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Fame and Fortune

Risk, responsibility, and the guided climber

Near the entrance to most Buddhist Monasteries there is a painting of the wheel of life. At the hub of the wheel is a symbolic explanation for all our suffering. There is a pig representing our ignorance, a cockerel representing greedy desires and a snake representing the anger within us. In our ignorance, we become attached to our desires for such things as fame, fortune and power over others. But no sooner have we gratified one set of desires than we set off in pursuit of others, and anyone or anything that seems to thwart the attainment of those desires evokes in us responses of anger and malice.

It is so easy to get on this treadmill of life, but much harder to get off it, as evidenced by myself at 56 still reaching out to an audience for attention, still wanting a slice of the action and acclaim, and still planning new routes on unclimbed Himalayan peaks. There are those, however, whose ambitious desires outstrip their own ability, so that they have to pay others to help them achieve their goals – a hollow victory if they succeed and a course of action that has caused a great deal of suffering to others. When things go wrong or when there is an accident, there are those, too, whose first thought is 'Who shall I blame?' and the second 'How can I make some money out of it?'

The whole of life is an adventure. If it had not been there would be no evolution, no progress. A number of situations have arisen recently where risk-taking and its consequences have not been fully understood and accepted. As a result, the financial cost of adventurous pursuits has increased and the spontaneous initiative to adventure has been diminished.

Climbing Walls

A young woman, Kim Touch, had been to the Philadelphia Rock Gym on many occasions. She knew it was potentially dangerous, she had signed all the disclaimers. She fell only three feet whilst bouldering, breaking her wrist, even though there was adequate floor padding. The wrist didn't mend well and so she instructed her lawyers to sue the owners of the climbing wall for compensation. The owners were tempted to pay up in order to avoid the loss of their 'no claims' bonus, escalating insurance costs for the future and to save time and trouble contesting the claim. However, the plaintiff's case was so outrageous that they and their insurers decided to take her on. The case has yet to go to court, but whichever way it goes the climbing wall owners know that they have already lost \$2500 and that it will be more difficult to get reasonable insurance cover next time. This

woman suspected that all this would happen but she did not reckon on her opponents having the courage to fight the case.

Crag Climbing with Guides

A novice climber fell to his death whilst being lowered down Lovers Leap Rocks in Northern California. Four anchors had been placed around a block by his climbing instructor. They all pulled when the block moved and the student fell to his death. His wife subsequently sued. The case eventually found its way to the Appeal Courts where the judge displayed amazing insight with the statement: 'Falling, whether because of one's own slip, a co-climber's stumble, or an anchor system giving way, is the very risk inherent in the sport of mountain climbing and cannot be completely eliminated without destroying the sport itself.' The court decided in favour of the defendants and in effect in favour of climbing. In making a judgement, the courts have to balance the fact that the plaintiff is assumed to know of the risks, against possible negligence on the part of the guides. The student here had signed his disclaimers and the instructors were found to have set the anchors 'within the sport's norms'. Had the instructors not done so, the outcome could have been very different.

Two years ago, in Britain, Martin Pope, after thirty days of climbing experience, and after three outings with British Mountain Guide David 'Cubby' Cuthbertson, followed Cuthbertson up a climb of HVS standard and himself led successfully a V-Diff and a Severe climb. Cuthbertson allowed him to select his own gear and lead another V-Diff. He was rightly trying to instil into his client a degree of self-reliance, albeit in a very controlled environment. Pope fell, all his runners failed and he ended up in hospital with spinal injuries. Later he sued his guide for negligence. The case went against the plaintiff. The judge held that 'if you are going to engage in rock climbing you must acknowledge and accept the risks you take and not expect to off-load your responsibility onto others. I believe that Mr Pope thought that having paid for a guide he was entitled to have his safety guaranteed. To engage in what even he regarded as a high risk sport in that frame of mind was foolish.'

It should be noted that the judge was helped enormously to come to this decision by the extremely articulate evidence given by the expert witness, guide and former head of the Mountain Leader Training Board, Iain Peter.

Alpine Climbing with Guides

Not so fortunate was David 'Smiler' Cuthbertson. He was found negligent in a widely reported High Court case that took place seven years after an accident on the north face of the Tour Ronde in July 1990 when his client and friend Gerry Hedley died.

It would be interesting to trace in full the humble beginnings of guiding in the Alps through to modern times, but here is a very brief potted history. At first the foreigner hired the more adventurous of the local villagers living

below his peak – woodsmen, chamois hunters, crystal hunters – more or less as a servant to help him find the easiest way and to hump his load up to the mountain. The local people gradually took on more responsibilities for the actual climb, arriving at the point where climbers such as Geoffrey Winthrop Young treated the local people as equals and friends.

Nowadays there is a presumption that when you hire an Alpine guide you are hiring someone to take care of you and all aspects of the climb, roped together all the way. However, in the case of Cuthbertson and his client Hedley, a situation had developed over the years, leaning towards the style of Winthrop Young, where the client had gained enough experience to suggest that he should lead some of the route. Hedley had led some of the earlier pitches, but had been slow, so much so that Cuthbertson took over the lead and, two pitches later, with the sun striking the rocks above and with a potential for stonefall, he hurriedly left his client belayed to one ice screw and moved quickly out of the fall line of the face, to the safety of a rocky section. On the way ice broke off beneath his crampons and he fell, pulling his client with him. Cuthbertson suffered only a broken knee while, sadly, Gerry Hedley was killed.

Last year the case came to court and the judge found in favour of the plaintiff, Gerry Hedley's son, who, at the time of the accident, had not yet been born. The British Mountain Guides suspended Cuthbertson while they conducted their own enquiry. In September last year they found that Smiler was 'not at fault' and he was reinstated as a full BMG guide. Thus ended a 'seven-year nightmare' for Cuthbertson and his family.

However, a black cloud still hangs over the future of British guiding in the Alps. This case should never have gone against the guide in the first instance. The court could find absolutely no evidence of negligence up until that last fatal belay. Until then every care and consideration had been responsibly taken by Cuthbertson. Suddenly, at that point, danger was threatening, decisions had to be made fast by the man on the spot and Cuthbertson took them in what he considered to be the best interests of his client and himself.

Back in Britain, seven years later, the judge made his decision based on comments made by the plaintiff's expert witness, experienced climber and fellow BMG guide Alan Fyffe, that Cuthbertson was negligent in that he only placed one ice screw instead of two. Alpine climbers everywhere have debated that judgement. But even if Cuthbertson had made the wrong decision in the fast-moving and dangerous situation he was in, that could happen to anyone, as everyone who climbs must know. None of us is infallible nor can Alpine climbing be reduced to an exact science, as the judge had assumed. Without gross negligence or criminal intent, there was absolutely no case to answer.

With the benefit of hindsight, Cuthbertson was badly served by his own BMG body. In failing to conduct an enquiry immediately after the accident, they left a vacuum that was filled by all manner of ill-informed opinion.

If they had found, as they found later, that Cuthbertson was not negligent, then it would have been a tremendous boost to his case and given a lot of credence to his own expert witness. But, in fairness to the British Mountain Guides, they are a relatively young organisation maturing in response to crises that confront them from time to time, including the other David Cuthbertson accident. Now no doubt they will learn through the experience of the accident on the Tour Ronde.

It seems to me, from having enquired into this case at some length, that the BMG are as yet uncertain what their role is: are they a company of friends, a professional association or a trade union of guides? At times they attempt to be all three but they did not fulfil any of these three roles to Cuthbertson's satisfaction. He had not until the end received the whole-hearted backing of any individual guide and in fact some had already suggested that he should not be fully reinstated. After the accident they were quite content for Cuthbertson to continue guiding for another 1500 days until his suspension last September. They also completely failed to anticipate the importance of the court case and prepare for a possible negative outcome.

Someone had to be an expert witness for the plaintiff, as well as for the defence, and the fact that Allen Fyffe gave answers to leading questions that were not countered by Cuthbertson's defence was hardly Fyffe's fault. With the case going against Cuthbertson, Fyffe has come in for a degree of criticism from his peers. Fyffe gave his opinion that two ice screws should have been placed in the belay. It was up to the defence team to state the obvious: that one of the great challenges and attractions of Alpine climbing is that every climb is different from the one the day before and that on big ice faces there is no right or wrong way, but only what is appropriate at the time. The conditions may be such that no belay at all is necessary and that the team should move rapidly together.

The main point is that danger and the risk of accident are an inherent part of Alpine climbing. The client knew this and accepted the dangers when he signed up to climb with Cuthbertson. The case should have been thrown out of court regardless of the fact that a bereaved mother and son would receive no award from an insurance company. Despite the fact that the husband and wife were negligent themselves in not taking out personal accident cover, the wife's situation evokes considerable sympathy. Which of us can say, if we had been in her position, that we would not have done exactly as she did? The fact remains that, as a result of this case, every British Mountain Guide going off to the Alps with his clients will do so with a lot more circumspection, be that little bit less adventurous and will have had to increase his charges to meet increased insurance premiums.

Guiding in the Himalaya

Last year my own Specialist Trekking Co-operative was involved in litigation after a trek to Rara Lake in West Nepal. It was a *Trail Walker* 'special

offer' trek and so the seven clients were accompanied by Chris Fenn, appointed by the magazine. The sirdar running the trek was Tej Badhur, a very experienced Tamang who had trekked all over the Himalaya with myself, other friends and many clients, to everyone's satisfaction. On this occasion, on reaching Rara Lake, the sirdar decided, in consultation with Chris Fenn, that they should return to Jumla by the same route, with interesting variations, instead of returning by a different route to Jumla, thus making a complete circular trek as advertised. The reasons for the change of plan were that two of the trekkers had been ill and a further one was very slow. Moreover, they were already two days behind schedule owing to international airline delays. The return trek was completed to everyone's satisfaction at the time. In fact, one of the trekkers who was later to become one of two plaintiffs against STC, wrote a glowing article in *Trail* immediately after his return, saying how much he had enjoyed the trek.

The sirdar had not done the trek before but he was quite certain that he would have had no problem in completing the itinerary as advertised, and in fact showed his metal by carrying out the variations, as requested, despite the fact that he had not done them previously. Two of the clients seized on this point, that the sirdar had no previous knowledge of the route, and made it the basis of a claim for £500 each through the Small Claims Court. The plaintiffs lost in view of the overriding consideration that the planned route needed to be curtailed to ensure that the trekkers should not miss their international flight home. The judge also seemed to be impressed that the plaintiffs had been thoroughly briefed well in advance that trekking in the Himalaya was no ordinary holiday and was for the enthusiast, implying that only the unexpected was to be expected on such holidays.

Our relief at the favourable outcome can be imagined. We had spent so much time and money preparing the case; it had filled our minds with worry, off and on, for eight months. It had given me a first-hand inkling as to how Smiler Cuthbertson and others must have suffered during the period of waiting for their cases to come to court. Those who accept money to take people into the mountains take on enormous responsibilities and are very exposed. Even if the case is won, there is no compensation for travel and other actual costs, nor for time lost. The insurance company loses a great deal more if they take on the case and provide a solicitor. It would certainly have been in the short-term interests of Sun Alliance to have settled out of court. They too were very courageous in taking on the litigants.

Trekking Peaks

A few months ago I was contacted by a client, who had been on a trek with another trekking company, to provide photographic evidence and statements so that he could take them to the Small Claims Court. In this case the client had paid the trekking company to be taken on a trek to climb unclimbed trekking peaks. In the event there was an accident and the team as a whole was not sufficiently fit, and so the Western leaders curtailed their

activities and failed to complete all that was advertised. The trekker who contacted me told me that he and a companion were fit and could see that it would be easy for them to climb one of the peaks concerned. I asked him why he didn't just go and do it. He said that the Western leader was not keen and so he backed off. I asked him why he didn't just tell the leader that he and his friend would climb the peak on their own responsibility. He had no answer.

It is my opinion that as soon as people pay money to go off to the mountains, they often absolve themselves from all further responsibility for taking risks and facing up to uncertainties. There are many instances in the mountains these days where this syndrome is becoming more and more apparent, and never more so than on Everest.

Everest with Guided Parties

Suddenly it strikes certain people who have been successful in other spheres of life that they would like to climb Everest, even though in some cases they have had no previous climbing experience. With their 'can do' mentality they have fat enough wallets to make them think they can buy anything, even reaching the top of Everest and getting down safely. After paying a guide or a guiding organisation huge amounts of money, currently around \$65,000 a time, off they go onto the mountain, as little more than a dog on a leash.

In good weather a lot of them 'succeed'; in bad weather many of them do not and remain up there or come back terribly mutilated. The accruing publicity from such disasters only seems to encourage more non-climbers to sign up for the mountain, egged on no doubt by such claims as that of a Frenchman who climbed Everest and declared afterwards that it was the first mountain he had climbed. He was lucky with the weather and with his own ability to acclimatise but, as we saw in the summer of 1996, when the weather comes in, terrible things can happen high on Everest, even to climbers who have earned every right to be there by a long apprenticeship climbing elsewhere, but especially to clients on commercial expeditions.

The first of the genre was the high-profile and somewhat flamboyant Texan tycoon, Dick Bass, aged 55, who bought his way onto a Norwegian expedition and paid for his guides David Breashers and Ang Phurba to take him to the summit. He reached the summit and thus completed his quest to be both the oldest man to climb Everest and the first to climb the Seven Summits. The other six of the Seven Summits seem to have been the only climbing that he had done previously. Bass made it because he was canny enough to make certain that he was roped to two good men all the way to the summit. After his ascent in 1985, and his obvious enjoyment of the achievement, Dick Bass became quite evangelical about the benefits of climbing high and his success had the effect of encouraging a lot more non-climbers to follow the same trail. Guiding organisations were subsequently set up to meet this demand for climbing high in the Himalaya.

There are many non-climbers who go where they should not go and consequently put their guides and Sherpas at risk. In 1994, Australian business

man Michael Rheinberger, aged 53, who had attempted Everest seven times before, now found himself with the summit in his sights. He was accompanied by the experienced New Zealand guide, Mark Whetu. Despite good weather Rheinberger was going desperately slowly. One guide had already turned back because of the slow pace, but Whetu became caught up in Rheinberger's obsession to be on the summit of Everest. They reached the summit after sunset and bivouacked 20 metres below the top. The next morning was cold and windy. After descending only 900ft to just below the Second Step, Rheinberger, by now blind, delirious and unable to walk, could go no further. Whetu had to leave him to save himself. Two days later he made it into advanced base camp with badly frostbitten feet. The client had not seemed to mind at all that he might lose his life to achieve his goal. Now Whetu was left behind, maimed physically and consumed with guilt for having abandoned his client whilst there was life left in him.

Thanks to the writing skills of Jon Krakauer, as evidenced in his book *Into Thin Air*, we are given a personal account of the worst day ever on Everest, 10 May 1996, when altogether eight climbers died. Krakauer was one of 240 climbers and Sherpas from 14 expeditions occupying a sprawling city of tents on the Khumbu Glacier. Among their number were men and women with little or no climbing experience – relative newcomers to the sport who had paid experienced Himalayan guides up to £42,000 to get them to the top of Everest. Although Krakauer had paid to go on Rob Hall's commercial Everest expedition, he was himself a very experienced climber. Yet he too succumbed to the dangerous client/guide dependency syndrome. Rob Hall and his guides were strong characters with proven track records and the clients 'had been specifically indoctrinated not to question our guides' judgement'. In his book he tells us how, for safety's sake, a responsible guide will always insist on calling the shots, for he cannot afford to allow clients to make important decisions independently. Thus the clients have to abandon their usual self-reliance and personal responsibility. This state of affairs is one which he says will haunt him for the rest of his life, when he recalls 'the ease with which I abdicated responsibility – my utter failure to consider that Andy might be in serious trouble'. Here he is referring to Andy Harris, a guide who was suffering from *hypoxia*. If that can happen to a serious mountaineer who signs on to a commercial expedition, then it is obvious that the effect on the inexperienced client is going to be at least as dramatic, if not more so.

The other commercial outfit on the mountain, Scott Fischer and his Mountain Madness team, were also well disciplined, at least up to the South Col. From reading the various accounts it would seem there was some competition, albeit friendly, between Rob Hall and Scott Fischer to get as many clients to the summit as possible. If this is true, it may explain why Fischer carried on when he was sick from some long-standing liver complaint and Rob Hall went on to the summit long after his prearranged return time of 2pm. In fact he didn't get to the summit until after 4pm. With one

head guide incapacitated with sickness and the other isolated because of the late hour of his ascent, the rest of the team floundered around. The probability is that, had the weather stayed fine, all the clients and guides would have got down safely. But when the storm blew in, it dangerously compounded the cocktail of errors that had been developing all day.

The fittest and most experienced man on the mountain was probably Scott Fischer guide, Anatoli Boukreev. He believed that clients should be as fit and able as the organisers and leaders themselves. 'If client cannot climb Everest without big help from guide,' he maintained, 'this client should not be on Everest otherwise there can be big problems up high.' He reached the summit without oxygen and, rather than stand around getting hypothermic and losing strength, he descended to the South Col so that he could be of more use to those coming down late in the day. In his book Krakauer is very critical of Boukreev and yet it was Boukreev who had gone out solo into the blizzard sweeping across the South Col when no other guide, client or Sherpa had the strength or courage to do so. He probably saved three lives and he also went back up the following day, from the South Col to 27,600ft, to try to rescue his friend Scott Fischer. He found him dead.

Whilst Krakauer and some of the other clients may have found Boukreev's rapid descent to the South Col ahead of his clients irresponsible, his peers in the American Alpine Club conferred on him the David A Sowles Memorial Award which is given to climbers who distinguish themselves, with unselfish devotion and personal risk, to assist a fellow climber imperilled on the mountain. This award – justly given for the care and consideration Boukreev had shown to others – must have healed some of the wounds inflicted on him by the criticism he had received. Sadly, he died on Christmas Day 1997 whilst attempting Annapurna's South Face.

Boukreev was a strong, self-realised man who had relatively little respect for the formal rules and regulations of guiding, but who knew from experience what the right approach and attitude should be. Every committed Himalayan climber will concur with that approach. What has to be made certain is that the client signing up for a commercial venture on Everest knows what is expected of him. It should be pointed out to clients that in the Himalaya, particularly high on Everest, conditions are different from the Alps where the guide is roped to the client most of the time and makes most of the decisions. In the Himalaya this is not always possible. The commercial organisations will be peddling a dangerous and unreal myth if they advertise or imply that they can get anyone fit enough to the summit and down again safely. Of course, there can be no guarantees. How can there be when there are so many very accomplished climbers who have come to grief high on Everest?