trial, the law of this competition will allow liability even for reckless or grossly negligent conduct to be reduced by plaintiff's comparative fault (i.e., the negligence of the plaintiff's decedent). We expect this version of the law will lead to more interesting, dynamic trials for both teams, even if it is not how things would play out under the actual law of the Commonwealth.
1. The plaintiff knew the risk was present.

2. The plaintiff understood the nature of the risk to himself.

3. Nevertheless, the plaintiff unreasonably, freely and voluntarily took the risk.

4. The plaintiff's assumption of the risk was a proximate cause of plaintiff's damage.

If the defendant has failed to prove any of these propositions, the defendant has not proved this defense. If the defendant has proved all of these propositions, then you will assign a percentage of fault against the plaintiff and include it in the total percentage of fault, if any, found by you in your answers to the special verdicts.

- **Comparative Fault - Effects of Verdict.**

  After you have compared the conduct of all parties, if you find the Alejandro Desafios was at fault and his fault was more than 50% of the total fault, the Plaintiff Estate of Alejandro Desafios cannot recover damages.

  However, if you find the plaintiff's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of plaintiff's fault.

- **Essentials For Recovery.**

  The plaintiff must prove all of the following propositions:

  1. The defendant was reckless or grossly negligent in one or more of the following ways:

     a) In failing to properly monitor occupancy of the course;

     b) In allowing unregistered racers to participate;

     c) In failing to maintain and properly train a sufficient staff to provide for safety of those participating in the event;

     d) In failing to supervise the event which involved known danger;

     e) In failing to design reasonable safety features;

     f) In failing to notify and fully train participants of procedures and processes; and

     g) In failing to render prompt, effective, and timely emergency assistance.

  2. The recklessness or gross negligence was a proximate cause of damage to the plaintiff.
3. The amount of damage, which will be the subject of a second part of the trial.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved any of these propositions, you will consider the defenses of comparative fault, and unreasonable assumption of the risk.

- **Trial Bifurcated**

  This case will be tried in two parts. The first part, which you are in now, concerns liability, the responsibility for the damages. In the second part of the trial, you will determine the exact amount of damages. You should not concern yourself with the exact amount of damages at this point in the trial. I will provide you separate instructions about that question before the next portion of the trial.

- **Proximate Cause - Defined.**

  The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct.

  "Substantial" means the party's conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

- **Concurrent Cause - Defined.**

  There can be more than one proximate cause of an injury or damage. When the fault of two or more separate parties is so related to an event that their combined fault, when viewed as a whole, is the cause of the event without which the event would not occur, then the fault of each party may be a proximate cause, provided the fault of each substantially contributes to plaintiff's injuries.

  "Substantial" means the party's fault has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

- **Sympathy and Prejudice**

  Please keep in mind that this dispute between the parties is, for them, a most serious matter. They and the court rely upon you to give full and conscientious consideration to the issues and the evidence before you. Neither sympathy nor prejudice may influence your deliberations. You should not be influenced by anything other than the law as I have stated it to you and the evidence in this case, together with your own judgment and evaluation of that evidence.

  All parties stand equally before the court, and each is entitled to the same fair and impartial treatment in your hands. Please keep in mind that you are bound by the law, and your sole job in this case is to be judges of the facts. You are to use your common sense and collective experience to determine the facts in this case and to balance the competing interests in accordance with the law with which I have just instructed you.
STIPULATIONS

1. All documents, signatures and exhibits, including pre-markings, included in the case materials are authentic and accurate in all respects; no objections to the authenticity of any of the foregoing will be entertained. The parties reserve the right to dispute any legal or factual conclusions based on these items and to make objections other than to authenticity.

2. Jurisdiction, venue and chain of custody of the evidence are proper and may not be challenged.

3. All statements were notarized on the day on which they were signed.

4. This trial shall be bifurcated, and liability shall be the only issue on the date of trial. Damages shall be considered later, in a separate proceeding, if necessary.

5. All signatures on letters, witness statements and other documents are authentic. Those statements not including a signature are presumed to have been signed and authenticated.

6. Whenever a rule of evidence requires that reasonable notice be given, it has been given.

7. The Medical Examiner determined the official cause of the death of Alejandro Desafios to be accidental drowning. Alejandro Desafios was pronounced dead by the treating physician, Dr. Lindsay Rogers, on Monday, October 25, 2021 at 3:26 p.m.

8. Alejandro Desafios signed the Storm Chase Assumption of Risk, Waiver of Liability and Indemnity Agreement on Saturday, October 23, 2021.

9. The parties attempted to mediate this matter and failed to reach agreement. Subsequently, both have agreed to waive arbitration and proceed to trial.

10. The decedent, Alejandro Desafios, was male. This does not affect the gender of the witnesses involved nor does it have an impact on the relationships between the decedent and the witnesses.
11. The plaintiff’s Administrator, Beatrice Desafios, will not be present during the liability trial, and plaintiff will not have a party representative at counsel table. Ms. Desafios reserves the right to testify during the trial of damages, should that occur.

12. Exhibit 1 is a copy of the Storm Chase flier for the Penn’s Peak event. It was obtained by plaintiff in discovery from the files of Storm Chase LLC.

13. Exhibit 2 is a copy of a waiver identical to that electronically signed and initialed in each blank space by Alejandro Desafios. It was produced in discovery by Storm Chase LLC.

14. Alejandro Desafios was of sound mind and body at the time he electronically signed and initialed a document identical to Exhibit 2.

15. Exhibit 3 is a copy of the quiz questions individuals completing the Storm Chase LLC waiver and registration process must answer at different points during their registration process. The questions pop up on the website between portions of the waiver or registration materials and must be completed before the registration or waiver process can continue. These questions were provided by Storm Chase LLC during the discovery process from its electronic files.

16. Exhibit 4 is a copy of the Storm Chase Pledge signed by all registered Storm Chase participants on the day of the event. This copy is identical to that completed and signed by Alejandro Desafios on the day of the Penn’s Peak event and was produced in discovery from the files of Storm Chase LLC.

17. Exhibit 5 is a map of the Penn’s Peak competition route, including the obstacles present on the course on the day of the event. It was produced in discovery from the files of Storm Chase LLC.

18. No photo of Abandon Ship exactly as it was at Penn’s Peak exists. Exhibit 6 is a picture selected by Tori Damon as described in Lines 140-43 of Damon’s statement. It may be used by either party to show the approximate appearance of Abandon Ship.

19. Exhibit 7 are accurate depictions of signs posted by Storm Chase LLC at the Penn’s Peak event. These photos were retrieved from various social media sites by D.J. Hatchet. Each individual identified as a witness in this trial who was present at the Penn’s Peak Event on October 23, 2021 saw each of these signs.

20. Exhibits 8 and 9 are articles written by D.J. Hatchet and published on Dr. Danger’s Sports Xtreme, a website operated by Dr. Danger Sports Xtreme LLP. It was obtained by the parties jointly from that website.

21. Exhibit 10 is a record obtained in discovery from Storm Chase LLC. It was created by Storm Chase medical staffers under the direction of Dr. Lindsay Rogers on the day of the Penn’s Peak event.

22. Exhibit 11 are emails obtained in discovery from the personal email account of Dr. Lindsay Rogers. An identical copy of these emails was retrieved in discovery from files of Storm Chase LLC from the account of Chris Tempesto. Emails were exchanged on October 24, 2021.
To the jury:

To further clarify instructions given to you by the trial judge, you are being provided with the following verdict form. At the conclusion of your deliberations, one copy of this form should be signed by your foreperson and handed to the court clerk. This will constitute your verdict.

**Question 1:**

Do you find the plaintiff, the Estate of Alejandro Desafios, has shown that it is more likely than not the defendant, Storm Chase, LLC, or its employees or agents acted grossly negligent through act or omission in designing or operating the Penn’s Peak Obstacle Course Race on October 23, 2021?

Yes _______ No __________

Continue to Question 2

**Question 2:**

Do you find the plaintiff, the Estate of Alejandro Desafios, has shown that it is more likely than not the defendant, Storm Chase, LLC, or its employees or agents acted recklessly through act or omission in designing or operating the Penn’s Peak Obstacle Course Race on October 23, 2021?

Yes _______ No __________

If you have answered either Question 1 or Question 2 or both “Yes,” continue to Question 3. Otherwise, sign at the bottom of this sheet and return to the courtroom.
Question 3:

Did you find that the defendant, Storm Chase, LLC, has shown that it was more likely than not that Alejandro Desafios acted negligently and/or assumed an unreasonable risk with respect to the Obstacle Course Race on October 23, 2021?

Yes ________ No __________

If you have answered Question 3 “Yes,” continue to Question 4. Otherwise, sign at the bottom of this sheet and return to the courtroom.

Question 4:

Without considering the amount of damages suffered by the Estate of Alejandro Desafios as a result of the alleged operations of the Obstacle Course Race, please identify the portion of those damages that was caused by the negligence of each of the following:

- Storm Chase, LLC, including its employees and agents ___________%
- Alejandro Desafios ___________%

The percentages you have listed for liability must add up to 100%. If they do not, you must re-assign percentages to those individuals found liable until the total liability you have apportioned among responsible individuals is 100%.

You have finished your deliberations. Please sign at the bottom of this form, then please return to the courtroom.

_____________________
Foreperson
List of Witnesses

The prosecution and defense must call each of their respective witnesses. No party representatives may sit at counsel table.

For the Plaintiff:

- Tori Damon: Storm Chase Participant
- Dr. Lindsay Rogers: E.R. Doctor and Storm Chase Medical Personnel
- D.J. Hatchet: Obstacle Race Aficionado

For the Defense:

- Chris Tempesto: Defendant, Founder of Storm Chase, LLC
- Devin Cody: Director of Competitor Safety, Storm Case, LLC
- Izzy Cameron: Obstacle Race Aficionado
Statement of Tori Damon

My name is Tori Damon. I am 36 years old, and I was raised in Winnipeg, though my family wintered on Tortola, in the British Virgin Islands. I attended McGill University in Montreal, which is basically the Yale of Canada, and later earned a Master’s Degree in Corporate Communications from Villanova. I own and run, and serve as CEO of TD Island LLC, a niche marketing and public relations firm in Wisawe, Pennsylvania, proving a full-service, turnkey operation: web designers, graphic artists, social media experts, and public relations specialists, plus one counsel versed in the intersection of the law of U.S. and Commonwealth nations. “Alé” Desafios was one of our top public relations experts; we hired him from Xenopharma, where he was a crisis management professional. TD only has 20 employees, and we consider them all family. Losing Alé was crushing.

TD’s job is to connect our clients and to make sure they enjoy working together. That’s how we do business internally, too: I create an enjoyable workplace, laid back and creative. We participate as a team in lots of extracurricular activities – softball, bowling, dodgeball, trivia nights, etc. Alejandro was by far our most competitive team-member. I think it was something in the water at Xenopharma – they’re extremely competitive – or maybe crisis management is just highly adrenalized. Whatever it was, he would brag about his wins, his times, his weights and reps… he didn’t mean anything by it, but our corporate culture was more “play for the fun of it,” and Alé thought the fun was winning. It was a bit much. But Alé was also a team player: always the first to help someone down or hurting. Although I would schedule TD for a variety of events, I especially loved outdoor activities, because that contributes to happiness on more than one level.

That’s why I was intrigued when we were contacted by Storm Chase. Like everyone else, I knew about extreme obstacle events and had seen snippets of mud races on the Web. Storm Chase was planning an event like that deep in Potter County, not far from Wisawe, in the Fall at Penn’s Peak. They were lining up corporate sponsors and offering group discounts for company-sponsored teams. COVID had hit us hard – after all, our business requires travel – so we were in no position to sponsor. But a presence at events like that, with hard-charging executives from Philadelphia or Wilmington, can be a real boon. Sponsoring the Zombiepocalypse in 2019 helped us create a six-figure client relationship with Salus LLC, and when they were bought by Pop-Cap, we brokered Pop-Cap’s exclusive right to sell energy drinks at all Carnival and Princess Cruises ports in British Columbia, Alaska, and the British Virgin Islands. That deal made us! Of course, looking weak to competitive executives is not helpful: Alé and I both knew a strong time in the race would help make us “winners” in their eyes.
None of us had ever participated in a mud run, and the Storm Chase run was longer than most: 12 full miles. It looked like a challenge, but the event website encouraged costuming, so I figured it would be fun, too. To get psyched, we watched some clips of Spartan Race on TV and videos of Tough Mudder, and it was clear this was going to be a whole new level of challenge. Our team was fitter than most, but even so, we would have to train a little differently.

Since the event was around Halloween – and because it’s fun! – we decided to go in costumes. We had just lost the fall soccer title to Xenopharma, and Alé suggested we dress up as bog turtles to get even. I don’t know what that’s about; I guess they have some kind of history with them? We didn’t go crazy, just put on body paint with “Save the Bog Turtles” written in white on top of our green shells. We knew better than to weigh ourselves down. We certainly stood out, but we were hardly the weirdest or most elaborate costume! The Xenopharma team wore custom Nike rugby jerseys. Lame! Classic Xeno, substituting money for creativity.

We knew we would have to sign some sort of waiver. It’s a basic fact of life – if you want to do anything fun, you’ve got to sign a waiver. Download a video game – sign a waiver. Go on a cruise – sign a waiver. Jump out of an airplane – sign the waiver. Usually, it’s automatic: click or sign your name on the dotted line. This one was a lot more complicated: it was electronic, part of online registration, and there was this dumb quiz that really didn’t relate to the waiver but made us slow down and pay attention. We all scanned the document but did not read it closely – at least I know that I didn’t. They can’t really expect anyone to read these things, can they?

A week before the event, I heard that the Storm Chase was sold out. I think it helped that the stars were coming out – John Lande from American Ninja Warrior and Christina Thompson from the Amazing Race. I was even happier to hear that they were selling spectator tickets: more eyeballs on the team, more folks to meet at the after-parties. I had another couple hundred business cards printed. Alé was excited, too. He said, “a win here is a PR bump that would take me months to get otherwise.” He wasn’t wrong, but I reminded him that it was about the fun and bonding.

The race lived up to the waiver, though! As I said, from YouTube, we knew that there was some danger involved. The event site really played that up, though: signage was everywhere at the start of the course with Caution and Danger warnings. There was even one with skull and crossbones with the words “Danger” and “Obsta-Kill Course” written on it. Everyone took their selfies there, but nobody took the possibility of death seriously. It was just in good fun, right?

The event opened at 8:30 in the morning, but teams had staggered start times, with groups leaving every 15-20 minutes starting at 9:00. Our team was meant to start a little after 10am, so we
were up at dawn to tailgate and schmooze. There were five of us: me, Alé, Katie, Reed, and Jenny. I’m not a bad hand on the skillet, so I whipped up some eggs and bacon, and Alé had been a bartender during college, so he was mixing some liquid courage. Each of us had probably had a couple by the time we got to registration, but my attention was on the tabasco eggs, so some might have had more or fewer. Nobody was intoxicated or impaired, as far as I could tell, and I’ve been with these people a lot. We’re like family after all!

When we arrived at the site, we checked in, participated in a “pledge ceremony” that felt more like a cult initiation than a race briefing, and were given bibs with race ID numbers as well as one RFID tag for our team leader to track our time. We gave that to Alé, of course. Then our race IDs were written in black Sharpie on our foreheads, heightening the merriment.

We got to the start line a few minutes late, but the Storm Chase monitor for groups starting at our time slot, a hippie named Izzy, allowed us to join. The rest of our time group was not happy; they had to wait for us to get there. After that, I felt like we had a target on our backs. As a group, we moved up a hill to the first obstacle, a basic climbing wall approximately 12-15 feet tall with a sheer drop into a mud pit on the other side. It was an easy one, but it got juices flowing: we were covered in filth and ready for a good time! At the back end of the pit, there was Izzy again, reading off a cue card about the do’s and don’ts of the course. Like one final reminder before we entered the real hell that was this competition. Izzy was supposed to keep an eye on us, but I rarely saw them. We were moving too fast and whenever we were at an obstacle, Izzy was off taking a smoke break or something. No one gave us any useful information about how things would work, and there definitely was no mention of this “flag system” I know Storm Chase is saying existed. The “instructions” were just theatre, really.

Most of the obstacles were pretty typical: you run through them, over them, or under them. But some took much more time to figure out, or teamwork to surmount. Those couldn’t be finished quickly. Crowds tended to back up at these, milling around while waiting for those ahead to finish, getting cold and tightening up. That seemed like an obvious, pretty avoidable problem... Storm Chase could have built doubles for those obstacles, or not had them at all. They’ve done this before, right? Instead, the backups got everyone agitated and impatient.

Even stranger, a mile or two in, I started noticing participants without race bibs. Others had different colored Sharpie numbers on their faces or different letter and number combinations – as if they had done it themselves. I wanted to say something to Izzy about it but couldn’t afford to waste time looking for where they went. Still, it seemed like there were more than a few people crashing the party! To some extent, that’s inevitable: Penn’s Peak is an open area. But I was surprised that the race
staff didn’t pull those people off the course, because there had to be dozens, maybe even hundreds of “extra” participants on the course just that we saw during our small-time window. And ten or fifteen extra people on an obstacle can really change the experience, adding chaos and crowding, and not for the better!

In the online registration, we were all told that this was not a race and that teamwork was more important than speed! We were also told that there was no requirement to complete all of the obstacles; that we could skip any obstacle and take a time penalty. But the vibe was different on the course: there were official-looking monitors in Storm Chase shirts at each obstacle, screaming like drill sergeants for everyone to go through all of the obstacles; there was a giant leaderboard showing the top times; and anyone skipping a hurdle got an earful from spectators, other competitors, and even sometimes event officials. I know they were creating excitement, but there were racers who were bloody, muddy, and confused. Some definitely could have used a break. At one point, even Alé looked like he wanted to go around one of the electric fence obstacles, but the shouting from the crowd and a Storm Chase staffer led him (and therefore all of us) back to the obstacle anyway. You could just tell he was bullied into it.

Lots of the obstacles involved water or mud, which never really warmed up. In fact, the third or fourth obstacle on the course was a dunk in an ice bath, I guess to brutalize anyone not frozen by the mud jump already…? And it was early on, so no one felt good skipping it. After that, whatever patience participants had evaporated – there was a ton of pushing, shoving, and grumbling at later obstacles. Worse, everyone seemed to get caught up in the silly “need for speed” – even though the only prize for being fast was being put on a big board and having a photo on the Storm Chase webpage. It was probably inevitable that folks who chose this kind of “fun” would get whipped up into a competitive feeding frenzy, but Storm Chase made sure of it.

There were medical service tents set up in a few places, and there were a couple places to get a drink of water or sit and recover. But for the length of the course, I often felt like I needed more hydration. And from what I saw, the medics in the tents were busy! Lots of bumps, scrapes, and bruises, but I noticed one person with a gashed leg, another with blood streaming from a broken nose, and one who had broken an arm. In all, the med tents looked overworked. There were also golf carts and ATVs lined up to take the more serious cases to ambulances in the parking lot.

By about 90 minutes in, the whole team was dragging. Honestly, I was a little concerned. We all got jolted in the Electric Storm, Katie more than once! Jenny messed up her ankle on the descent of the Mudslide, and Alé had taken a thump to the head on the Cyclone. Plus, we each must have sucked down
a gallon of mud. Alé was struggling more than most. He staggered a couple times, and once when he got
up, he started running the wrong direction. I figured maybe he was dehydrated or still feeling the Bloody
Marys or something, so I asked him at one point if he wanted to bail or have the team crash out for a
few extra minutes at one of the water tents that were all around the course. He would have none of it;
Alé never gives up, that’s just the type of person he is. Was.

We hit the Abandon Ship sometime not too long after noon. The front end was pretty basic: a
20-foot wall with cargo netting and ropes to climb. Alé struggled with the climb, which was not like him,
but the event had been going for hours by this point, so the nets and ropes were slick with mud, and
only Katie – who is part monkey or something! – got up at the usual pace. While some of the stronger
climbers around us were helping others, in the spirit of the event, as Katie helped Alé, others were
loudly grumbling and even cutting the line. At the top of the obstacle was a relatively narrow platform
to wait on. Then each runner walks out onto another mud-slick piece of wood, fashioned as a kind of
plank on a pirate’s ship, and jumps the 20 to 25 feet back down into a deep pool of mud and has to pull
themselves out or swim out to the other side, maybe 20 yards away. I wasn’t stopping for pictures that
day, but afterward, Alé’s lawyers asked me to look at a bunch of similar obstacles from other races, and I
picked one that was either the Abandon Ship or one just like it, except that the top was open, without
those guard rails, and Abandon Ship sure felt taller than that!

When we finally reached the top of Abandon Ship as a team, it was really congested: people
were everywhere, and more were climbing up all the time. It was like a scene out of the Walking Dead,
and worse, there was no sense of organization... no waiting line, or indication of whose turn it was to go
next, or even when it might be safe to jump. There was only one event monitor at the top, and she was
waiving a red flag, but no one knew what that meant, or no one was listening, or both. She was also
shouting at folks, waving her hand with some kind of walkie-talkie, but I couldn’t even hear her over the
crowd and Dropkick Murphy’s Shipping Up to Boston blasting on repeat. There was no controlling the
crowd at this point. And the super-competitive teams were not even pretending; they just muscled to
the front and jumped whenever they felt like it. I would like to say Team TD did better, but Jenny and
Reed did all anyone of us could do: they just went and jumped at the first available moment. I saw them
paddle to the far side of the pit and climb the cargo netting out of the pool. They waved back to Alé,
Katie, and I at the top of the platform. Alé looked nervous, and he was waiting for a few others in the pit
to swim to safety. People kept slamming into him, and he was off-balance from it. He shoved one or two
of others back. Then he jumped in himself, with Katie close behind. Right after they landed, the
Xenopharma team that had started twenty minutes behind us blasted up the cargo netting and –
without even looking – all jumped in together from the same spot, five at once. I don’t know if they saw
Alé and were trying to spook him or just were jerks. I don’t know if Storm Chase can even punish that
behavior, but it didn’t matter: the monitor had her back to the water and didn’t see what happened.
Katie reached the end of the pool after about twenty or thirty seconds, about the same time as
Team Xeno, but I never saw Alejandro surface. I was getting shoved to the front of the plank, but just
before I jumped in, I saw Reed yelling to the lifeguard at the pit side. It looked to me like Reed was
screaming Alejandro’s name and pointing back toward the mud pit. I started shouting his name too,
“Alé! Alé!” But some of the dopes at the top of the platform thought I was doing that soccer chant –
you know, “Olé, Olé, Olé … Olé, Olé …” – and they started singing, too, and jumping in en masse. Of
course, Izzy – who was supposed to be our monitor with a walkie talkie to call for help – was nowhere to
be seen.
It must have a minute or more since Alé jumped, and he had still not surfaced. Finally, between
my efforts at the top and Reed’s on the ground, the platform monitor and the lifeguards started moving,
but the monitor couldn’t get runners to stop jumping. Eventually, she was able to get the monitor at the
base of the wall to stop others from climbing on up, and that helped. A lifeguard by the pit was blowing
their whistle trying to get everyone out of the muddy water. I raced down a ladder to the side of the
mud pit and met up with Jenny, Reed and Katie. They were as freaked out as I was.
Finally, one of the lifeguards – the name “Devin” was written in Sharpie on their shirt – came
over to ask if anyone was missing. I was gobsmacked: it felt like minutes had passed, but Devin had no
clue what was actually going on. I know that time speeds up in these situations, so it could have been a
little less time than I thought, but every second counts. At last, after explaining quickly again, we were
able to get Devin to do their job!
Devin dove in, then surfaced, then dove and surfaced again a few more times before they finally
brought Alé up. But when Devin dragged Alé to the shore, Alé was not breathing! Devin started CPR, and
a few seconds later, some other medics drove up in a golf cart. Together, applied electric shock paddles
from a portable unit. It took three times shocking him before they finally got a pulse. Then an
ambulance appeared, they loaded Alejandro onto it, and sped off.
The whole process seemed to take forever, at least five minutes before they applied the shocks.
But time is hard to judge; when I first saw the diver bring Alejandro to the surface, I really lost it. I’ve
never cried so hard. I’ve had loved ones in my life die, but never with me watching!
We went to the ER and waited. I’m sure that since they were overcrowded and understaffed,
and since none of us was actually related to Alejandro, they couldn’t give us any updates. I later read in
the paper that it was almost a record day at the ER – all because of the Storm Chase obstacle race. Well after midnight, someone came out and told us that while the medics were able to normalize Alé’s heart and he was breathing on a ventilator, Alé was brain dead. His family made the decision to remove him from life support the next morning.

Looking back, what upsets me is the failures of the event organizers. Their website indicated that they’ve been holding extreme obstacle races since 2013, but they seemed overwhelmed and totally unprepared. I know the pandemic had everyone a bit off their game, but this was chaos, and Alé is dead because of it. We knew there were risks, but we counted on Storm Chase to do their best to keep us safe, not to throw thousands of people at an extreme obstacle course and hope.
Statement of Lindsay Rogers, M.D.

My name is Lindsay Rogers, and I was an on-call attending physician in the Potter County General Hospital on October 23, 2021 as well as the Medical Race Coordinator contracted by Storm Chase for the Potter County race. My full-time job is as an Attending Physician in the Emergency Room Operations at Laurel County Regional Hospital in Wisawe, Pennsylvania, and I “moonlight” – or work per diem, for cash – at other ERs. Medical School debt is no joke. I attended Muhlenberg College in Pennsylvania as an undergraduate, graduating with a B.S. in Pre-Med in 2010. I commenced my M.D. in 2012 at Kalmia University in Wisawe. I did my rotation in Emergency Medicine at Laurel County in 2014, and after I graduated in 2017, I completed a residency in Emergency Medicine at the University of Pittsburgh before returning home to take my current position in January 2021.

Look, I am going to go into detail here, but the reality is that this Storm Chase was the mud race equivalent of the Fyre Festival. It sounded great, sounded like all of the right stuff was in place – but in reality, it was a disaster. Poorly organized from the top down. And no amount of paid-off influencers, techy registration processes or affirmative slogans is going to change the fact that you cannot put on a race like this without making safety – and not profit – your ultimate top priority. The warning signs were there for months, and the event execution was even worse. It was like they were using a piece of tissue paper to catch a baby falling from a burning building and hoping it would work out. You guessed it – it did not. Storm Chase promised me a ton of money if I didn’t testify here today. Loans be darned. I need a clear conscience.

Also before I get too far into it, I should clear the air on my past. I own my mistakes and am a better person as a result of it. I took four and a half years to complete a three-year residency program, because I was convicted in 2018 of Driving While Intoxicated. Worse, the intoxication was oxycodone, an opioid painkiller to which I had become addicted. I knew that the Prescription Drug Management Program would notice if I was prescribing to myself, so I just stole the pills and doctored the pharmacy logs at the hospital. I was fortunate: Laurel County has a Drug Court program that gives addicts a pathway out of the criminal justice system. It was the hardest thing I’ve ever done, harder by far even than the MCAT or Gross Human Anatomy. But working with the judge, probation officer, and a support group, I have been clean for three and a half years, and I fulfilled my sentence performing community service at understaffed community health centers. I have filed a petition to restore my civil rights, but I still cannot vote or own a firearm or serve on a jury.
In February 2021, I was asked by the ER Director at Potter General Hospital, Dr. Steve Eckley, to attend a meeting between the organizers of an extreme obstacle course race and the County Recreation department, which would have to approve the race. Eck knows that I was a competitive triathlete in college, and I still run, bike, and swim, just not competitively. I was asked to join as a sort-of de facto subject matter expert.

Chris Tempesto attended the first meeting. Big vision with little substance. Chris indicated that their primary concern was safety and that they would take all measures necessary to put together a safe, fun, and challenging event. The words were right, but the tone seemed off to me, like Tempesto was just going through the same pitch as always, not like safety was actually that important. Tempesto even objected that there was no need to have an ER doc at a “friendly business meeting,” as though I was an impediment to the rubber stamp Storm Chase expected. I was a little put off, but things calmed down when Devin Cody, the Storm Chase Director of Competitor Safety, got involved. Cody reminded Tempesto that there had been a near-death after a previous race, so our concern was reasonable.

I asked a lot of questions about the nature of the obstacles placed on the course. I had mistakenly believed that this would be a nature challenge – kind of like a cross country race on steroids. I was shocked and it takes a lot to shock me, when I heard about some of the barriers and challenges planned. They talked about live low-voltage electrical wires, freezing cold water, difficult climbs and tricky descents, mud, barrels, fire pits, and assorted other tortures. The obstacles were packed tightly, but the course was still going to be 10 to 12 miles, which is a substantial distance even for a country run. Cody admitted that we should expect an increase in ER visits during the weekend of the event, which could include severe lacerations, concussive injuries, electrical burns, mild hypothermia, or broken bones. They reported that their races might draw as many as 4000 participants and that we could expect 5-15 significant cases and perhaps a couple dozen cases requiring observation or diagnostic efforts.

I thought that number was low, but Cody explained that most of the participants with contusions, lacerations, sprains and strains, or dehydration would be treated by the on-site medical staff. The original plan called for a single medical tent located in an area close to the start/finish line, with monitors equipped with walkie-talkies and golf carts throughout the course to attend to injuries. I suggested that in addition to the primary medical tent, they might consider a series of triage tents in strategic locations – preferably close to those obstacles that in the past have generated the most injuries. Any lay person could guess which obstacles might generate the most problems – clearly anything featuring live electrical wires, fire, water, or long drops would be the most dangerous. I demanded they consider tents near some of those.
Tempesto pushed back, noting that there were also ambulances available in the parking lot that could be summoned in the case of extreme emergencies. To me, that proved Storm Chase’s bad faith: the course was a ten-plus mile loop, so the ambulance could have to go as far as three to five miles. At highway speeds, that’s not very long, but on dirt trails, in a mountain environment, with crowds of runners all over the place and obstacles filling several of the open paths? The ambulance would be lucky to make 20 mph. It was obvious that the event would need emergency personnel closer to the obstacles, especially the bad ones.

The Recreation Commissioner backed me, and Cody and Tempesto stepped into the hallway to discuss things. You could hear Tempesto getting upset, and Cody had to practically shout to get things done. Eventually, they came back in, and Cody explained that Storm Chase could accommodate most of the suggestions. Tempesto just sat there staring daggers at me and stabbing at a cell phone. I also urged the Storm Chase crew to hire additional EMTs and lifeguards. I did not believe that their original plan had sufficient emergency staffing. While they welcomed my suggestion for triage tents on the course, they assured me that they would have sufficient safety personnel available in accordance with health and safety guidelines and their past experiences. I tried to push the point, but around that time, the County’s Director of Tourism came by and made a big deal of how excited the County was to be welcoming Storm Chase and the thousands and thousands of tourists and their dollars it represented at such a difficult time. After that display, the Recreation Commissioner said she was sure the staffing levels were ok. I’ll bet whatever texts Tempesto was sending saved Storm Chase thousands from not having to pay the necessary safety personnel.

When the meeting concluded, I did some comparative research. I wanted to make sure that our hospital staff would be prepared for that weekend, but I also felt an obligation to contribute to the overall safety of the event. If I could suggest some ways to modify a few of the most dangerous obstacles, I would be doing all of the participants a huge favor. I take my responsibilities seriously. I reviewed other similar races with comparable obstacles and contacted colleagues at ERs close to where these events had already taken place.

In mid-October, while the event course was under construction at Penn’s Peak, I was invited to do a walk-through of the course and view the preparations for emergency medical service on-site. I was coming off an eighteen-hour shift at Laurel County, but I saw some of the Storm Chase “training” for EMTs, Lifeguards, and other safety and security personnel. From what I could tell, it was just a bunch of coffee and donuts and “y’all know what you’re doing” talk. It looked to me like there was more emphasis on handing out branded merchandise than on site planning. There wasn’t even a sign-in sheet,
much less credentials being checked. That’s a huge issue: EMTs all register with the state, but there isn’t
a statewide database of lifeguards or individuals who take an advanced first aid class, so people can
claim to have the training and not, or have out of date training. The oddest bit was that as I was leaving
and planning to lodge a complaint with the County, Tempesto stops me and hires me on the spot to
serve as the medical coordinator for the event. They really must have been shorter on staff than they
wanted to admit. He didn’t even ask for my resume or a reference.

Yes, I was under contract, but $1000 wasn’t going to change my opinion that the course was
unduly dangerous. The obstacles themselves were well-constructed, but they posed tremendous threats
to physical health. I could only imagine that adding thousands of people to this course (and a thousand
more spectators) and tons of mud could turn this dangerous trek into a catastrophe. I voiced my
concerns once again to Devin Cody, this time via email. Cody assured me that Storm Chase had
everything under control, that this kind of thing was “old hat” for them, and that I was being a
worrywart and should stick to the Band-aids and leave the course to him. My biggest concern was the
Abandon Ship. The depth of the water, the amount of mud, the relatively small landing area, and the
risk for falls from a narrow jumping spot... none of it looked safe to me.

I was on call in the Potter General ER on Saturday, October 23, 2021 and at the race all day. To
be honest, I was very worried something serious was going to happen. None of my concerns had been
addressed, and I thought that Storm Chase was just being too casual for something so big after being
put on ice for so long due to the pandemic. Just crossing your fingers and wishing for the best is a recipe
for disaster. During what can only be described as a pep talk to the staff before the participants arrived,
Chris was preaching stating that, “neither snow, nor rain, nor heat, nor gloom of night stays these
participants from the swift completion of their appointed rounds.” Chris went so far as to confess that if
the event was postponed or delayed, “it would spell financial ruin for the company,” and that we
needed to “make this happen at all costs”. But the wildest thing was the tone of it wasn’t down at all; it
was like a pep talk, and Chris gave this rah-rah about encouraging the participants as much as we were
encouraged right after saying this really troubling stuff.

Around 12:30pm, I got the radio call of an unconscious participant on the Abandon Ship
Obstacle. The scene was complete bedlam. No one seemed to be taking charge, and despite talking a big
game, Cody was like a deer in headlights, doing chest compressions with wide eyes rather than taking
command and getting assistance from others. I didn’t see any rescue breaths, either. There was a time
when we trained untrained people not to do them, but a professional or trained personnel should be
doing two breaths for every 30 compressions. Mind-blowingly, behind Cody, participants were still doing
the obstacle! While Cody kept doing CPR, I set up the automatic external defibrillator (AED), and we
shocked. Nothing. Cody restarted compressions, and we cycled twice more before a normal cardiac
rhythm could be established. Of course, Desafios remained unconscious. An ambulance had arrived
while we were resuscitating, and I accompanied him to the ER.

Alejandro Desafios was admitted to Potter General on a priority-emergency basis by
ambulance. A priority-emergency admission occurs when the EMTs conclude that the patient is in such
extreme condition that they are admitted right away, often met at the hospital doors by a team of
doctors and nurses.

As most laypeople know, the “rule of three” governs the human body: a healthy adult human
can typically go three weeks without food, three days without water, or three minutes without oxygen
before there is a high risk of death or permanent injury. That’s not entirely accurate medically, and
there are tons of factors that impact on any person’s response to deprivation, but it still holds some
truth, especially as to oxygen: an individual who is without oxygen for three minutes or more is likely to
suffer significant, permanent physiological damage.

Mr. Desafios was moved as swiftly as possibly to the Intensive Care Unit, where my colleagues
and I put him on a ventilator and cardiac monitoring. Testing that evening showed no
brain function. He did not regain consciousness. I later learned that his family made the difficult but sound decision to
remove him from mechanical life support.

Two factors likely contributed to Mr. Desafios drowning. First, Mr. Desafios may have been
struck by another, falling participant. That blow would have landed with considerable force, which could
have further disorientated him or knocked the wind out of him. Regardless, once he opened his mouth –
involuntarily – and inhaled water, rather than air, he would have been rendered helpless almost
immediately. Second, Mr. Desafios’s breath-holding ability may also have been reduced by cold-shock
response, which can happen anytime someone’s head is submerged in cold water. (I estimate that the
water temperature at that obstacle on that day to be around 50 degrees Fahrenheit.) Cold shock causes
a sudden release of adrenaline and an increase in heartrate, which can reduce an average breath-hold
time of one minute to just 15 seconds. (The cold literally takes one’s breath away.) Accordingly, even if
Mr. Desafios just became disorientated and began swimming in the wrong direction – in water muddy
enough that one cannot see the light, “up” and “down” can lose meaning – he may have run out of air.
That’s entirely natural: at some point, the body overrides the brain, panics, and attempts to inhale. It
fills the lungs with water, and the countdown begins. After three minutes, brain cells began dying
rapidly. For a couple of minutes, resuscitation and recovery are still possible, often with limited permanent damage.

That brings us to the on-site response. I cannot comment definitively on the response time, since I was not there. However, from the physiological damage, it is virtually certain that Mr. Desafios was not receiving oxygen to his brain for more than three minutes. He may have been underwater that entire time: there were traces of murky water in his windpipe. Or he may have been rescued after, say two minutes and thirty seconds, then had to be dragged to shore before resuscitation could begin. But as I said, three minutes is when damage starts. It would be very unusual to see this level of damage after only three minutes. Medically speaking, it is much likelier that Mr. Desafios was starved of oxygen for four minutes or more before the resuscitation started.

My experiences on October 23, 2021 have led me to conclude that extreme adventure races pose a grotesque and under-recognized threat to the 1.5 million individuals who engage in these races each year. I have become an advocate for victims, and I am currently serving as a paid expert witness in another civil trial. I have also received smaller but material compensation for my appearances on several morning and cable news shows.

Even if you don’t follow all of the details of how the safety was compromised at the event, the bigger picture speaks for itself. On Saturday, October 23, 2021, our ER treated 39 patients between 7 a.m. and 10 p.m. Of those, 31 were runners in the Storm Chase race. Starting mid-morning, the hospital had a steady flow of Storm Chasers, some arriving by ambulance, others by private vehicle. The ER was swamped. One runner had a heart attack. Approximately a half dozen experienced significant orthopedic injuries, including a couple of displaced fractures. A dozen or more neurological patients were evaluated for concussion, at least one of whom checked himself out against medical orders recommending admission overnight. The list goes on: an awful laceration from someone who freaked out while snagged in barbed wire; several drug-related issues, mostly related to amphetamine, steroid, or painkiller use; and multiple cases of hypothermia. Another patient developed seizure-like activity and altered mental status. He was unable to move his entire right side. After treatment in the emergency department, he was admitted to the intensive care unit and discharged from the hospital to a rehabilitation center 4 days later. Six months after the injury, he still had lower right leg disability.

As one might expect, several of the most severe injuries occurred in the last obstacles, when runners were cold and tired. One patient received 13 electrical shocks during the final obstacle. She reported that the first two disoriented her, and she just wandered insensate into the others until finally a staffer shut down the current and got her out. She was admitted overnight with multiple second-
degree burns. And those are just the ones we saw at the ER; I later saw the EMT logs for the
competition, and they reflect a flotilla of soft tissue injuries, smaller lacerations, syncope (fainting, often
from exertion), and additional concussion checks.

Look: people ultimately are going to do what they want to do. The best solution is obviously to
shut down these extreme races. But if sanity is not going to prevail, medicine has to: medical and safety
professionals must be involved in the planning and implementation processes of these events, and
Emergency Rooms should be prepared for a line out the door of the unnecessarily injured – anything
short of that is grotesquely negligent.
Statement of D.J. Hatchet

My name is D.J. Hatchet. I am 49 years old. I currently reside in Boise, Idaho, but travel frequently for my work. I am a former traveling circus and rides inspector for the Idaho Department of Parks, but I currently serve as the Executive Director of the National Obstacle Racing Association (NORA), an organization I founded. I publish a magazine, Obscure Sports Quarterly, edit an Extreme Sports website, and review extreme sporting events and blog about them on Dr. Danger’s Sportz Xtreme. I even tried to start my own course series, the Hatchet Attack, but given the economics of the sport, I was not able to continue.

Actually, it’s a funny story. When Hatchet Attack was first getting off the ground, Chris Tempesto gave an interview that absolutely trashed our initial course. I wrote a response for the site, but in retrospect, Chris was totally right! My history-inspired courses were far more creative than The Storm Chase’s, but the obstacles were a bit “lame” and “pointless,” as Chris wrote. Even so, I think there was a market for historic-recreation obstacle courses, and I think Chris’s takedown had a lot to do with the business’s failure. Every cloud has a silver lining, though: Dr. Danger was really impressed with my passion and my writing, and Doc hired me to write instead! It wasn’t much money – and still isn’t – but it keeps me in the game. Wherever you obstacle race in the U.S. of A., you’ll see my tiny house parked by the course, and I personally cover each innovation. Serious obstacle runners pay to read my reviews of the new courses and products available, and Sportz Extreme receives a number of sponsorships from companies engaged in the obstacle racing and home obstacle racing industry, most of which I disclose to my readers.

My work in extreme obstacle racing has also led to other useful income streams. I consult with the founders of Tough Mudder and Spartan Race to advise them on some of the obstacle and course designs. I am compensated modestly; I’m not an engineer, just someone who lives and breathes obstacle racing and writes about it for a not-too-bad living. And my readers know that I’m giving them the inside scoop, even if I might be less objective about courses I helped design. I also serve as an Event Director for Warrior Dash events several times per year. Although Warrior Dash courses are shorter – hence, “dash” – they are also extreme obstacle courses, and as an Event Director, I’m responsible for their organization, staffing, and administration. I offered those services to Storm Chase about a half a dozen times over the past few years as well, but I was turned down flat each time. You would think Chris would owe me one or two. I am the zeitgeist here.
NORA aims to bring obstacle race organizers together, to unify health and safety protocols and ensure consistency in design. The reception has been lukewarm, but rarely hostile. Chris Tempesto is the exception. Most of the organizations understand that if we are to effectively grow the sport, we need both national standards and rules and national representation in lobbying, but Tempesto has outright refused every overture, often in the most vicious terms, way beyond professional. Serves Chris right to need us now, eh? Anyway, I really do think I am the foremost expert in the administration of extreme racing from both an organization, competition, and safety perspective. I was recently asked by Kalmia University to serve as a subject-matter expert for their Sports Administration major. I am also working on a few book chapters with the renowned Professor of Sports Law, Dr. Sophia Otero.

I won’t bore you with the long history of Frenchman Georges Herbert in the early 20th century or about the use of obstacle courses for military training or even the emergence of parkour as a way of keeping fit and having fun. It’s fascinating, but I’m paid by the hour. Each of the Big 3 races – Tough Mudder, Warrior Dash, and the Spartan Race – offer something slightly different to participants: Tough Mudder plays up teamwork, camaraderie and the joy of simply finishing the race; Spartan Race increased the challenge and added a timing element; and Warrior Dash is designed as a shorter, less strenuous exercise. Dozens of organizations arose to sponsor events, and the idea of crawling through freezing mud, under barbed wire and scaling walls for fun and sport went from fringe to mainstream. That explosion of interest also generated big sponsors: shoe companies, sports drink, energy drink and sports apparel. Even Wheaties, the venerable “Breakfast of Champions”, lends its name to various events.

The Storm Chase jumped onto the scene in 2013 and was one of the few mid-tier providers – national, but not the Big 3 – to have survived. What Chris figured out that the rest of us could not was the obstacles. Chris’s obstacles are among the most creative in the business, and Storm Chase has a reputation for being innovative and daring. Of course, without a national governing body for the sport to create standards for safety, construction, participation, etc., the envelope can be pushed too far, and “fun and exciting” can become “dangerously ill-conceived.” Companies like Spartan Race or Tough Mudder have an established reputation and clientele; Storm Chase has to push the limits to be noticed at all. That was doubly-true coming out of COVID; Spartan Race and Tough Mudder are household names that could count on clients coming back and had cash reserves to ride out the pandemic. Smaller players like Storm Chase had to make bigger splashes, sooner.

So I was hardly surprised when I toured the Penn’s Peak course on Wednesday, October 20, a few days before the event. The location was ideal for obstacle racing, and the course followed a lot of
normal industry practices. But Storm Chase was doing its “extreme!” thing, and it looked to me like Chris had packed too many obstacles into the course. This presents two main issues. First, the sheer number of obstacles and the energy required by participants to complete them leads to greater exhaustion. That’s the high that most of them are seeking, but the running segments between obstacles allow participants to recover and refocus. Too many obstacles in the same distance means less recovery. That can spell disaster. Obstacle racing requires intense focus, and if that focus slips, even for a second, serious injuries can result.

Second, each obstacle presents an opportunity for course congestion. Participants bunch up at obstacles while waiting their turns. Usually event participants are patient and helpful, but with enough congestion at any obstacle, or if the congestion happens obstacle after obstacle, frustration kicks in. Once contestants start breaking the rules or stop queuing up, chaos ensues. And while obstacle races rely on the perception of chaos, real chaos presents a potentially lethal danger. Each obstacle is designed for a specific “flow” and number of participants. Add even 10% or 20% to that or have some participants shoving others off the carefully-designed rest spaces and you have a recipe for disaster. That’s why courses are closed to non-registered participants and start times should be strictly staggered... you can’t let the obstacles overload. That’s very unsafe.

The one thing that surprised me was the number of medical tents in closer proximity to the more dangerous obstacles. Chris usually doesn’t like to shell out for extra EMTs, even though they cost less than $20 an hour! Like all mid-tier providers who can’t move the merch of a Spartan Race or Warrior Dash, Storm Chase runs on a razor-thin budget. So they tend to understaff – both in the triage tents and on the course. This one looked better, at least on Wednesday: there were ATVs and golf carts available for more than a skeleton crew, so perhaps Storm Chase was increasing the number of roving course monitors.

Storm Chase was also hyping the appearance of two popular reality television stars at the event. Celebrity drives attendance, always. That’s good for the event and great for the sport. My concern, however, was the lack of well-defined racer/spectator areas. While there were a few roped-off sections for spectators, for the most part observers could freely roam the course. That can create additional chaos and additional pressure on course monitors and safety personnel. It also creates the risk that that non-participants hop in mid-race, which is doubly bad: it increases congestion, and those people have no “buy in” to the race, so they might not care about race officials’ directions and won’t have passed through any screening for intoxication. I made note of it for blogging later, but I didn’t talk to Chris or
anyone else about it. After all, they ought to know, and I was there for Dr. Danger, not as a paid consultant. The next morning, I left for a Spartan Race in Des Moines and thought nothing more of it.

When I heard about the death of Alejandro Desafios, I came back to Penn’s Peak to find out what happened. As the Executive Director of NORA, I have an obligation to oversee course safety investigations. I parked the tiny home outside a Denny’s and used the free WiFi to search social media and local news for participants I could interview, witnesses to the tragic drowning, and video of the event. That’s what both safety inspectors and journalists do! I outline my findings here. I should note that the plaintiff’s in the case also paid me $5,000 to investigate Alejandro’s death and also gave me another $5k to testify on their behalf. Every little of scratch helps even though this is not a lot my most expert standards.

The obstacle in question, Abandon Ship, requires participants to plunge some 20 feet from a platform into a deep pool of frigid, muddy water and then swim 40 to 50 feet to a cargo net to climb and exit the pool. There were no lane dividers to organize jumpers, no system to warn those climbing up to the platform that it was already overcrowded, no system in place where someone below at the pool (such as a lifeguard) would signal to the top that it was safe for the next person to jump. (Even municipal swimming pools know that is an absolute necessity!). The organizers must have known that this obstacle was becoming a real safety issue, and yet they did nothing to rectify the situation. Quite frankly, the obstacle on which the victim died was an accident waiting to happen. They did have this red flag, green flag system, but they never informed the participants that this was part of the safety protocol.

In talking with participants at the race, they described a scene of mass chaos. The obstacle was overcrowded – to the extent that many were jumping into the pool simply to avoid the crush on the platform or getting knocked off of it. I found one video on Instagram by a local company, Xenopharma, that shows their team completing Abandon Ship. The video has been un-posted, but it showed one event staffer stationed at the top of the platform – and that staffer appeared either completely overwhelmed or completely inattentive. People were jumping off the obstacle or getting pushed off the platform seemingly willy-nilly; only the Xenopharma team – identifiable by their sharp, matching jerseys – and a couple of others appeared to be able to navigate it in an orderly fashion. Other spectators with whom I spoke witnessed at least a dozen or more instances where a lifeguard had to rescue a participant from the mud pit.

A review of social media postings during the event shows that the crowd seemed to be overwhelming. While there were the normal gleeful selfies – covered in mud joyfully completing the
final obstacle – there were also quite a few grumblings about course congestion, wait times at various obstacles, lack of instructions, and overall mayhem. I know that Chris and her/his staff monitor social media closely. It makes me wonder whether they removed certain safety features in order to improve crowd flow during the day.

Listen: with enough people participating in these type of events, the likelihood of injury is almost unavoidable. But while participants understand that there are risks involved, there is a clear expectation that basic safety precautions will be followed. Extreme Obstacle Races organizers require participants to sign waivers protecting the sponsors from lawsuits over injuries caused during the event. But we all understand that you can waive some things, but not gross neglect.

Costumes can add to the feeling of fun and camaraderie at these kind of races. But there is a downside to this kind of marketing. When the casual observer sees someone has completed an obstacle race in a dog costume, they think, “Well if they can do it dressed that way, I sure can do it as well.” And then injuries occur. These are serious courses designed for an elite level of fitness; that’s why Ninja Warrior is on TV!

Over the past five or ten years, in person and in print, I have offered some recommendations to Chris about the improvement of the course and the Abandon Ship obstacle specifically. In general, I believe that Storm Chase course can be improved with some instructions on how to tackle some of the obstacles, either from signs or from event staff. We all know Chris has a budget for signs; maybe some of them could have actual information instead of faux-scary slogans! Yes, the team problem-solving aspect is a critical part of the race, but some injuries will occur simply because of cluelessness.

Also, again, staffing. There were simply not enough staff, volunteers and medical personnel throughout the course. All of the people I interviewed stated that training was minimal and rushed. There was reference material available for each obstacle, but none of the staff I spoke with knew where to get it or who to ask other than Chris, and they were way too busy for something like safety. Storm Chase also references how much money they spend on training safety employees. But it doesn’t matter how much money they spend if they fail to apply military-grade risk management to what the company markets as a military-style obstacle course. Boot camp doesn’t start with fresh troops being driven into a death-defying obstacle course. Soldiers go through weeks or months of buildup and monitoring, under expert observation. The training is programmed to the minute, and their emergency response plans are well thought out, practiced, and proven. By comparison, an event like Storm Chase is a free-for-all, with EMTs scattered like breadcrumbs.
The safety design for the obstacle on which the death occurred, Abandon Ship, isn’t a plan. It’s
hope: throw a bunch of people into the water, from height, off a short ledge, and have some lifeguards
in the vicinity and an AED on a golf cart somewhere. Of course, it is impossible to eliminate the inherent
risk of drowning on an obstacle like this. But properly designed operating procedures could limit the risk
of the other problems the obstacle routinely encounters: too many jumpers at once, collisions between
participants in midair or in the water, lifeguards getting distracted by disorganized crowds, a participant
drowning without being seen.

How would I reform Abandon Ship? I’d shut down the whole thing entirely. Deep, murky, cold
water above your head is a terrible risk, and it can’t be effectively managed. If I couldn’t shut the whole
gooning down, then at least I would put into place the same protocols that are followed at water parks
with clear-water and ten-year-olds – one person in the pool, one person out. And for Pete’s sake,

Putting an obstacle like this toward the end of the course is just reckless madness: participants have less
energy reserves; they’re more likely to bunch up, causing collisions; and if things have not gone perfectly
– not that Chris would ever accept that things at Storm Chase would be less than perfect! – they are
frustrated, making it more likely they overwhelm the staff and just do what they please.

For an obstacle this size, I would require 6-8 dive personnel – two to three separate teams
composed of a diver, a backup, a dive tender, and a dive master – rotating frequently to prevent fatigue
and inattention. When Alejandro Desafios died, there was only one diver and one other lifeguard on
hand. And certainly, the response to a missing person potentially underwater has to be immediate and
aggressive. You only have seconds, maybe a minute, to find that person. It’s better to have a false alarm
and stop the obstacle than to have someone lying at the bottom for a long time. So there is no delay, no
questioning. Someone says “my partner didn’t come up,” they clear the event and the divers go in. Sure,
this has downsides, too: you back up the participants at the closed obstacle, which can cause future
problems. But anyone more concerned with a slowdown than human life is a monster in my book.

Storm Chase failed to employ the recommendations found in the United States Lifesaving
Association Manual and the American Red Cross Lifeguarding Manual, which emphasize the need for
constant vigilance by lifeguards, particularly during times of high activity. Storm Chase’s ineffective
crowd control resulted in a disorganized environment, and over the course of a day, you cannot count
on one or two lifeguards to be able to keep up with demand.

By the standards of the U.S. Lifesaving Association Manual, such a high volume at the Abandon
Ship obstacle should have triggered a “special operation mode,” requiring extra lifeguarding resources
or the closure of the obstacle. Storm Chase put safety personnel and other employees under
extraordinary pressure and increased the likelihood that they would fail to respond adequately to a report of a missing person. Those conditions made it impossible to carry out a rescue within the two-minute period required by industry-standard lifesaving manuals.

In the event of a missing-person report in reduced visibility, the U.S. Lifesaving Association Manual requires immediate surface dives by lifeguards “spaced in a line close enough to see, or touch, each other while on the bottom.” The Red Cross Lifeguarding Manual recommends that they be equipped with masks and fins.

On October 23, the diver conducted her/his search for Alejandro alone while other rescue personnel stood on the shore with no additional masks or fins in sight. So one person had to cover the entire pool. And only a strong diver could have covered the deepest part of the pit; no one had a SCUBA tank at all.

When a person signs up for a race, they have a reasonable expectation of safety: there will be a safe, approved course; lifeguards and other safety personnel will cover that course; and obstacles have been designed by qualified engineers, constructed by competent builders and tested by the sponsoring organization. Storm Chase at Penn’s Peak had none of that. While the death of Alejandro Desafios is a tragedy, given the pattern and practice of Storm Chase, it could not have been unexpected. Storm Chase knew the risks and took them anyway.
Statement of Chris Tempesto

Hi, I’m Chris Tempesto. That used to just be my stage name, but I legally changed it. Everyone just calls me “Storm” anyway. I am 37 years old and reside on Kauai, in Hawaii. As a kid, I was a competitive skateboarder and parkour athlete, and while I was in college at the University of Southern California, I worked on the side as a coordinator and action sequence designer on several movies. Now I apply the same skills that gave you Casino Royale or the Assassin’s Creed movie to literally giving you an experience like Assassin’s Creed as the founder and CEO of Storm Chase LLC. Storm Chase offers extreme physical and mental challenges to participants looking to upgrade their lives. Over our nearly decade of existence, we have conceived, designed and operated 150+ challenges in more than a dozen states. Most are smaller-scale, with twelve to twenty moderate obstacles on a short course of a few miles, but several times a year, we do a longer, blowout event. But regardless of whether runners compete in our small events or in a blowout, Storm Chase events showcase my creative, punishing obstacle design. Simply put? We do it bigger, better, and stronger. When runners finish a Storm Chase, they know it was a Storm chase.

As a parkour celebrity and content creator, I was often invited to mud runs and stuff. Seemed to me like a bunch of Navy SEAL wannabes, with no creativity or charm. But these runners clearly were paying for the privilege, and that got me thinking, “Why not? What if someone who really understood obstacles made the course?” In 2011, I had just started an Executive MBA program at the University of Hawaii, where I’d moved from SoCal to work on an Adam Sandler movie, and so I devoted my MBA to researching this business model.

According to what I learned, Obstacle Course Racing (OCR) was among the fastest growing sports in the world: the first races attracted only a few hundred hearty souls, but now it’s common to get thousands of people for a one-day event and more than ten thousand for a weekend festival. It looked like an obvious opportunity to me, and I have been proved right: since 2010, more than 5 million people have participated in some sort of OCR event. OCR is now big business: combined, the various organizers gross more than $300 million annually through registration fees and corporate sponsorships from shoe companies, fitness gear purveyors, health food and nutrition franchises. Tough Mudder even partners with Wheaties, the “Breakfast of Champions,” for cryin’ out loud!

Putting beer at the end of the course and encouraging costumes may make it seem casual, but let’s remember that there is mud (and lots of it – close to 700,000 gallons of mud at each event) and
freezing water and dozens of climbing, crawling, swinging, pulling obstacles, and some featuring fire and electricity. This is not a casual commitment.

I opened Storm Chase the day after I graduated. Despite my best efforts to apply what I learned, Storm Chase has never been as large or successful as some of the biggest races – Spartan, Warrior, or Tough Mudder. But we are big enough to be firmly profitable in the second tier, and we keep trying to move up. Even when the pandemic forced us to cancel the 2020 season, I just put that time into making 2021 bigger, better, and more exciting than any of our previous events. We scheduled the 2021 showcase blowout for later in the year, in October. One of my marketing consultants was from Middle of Somewhere, PA, and she was sure it was a great place to reemerge on the scene: lots of access to major cities but desperate enough for tourist dollars to roll out the red carpet. I could not have been more right agreeing with her!

Again, Storm Chase is not a race. We do time teams, but that is just for bragging rights and excitement. Everyone loves a leader board and the top teams do deserve recognition! But really, finishing is its own reward and the best realistic outcome for most participants: you are there for the experience, not the time on the clock. In fact, it’s best if you take your time. You will slip, you will fall, you will probably get some scrapes and bruises for your efforts. You may or may not be able to do all of the obstacles, but that’s ok. Enjoy the satisfaction of finishing all dirty and muddy, and then take photos, swap stories, and share a few beers. We tell our participants that everywhere: on the website, in the waiver, and in a pledge on the day of the competition. It’s supposed to be fun!

Of course, it also has to be a business. Site fees for an OCR can run up to $50,000. Insurance costs another $25,000 or so. We budget approximately $200,000 on construction of obstacles and clean up. On top of that, we incur the expenses of fire and rescue, police and safety, entertainment, freebies – all told, a large Storm Chase can cost up to $450,000 or more to put on, by the time you’ve cleaned up the land after the event. I sometimes question my sanity and think “wouldn’t it be easier to put together a different style race?” But that would make us lose what is special to our race and what differentiates us from all of the copycat competitions. There is risk inherent in this line of work, but like our participants, I’m willing to take it. And so are our runners, who typically pay $100 or more to compete.

We take safety very seriously. That’s not just lip service; we have Safety First signs all around our office. Each participating group is giving a “launch time,” so we do not experience overcrowding. In fact, we have a volunteer – maybe a retired athlete, an ex-military individual, or a retired policeperson or firefighter – go with each group. All of the observers are given Storm Chaser walky-talkies to report any unusual team behavior, especially if – as sometimes happens - teams get caught up in the moment and
become a bit aggressive. Spending energy on safety is good business: if someone died on our watch and it was our fault, it would be disastrous, like bankruptcy bad. That and the human stuff is why we take so much precaution and take the time to educate our participants.

Once we have a site picked out, we have to select the specific obstacles that will work in a particular setting. Our obstacles include heights up to 40 or 50 feet, climbing walls, cargo nets, steep inclines, water obstacles with depths over one’s head, leaps from height into water, and elements of both fire and electricity. There is no doubt that our challenges can be dangerous – but so can crossing the street. We advertise our race with these elements, we brief all competitors on these elements, and we require each participant to complete a waiver as part of the electronic registration process. At check-in, we verify verbally the waiver conditions and make each participant sign a pledge. We clearly set out the dangers involved.

The standard waiver reads in part, “I acknowledge that Storm Chase is an extreme test of my physical and mental limits that carries with it inherent risks of physical injury, inherent risks that cannot be eliminated completely without changing the challenging nature of Storm Chase event regardless of the care and precautions taken by Storm Chase.” The waiver goes on to release Storm Chase “from any claims, actions, suits, demands, losses and other liabilities in relation to any death, physical or mental injury ... resulting from the inherent risks of the Storm Chase event or the ordinary negligence of Storm Chase.” Some have referred to this as a “Death Waiver.” And we’ve played this up in a good-natured way – with signage along the course reminding Storm Chasers “Remember You Signed a Death Waiver!” and “Yep, You Signed Up for This Torture.” But in reality, we have taken every precaution possible to ensure the health and well-being of our participants. The whole idea is to make it feel extreme, not to actually risk anyone’s life.

Statistically, the number of seriously hurt OCR participants is small, despite having hundreds of thousands of annual participants. Our common injuries are non-lethal. Skiing is much scarier: out of every million people who ski each year, 54 die. But just as downhill skiers go to steep hills, people who do OCR want there to be some challenge, and that challenge means risk. Most of the deaths associated with OCRs, or any extreme sport for that matter, are from a medical condition that the participant did not even know he or she had in the first place. People drop dead running marathons, too, but no one wants to cancel jogging!

Even so, all of us knew that if we were in business for long enough, someone would eventually die. Our job was to do what we could. And we did! Our obstacle designs are approved by structural engineers, then built by certified general contractors. Each obstacle is vetted for safety and security and
has a designated Storm Chase team monitoring the location. We include fall prevention systems on many of our taller obstacles. We weight-test each obstacle to make sure that it can hold the projected number of participants at a time, and a few days before each event, we even send out our interns to test the course. We laugh that if they come back alive, it’s safe enough! On top of all of that, we hire teams of lifeguards to monitor all water crossings over 4 feet in depth and station experienced medical professionals throughout our course so that they can quickly react to any emergency. Of course, a lot of that is required by state and local law, and by our insurance, but we’d probably do it anyway in the interest of safety!

Of course, we focus our attention on the most common injuries – scrapes, cuts, burns, pulled muscles, etc. – while keeping an eye on the more serious ones. For example, the most common emergency associated with any endurance sport is a heart attack. We have had that happen several times over the years, but our rescue personnel typically treat it a few minutes, and we get victims to the hospital. In a lot of ways, they’re lucky that our courses stressed their hearts so much; had they collapsed jogging in a neighborhood or in the woods alone, they likely would have died. Another danger that many people overlook is heat exhaustion. We encourage participants to drink as much water as possible, and they should never skip a water station along the course.

Now let me address the Penn’s Peak race specifically and what I know of the situation involving Alejandro Desafios. The situation with Alejandro Desafios is very unfortunate, both for his family and for our event. His was the first fatality in the 10+ year history of our company.

We called the first Storm Chase showcase after the pandemic, the one in Pennsylvania, the World Championship, but in reality, that was a marketing ploy: anyone one was allowed to sign up. We pulled out all the stops on our marketing campaign, starting as soon as we had identified a date and site, and we offered inducements to businesses to sponsor and/or to field teams. We worked with Skip Kenyon, the agent for John Lande of American Ninja Warrior and Christina Thompson of the Great Race, to draw crowds and create buzz. We also offered them the chance to run the course, but they both refused.

We really didn’t know what to expect, but we were pleasantly surprised by both the turnout and the support of the community. Our showcase events are limited to 5,000 active participants and we managed to sell out this one – which frankly, was a good thing, because we needed the money. We also sold spectator tickets for 2,500 spectators. That was an unusually large number for us, but everyone was so psyched to be back that we didn’t want to turn anyone away. I am not aware of any non-registered, unofficial participant out on the course, but we definitely had a full house!
Storm Chase is a small company, so I am involved in every aspect of event preparation, especially for our showcases. But I also am the face of the company, so I have to be out finding and negotiating site contracts, not taking every meeting. I attended the first meeting of health and safety officials and then delegated the future discussions to our Director of Competitor Safety, Devin Cody. I remember meeting Dr. Lindsay Rogers at the first meeting and received reports from Devin on subsequent meetings. Dr. Rogers impressed me as a very dedicated professional, maybe even a bit too professional... like, does the ER doc really need to be part of deciding if trip hazards are painted neon orange or neon yellow? It was totally over the top. Still, I was impressed by their level of commitment to the event. That’s why I made the quick decision to hire Dr. Rogers for event day. Not sure why Dr. Rogers thinks I didn’t like them; I even wrote a note after the event applauding their quick thinking and offering them a bonus. But really, Dr. Rogers was superfluous in planning: at no point have we ever made a health and safety decision based on financial considerations or cost. Social media is our best friend, but it means that if someone is seriously hurt, the world knows about it. Any negative press could doom the business, especially coming out of the pandemic, unless of course looking riskier actually attracted the adrenaline junkies, I guess...

Our team selected several of participants’ favorite obstacles to implement on the Pennsylvania course: Electrical Storm, Ice Storm, Fire Storm, Blizzard, Cyclone, Tsunami, Mudslide, and Abandon Ship, among others. We established a registration area, a VIP area for high-performing participants to meet John and Christina, and worked out details of transportation to and from the parking areas, including for emergency vehicles. All of this information was available on the registration website, which also included detailed descriptions of the obstacles selected for a venue (to allow for training and preparation) and our waiver, which is provided in advance so that all participants can read it carefully. We even instituted a mini-quiz as part of the registration process to make sure people are paying attention. Our records indicate that Alejandro Desafios and his team did do both waivers, and initialed in all the right places.

Just like all of our events, the PA race employed a staggered start system to avoid congestion and an on-site safety pledge at the check-in process to remind all participants of the hazards that lie ahead. Our records indicate that Alejandro’s team was scheduled to start at 10:20 a.m. but that they did not arrive at the start until 10:35 a.m. We hold start times for no longer than twenty minutes before we allow wait-list substitutes to fill. Alejandro’s team just made it in time. Their assigned volunteer observer was Izzy Cameron, one of the older ones on staff but a good person and big fan.
The first obstacle on our course is always a relatively low wall and mud-drop, after which participants receive a scripted course briefing from the monitor to remind them of the rules of the course, describe the various obstacles, and, of course, to remind participants that there are only small-time penalties for skipping an obstacle. There are also signs posted along the course reminding participants that they can opt out of any obstacle for a time penalty. Storm Chase is not a real race, and everyone knows that. The monitor also conducts some group bonding activities – cheers and chants – before they all head off.

The obstacles along the course were fully staffed both with Storm Chase Event Specialists and, where necessary, with lifeguards and other health, safety and medical personnel. We had medical triage tents set up in strategic locations along the course and roving crews of medically trained The Storm Chase team members on ATVs and adapted golf carts. Ambulances are available on call from the main parking area to transport any severely injured participants local care centers.

Each of the medical personnel were issued 2 sets of walkie-talkies, one dedicated solely to on-going medical issues. The volunteer observers only had the non-medical one. My staff and I monitor these communications throughout the event. Obviously, we all were rusty coming out of COVID, and communications were pretty inconsistent and incoherent early in the race. But they had mostly smoothed up by noon.

The day of the event, Saturday, October 23, was cool and crisp – a perfect day for a Storm Chase. I did an early morning walk through of the course, and we held a quick team meeting to go over some of the basics and to remind everyone of safety and communications protocols. We were so excited to be back, I gave one of my most impassioned pep talks ever, and the staff was fired up. I told them to get out there and get the competitors just as psyched as they were! The crowd was enormous, and loud, and there were bizarre costumes galore. People really seemed to be getting into the Storm Chase spirit, after 18 months of sitting on a couch!

I do recall the call from Devin Cody that Devin mentions, but I can’t say I recall every call. Our walkie-talkies are alive with chatter; that’s why we have them! I think Devin is slightly misrecollecting what I said, though. I told Devin we should not shut down Abandon Ship entirely, like, for the day. That would be silly; there was just a backlog from staggered start groups not getting off right on time. That happens! I would never have told Devin or any course monitor how to run the obstacle from minute to minute. If Devin or the ground monitor wanted to Red Flag the loading area to relieve congestion, that’s always something they can do. The Man in the Arena and all that.
At the time that the tragedy with Alejandro Desafios took place, I was in the VIP tent, finishing a round of interviews with local media. Devin, who was taking a shift on the Abandon Ship obstacle, altered me of the Alejandro situation as soon as it occurred. I jumped on an ATV and headed over. Our medical and safety staff seemed to have things under control. Abandon Ship was not far from the medical tent, so we were lucky; Dr. Rogers was able to arrive so quickly that Alejandro had a steady pulse when he was rushed to the ER. Afterwards, Devin fully briefed me, advising on how well our safety protocols had worked. That’s why I told the local paper that the Desafios situation showed what a safe company Storm Chase is! It was only later that I learned that Alejandro Desafios was brain dead.

At the end of each event, we meet as a team to debrief. Our data shows that relatively few injuries occur on the Abandon Ship, not even in the top ten for the incidence of injuries. Still, given, the tragedy, we have taken steps to modify the obstacle in future events. It is a coincidence that some of the modifications implemented appear in DJ Hatchet’s report. As far as I’m concerned, Hatchet is a money-grubbing, self-aggrandizing hack. And, no DJ, I am definitely not giving you a job or joining your NORA. I have an M.B.A.; I know a marketing scheme when I see one.

Alejandro’s death was a tragic accident, a fluke. We did everything we could. It’s impossible to remove risk entirely from these events. The whole point of Storm Chase is to challenge – to really test participants. Injuries are a natural part of physical endeavors. Some will struggle, some will fail. That’s how we learn, that’s how we grow. Of course, our thoughts and prayers are with his family.
Statement of Devin Cody

My name is Devin Cody. I am 53 years old. I am employed by Storm Chase LLC as the on-site Director of Competitor Safety (DOCS). I am a trained EMT and a qualified Rescue Diver. I have been employed by Storm Chase for a little over 2 years. Prior to that time, I was a Lifeguard and Lifeguard Instructor for the State of California’s Baywatch program. I was eligible to retire with full pension at age 50. That’s when I began seeking other options. I had participated in a number of Obstacle Race Courses and offered my services to Chris “Storm” Tempesto.

At each event organized by Storm Chase, there are lead coordinators in construction, health and safety, traffic management, and public relations. All of us report to the Race Director, who coordinates the overall experience. There is a lot of travel involved and very long hours leading up to and during race event weekends. In a typical week, I am involved in wrapping up a recently completed event, planning for an upcoming event, and meeting with local representatives at future sites. But coming out of COVID, I had to make sure our team was extra well-prepared.

At a typical event, we advertise for and hire local EMT professionals, lifeguards, and other health and safety workers to staff obstacles, the on-course Triage Tents, to roam throughout as on-course monitors, and to stand-by to transport emergency patients to local medical facilities. In total, an event with 5,000 participants will require more than 75 health and safety staff, twice what our insurance agent suggested. This year, at my suggestion, we even added Dr. Rogers for the Penn’s Peak event to provide a new level of coordination with the local Emergency Rooms, just in case. I am glad we did. Otherwise, Alejandro would not have made it to the hospital alive.

Once Storm Chase has identified a site for a future event, I meet with local health and safety authorities to prepare them for what to expect. At this point, many of the locations have experienced a Storm Chase or a similar event, but in new locations, the meetings can be more extensive to get everyone up to speed. This was the first Storm Chase in Pennsylvania.

Starting in May of 2021, I met with staff from the local hospital, medical facilities, and the sheriff’s department, as well as local firefighters and EMT services for the event planned in October, 2021. At the initial meeting Chris was there to introduce the event and key personnel, but after that, I was the “primary.” We met 5 or 6 times in the months prior to the event and had 2 additional meetings during the week before the Penn’s Peak event. Dr. Rogers, who served as our onsite medical coordinator, was present at most of the meetings and offered some insight and suggestions for course set-up, injury prevention, and protocols for handling emergency situations. Everyone at Storm Chase
found Dr. Rogers to be extremely helpful, if not a bit pompous. But if I am being honest, it was D.J. Hachett nosing around that gave me the biggest anxieties. D.J. could not set up their own race, and that ridiculous idea of an OCR administrative body was failing miserably. I think he applied for my job like seven or eight times before I got the gig. I mean, who would put that person in charge? Chris only even allowed D.J. around because the business was failing because of lockdown, so we needed the press. To me, that was like inviting the fox into the henhouse.

A Storm Chase course is designed with safety as our top priority. Engineering and construction is outside of my area of expertise, but I am sure that we hired only the best engineers. We site our triage and medical tents in common areas to be able to service multiple obstacles, with attention paid to those obstacles with the higher incidence of injury. Each obstacle is staffed by at least one event supervisor. Lifeguards and certified water rescue personnel are available at each water obstacle of 4 feet depth or greater. Medical ATVs and golf carts rove the course frequently monitoring participant progress. All health and safety personnel are in complete communication with one another on a dedicated comm link. Health and safety personnel carry two comm devices – one monitors the general chatter of the race – so that we all know what’s going on – the second is a dedicated med link so that we can communicate with one another and summon additional medical assistance if needed without fighting for airspace with the general race monitor population.

We’re pretty obsessive about data collection when it comes to health and safety on the course. Even for the most minor injuries, we collect information on which obstacle (if any) an injury occurred, the time of the incident, the nature of the injury, the treatment received as well as basic demographic info on the injured competitor and their issued race ID. We also use the RFID technology to help keep track. Rarely do we need to send anyone to the ER.

We use this data to improve the overall race experience for participants. We have been able to adapt obstacles to make them safer or change them because our competitors aren’t enjoying them as much. As an event management team, we meet after each event to hash through the various aspects of the experience. Health and safety is just one component to consider when contemplating alterations to an obstacle. (Albeit the most important consideration.) Clearly, if an obstacle is rated low in user surveys and has received a number of health and safety concerns, then we will actively look for ways to modify the experience. To my knowledge, Storm Chase has never completely gotten rid of an obstacle. Rather, we work together to tweak Chris’s excellent designs.

We strive to provide a safe and challenging experience for all participants, but you have to recognize that different participants bring different background, skill and preparation to these events.
Some are very experienced OCR participants who have trained extensively for a race. They need to be challenged in order to keep them coming back and to ensure an enjoyable experience. Other participants, however, may be on their first OCR event and we cannot ensure (nor require) that they have spent time preparing specifically for this activity. These newbies may struggle a bit on some of the more challenging obstacles. We recognize that and make sure that all involved know that skipping an obstacle is always an option. Unlike some races that require participants to do burpees or some other physical “penalty” for skipping an obstacle, we at Storm Chase allow and encourage anyone who feels in any way inadequate to the challenge, to simply go around and take a small time penalty. There are no real repercussions, and there is no shame in opting out of an obstacle on the course.

Often it is not the obstacles that are the challenges, it’s other competitors or sometimes even the individual competitor themself. And even though we strictly forbid any alcohol on premises, some folks take it upon themselves to “pre-game” a bit. People need to understand the nature of the event, use their brains out on the course and leave their egos at the start line. I know that can be hard to remember during an adrenaline-fueled event, but we as a Health and Safety staff take every opportunity to remind participants to take it slow and use their heads on the course. I know that the other Storm Chase course monitors and event supervisors do so as well. We even have volunteer observers track the groups as they progress throughout the course.

By far the most challenging obstacles along any course, both for participants and for health and safety personnel, are the water features. The entire course presents a huge challenge, but something about water makes people panic more. Even the most seasoned triathlete experiences a moment of dread hitting the water. I think people sometimes just underestimate what it’s going to be like. Or they feel that the best way to overcome a fear is to just gut through it. That may work for some, but most participants should try not to get sucked into the race hype of being the most extreme or the toughest.

On Saturday, October 23, all obstacles were fully staffed. Event supervisors were stationed at each obstacle, with lifeguards at all obstacles featuring water at a depth of greater than 4 feet. The lifeguards are always equipped with dive gear at the 2 obstacles featuring deeper, muddier/murkier water. This includes the Abandon Ship obstacle. All health and safety personnel rotate through the course in shifts. Since there were 4 certified rescue divers on the course at this particular event, we took turns moving between the 2 deeper water obstacles and giving one another breaks. (Though a “break” for me usually consists of either checking in with the various triage tent personnel or taking an ATV out along the course to get a feel for that day’s challenges.)
I first visited the Abandon Ship around 10:30 or 11:00, in response to a call on the Medical comms. I immediately noticed that there was a huge number of people on the obstacle. Apparently there had been a group or two that arrived late, and there was a pack of people. One of them had gotten knocked off the top ledge and had been kicked on the way down by another participant. That is a serious problem: even minor head injuries can lead to disorientation, and disorientation and water do not mix. It looked to me like the monitor at the bottom of the obstacle was overwhelmed by the rush, and I made a quick call to see if Chris wanted to shut down the obstacle. Chris responded that that would mess up the teams’ times, that we should ride it out. I was surprised, but Chris is the boss, so I pulled the monitor aside and told him to get serious, use a sterner voice with people. Of course, he was all of eighteen or nineteen, so I don’t know if he had a sterner voice, but it must have worked out, because when I drove by again around 11:30, everything was back to normal. Either that or Chris was right and it was just a glut of people that passed.

I relieved the previous diver at Abandon Ship for a full shift a little after noon. She reported that there had been no major incidents during the previous shift, but she noticed that the obstacle seemed to be getting congested at the top of the platform. I guess we were a bit out of practice on the staggered starts, if backups kept happening. In addition, I know, sadly, that a few of the spectators decided to join the race. With an event space that big, trespass does occur. I did my best to kick them off the course and call security, but once participants are covered in mud, it is hard to tell who is who. I radioed up to the obstacle monitors to see what the deal was with so many people, but I received no reply. With the music blaring and with all of the participants gathered around, I understand that it may be hard to either hear the radio squawk or get time enough to respond. It did not appear to me, as a veteran of these event over 2+ years, that the situation was trending out of the ordinary range, but in hindsight, it was a bit of bedlam, especially at the top of the Abandon Ship jump spot. Folks were exiting normally, though, and the monitors had a clear way to signal participants: monitors are given two flags – one red and one green. A red flag at the bottom signals to the monitor at the top not to allow the next participant to leap into the water, and a red flag at the top means participants should stop. Green means “go,” Red means “stop”: it’s pretty intuitive! For the most part, the green flag stays up. It is not the same one-at-a-time process as you see at water parks, where the next person is not allowed until the previous diver/slider is completely out of the zone. It’s more fluid than that, so more participants complete the obstacle.
Not long into my shift, I observed a further increase in the rate of participants leaping from the platform into the pool. Sometimes these events can go in waves: a period of congestion, followed by relative calm. Timed starts are our biggest safety advantage, and we keep the cohorts small on purpose.

In an instant, it got crazy. I saw the red flag signal go up, but people kept jumping. I know it was that bog turtle team based on their shirts. There was one person in particular, who I now know was Alejandro Desafios, who was definitely in the fray. I watched him shove people out of the way, throw a few elbows. I could not tell if he was a calming influence or an aggressive one, but regardless, it did not seem like he had control of himself at the jump stop, after pushing through people he made his way to the front. He jumped, and then out of nowhere, an entire team who was in the trailing group bombarded up the wall and leapt into the water while it was still red flagged.

I lost sight of Alejandro trying to police the jumpers from the ground when a participant came to inform me that a teammate was missing. My heart sank. It was a bog turtle team member, and I instantly feared the worse.

I take any report of a missing participant very seriously. I asked a few questions in order to determine whether the missing racer was still in the water or had exited the obstacle in a different location. The person I was speaking with, Tori Damon, was screaming at me incoherently. Before shutting down an obstacle, I needed to ensure that there was in fact a danger present. Otherwise more people just pile up, creating a danger. I radioed to the monitor at the top to halt any additional participants from leaping and fired off a warning call to Chris and the HQ tent. I tried to organize the people standing by the side of the swimming hole and asked them to account for all team members.

Once it became clear to me that there was indeed a participant missing and that it was very likely that he was still in the water, I initiated an evacuation of the pool. I radioed to the nearest triage tent to send additional rescue personnel and Dr. Rogers, just in case. At the same time, I was pulling on the rest of my dive gear and prepared to enter the water. I do not know for sure how much time had elapsed since the participant entered the water. I know that from the time I was notified until the time I entered the water, no more than 2-3 minutes had passed.

The visibility in the pool was not good. It is, after all, a freezing mud pit. I dove below with a flashlight to pick up any signs of a person tangled or floating underneath. It took three dives before I finally located the victim. He was not tangled in anything, but he was unconscious. I was able to bring him to the surface and drag him to the side. Other medical personnel and I initiated CPR, without any response. On the third administration of the AED (automatic external defibrillator) by Dr. Rogers, we
were finally able to get a heartbeat. We carefully strapped Mr. Desafios into the ambulance, and he was transported to the local ER. He did not look good, but he was alive.

In a previous event, I had a similar situation. I was able to locate the participant and get her to the surface more quickly. She survived and recovered. The key is quick action, and in the case of Alé, I definitely sprang to action. The water is murky enough so that you can’t necessarily locate someone in distress right away. Getting into the water quickly is important, but so is clearing the area. You can’t have people falling on you and thrashing up the mud, creating a situation where you might have to rescue the rescuer!

This type of medical incident could have occurred anywhere on the course. I’m confident that my medical crew and all of our health and safety personnel acted as expeditiously as possible and according to protocol. This was a real tragedy, but we did everything we could to save him. As a company, Storm Chase spends thousands of dollars each year on safety training. The company also spends more than $4 million in external event safety costs. This was the first fatality in our 10 year history – that’s more than 50 events and more than 50,000 participants. That’s an amazing record really.

Since this tragedy, we have taken steps to improve the Abandon Ship obstacle and others. In the revised design, participants now climb up to the platform in single-file lanes separated by handrails. Up top, there are places for event supervisors to stand, sectioned off by two-by-fours. You can see something like what Abandon Ship looks like now in Exhibit 6, except that those rails were not there at Penn’s Peak, and Abandon Ship is taller than that obstacle. Each event supervisor is responsible for two lanes and actively directs jumpers on either side of his or her position. In the pool below, there’s a one-to-one ratio of lanes to lifeguards. Before allowing each participant to jump, the event supervisor on the platform communicates with the lifeguard below to make sure that the previous jumper has resurfaced and cleared the lane. We had to do this not because of what happened to Alejandro, but because the team from Xenopharma ignored our guard’s red flag. We also have at least one diver, in full gear, ready to hit the water at moment’s notice. Course-wide, safety personnel and event supervisors now receive “obstacle cards” detailing actions they should take during an emergency. Before each event, all Storm Chase staff run through real time drills to ensure that they understand their roles. We also have implemented a standard construction plan for obstacle frames.

I know that people know about Baywatch from the TV show. But the challenge we don’t talk about in lifesaving is how to deal with losing people, because you will... to a heart attack or the surf or a collision... people engaged in physical activity sometimes die. I will fight to my last breath for the ones we can save, but that’s the hardest thing: sometimes there is nothing you can do.
Statement of Izzy Cameron

My name is Izzy Cameron. I was a four-letter athlete in high school, having played lacrosse, soccer, basketball, and track. Before retiring, I was a sports therapist. I have a degree in literature from Erie County Community College, so my ability was more based on experience. But, really, after getting your first job in the field, no one cares about your credentials. The best part about my job was that I worked with the most important muscle in the body: the mind. I can fix them. It is a gift and frankly, I was famous for it. But it starts with reading people. Seeing the fear enter their eyes or stare of unrelenting ambition, as I did for nearly forty years serving as an athletic trainer and sports therapist for high school and college teams and individual competitors. I was even contracted for some races or games by individual professionals to help them physically but also to get them psyched up. Since I do love sports, Storm Chase and the entire uprise of the obstacle sports world had me intrigued. Blame it on the pandemic and the internet, but when you are retired and cannot even go outside, the internet becomes a rabbit hole of intrigue. I spent hours and hours watching all of the old events on YouTube.

When I learned that the return of the Storm Chase was going to be a mere three-hour drive from my home in Altoona, you know I was going to be there. And when the call for volunteers came, I was one of the first to sign up. Like I said, I had a ton of time on my hands and wanted to be part of the action. I wanted to feel the energy of crowd and the determination to tackle extremely hard obstacles. Plus, I wanted to get a chance to meet John Lande and Christina Thompson. When I was assigned the role of team monitor, I was excited and while I knew just observing would be a bit of a physical challenge given the length of the course, I was as ready as many of the participants. The role of the monitor is simple. The Storm Chasers were released onto the course in cohorts based on start times that were about 40 minutes apart. I was assigned the 10:20am cohort. That morning, we reported at 8am for a long training session on the safety protocols, ten minutes or more, and we were given a script to read to the participants after the first, warm-up obstacle. I was also supposed to keep an eye out for aggressive and unsafe behavior as well as unauthorized participants. I felt totally prepared for my job. Storm Chase did a great job there.

Look, Storm Chase is a stressful event that elicits a short term “fight or flight” response. This response starts in the brain, which starts a cascade of events that play a role in completing the event: increased adrenaline, increased heart rate, increased breathing rate, increased oxygenation and blood flow to the muscles and brain, changes in neurotransmitters, and shutting down non-essential processes like digestion. Every good sport does, and I’ve seen it in every high-level athlete I’ve ever treated. In
short, it’s scary, but it’s a rush. I do not recommend anyone mixing stuff like alcohol with sport. I know it is a rule for Storm Chase as well – right there middle of the pledge.

It’s so true that you don’t run an event like Storm Chase alone. You run it with everyone on that course... well, at least the ones in your cohort. There’s a wonderful atmosphere of “we’re all in this together” that’s unique to this kind of race. Camaraderie among participants is part of the event – it is actually a big goal and one of the benefits. Shared experience can really lead to great friendships and relationships. The overall experience of the race is something I feel that everyone should do at some point. You realize that you and your body can go farther and achieve more than you ever thought possible. You get to look at your blisters and bruises at the end of the event and think what it took to achieve the finish.

So for this particular event, I was aware that every participant had to sign a waiver, but they also had to do a pledge of sorts going over some of the values I just described. There are risks involved in any kind of race, from a 5K to a marathon, so when it comes to a mud race involving elements like fire, barbed wire, climbing big things, being exposed to ice cold and mud, you’ve got to use your head. The most important thing in an event like this is to stay safe and only do those challenges that you feel comfortable with. At Storm Chase, anyone can just go around an obstacle for a small time penalty. There are signs posted along the course with this message. Course monitors, like me, at each obstacle remind participants constantly as well. But here’s something to take into account: when people get in race mode, some still make wise decisions and consider their self-preservation, but others don’t make very good decisions at all. Participants often face instant, game-time choices while in the throes of an adrenaline rush. Or they feel compelled to complete an obstacle either through peer pressure, ego or goading from others. And there were a lot of others there, not just on the teams but among the spectators. Even the race staff was there to encourage participants to do their very best, to push themselves so they would have a good experience and be proud later. That’s what Storm Chase is all about: pride of accomplishment. For some people, skipping obstacles might feel like “less than” the full experience, so some people might have thought staff was pressing them. No way! Staff just wanted the runners to be all they could be, and we stood behind them pushing their own limits.

It’s not only overt pressure to complete all obstacles that drives a participant to make bad choices. Sometimes pressure comes in a subtle way. Teammates can pressure, just thinking they are being supportive (“just give it a try” or “you can’t win if you don’t play”). Internal pressures include both a sense of not wanting to let the team down (despite the fact that there is no timer, no scorecard, no judgments) and a desire to perform at a comparable level (or better) than the rest of your team.
After the training and Chris’s speech, I was ready to run through a wall, but my morning cohort was not leaving until after 10, so I sat in the warming tent, drinking coffee. Worse, all of the teams were there right at 10:20am except for the bog turtle team. There were nowhere to be found. I radioed to the organizers and they said they had just arrived at the registration area. One of the volunteers told me that a few of the team members appeared to be a bit “off” and that I should keep a close eye on them. The rest of the cohort didn’t like them, because everyone was freezing and wanted to get going. They had to get to my station by 10:40 or I would have to disqualify them. I can tell you that the rest of the cohort were not happy to be waiting for them. Right when I was about to call it, they showed up.

Technically, I may have even let them start a minute or two after 10:40, but what does one minute matter?

Right from jump, we were behind schedule. I could tell the bog turtle team in particular was not paying attention when I went over the safety protocols. They seemed far more interested in getting running than respecting the event. I chalked it up to event jitters, but I had equally convinced myself that it was due to alcohol consumption. Who drinks light beer at 9 AM? Then again, none of the teams seemed to want to listen to me much, and I was flying through instructions so we would not get disqualified and I’d lose my chance to see the whole course up close. Alejandro Desafios in particular was a bit of a joker. He kept talking over me and making comments about my ability to keep up given my age. Not cool.

In my observation of Alejandro and his team, I noticed both external and internal pressures mounting. It was like they were on a mission to get the best time, and Alejandro was clearly their leader. He was motivating the rest of the team the entire time. I also saw at least one instance where one of the team members reminded another that they could “just skip it,” but Alejandro yelled at them that they needed to do it, it was all a bit intense. I had to pull Alejandro aside at one point and remind him that the skip obstacle option is not something to be ashamed of. Along with an evident desire to not let the team down, I observed a fierce sense of competition among Alejandro and at least a few of his teammates. I even had a quick one on one with another one of his team members that asked if she skipped an obstacle would the entire team be time penalized.

I witnessed each member of their team get zapped by electrical wires hanging over a mud pit in the Electric Storm obstacle. I witnessed one member of the team suffer pretty bad rope burns, I noticed a rather nasty ankle injury on the Mudslide, and I saw Alejandro fall from a rotating monkey bar-type contraption called the Cyclone, suffering a blow to his head that left him dazed. But each time, the entire team continued, and I didn’t think it was so severe that a medic was needed. Under normal
circumstances, any of those injuries could have ended the race. But I think there might have been a little too much pride involved. They kept on muttering about the other team from Xylophone or something and needing to be at the top of the leader board. I probably should have intervened more, but I was caught up in the excitement. I also had to feed my nicotine monster and stepped away from the course a few times to catch a butt or two.

There was also mounting pressure from individuals and groups coming up from behind because we got such a late start. They were egging my cohort to either quickly complete an obstacle, go around, or get out of the way. There was one group in the 11am cohort that was particularly aggressive – a team from a local company called Xeno. I could see now why my bog turtle team hated them so much. Smug and condescending is not a great look – regardless of circumstance. You could tell they were gunning for the time award, or bragging rights, or they were just a bunch of alpha male jerks! Alejandro’s group was not the fastest on the course, nor the slowest – they had no chance of winning. But in every event, there are always those gung-ho groups that just add to the chaos. There also seemed to be a lot people on the course. I’m not sure what the final participant tally was, but the course did seem a bit overcrowded – adding to the pressure. I did not look carefully enough to notice whether every participant had a race bib and number.

By the time we got to the Abandon Ship obstacle around 12:30, the course was really congested. I think the proximity of the finish line had something to do with that. I got the sense that by that point in the course, most everyone had had enough abuse and just wanted to be done and get to the beer.

Where once others might stop and lend a hand to strugglers, now with only a few obstacles remaining, there was a lot of pushing and shoving to get to the wall of cargo nets, and then over, around, and through slower participants to get to the top. The course monitor stationed at the base of the wall was trying her best to have teams and individuals proceed in an orderly fashion, but as in all things, once one person jumps the line, others quickly follow. I did notice that the monitor used her radio to call for some assistance, but I didn’t stick around to see if any additional help arrived.

As my teams made their way up the wall to the platform, I moved to a vantage point beside the pool of mud. From there, I could see that the platform at the top was overcrowded. The obstacle staff threw up the red flag that was meant to make the participants stop and wait for the area to be clear, but Alejandro was not having it, you could see it in his eyes. His aura screamed red. He was pushing people out of the way, and eventually just jumped in with a couple of his other teammates. I couldn’t tell if he could see it or not, because the girl holding it was pretty short, and there were a lot of people up there, but I know we discussed the red flags in my speech at the start. I may have read fast, but I read every
Anyway, it wasn’t that big of a platform to begin with, with two or three dozen people up there at one time, it was jam-packed, and clearly there was a problem. The problem seemed pretty obvious to me: the number of climbers reaching the platform exceeded the number of jumpers into the pool. They either needed to increase the rate of jumpers — not the safest option — or decrease the number of wall climbers temporarily until the logjam cleared — which was attempted in good faith, but in vain. The monitors had the red flags up, but no one was listening. That’s one of the troubles with millennials, you know: no respect for authority. But what made the situation go from bad to impossible was the team from Xeno. They went right up the cargo nets — like spiders, that group! — against the red flag at the bottom and just jumped in — all of them — all at once against the red flag at the top. It was dumb, aggressive, and really unwarranted given the circumstance.

There were two lifeguards stationed at either side of the pool. One was busy helping a struggling swimmer to shore after the mass of humanity plummeted into the icy cold water. I do remember one of his teammates yelling that Alejandro was still in the mud pit and had not come out. They were really in the face of one of the lifeguards yelling and screaming. I thought the lifeguard acted in a calm and collected manner, very steady, carefully listening to what was said. They quickly had participants by the side of the pool do an inventory to see if anyone was missing. They finally got the area cleared of jumpers. It couldn’t have taken more than 45 seconds, maybe a minute at the most. I was impressed with their professionalism, given the sheer number of people. Once the pit was cleared, the first lifeguard put on their mask and dove in to start the search. The search process was hindered by a number of participants who tried to help. I could tell that they were getting in the way, and heard the lifeguard yell something like, “I’m a trained diver, back off, I need space.”

When they had to make their third dive below the surface, I knew that the outcome could not be good. At that point, Alejandro had to have been in the water at least a couple of minutes, maybe more. When the diver finally brought him up from below, dragging him to the side of the pit, it was a sickening sight. Emergency medical help had been called from the nearby tent, and they arrived shortly thereafter. Together they performed CPR and zapped Alejandro 2 or 3 times with the shock paddles before getting a pulse. I came over to help as well and as much as I could. I heard on the news that he died the next day in the ER.

From my vantage point as a Storm Chase observer, it appeared to me that the event organizers did everything possible to provide a safe — but exciting! — challenge to competitors. I know it ended bad, but I call them like I see them. If Alejandro was paying attention to the red flag and reading the situation correctly, he would have waited. He never would have jumped. He would still be alive. Whether it was
his overzealousness, him wanting his team to win even though he had no shot, or just plain old adrenaline driven by the chasing teams, he made a bad decision.

While there was some congestion on the course and injuries did occur, the medical staff provided prompt and effective treatment and the event supervisors were informative and helpful. The event was well organized. That’s what I told Chris afterward, when Chris asked about what had happened, how this could have gone down: there were a lot of people, but his team acted right. That probably wasn’t 100% true; as I said, there were way too many people on that obstacle, and there were teams pushing and stuff. The obstacle monitor looked to be about 16, 17 years old maybe… fine for a Sunday at the community pool, but no way gonna keep control over dozens of fired-up 20- and 30-somethings. In any case, Chris was smart enough to figure out how to fix things later; in the moment, I could tell that it was what Chris needed to hear. As I said, I’m good at that.

Even so, I think a person makes their choices. Ya buy your ticket, ya take your chances, I say.

With the advent of televised races and shows like American Ninja Warrior, there are a lot of stay-at-home weekend warriors who are inspired to try their hands at obstacle courses. But many do not understand the extreme challenges that they will face. Race organizers do what they can, but runners in these races should also be fully prepared – that’s on them. Someone with a pre-existing health condition or without proper physical training, for example, should not jump right in. I’ve been in events before where I would have been worried for my own safety, not because of my lack of competence or training but because of the incompetence and risk-taking of others. Race organizers cannot stop all of that.

Bad things sometimes happen to good people. That’s the way of the world. This was a good enough race. Participants seemed to have a good time. It’s truly unfortunate that this tragedy casts a pall over this event and over the sport in general.
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Exhibit 1

The Glorious Return of the Most Challenging, Most Surprising, Most Dangerous Obstacle Race in the World

WORLD CHAMPIONSHIP

STORM CHASE

ONLY THE WEAK TAKE COVER
Penn's Peak Pennsylvania | October 23, 2021

Curtain Opens at 7:30 AM
Exhibit 2

**Storm Chase LLC**

**ASSUMPTION OF RISK, WAIVER OF LIABILITY, AND INDEMNITY AGREEMENT**

Penn’s Peak 2021

**PARTICIPANTS: READ THIS DOCUMENT CAREFULLY BEFORE SIGNING ELECTRONICALLY. THIS DOCUMENT HAS LEGAL CONSEQUENCES AND WILL AFFECT YOUR LEGAL RIGHTS AND WILL ELIMINATE YOUR ABILITY TO BRING FUTURE LEGAL ACTIONS. YOU CANNOT PARTICIPATE IN THE COMPETITION WITHOUT EXECUTING THIS AGREEMENT**

**Parties**

**Released Parties** include STORM CHASE LLC and its directors, officers, employees, agents, contractors, insurers, spectators, co-participants, equipment suppliers, and volunteers; PENN’S PEAK and its directors, officers, employees, agents, contractors, insurers, equipment suppliers, and volunteers; all STORM CHASE LLC event sponsors, organizers, promoters, directors, officials, property owners, and advertisers; governmental bodies and/or municipal agencies whose property and/or personnel are used; and any or all parent, subsidiary or affiliate companies, licensees, officers, directors, partners, board members, supervisors, insurers, agents, equipment suppliers, and representatives of any of the foregoing.

**Releasing Parties** include the participants as well as participant’s spouse, children, parents, guardians, heirs, next of kin, and any legal or personal representatives, executors, administrators, successors and assigns, or anyone else who might claim or sue on participant’s behalf.

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**Initial Assumption of Inherent Risks**

Storm Chase event (hereafter referred to as the SC Event) is meant to be an extreme test of toughness, strength, stamina, camaraderie, and mental grit that takes place in one day. It is not a race against other contestants, but rather a competition with oneself and the Course. The object is to complete the Course. Venues are part of the challenge and usually involve hostile environments that might include extreme heat or cold, snow, fire, mud, extreme challenges in elevation, and water. Some of the activities include runs, military style obstacles, going through pipes, traversing cargo nets, climbing walls, encountering electric voltage, swimming in cold water, throwing or carrying or getting hit with heavy objects, and traversing muddy areas. In summation, the SC Event is a hazardous activity that presents the ultimate physical and mental challenges to participants.

I understand and acknowledge that the SC Event is an extreme test of my physical and mental limits that carries with it inherent risks of physical injury. **Inherent risks** are risks that cannot be eliminated completely (without changing the challenging nature of the SC event) regardless of the care and precautions taken by Storm Chase LLC (hereafter used when referring to the corporate entity and protected parties). I also understand that these hazards may be magnified due to the fact that the SC Event is often conducted under what may be extreme conditions and circumstances.

I understand and acknowledge that the **inherent risks** include, but are not limited to: 1) contact or collision with persons or objects (e.g., collision with spectators or course personnel), contact with other participants, contact or collision with motor vehicles or machinery, and contact with natural or man-made fixed objects; 2) encounter with obstacles (e.g., natural or man-made water, road and surface hazards, close proximity and/or contact with thick smoke and open flames, barbed wire, pipes, and electric shocks); 3) equipment related hazards (e.g., broken, defective or inadequate competition equipment, unexpected equipment failure, imperfect course conditions); 4) weather-related hazards (e.g., extreme heat, extreme cold, humidity, ice, rain, fog); 5) inadequate or negligent first aid and/or emergency measures; 6) judgement and/or behavior-related problems (e.g., erratic or inappropriate co-participant or spectator behavior, erratic or inappropriate behavior by the participant, errors in judgment by personnel working the event; and 7) natural hazards (e.g., uneven terrain, rock falls, lightning strikes, earthquakes, wildfire attacks, contact with poisonous plants, marine life and/or ticks).

I further understand and acknowledge that any of these risks and others, not specifically named, may cause injury or injuries that may be categorized as minor, serious, or catastrophic. **Minor injuries** are common and include, but are not limited to: scrapes, bruises, strains, muscle tension and soreness, nausea, cuts, sunburns, abrasions, grazes, lacerations, and contusions. **Serious injuries** are less common, but do sometimes occur. They include, but are not limited to property loss or damage, broken bones, fractures, torn or strained ligaments and tendons, concussions, exposure, dehydration, heat exhaustion and other heat-related illnesses, mental stress or exhaustion, infection, vomiting, dislocations, hyperthermia, anemia, electrolyte imbalance, loss of consciousness, syncope, dizziness, fainting, seizures, electric shock and/or injury, and neurological disorders/pain. **Catastrophic injuries** are rare; however, we feel that our participants should be aware of
the possibility. These injuries can include, but are not limited to, permanent disabilities, stroke, single or multiple organ failure or dysfunction, physical damage to organs, spinal injuries, paralysis, heart attack, heart failure, blood cell disorder, brain swelling, and even death.

I further understand and acknowledge that the SC Event may contain obstacles with electrically charged wiring and fencing. During this event I may be exposed to such electrically charged live wiring. I understand and acknowledge that exposure to such electrically charged objects may directly cause or contribute to bodily injury. These injuries may be serious and permanent. The injuries include, but are not limited to: skin irritation, electrical burns, muscle spasm, muscle contraction, single or multiple organ failure, eye injuries including cataracts and temporary or permanent blindness, cardiac arrest, heart attack, disruption of normal cardiac rhythm, bleeding, muscular swelling, decreased blood flow to extremities, loss of consciousness, coma, seizure, spinal cord injury, fracture, injury to ligaments, paralysis, stroke, muscle weakness, neurological disorder, tingling sensations, infection, muscle breakdown or destruction, depression, anxiety, aggressive behavior, ulcer, pneumonia, sepsis, and even death.

I also understand that it is my responsibility to consult with my personal physician prior to participating in the SC Event to ensure that such participation will not pose any unusual risks to my health and well-being. I understand that it is my responsibility to inspect the Course, facilities, equipment, and areas to be used, and if I believe or become aware that any are unsafe or pose unreasonable risks, I agree to immediately notify appropriate personnel. By participating in the event, I am acknowledging that I have found the course, facilities, equipment and areas to be used to be safe and acceptable for participation. I accept full and sole responsibility for the condition and adequacy of my equipment.

I understand fully the inherent risks participating in the SC Event and assert that I am willingly and voluntarily participating in the event. I have read the preceding paragraphs and acknowledge that 1) I know the nature of the SC Event; 2) I understand the demands of this activity relative to my physical condition; and 3) I appreciate the potential impact of the types of injuries that may result from the SC Event. I hereby assert that I knowingly assume all of the inherent risks of the activity and will take full responsibility for any and all damages, liabilities, losses, or expenses that I may incur as a result of participating in the SC Event.

___ Initial  Waiver of Liability for ORDINARY NEGLIGENCE: In consideration of being permitted to participate in the SC event, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. I (on behalf of the Releasing Parties) hereby forever waive, release, covenant not to sue, and discharge Storm Chase LLC and the other Released Parties from any and all claims resulting from the INHERENT RISKS of the SC Event or the ORDINARY NEGLIGENCE of Storm Chase LLC (or other Released Parties) that I may have arising out of my participation in the SC Event. This agreement applies to 1) personal injury (including death) from incidents or illnesses arising from the SC Event participation, which includes injury during course inspection, observation, practice runs, the event, medical treatment, Burn Zones and while on the premises (including but not limited to base area, stands, sidewalks, parking areas, sponsor promotions, restrooms, first-aid tents, and dressing facilities); and 2) any and all claims resulting from damage to, loss of, or theft of property.

___ Initial  Indemnification Agreement: In consideration of being permitted to participate in the SC Event and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, I hereby agree to hold harmless, defend, and indemnify Storm Chase LLC and the other Released Parties from and against: 1) Any and all claims made by me (or any Releasing Party) arising from injury or loss due to my participation in the SC Event; and 2) Against any and all claims of co-participants, rescuers, and others arising from my conduct in the course of my participation in the SC Event. For the purposes hereof, “claims” includes all actions and causes of action, claims, demands, losses, costs, expenses and damages, including legal fees and related expenses. This indemnity shall survive the expiration or sooner termination of the SC Event.

___ Initial  Other Agreements

Venue and Jurisdiction: I understand that if Mediation and Arbitration prove unsuccessful and legal action is brought, the appropriate state trial court for the state in which the SC Event is held has sole and exclusive jurisdiction and that only the substantive laws of the State in which the SC Event is held shall apply.

Severability: I understand and agree that this Assumption of Risk, Waiver of Liability, and Indemnification Agreement is intended to be as broad and inclusive as is permitted by the state in which the SC Event is held and that if any provision shall be found to be unlawful, void, or for any reason unenforceable, then that provision shall be severed from the Agreement.
and does not affect the validity and enforceability of any remaining provisions.

**Integration:** I affirm that this agreement supersedes any and all previous oral or written promises or agreements. I understand that this is the entire Agreement between me and Storm Chase LLC and cannot be modified or changed in any way by representations or statements by any agent or employee of Storm Chase LLC. This agreement may only be amended by a written document duly executed by all parties.

**Mediation and Arbitration:** In the event of a legal issue, I agree to engage in good faith efforts to mediate any dispute that may arise. Any agreement reached will be formalized by a written contractual agreement at that time. Should the issue not be resolved by mediation, I agree that all disputes, controversies, or claims arising out of my participation in the SC Event shall be submitted to binding arbitration in accordance with the applicable rules of the American Arbitration Association then in effect. The cost of such action shall be shared equally by the parties.

**Class Actions:** I agree that any arbitration, mediation or legal action shall proceed solely on an individual basis without the right for any claims to be arbitrated on a class action basis or on bases involving claims brought in a purported representative capacity on behalf of others. Claims may not be joined or consolidated unless agreed to in writing by all parties.

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Initial Agreements for the Protection of Participants

- I represent and warrant that I am in good health and in proper physical condition to safely participate in the SC Event. I certify that I have no known or knowable physical or mental conditions that would affect my ability to safely participate in the SC event, or that would result in my participation creating a risk of danger to myself or others.
- I represent and warrant that I am in full command of my faculties and am not under the influence of alcohol or drugs.
- I agree not to participate in a SC Event while under the influence of alcohol and/or drugs.
- I acknowledge that Storm Chase LLC recommends and encourages each client to get medical clearance from his/her personal physician prior to participation.
- I assert that I have not been advised or cautioned against participating by a medical practitioner.
- I understand that it is my responsibility to continuously monitor my own physical and mental condition during the Course, and I agree to withdraw immediately and notify appropriate personnel if at any point my continued participation would create a risk of danger to myself or to others.
- I represent and warrant that I am covered by medical insurance.
- In the event of an injury to me that renders me unconscious or incapable of making a medical decision, I authorize appropriate Storm Chase LLC personnel and emergency medical personnel at the event to make emergency medical decisions on my behalf (including, but not limited to CPR and AED).
- I authorize Storm Chase LLC to secure emergency medical care or transportation (i.e., EMS) when deemed necessary by Storm Chase LLC.
- I agree to assume all costs of emergency and medical care and transportation.
- I acknowledge that Storm Chase LLC has instituted its rules for the protection of the participant and co-participants. I agree to familiarize myself with those rules and follow them throughout the event. I also recognize the authority of Storm Chase LLC to halt my participation (and, if necessary, have me removed from the premises) if my participation, conduct, or presence endangers myself or my co-participants.

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Entry and Participation Agreements:

**Rules:** I agree to become familiar with and abide by all written and/or posted rules of Storm Chase LLC, as well as all written and/or posted rules of the Venue. I further agree to comply with all directions, instructions and decisions of Storm Chase LLC and Venue personnel. I further agree not to challenge these rules, directions, or decisions on any basis at any time.

**Emergency Delay or Cancellation:** I acknowledge that Storm Chase LLC at its sole discretion may delay, modify or cancel the SC Event if conditions or natural or man-made emergencies make administering the event unreasonably difficult or unsafe. I agree that “emergency” is defined to mean any event beyond the control of Storm Chase LLC, including, but not limited to: high wind, extreme rain or hail, hurricane, tornado, earthquake, flood, acts of terrorism, fire, threatened or actual strike labor difficulty or work stoppage,
insurrection, war, public disaster, and unavoidable casualty. In the event of a
delay, modification or cancellation of the SC Event as described in this
paragraph, I understand that I will not be entitled to a refund of my entry fee
or any other event costs incurred in connection with the SC Event.

Govern Participation: I understand that Storm Chase LLC has the authority
to issue instructions or directions relating to the manner of my safe
participation in the Course or Related Activities and the authority to halt my
participation in the Course of Related Activities at any time they deem it
necessary to protect the safety of participants, spectators, and personnel;
and/or promote fairness and the spirit of Storm Chase LLC.

Removal from Course: I understand that Storm Chase LLC and Venue
personnel may immediately cause anyone who disobeys any rules, directions,
instructions, decisions, or laws, or whose behavior endangers the safety or
negatively affects a person, facility, or property of any type or kind, to be
removed from the Course.

Fee Refunds: In understand that all fees and associated costs (including
optional product purchases, spectator tickets and donations), paid in
registration for this SC Event are not refundable for any reason under any
circumstances, including but not limited to injury, a scheduling conflict,and/or event cancellation.

Military: I understand that active duty or deployed military participants may
be entitled to a refund on a case-by-case basis upon providing sufficient,
official documentation regarding the deployment that conflicts with
participating in the event.

Attitude and Behavior: I also agree to exhibit appropriate behavior at all
times; demonstrate respect for all people, equipment, and facilities; and
participate with a cooperative and positive attitude.

Alcohol & Drugs: I certify that I am not, and on the date of the SC Event
will not be, under the influence of alcohol or any non-prescription drugs that
would in any way impair my ability to safely participate in the SC Event. I
further understand that the consumption of any alcohol and any illicit or
illegal drugs or substances during the event is strictly prohibited. Storm Chase
LLC will only allow responsible consumption of alcohol after the SC Event.
The consumption of any illicit or illegal drugs or substances before, during,and after the SC Event is strictly prohibited. I agree to take full responsibility
for any alcohol consumption at the Event.

Specific Rules: I specifically acknowledge and agree to abide by the
following rules: 1) no urination or defecation is permitted outside of
designated areas; 2) no wheeled conveyances or pets are allowed in the
Course at any time; 3) no clothing, props or equipment that pose an
unnecessary risk to participants, spectators or personnel are permitted; and 4)
obey civil and criminal laws including traffic laws.

Photography: I understand that any and all photographs, motion pictures,
recordings, and/or likenesses of me captured during the SC Event by Storm
Chase LLC, its affiliated entities or contractors, and/or media become the sole
property of Storm Chase LLC. I grant the right, permission and authority to
Storm Chase LLC and its designees to use my name and any such
photographs, motion pictures, recordings, and/or likenesses for any
legitimate purpose, including but not limited to promoting, advertising,and
marketing activities. I further understand that Storm Chase LLC and its
designees have the full right to sell and/or profit from the commercial use of
such photographs, motion pictures, recordings and/or likenesses.

Majority Age: I affirm that I have reached majority age (or will have reached
that age by the date of the SC Event. Majority age is 18 in all states except
Alabama (age 19), Missouri (age 19), Nebraska (age 19), Mississippi (age
21).

Acknowledgement of Understanding: I have read this Assumption of
Risk, Waiver of Liability, and Indemnification Agreement and fully
understand its terms. I understand that I am giving up substantial rights.
Including my right to sue. I further acknowledge that I am freely and
voluntarily signing the agreement and participating in the SC Event, and
intend my signature to be a complete and unconditional release of all
liability due to ORDINARY NEGLIGENCE of Storm Chase LLC (and
other Released Parties) or the INHERENT RISKS of the activity, to the
greatest extent allowed by law in the State in which the SC Event is held.

Signature of Participant
Print Name
Date

FOR STORM CHASE USE ONLY:
Received by:
Date:
STORM CHASE ID#: 
you are not officially registered for the competition until this quiz is completed.

we need to make sure you were paying attention to the Waiver!
Storm Chase Pledge
Hello fellow Storm Chaser! We are looking forward to you joining us in this epic obstacle course to test your mind, body, and agility. Before we begin, please read the pledge below, and sign at the bottom of the page. Here at Storm Chase, we want our Participants to test themselves while still maintaining the values listed below.
As a Storm Chaser Challenger, I pledge to:

➢ EMBRACE THIS CHALLENGE OF PHYSICAL ENDURANCE AND MENTAL BRAVERY.
➢ I, ALONG WITH MY TEAM, WILL UPHOLD THE VALUES OF STORM CHASE LLC, THROUGH THE USE OF INTEGRITY AND TEAMWORK.
➢ I UNDERSTAND THAT THIS IS NOT A RACE, BUT A PERSONAL CHALLENGE TO OVERCOME OBSTACLES PUT IN MY WAY.
➢ I WILL NOT WHINE, I WILL NOT BECOME ANGRY OR AGGRESSIVE, I WILL NOT QUIT, I WILL NOT LET MY FELLOW STORM CHASERS DOWN.
➢ I WILL NOT BE SHOCKED BY THE ELECTRIC SHOCKS, I WILL REMAIN COOL WHILE IN ICE, AND I WILL BATHE IN THE MUD LIKE IT IS A DAY AT THE SPA.
➢ BY SIGNING THIS PLEDGE, I AGREE TO PROCEED AT MY OWN RISK.

ALL RISKS ARE ASSUMED BY ME, THE PARTICIPANT.

Participant Signature: _____________________
Phone Number: ______________________

EMERGENCY CONTACT:
Name: ________________________________
Phone Number: _______________________
Relationship to Participant: ____________________
Exhibit 5

October 23, 2021
Course Route & Obstacles
Penn’s Peak

OBSTACLE LIST
1. Welcome to the Storm
2. Thin Ice
3. Hurricane Alley
4. Mudslide
5. Squall
6. Tempest
7. Electric Storm
8. Ice Storm
9. Tsunami
10. Dust Storm
11. Quick Sand
12. Blizzard
13. Firestorm
14. Cyclone
15. Sinkhole
16. Tidal Wave
17. Avalanche
18. Typhoon
19. Abandon Ship
20. Drought
21. Thunder
22. Lightning
Exhibit 7

Remember you signed a death waiver.

Jump quickly. Management reserves the right to push you off.
There is a good chance you will break your ankle on this obstacle.

Sorry.

Dry your eyes, princess.

Face marking is compulsory—we don’t care if you have court on Monday.
Dr. Danger’s Sportz Xtreme

Costs, Pros & Cons of Obstacle Course Races

As a fitness professional, I’m always excited when races and events draw crowds. Anything that gets people up and moving is generally considered a good thing. But there are risks that arise when sports go from zero to 60 in a matter of months – an exponentially exploding industry opens up itself, and its participants, to problems.

Understanding Obstacle Course Racing (OCR)

Given the dynamic growth of the OCR industry, it’s a little tricky to positively define OCRs. In general, they’re exactly what they sound like: Races, during which participants come across, and overcome, specific obstacles (for example, crawling through mud pits, climbing over walls, or jumping over fire).

OCRs are held all over the country, typically in large, open parks or outdoor spaces where the racing companies have room to build their obstacles. Races vary in length and time, but most range from a 5k to half-marathon distance (roughly 3 to 13 miles), and most can be completed within one to four hours. They typically take more time to complete than a standard road or trail race because it takes participants longer to overcome the course's obstacles.

Because of the boom in participation, you can expect several hundred to several thousand participants at any given OCR event. And because many of these races are designed to encourage teamwork, there are usually options to join either as an individual or as a team. Sometimes races even offer discounts to those registering as part of a team. If a typical race entry ranges in price from $60 to $200, team registrations might receive a 5% to 10% discount for each person registering as part of the team.

Advantages of OCRs

There’s a lot to be said for obstacle course racing, and I see no reason most interested parties shouldn’t try one out. These are many of the reasons I’m an overall proponent of the sport:

1. **Enhance Cardiovascular Fitness.** Obstacle course races are races typically ranging in length from 1 to 13 miles, depending on the event. Participants must train to be able to walk or run the full distance of the course.

2. **Encourage Strength and Flexibility Training.** Unlike traditional road races, where you simply travel the distance of the course powered by your heart, lungs, and legs, OCRs introduce difficult obstacles that require additional training. To be able to effectively climb over a 10-foot wall, you must develop upper body strength. To be able to climb up a 30-foot rope, you must develop full-body strength and coordination. To be able to climb through some obstacles, you must develop greater flexibility. All-in-all, OCRs require greater total-body fitness than your standard race.

3. **Challenge Mental Toughness.** It’s one thing to run for three miles – but it’s another thing entirely to run, jump, and crawl a total of three miles. For individuals looking for a new challenge, or those wanting to test the boundaries of their body and mind, OCR racing is a great place to start.

4. **Encourage Teamwork.** Most OCR courses are designed for promoting teamwork. In other words, there may be some obstacles you can’t get through without a little help – you may need others to help you crawl up a 30-foot cargo net, or to help you out of a mud pit. The industry as a whole is community-focused, with a desire to help participants achieve and feel accomplished.

5. **Draw More People to Fitness.** Because there’s a focus on teamwork, and because many OCR races seem novel, more people are drawn to the sport. Any time people sign up and train for events is a step in the right direction for overall community health.

6. **Options for Every Level.** Whether you’re a total beginner or an elite athlete, there are obstacle course races perfect for your experience level. For instance, women can sign up for the Pretty Muddy OCR – an un-timed race that’s perfect for anyone just starting out, or as a fun race for the more competitive athlete. Likewise, those who want to earn a living running OCRs can sign up for the Spartan Race, where it’s not uncommon for top competitors to be supported by sponsors as they race for generous prize purses from the racing company.
Disadvantages of OCRs

Unfortunately, not everything about the OCR industry is good. When any industry experiences a boom, there's an inevitable bust that may take place before the industry normalizes.

1. Too Many Races
First, the industry has been saturated with hopeful entrepreneurs starting races with the goal of becoming the "next big thing." But putting together big events isn't cheap – you have to have the space, the insurance, the online presence, the obstacles, the staff, and the marketing to draw competitors in. According to Obscure Sports Quarterly, a typical obstacle course race costs between $130,000 and $420,000 – that's serious cash. Some entrepreneurs are realizing their work isn't generating the rewards they predicted, and are being forced to close their doors.

I actually experienced this myself. A few years ago I was signed up to take place in a 5k obstacle course race. Several weeks prior to the event, I received an email stating that the company had filed for bankruptcy and no further races would be held. There was no recourse for those who signed up and spent money on the event. Luckily, another race company stepped in and took it over, so those who signed up were still able to compete.

2. Poor Regulation
As a whole, the OCR industry has grown too fast for regulations to keep up. In fact, the industry is largely unregulated. This means there aren't standards for staffing, obstacle type, obstacle safety, or even course length.

There are three main problems with the lack of regulation:

1. Companies Can Implement Obstacles Without Standardized Safety Testing. Almost any company can come in, open up shop, and create whatever obstacles they want without any real guarantee that they're safe or reasonable. In fact, many companies start up with the hopes of making bigger, better, wilder obstacles to draw participants, but there's no way for participants to be sure they're safe.

2. Course Safety Can Be Compromised With Crowds. The number of participants and the lack of regulation can lead to otherwise safe obstacles becoming unsafe. Take, for instance, the drowning death of Avishek Sengupta in a 2013 Tough Mudder race. While a wrongful death suit is still pending in court against the racing company, the speculation is that there were too many people on the course that day, which made normal regulation of the obstacles more difficult to maintain. Without standardized regulation for how to handle crowded courses, this type of tragedy is more likely to take place.

3. Professionalism as a Sport Is Difficult Without Standards & Regulations. For individuals who want to seriously compete in the sport, the lack of regulation prevents the industry from seeming professional. Compare it to any other sport – running, for instance – and you know there are standards to follow. A marathon is a marathon, no matter where you run it. A 5k is a 5k, no matter where you run it. There are records to break, rules to follow, and governing bodies to make sure athletes are participating appropriately. However, the OCR industry is all over the place when it comes to standards and regulations. For instance, there are no standardized obstacles or race distances, and there's not a governing body to enforce athlete drug testing.

4. There is No National Governing Body for These Types of Races.

There is an association trying to increase the regulation in the industry – the National Obstacle Racing Association (NORA) – but the only way this group will see success is if it's widely accepted by the racing companies already ruling the industry. The jury's still out on this matter, and only time will tell.

Deciding to Race

Generally, there's no reason you shouldn't decide to race in an OCR – but you should understand the risks involved and take steps to minimize your own risk.

1. Train Appropriately
Don't sign up for a race and then show up on race day completely unprepared. Racing companies want you to be successful and free from injury, so follow their suggestions for training and nutrition. In general, give yourself a minimum of one month to prepare, and incorporate strength and flexibility training into your workout regimen.

2. Ask Questions
If you're in doubt about what you should do to prepare for a race, don't hesitate to communicate your questions to the racing company. If they're slow to answer, or don't seem equipped to answer your specific questions, you may want to consider canceling your registration and signing up for a different event. You may also want to seek out a trainer or coach to help you prep for your event. A trainer can walk you through specific exercises that will mimic the type of work you'll need to do during the event.

3. Practice Defensive Racing
When you arrive to a race course on race day, understand that you're in charge of your own safety. It’s reasonable to assume a course management team has created safe obstacles, but you shouldn’t assume that they’re being managed or monitored appropriately. Think of your racing as “defensive racing,” much like defensive driving. Keep an eye on what’s happening around you, and never feel pressured to attempt an obstacle that seems unsafe.

Final Word

The obstacle course racing industry has a lot going for it: It’s fun, exciting, and widely available. But just because OCRs look pretty on paper, it doesn't mean the reality is perfect. In the words of water safety, “Look before you leap” (both literally and figuratively) into OCR events, and always be your own safety advocate. For instance, if an obstacle seems too crowded to safely attempt, consider waiting for it to open up, or simply skip it altogether. Most OCRs companies offer alternative exercise suggestions for individuals who can’t (or don’t want to) complete a particular obstacle.

Likewise, if race course personnel aren't helping manage the flow of the event, or if safety personnel seem distracted, don’t be afraid to ask them to step up their game. No one wants a day of fun competition to turn into a life-altering tragedy – it’s reasonable to expect race personnel to be proactive and engaged in protecting the safety of participants.
Dr. Danger’s Sportz Xtreme
Obstacle Review – April 2019 (Camp Kikiwaka, Maine)

Storm Chase – Abandon Ship: You climb up an incline to a platform about 20 or so feet above a water pit. Your job is to jump into the water. This is a “free for all” kind of thing where people just kind of mill about on the platform until they get the nerve to take the plunge. They do station someone up on the platform who occasionally does a countdown in order to move those thinking too long about the plunge to jump. The key for me is to jump as quickly after getting onto the platform as I can. Obviously, don’t push your way to the front, but if you’re at all afraid of heights you want to spend as little time thinking about this as possible. It’s not a bad obstacle, unless it’s really crowded. The platform isn’t all that worrisome, but you definitely want to make sure you’re safe with the spot in the water you choose. The last thing you want to do is jump on someone else. So the lesson about not dawdling applies to those people in the water as well—get swimming towards the exit as soon as you come up. Don’t try to tread water unless you absolutely have to - you’ll definitely be unhappy if someone else jumps on you.

Dr. Danger’s Sportz Xtreme
Excerpt from “Sometimes You Just Need a Little Push”
June 26, 2019 – Storm Chase – South Carolina

I ended up talking with a young married couple who were doing their first OCR together (short aside - my wife would NEVER run a course with me). The guy was a pretty big dude who was a gunner in the military, and his wife was a petite, but fit housewife/mother. It was clear that they were having a good time, but that it wasn’t exactly a walk in the park. I would pass them on occasion, and they would pass me at other times. One of the places where we crossed paths was at Abandon Ship.

I climbed up to get to the platform and found the young couple at the top. The wife was in obvious distress, and wanted nothing to do with jumping from the platform. I told her it would be okay, and that it really was just a quick step off into the pool waiting below. The water would be cold, we all knew, but it was plenty deep enough to ensure she wouldn’t hit bottom. And, if she had problems with swimming, there were folks down there that could help her. None of these things were the problem, though...rather, she was afraid of the height. Every effort to provide rational reasons why she would be okay were rebuffed because she wasn’t acting rationally at the time (fear causes this, I know). The husband was gently trying to cajole her into jumping, but wasn’t having much luck. Understanding that this wasn’t my fight, I did what we could - I jumped off to, hopefully, show her that she’d be okay. I swam to the other side, got out, gave a quick look, and ran off without giving it much more thought. She was either going to jump, be pushed, or skip the obstacle, and I’d no doubt hear about whatever happened when they passed me again, which, eventually they did. I asked how it had gone, and she told us that her husband ended up having to push her in - and she was NOT happy about that. I asked if it was as bad as she thought it would be, fully expecting her to say “not really”, but she actually said that it was every bit as bad as she expected.
As I reflected on this, I realized that my own strengths is that I don’t seem to overthink the obstacles that come my way. It’s easy to stand on the lip of Tough Mudder’s Arctic Enema, knowing how cold it will be, and freeze up at the prospect of even trying it. It’s very easy to stand on a platform 20 feet above the water and think about how scary it is to fall, and that realization makes you stand and stare at the water below. In every case, the more time you spend thinking about the possible consequences, the more likely you are to give into the fear that holds you back. After all, if we’re honest, it’s not like we’re standing on the platform thinking about the positive outcomes...we spend way too much of our time thinking of all of the scary things that could happen.

I had a similar experience when I was younger. My friends and I had gone to an overhang at the oceanfront near where we lived. It was about the same height, but required a jump into the water below. I successfully jumped a few times, but, the final time I was standing on the cusp I started thinking about how stupid it was to jump into the ocean from that distance and how I might hit the rocks on the way down. I froze for what seemed like minutes, but eventually jumped. It was the most liberating fall, because I realized that those things weren’t really what was holding me back. I was holding myself back by overthinking the situation. So now, whenever I’m approaching Arctic Enema or Abandon Ship, I consciously decide to jump in as quickly as I can. Ironically, it’s the easiest way to not freeze when confronted with a dumpster full of ice-water.
On-Course Medical Tent Treatment Log Synopses

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Great Job Today - Reward!!

Chris Tempesto

to me

Hey Lindsay:

What a day - almost perfect. You know, what you did for that Alejandro fella, that was really amazing. He would not have made it to the hospital without your quick work.

I was thinking you deserve a reward - how about $2000? Just don't tell anyone about it.

~ Tempesto

Lindsay Rogers

to Chris Tempesto

Yeah - thanks, no thanks. I guess you're sorry, not sorry.

Lindsay

***