



Neutral Citation Number: [2025] EWHC 1844 (KB)

Claim No. KB-2023-000284

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
THE ROYAL COURTS OF JUSTICE

Date: 18.07.2025

Before:

MR JUSTICE RITCHIE

BETWEEN

ANDREW CANNESTRA

Claimant

-and-

MCLAREN AUTOMOTIVE EVENTS LIMITED

Defendant

NEIL BLOCK KC (instructed by **Stewarts Law**) for the **Claimant**
MATTHEW CHAPMAN KC (instructed by **Clyde & Co**) for the **Defendant**

Hearing dates: 2nd-4th & 7th-10th July 2025.

Approved Judgment

This judgment was handed down remotely at 10.00am on Friday 18th July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Ritchie:

The Parties

1. The Claimant is a neurosurgeon who lives and works in Jacksonville, Florida USA. The Defendant makes Formula 1 racing cars and also very fast road cars. The Claimant had been a customer of the Defendant in the past and had bought two McLaren road cars. As a result, he was on their mailing list for marketing their driving events.

Bundles

2. For the hearing I was provided with digital and paper copies of the core bundles (3 lever arch files) and the documents bundles (3 lever arch files). I was provided with two skeleton opening submissions and one written set of closing submissions. During the trial the Claimant produced some mobile phone screen shots and the Defendant provided some accident statistics from Lapland. An agreed site plan was also provided.

Summary

3. Whilst the Claimant was in Lapland on an expensive 4 day driving experience for McLaren road cars on ice, he chose to drive a snowmobile (SM) as part of the ancillary fun activities provided by McLaren. On 2.2.2020 at around 3.14 pm he was following a guide round a snowy track through trees, but he lost control, drove off the track and hit a tree. He was injured. At first, he thought it was all his own fault, apologised and offered to pay for the smashed up SM. A few months later, he instructed solicitors and by the end of July 2020 a pre-action protocol letter was written by his solicitors, to McLaren's solicitors, asserting negligence/breach of contract by the guide and claiming damages for personal injuries.
4. The *Package Travel and Linked Travel Arrangements Regulations 2018* (the Regulations) apply to the contract between the parties. McLaren is liable for the proper performance of the contract by its servants, agents, suppliers and sub-contractors (Reg. 15). It was an implied term that the Defendant would exercise reasonable care and skill in the provision of the SM safari services which were included within the package travel contract, see *Wilson v Best Travel Limited* [1993] 1 All ER 353 (QBD). The Claimant bears the burden of proving causative fault by the Defendant, see *Hone v Going Places Leisure Travel Limited* [2001] EWCA Civ. 947. The standard of care is the local, Finnish safety standard, see *Wilson v Best Travel Limited* [1993] 1 All ER 353 (QBD) and *First Choice Holidays & Flights Limited v Holden* [2006] EWHC 3775 (QBD). If the Claimant proves a breach of contract then Reg. 16(4) provides a form of statutory defence. The Claimant/traveller will not be entitled to compensation if the Defendant is able to prove that any lack of conformity with the contract is, "(a) attributable to the traveller ...", see *Hurley v TUI UK Ltd* [2014] EWHC 4774 (QB).

The Issues

5. This was the trial of liability. The Defendant admits a duty of care was owed to the Claimant. The local standard of care applicable in Finland was agreed between the Finnish experts (Mr Klammer and Mr Leinonen). The issues are as follows:

Breach

- (1) Did the Defendant breach the standard of care when briefing the Claimant on how to operate the SM?
- (2) Did the Defendant breach the standard of care when switching the SM to Standard mode after 1-2 minutes of riding?
- (3) Did the Defendant breach the standard of care owed to the Claimant by failing to guide him round the track safely?

Causation

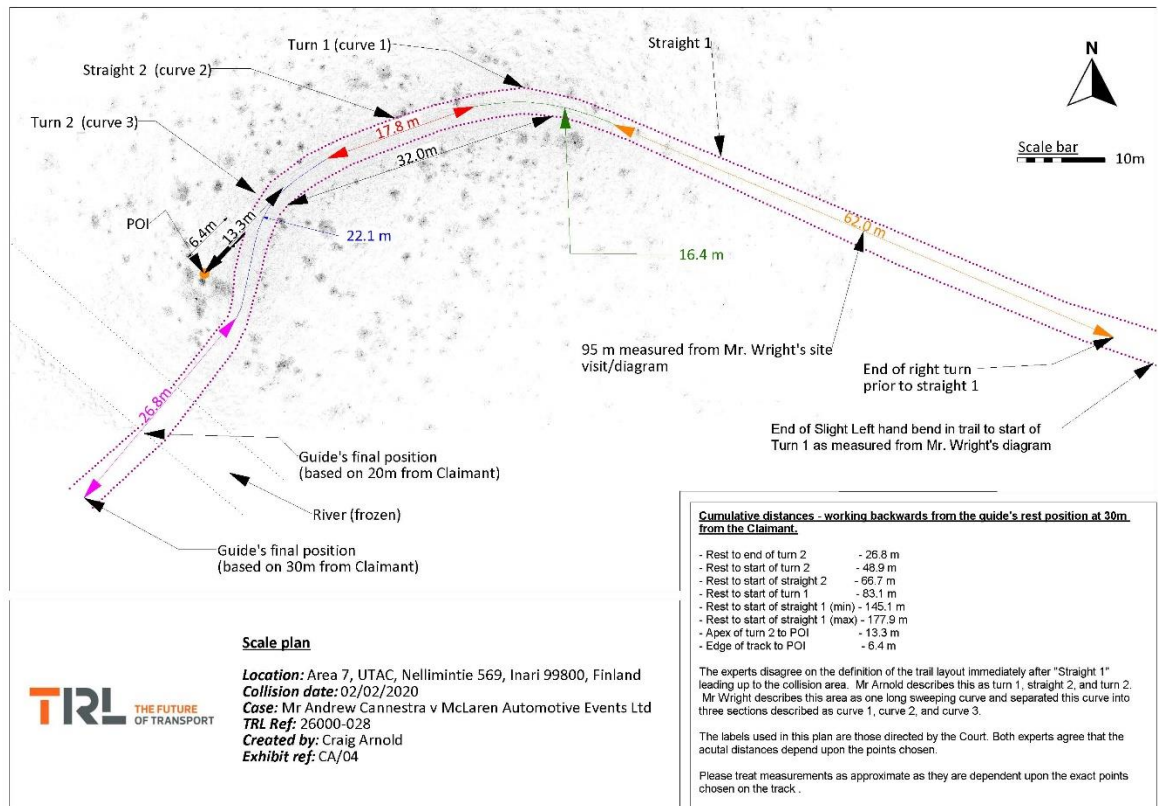
- (4) Did any breaches by the Defendant cause the Claimant to run off the track and hit the tree?

Contributory negligence

- (5) If the Defendant was negligent (or in breach of contract), did the Claimant contribute by his own negligence to the accident and his injuries? If so in what proportion?

Definition of terms used

6. **Bundle references:** C1 means core bundle page 1. D1 means documents bundle page 1;
- “ride 1”:** means the short ride straight after the briefing, done in ECO mode;
- “the stop”:** means the period when the group stopped after ride 1;
- “ride 2”:** means the second ride after the stop when the Claimant was in a higher power mode than ECO;
- “straight 1”:** means the straight before turn 1. There was some confusion over the description of this straight, which was sorted out by an agreed plan at trial. In total it could have been perhaps as long as 260 metres (see Mr Wright’s plan at C855), but the last part of this straight was shown on the agreed plan as 62-80 metres long. Looking back from turn 1 down straight 1 (figure 43, D548 - Mr Arnold’s report) there is a right hand curve which AP and the Claimant came around before reaching straight 1. It does not appear to be possible to see further back than that curve when looking back from turn 1. The experts marked the end of the right-hand curve on the agreed plan
- “turn 1”:** means the first left hand turn of the pair at which the accident occurred;
- “straight 2”:** means the second straight, after turn 1, which was about 32 meters long from apex to apex and 18 metres long from the end of turn1 to the start of turn 2;
- “turn 2”:** means the second left hand turn where the accident occurred.
- Here is the agreed plan:



PAP letters, pleadings and the chronology of the action

7. In the pre-action protocol (PAP) letter the Claimant asserted that he was given a briefing for less than 5 minutes covering: starting the SM; the brake; the throttle and leaning into turns. It did not cover: the emergency stop button or the engine cut out tether. They set off and, after 10-15 minutes they stopped, having ridden at speeds up to 30 mph (48 kph) through trees. The guide told the Claimant he was doing well and suggested splitting off from his partner to "have some fun". The guide changed the mode of the SM to "Sport" and gave no explanation. They set off on ride 2, leaving the Claimant's partner behind. The guide went at a higher speed (40 mph which equates to 64 kph) having told the Claimant to follow him. Within a couple, of minutes "*when approaching a turn, Mr Cannestra lost control of the snowmobile, and ended up driving off the path, striking a tree*". Fault was alleged through the Defendant failing: to provide adequate instructions; to explain the emergency stop button or how to perform an emergency stop; to allow the Claimant to practise adequately on open terrain including emergency stops; to advise on or attach the tether cord; to assess the Claimant's ability before increasing the power mode; to give additional instructions on cornering at high power or speed; to provide an opportunity to practise such turns in open terrain; by increasing the speed beyond the Claimant's ability and experience so that it was dangerous near trees; by exposing the Claimant to a foreseeable risk of harm. This letter did not allege that the guide went so fast that he was out of sight when the Claimant exited turn 1. This is relevant because by the time the claim was pleaded, that new allegation became central.

8. In its PAP response, the Defendant asserted on 15.2.2021 that: the briefing lasted 5 minutes or more; the two guides provided an appropriate briefing; the Claimant was briefed whilst the guide sat on a SM and demonstrated: how to position; how to lean into turns; the throttle and the brake; the emergency stop button and the tether cord. Then the Claimant and his partner were sat on SMs and shown again, so that both demonstrated that they understood. Then hand signals were covered and they were advised on safe separation between SMs. The Claimant commented that although he was a novice he had operated jet-skis which he said had similar controls. They set off. The Claimant operated the SM confidently. KM, his partner, was more timid and slower. 1/5th of the way round the track they stopped and the Claimant hit the emergency stop button to turn his engine off. The guide complimented the Claimant on his competence. They agreed to split off and go faster. They told the other guide and KM. The guide put the Claimant's SM into Standard power mode and warned him that it was "more sporty" and would enable faster driving and to be more careful and follow the guide's lead. They set off for ride 2 and the speed was increased to 60 kph on longer straights and 30-40 kph on other straights but reduced to 10-20 kph at corners. The Claimant continued to drive competently and maintained an appropriate separation. 3/5ths of the way round the track, the accident occurred. The Claimant had successfully negotiated 20-30 corners by then. The guide did not see the crash. From the tracks in the snow the Defendant asserted that the Claimant lost control in the middle of the turn, not when approaching the turn. After the crash, near the ambulance, the Claimant told the guide that his glove had become stuck, he had accidentally accelerated and gone off the track. A few days later the Claimant wrote to the Defendant stating that the accident was his "*error and*" his "*responsibility*". Liability was denied and the allegations of negligence were denied.
9. In the Particulars of Claim, dated May 2023, the Claimant asserted that the briefing took approximately 5 minutes, was partly on and partly off a Lynx Xtrim 900cc SM (this was a change from his PAP letter). It covered: starting the SM, how the throttle and brake were to be operated and the need to lean into turns. It did not cover: the emergency stop button or the tether cords and these were never attached. It did not cover the details of the track or the possible risks. There were no signs or flags marking the track. On ride 1, they rode for 10-15 minutes (this was later changed to 1-2 minutes) at speeds up to 30 mph (see the speed conversion above) then stopped and the mode was changed on the Claimant's SM from ECO mode to "another mode" (this was a change from the PAP letter) with greater power and throttle response and the risk of understeer. No further briefing was provided. The visibility was limited by snow and sunset and they rode at approximately 40 mph (conversion above), the guide was pulling away and the Claimant was "unable to keep up". Within a few minutes:

"27. ... the two snowmobiles approached a series of two left hand bends, separated by a straight of approximately 32 metres. The Claimant had lost sight of Mr Pitkanen due to the increasing gap between them and consequently

was unaware of the second of the series of left-hand bends on the short straight section of track on the approach to it. As he entered the second bend he lost control of his snowmobile and veered off the track into deep snow then into collision with a tree. ...”

This “disappeared guide” assertion had not been in the PAP letter. A plan was inserted into the pleading then the Claimant pleaded that:

“28. The approach to the point on the track where the Claimant lost control of the snowmobile was relatively straight for about 80 metres. There was a slight downhill gradient. There were trees on both sides of the track. There was no visual indication of the presence or nature of the bend.”

The words in para. 28 mix up the approach to turn 1 with the approach to turn 2. The 80 metre approach was straight 1 and that approached turn 1. The approach to turn 2 was shorter (18-32 metres - straight 2). In his witness statement provided later he admitted that he was aware of turn 1 because he saw the guide make that turn.

10. The particulars of negligence, in para. 29 were: (a) inadequate briefing, in particular failing to inform of: the emergency stop button and its use (non-causative); not attaching the tether cord (non-causative); the layout of the track and the potentially hazardous bends and corners; the more severe bends; the powerful nature of the SM and the tendency to understeer. (b) No flags or signs or warnings (abandoned later). (c) Changing the mode to Standard or Sport, neither being suitable for a novice. (d) Failing to give a further briefing on the increased power and throttle response and the tendency to understeer and how to cope. (e) Failing to arrange practice in a safe location. (f) The guide riding too fast. (g) The guide failing to stay in sight and keep a safe separation distance. (h) The guide failing to stay in sight of the Claimant with reduced visibility due to snow, sunset and failing to realise that the Claimant would attempt to “keep up”. (i) The guide failing to warn the Claimant to slow down before two left turns. (j) Leaving the Claimant to fend for himself. It was asserted that it was reasonably foreseeable that the Claimant would try to catch up.
11. In the Defence the Defendant denied liability and pleaded that the Claimant had signed various forms before the ride and had failed to disclose his medical condition which involved a hand tremor. The Claimant had agreed that riding SMs was demanding and he would follow the guide’s instructions and would pay the first 1,000 euros of any crash damage. It was denied that the SM understeered or was unsuitable for novices save in ECO mode. The briefing lasted 5 minutes. The guide provided it in two parts, partly on a SM and then with the Claimant and KM on SMs. The Claimant was taught how to position and lean into turns; how to operate the brake and throttle; how to turn the handlebars; how to switch on and off; how to avoid using the throttle when braking. The guide demonstrated the emergency stop and the tether cord. The briefing was done again with the Claimant on a SM. Then hand signals were demonstrated and they were

asked if they had any questions, they had none. As to ride 1, the Defendant asserted that the group went no more than 20 kph at first, then increased to 40 kph on straights and 15 kph on corners. They stopped after 1-2 km. They decided to split the group, KM was going slower. The guide put the Claimant's SM into Standard power mode and he told the Claimant that it was more powerful, would increase acceleration, throttle response and top speed and he needed to be more careful. The Claimant agreed. They set off on ride 2. Visibility was not limited. The track was visible. Gradually they built up speed to 60 kph on "*straight sections of the trail*" and 10-20 kph on corners, with a reasonable distance between them. It was denied that the guide went out of sight. The last time the guide looked back was 20-30 seconds before the accident. They had taken 20-30 gentle corners and travelled 4 km, then the crash occurred. The guide stopped 20-25 metres away. The Claimant had gone off the track at a "*slight left hand gentle downhill curve*". After the accident the Claimant told the guide his glove had become stuck to the throttle. The Claimant had sent a message offering to pay for the SM because it was, using his words: "*my error and my responsibility*" and caused by "*my little self destructive snowmobile behavior*". Negligence was denied. The cause of the crash was pleaded as the Claimant accidentally accelerating whilst negotiating turn 2 instead of braking. No flags or signs were needed. The Claimant had driven in standard mode for longer than ECO mode and that had been his "practice". The guide was a reasonable distance in front, driving at a safe speed and the Claimant knew he had to slow down for corners. The Defendant pointed out that the "out of sight" guide allegation was not made in the PAP letter. Contributory negligence was asserted against the Claimant including: failing to follow instructions, driving too fast and accelerating accidentally on a corner and failing to declare his health condition. Volenti non fit injuria was asserted as was the *Compensation Act 2006* and Reg 16(4) of the Regulations. Neither volenti nor the 2006 Act were pursued at trial.

Documentary evidence

12. Before I set out the witnesses evidence it will assist understanding if I set out a summary of the relevant documents. I start with documents before the accident. The manufacturer of the Lynx Xtrim 900 SM produced a manual for its operation. It is described as a sport/deep snow cross over. It is the most powerful SM they list in this manual. The others are 600 or 800 cc. The throttle has intelligent electronic control, so there is no cable. In ECO mode, vehicle torque and speed "are limited". It is a reduced power mode (D504). In Standard mode, acceleration is reduced when starting off from stationary and at "low vehicle speed", otherwise it is a "full power" mode (D504). If the *Learning Key* is used, the torque is limited and the speed is limited. The initial Learning Key programme limits the speed to 40 kph but it can be set to 70 kph. A warning is given: "*The ability of a novice to operate the SM can be exceeded even when a learning key is used*". For turns, the advice was to lean in. The left handlebar has a brake on the forward side operated by the driver's fingers. The right handlebar has a throttle on the rearward side operated by the driver's thumb and palm. A tether, which attaches to the engine cut off, is on the dashboard and the SM can only operate if it is attached. The other end is to be attached to the eyelet on the rider's clothing. If the rider falls off, the curled

cord pulls the tether cap off the base and the engine stops. Also, there is an emergency cut off button on the right side of the handlebars. There is a speedometer.

13. Luxury Action were the Defendant's suppliers of the SM experience. Arto Pitkanen (AP) and Jouni Satta, the guides, were signed off as having had training on SM operation and guiding. Powerpoint slides from that training were produced, which were provided in association with a company called SML. I extract some relevant parts here. The main guide should be at the front and should set the route, the pace and decide upon the breaks. The safety distances depend on the conditions. A safety demonstration is required. This should demonstrate the driving position; emergency stop function, the tether and its attachment to clothing; the controls: the brake, the accelerator, starting and stopping. Safety distances of 5 metres minimum should be advised. Those increase with speed and weather conditions. The demonstration should cover turning the handlebars, weight transfer and advice should be given about left hand turns. Guides were instructed that:

“Tell me about turning left, DO NOT push the accelerator when turning to avoid attacking a tree. Similarly, "tourist panics" MUST NOT clench their fists, the throttle goes to the floor. Prior knowledge helps to avoid such reactions.”

Thus, guides were taught to brief customers not to push with the right arm when turning left and not to clench the throttle. After accidents the guides were taught to make a report and take photos, if possible. No guidance was given in that presentation on the mode to be used on the SM and no guidance was given on post-accident evidence gathering, expert examination of the track or the crashed SM or asking the rider what happened and writing that down for posterity.

14. LA produced documents for their guides. Their Snowmobile Safety and Operation Briefing document (SSOB) required guides to brief customers. The briefing required the guides to cover: no alcohol, no drugs, no strong medication, compulsory insurance, the insurance excess of 1,000 euros and the maximum speed limit of 60 kph in forests and 80 kph on lakes. The minimum safe distance is stated as 5 metres. Driving should always be on the right-hand side of the track, if not advised differently. The briefing should cover: no overtaking, hand signals, the emergency stop button, the throttle and the thumb activation of it, the use of it to accelerate and to slow down, the start button, the engine stop switch, the brake lever, the tether cord, the engine cut off cap and the attachment of the cord to the rider's clothing. The briefing was also required to cover: riding position, leaning into turns, advising riders to slow down or stop if they feel uncomfortable or insecure. Finally, the track and possible risks of the track and duration should be mentioned and riders asked if they have any questions. The SSOB did not carry over the Powerpoint words about left hand turns.

15. LA also had a safety document (30.10.2019). This stressed the maximum speed of 60 kph, off road and 80 kph on lakes. It expressed that LA designed their routes to be suitable for all levels of riders. It advised that for inexperienced customers a thorough briefing was required because the risks were higher. The document required guides to use the SSOB for briefings. The guide was to start the briefing sitting on the SM and after that take the riders for a few hundred metres then stop and ask if everything is alright. After that, the guide was required to look out for yo-yoing (gaps increasing and decreasing between riders). During “long straights” the guide was to watch behind and at corners the guide was to slow down, so everyone was in sight of each other going around the bend. No guidance was provided on the mode to be used on the SM.
16. LA also produced a document called “Guide 2019-2020” to compliment the safety document. This gave guidance on treating customers well. It summarised that the briefing was split into three parts: (1) Finnish law and insurance, (2) security and (3) technical. Under security it advised that the safe separation distance was 20 metres (in contrast to the minimum of 5 metres in the SSOB). Guides were reminded to tell riders not to use the brake at the same time as the throttle. The first stop was to be “after a few kilometres”.
17. In 2017 LA were audited by TUKES, the Finnish health and safety organisation. This mainly focused on the policies and documentation. The guidance in the SSOB was approved as following the industry practice.
18. On the day of the accident the Claimant signed the following forms:
 - (1) The self-liability form. This provided a warning that snowmobiling would be physically demanding and it required disclosure of disabilities which might be affected or worsen. It required riders to be 16 or over, have a driving licence and be alcohol and drug free. It also informed drivers of the 1,000 euros excess.
 - (2) A driver declaration form. In this the Claimant agreed to follow safety protocols, that he was aged over 25, that he was voluntarily exposing himself to taking risks and that he was fit to drive and not suffering from any medical condition or disability which would make it unsafe for him to drive in the event.
 - (3) A release and waiver form. In this the Claimant agreed to release the Defendant from liability for death and personal injury claims howsoever caused when driving “the Car”. This waiver expressly did not waive liability for negligence by the Defendant.
19. On the day of the accident the Claimant took various photos just before ride 1 and during the stop. These showed the light and conditions and the precise timing of the events. The briefing was at around 2.58 pm and they did not set off until 3.03 pm or later. They were taking a photo at the first stop at 3.07 pm. Their jackets had tether eyelets. None of the photos show tethers attached but that does not mean that they were not attached.

20. After the accident the following documents were produced. Photos of the scene of the crash were taken some hours afterwards but on the same afternoon/evening, when the SM was recovered by LA staff (D98-104). Later the same evening, when it was dark, Janne Seurujarvi took a black and white photo of turn 2 (D110). The SM was still in situ. Here it is. The blue arrow marks the SM.



21. No plan was drawn up by LA, no measurements were taken, the Claimant's tracks were not marked and the SM was not examined by an engineer (at least no such report was produced), so little effective post-accident fact gathering was carried out.

22. The Claimant was transported by SM to the ambulance in the car park nearby and there he had a conversation with AP. As a result, AP wrote his accident report form on 3.2.2020 stating this:

“We drove together with the customer and in the middle of the left side curve the customer had, while turning the steering wheel, squeezed the throttle inadvertently. The snowmobile drifted out of the route and crashed into a tree.”

AP drew this plan:

23. In the ambulance, the Claimant took photos which showed a bruise on his left forehead. The Claimant was taken firstly to the local hospital (Central Hospital of Lapland) where they recorded that he told them that he: *“lost control of the vehicle and hit a tree. Wore helmet, head injury and loss of consciousness for 30 seconds, No amnesia regarding time after or before the incident. Left knee injured. Walked normally after the accident. Fully orientated.”* ... *“Snowmobile accident. Speed 30 km/h ...”* ... *“30km/h speed, losing control of the vehicle collision with a tree, helmet unbroken, slight bruises.”* Because he had a head injury he was then transported to another hospital with neurological facilities. At Oulu University Hospital they recorded the following of relevance: *“Underwent initial treatment in the Central Hospital of Lapland, during which a leakage was found on the left side ventricle.”* ... *“Patient has full recollection of everything before and after the incident.”* ... *“Lost control of vehicle and hit a tree”* ... *“The accident was caused by loss of control of the vehicle”*... *“The patient remembers the accident and has no pre- of post traumatic amnesia. The cause of the accident was mixing the gas and the brake handles.”* The Claimant was advised to stay in for observations. Against that advice he self-discharged and went back to the resort, 500 km away. No witness statement was taken from him or from the guide by LA or the Defendant.
24. On 3.2.2020 Arto Pitkanen (AP), the guide, wrote a Whatsapp message at 11.06 am stating:

“We drove faster at straight parts and slower in corners. Maximum speed at straights maybe 60km/h and corners maybe 10-20km/h. After around 4km of driving I heard a crashing sound after a corner and stopped. I looked back wondering what was the sound and saw the misters snowmobile crashed a tree aprox. 30 meters behind me right after the corner. ... Then the doctor came and researched him again and better and we decided that we can move him ourselves to ambulance that was coming to parking lot. Customer told us that his glove got stuck to throttle at mid way of the turn when he tried to go slower and so he accidently accelerated out from the track. We were driving tight with the customer and in the middle of the curve to the left the customer had inadvertently squeezed the gas while turning the wheel. The snowmobile drifted off the route and rushed into a tree.”

25. On 4.2.2020 Elliot Weir wrote the Defendant’s incident report containing the following:

“5. Description of incident:

Following snowmobile instructor, came to a more "wooded" section, lost control of the vehicle and came into contact with a tree.

6. Contributory factors:

Unaware of potential speed of vehicle, not knowing how fast it could go.

...

11. What action was/ should be taken to prevent recurrence?

Snowmobile instructors to brief to be more careful approaching the wooded section of the course.”

26. On his journey home, on 4.2.2020, the Claimant wrote various texts to the Defendant’s staff including the following:

“No worries ... shit happens ... I asked Elliot if I owe you guys a snowmobile, or any other costs. Please let me know. It was my error and my responsibility...”

On 5.2.2020 the Claimant wrote:

“Hey guys, we are on our plane to Amsterdam. Thank you both so much for your help yesterday and thru my little self destructive snowmobile behavior. Please let me know anything I am responsible for.... transport.... a snowmobile..... etc. we had a great time and all is good!”

The witness evidence

27. I heard evidence from the following lay witnesses:

- The Claimant.
- Kaitlin Meador (KM).

Defendant's witnesses:

- Arto Pitkanen (AP).
- Jouni Satta.
- Henry Valle.
- Elliott Weir.
- Jukka Lainkari.

I read the witness statements of David Culpepper, Hanne Seurujarvi, Elisa Honkavuori; Ari Pikkuhookana, Kevin Mason and David Hale.

I heard expert evidence from the following persons:

Claimant's experts:

- Craig Arnold.
- Bernard Klammer.

Defendant's experts:

- Mark Wright.
- Stan Gale.

I read all of the experts' reports and joint reports and the agreed report of Jaako Leinonen.

Agreed evidence

28. Before I deal with the disputed factual evidence it makes sense to set out the agreed evidence. The experts on the local Finnish safety standards, Jaako Leinonen and Bernhard Klammer, provided a joint report on 8.5.2025 which was presented as agreed evidence. They advised as follows (I have corrected typos but left in the wording as it was written). The main duty of a guide when guiding novice drivers is the safety of the participants. This includes safety of equipment, instruction/safety briefing, track used, guiding (visual control of the group, selected speed, pacing where needed, selection of the driving mode of the SM). Safety of equipment: the guide has to make sure, that the equipment is safe and fits for the kind of tour he is guiding. He has to control if safety features are in use when driving (helmets, tether cord, the right driving mode in use). Visual control of the group: The guide always has to check how the group is proceeding and if any problems occur. He shall never be out of sight of the group. This also means, that the guide has to wait before a difficult section of the track and make sure, that the group can see how he is driving through this section. Selected speed: The guide adjusts the speed to the track and the group. Nobody is permitted to pass any other snowmobile, hang back to be able to speed up, etc. If a customer is slow the speed shall be adjusted to the slowest customer. Pacing: the guide sets the speed and has to take care, that

customers can follow his speed without difficulties. This is really important in difficult track sections. In the section of the track where the accident occurred (a right turn followed by a straight part leading into a double left turn followed by a right turn) pacing is a must given also the light/visibility at the time of the accident. Selection of driving mode: the guide always sets the driving mode to ECO/learning mode for a beginner. Only after a reasonable distance driving he may change the mode but has to clearly instruct the customer on the changes and what it will mean for driving. Also, the customer shall be asked if he agrees with it. Snowmobile used was a LYNX extrem 900 with 90hp. This is not commonly used for tourist driving due to its power to weight ratio. It is safe for tourists in ECO mode. Normally used for tourist driving is the LYNX extrem 600, with 60hp and other snowmobiles specially produced for tourist driving. Lefthand turns: it is common knowledge for snowmobile tour operators that lefthand turns are potentially dangerous. The reason is, that beginners tend to push with the right hand for steering and unknowingly push at the same time the throttle which is situated on the right handle. When tightening the grip they even more press the throttle which leads to the max. acceleration. Klammer noted that 3 out of 4 cases he had to deal with had been accidents in lefthand turns with personal injuries.

29. Mr Leinonen's agreed report contained the following opinions. He is a senior safety officer at TUKES. A government decree requires SM providers had a safety document for consumer services. Private routes (tracks) are less regulated. There was no legal obligation to use markings. The speed limit on private tracks like the one in this case is 60 kph. There was no legislation governing practice sessions. Some have training areas, others take place on the initial part of the track and then the group stops for a review. The Consumer Safety Act applied. The service must be safe for customers when correctly used. The duty of care was: *"The operator must ensure that the consumer service does not pose a danger to anyone's health or property, as required by the care and professionalism required by the circumstances. The operator must have sufficient and correct information about the consumer service and must assess the related risks. 920/2100 5§"*. Around 50-80 accidents pa. are recorded in guided SM safaris, 5-10 are serious. Driver error is the most common cause. Gloves are typically a mitten with only the thumb separate (this is what the Claimant was provided with). If the evidence of AP and Jouni Satta is accepted their safety briefing corresponded with general practice. No safari can be completely safe. Customers should be told this before starting, usually on a liability form. 5-7 minutes for the briefing is usual. During the ride the guide will regularly turn to look back and supervise customer driving. The lead guide determines the speed. The safe separation distance is 10-30 metres but can vary depending on the speed and weather. The guide must keep visual contact. If the guide loses visual contact the safaris must be stopped. The most common SM used is the 600 cc. The Lynx has 3 power settings, Standard, Sport (increased power and acceleration by 25%) and ECO (limited power and acceleration by 40%). Safaris usually start in ECO and the mode can be changed during the safari. The Lynx 900 is a relatively popular model because it has the mode options. If the mode is changed it is important to familiarise the customer with the fact that acceleration and speed will be potentially greater. Mode

change during the safari is commonly done. The customer's driving ability must be closely assessed. If the Court accepts AP's evidence his assessment was sufficient, but that is for the court to decide.

Evidence on paper

30. **David Culpepper** was a guest at the McLaren ice driving event. He found it difficult to see contours with the light conditions. Otherwise, his evidence does not go to the issues.

Kevin Mason was the medic who attend the Claimant after the crash. When he arrived the Claimant was helmet off and coherent. He had leg pain but no neck pain or back pain and no loss of sensation. He was fully alert and talking normally. He provided no other evidence relevant to the issues.

David Hale was also a guest and provides no useful evidence on the issues. He did not do snowmobiling.

Elisa Honkavuori was the COO of LA at the time. She organised the McLaren ice driving event. She was involved in selecting the guides. LA only selected the most experienced and then trained them. The documentation was produced by Henry Valle and Jukka Lainkari. The latter trained the guides. After the accident she spoke to AP who told her that after 4km of riding he heard a crash, saw the Claimant against a tree 20-25 metres away and ran back. AP said that the Claimant told him that his glove became stuck and he accelerated instead of braking.

Ari Pikkuhookana is a SM instructor for LA and a guide for them. He described the LA training given to guides. The training covered the SM modes and safety briefings and safe guiding. He described an accident which occurred on 2.1.2021, so after the Claimant's accident. It was on a private track at 4 pm and they were using Lynx Xtrim 900 SMs. He considers that type of SM to be good for beginners in ECO mode. He said that ECO mode capped the speed at 40kph and Standard mode increased the acceleration and top speed. He did not generally allow changes of mode away from ECO. On a safari a 17 year old going at 15 kph went off track at a left turn. He did not see the event. He "thinks" that she gripped the throttle by mistake. No injury of importance arose.

Janne Seurujarvi provided two witness statements. He was the MD of UTAC who provided the track for the McLaren snowmobiling and had done so since 2018. McLaren asked for a short, flat, easy to navigate circular track, with corners, near the car track and suitable for novices. They created one each year in winter. A groomer machine with snow ploughs at the front was used to level snow and create banks. LA maintained the track.

The Claimant's evidence

31. I will not summarise every factual assertion. I will focus on the key issues.
32. **The Claimant.** After the messages which the Claimant sent to the Defendant, the Claimant's next statement of his recollection will have provided the factual basis for some of the PAP letter of claim and then the factual assertions in his pleading. These

are set out above. I noted that the former did not include the out of sight guide allegation. His evidence in chief was in his witness statement (9.7.2024). Another group went out before him. They returned in 30 minutes (so, I conclude that he knew the approximate duration of the circuit). They signed some forms. He and KM were briefed in somewhat of a rush. It took 5 minutes and was split into 4 sections. They told the guides that they were novices but the Claimant had ridden jet-skis. He accused the Defendant of failing to follow LA's SSOB briefing guidance by failing to mention: (1) no alcohol; (2) the need for a driving licence; (3) the age over 16 rule; (4) the 1,000 euros excess; (5) the minimum separation should be 5 metres; (6) no overtaking; (7) the maximum speed limit or speed at turns or any warning about left hand turns and pushing the throttle; (8) only to drive on the right hand side of the track; (9) the hand signals; (10) the stop button; (11) the heating switches; (12) the tether cord; (13) the shape of the track or possible risks. He and KM *were* briefed on: (1) operating the SM including the brake on the left and the throttle on the right (there is a typo at para. 61) and using the throttle to slow down by releasing it; (2) riding position and leaning in on turns. All of the briefing took place with the Claimant and KM standing, not on any SMs. They were not told the briefing again sitting on SMs. They had no practice. They set off. The light was fading. It was snowing lightly. The track was compacted. They travelled for a few minutes – para 64 - or not more than 10 minutes – para. 66, in procession going not faster than 20 mph (32 kph) on straights and less on corners. He never looked at his speedometer. They stopped. He did not press the emergency stop button. Photos were taken. He and AP and later he and KM spoke. AP told the Claimant he was doing well and suggested that they go off together and have “some fun”. AP changed his controls. The Claimant did not say he wanted to go any faster. AP may have said he had changed it to “sport mode”. He did not explain. The Claimant now felt, in retrospect, that it was too powerful for him, but he did not take that view at the time. They set off on ride 2 and AP sped off. The separation between them increased and as the Claimant completed turns he could just see AP ahead in the distance on the next turn. He could not recall how many turns he completed. He completed the penultimate turn before the crash, which he said was a right-hand turn. As he exited the right-hand turn, he was able to see AP quite a considerable way ahead for the briefest of moments. AP then disappeared again as AP completed a left-hand turn. The Claimant was unable to see whether his brake lights were on or not. On this last turn before his accident, he had no guide because AP was too far ahead. He was not aware that the corner was a very sharp one. He wrote that between the exit of the right-hand penultimate turn and the left hand turn of his crash, there was a slightly downhill straight. He estimated his speed to be around 60kph in his attempt to keep up. He applied his brake heading into the left-hand turn. *“I steered to the left and leaned into the turn. I can remember the turn being quite long. I remember negotiating the turn for some time before I lost control of the snowmobile. I remember reaching what I believe to be the apex of the turn before I lost control. I felt the snowmobile understeer during the turn. This caused me to lose control of the snowmobile. After losing control, I was unable to regain it. The snowmobile left the compacted ruts of snow marking out the trail.”* He ducked to the right. Having seen the expert's map he recalled the left turn as a particularly long one and he felt he had

negotiated the apex before losing control. He does not remember if he gripped the accelerator tighter or not. He was aware that doing so would accelerate. He asserts that his memory of events post incident had not returned. His helmet had significant markings on it. He was certain that no tether was fixed to him. He had no recollection of telling AP that his glove got stuck in the throttle. Instead, he asserted AP suggested that to him by the ambulance. He explained how the hospital notes recorded accidental throttle use but explained this as the neurosurgical registrar making that suggestion *to him*. He said “no” in reply. He accepted writing the messages accepting responsibility after the accident. He explained these by asserting that he was embarrassed. His view changed later on when he read the SM manual.

33. In his verbal evidence in chief, he explained the timing of the photos taken on site before ride 1 and during the stop, which he produced as phone screen shots at the start of the trial. In cross examination, he asserted he did not have to disclose to LA his essential tremor which was managed by propanonol. He withdrew many of his criticisms of the guide’s briefing, in particular those relating to alcohol, age, driving licences and the insurance excess. He accepted that all of these were dealt with on the forms he signed, so there was no need to mention them again. He accepted that this being a one-way track there was no need to advise customers to drive on the right-hand side, so withdrew that criticism. He accepted that there was no need to be advised not to overtake when they were on a narrow track and in procession, so he withdrew that criticism. He withdrew the criticism about body positioning. He agreed that these criticisms were unfair. He accepted he was instructed on how to use the brake and throttle and that he should take his hand off the throttle when braking. He agreed that these were demonstrated to him by the guide whilst AP was sitting on a SM. He therefore abandoned his assertion in his witness statement about where the briefing took place. He denied being told that when turning left he should not push with his right hand. He recalled one hand signal being included. He accepted that in ride 1 they had travelled 600-700 metres and had made around 12 left and right turns. He accepted that when they stopped AP suggested that they split up and go faster and had told him the new mode would be “sportier”. He denied that AP warned him to be careful. In ride 2 he accepted that they had started slower and maintained a constant separation at first and had sped up on straights and slowed down at corners. He did not deny the assertion that he had negotiated tighter right and left turns than turn 2. He did not look at his speedo at all. He explained the confusion in his witness statement about when he last saw AP. It was just before AP turned into turn 1, not turn 2 and said that, at that time, he had just exited the right hand turn at the start of straight 1.
34. Stopping there. As explained above, the agreed plan of the scene did not go far enough back to show the right hand turn at the start of straight 1. However, the experts did measure straight 1 in various ways. Mr Arnold measured it at 62-80 metres and provided a photo looking back which showed the right-hand curve (C501, figure 1). His satellite image of “the straight” shows that overall it was much longer (C549) but did curve to the right and he marked the start and end of the broad right-hand curve on that

image. So, if I accept Mr Arnold's evidence on layout, the Claimant would have been 60-80 metres away from AP as AP entered turn 1, on the Claimant's account.

35. The Claimant asserted that he never saw AP again and that the trees on the left-hand side of straight 2 obscured his view of AP after AP had passed the apex of turns 1 and 2. As to the events after the crash, the Claimant sought to explain the hospital notes by suggesting that the ambulance driver may have written notes on how his accident had occurred which were used by the hospital. He criticised the notes of his speed being 30 kph, because he only ever spoke of miles per hour. He maintained his evidence that the doctor suggested the mechanism of the crash was accidental throttle use, not him, and he denied that theory. The Claimant accepted that his post-accident texts were him accepting responsibility and he made no criticism of the guide at all at that time, or of too much power or understeer. In re-examination he explained that he had a brain bleed and was not thinking straight. His thought process cleared back in Florida and he decided that the guide did not guide him properly. In final questions he explained that he braked at T1 and at T2 then lost control. I will consider credibility below after reciting AP's evidence and the expert evidence.
36. **Kaitlin Mealor** was the Claimant's partner at the time, they have two children. They have since separated. In her witness statement she asserted that the Claimant is not a risk taker. She echoed and repeated the Claimant's criticisms of the briefing. After the stop she asserted that the Claimant and AP drove off at greater speed. It was scary for her after the crash because she was left alone on the track when Mr Satta drove off to assist. When she was brought back to the resort the Claimant was in the ambulance. She asserted that he was disorientated. She did not speak to the guides.
37. In her verbal evidence in chief KM denied the conversation with Elliot Weir after the accident in which he asserted that she said that the Claimant was an "adrenaline junkie" who had regular accidents. In cross examination KM withdrew many of the allegations she had made in her witness statement about the briefing. She could not explain her motivation for making them in the first place but accepted that many were unfair. She became emotional when asked about her motivation. She rode slowly on the track and did not need further instruction to ride safely.
38. I did not find KM's evidence to be of much assistance. She appeared to me to be playing a wing person role to support her ex-partner. When pressed on why she made many unfair criticisms of LA she ended the questioning by tears. I was not persuaded by her denial of the conversation with Elliot Weir after the accident about the Claimant being an adrenaline junkie who was always getting into accidents. This conversation may be put into context. The Claimant had bought two McLaren road cars, which are up the top of the list of the most powerful vehicles on roads worldwide. They were both on a McLaren ice driving holiday. Adrenaline cannot have been irrelevant to the experience of driving on ice in a superpowered car. There is nothing wrong in that. Life is for living and excitement and risk are part of that, but KM's denial of the conversation did

not have the ring of truth, on my assessment of her evidence. Nor was a supplementary witness statement put in making that denial. It only came out in evidence.

The Defendant's evidence

39. **Jukka Lainkari** was the operations co-ordinator of LA. He had run SM safaris for a long time. He had experience in SM safari safety from his previous job. He oversaw safety training and policies at LA from 2019. He used to share the responsibility with Henry Valle but the latter had been promoted. He was the Snowmobiling Guide Association of Finland (SGAF) rep for LA and was a founding member and that association which is focussed on safety. He is passionate about promoting safety. He wrote the training guide. He did the training. He described the training. SML provided it with him. It was not mandatory in Finland. He set out what he described as the bare minimum for a customer briefing in his witness statement at para. 30. This included the throttle and how to operate it and the brake lever, safe separation distances (15 metres – 30 metres) and other matters. However, he went on to assert in paras. 31-32 that he trained LA guides to go further and provide a full demonstration of function sitting on the SM which is then repeated with the customer sitting on the SM. It includes how to stop by taking the right hand off the throttle and applying the brakes. All LA guides were required to start customers in ECO mode, which limited the top speed to 40 kph and limited acceleration and throttle response. Most customers remained in ECO mode. Standard mode removes the speed limiter and increases the acceleration and throttle response. LA left the decision on mode to the guide in conjunction with the customer. The guide would be best placed to judge the customer's abilities. He gave his opinion on how the Claimant's accident occurred which I do not take into account because he was not there and is not an expert in this case. However, he tagged onto that opinion these words:

“13. ... In Finland, snowmobiling accidents have occurred when people are turning left on a trail, they use their right hand to push the handlebar to the left to make the turn and in doing so press the throttle, which accelerates them off the track instead of through the corner.

14. All customers are informed of this potential driving mistake and they are told how to avoid it. In almost all cases of snowmobiling accidents, it is the driver's mistake.”

I shall call this the left hand turn risk (LHT risk). He did not state in his witness statement that as part of the bare minimum briefing or as part of the additional briefing requirements for LA guides, the LHT risk had to be communicated. He did explain that an explanation of LHT handlebar and throttle operation was required. However, at that time no allegation had been made in the Particulars of Claim or pre-action protocol letter relating to the accident having been caused by accidental acceleration. I shall return to this when cross examination is summarised below. He went on to summarise the January 2021 accident at which he was present. He stressed that all guides are instructed to advise customers not to touch the throttle when making turns especially

left hand turns and asserted that this later accident occurred because the customer ignored that warning, but he could not be certain. Once again it would appear that LA's post-accident reporting did not involve taking any detailed witness statements. He did not mention the Learning Key of the Xtrim SM in his witness statement.

40. This witness gave evidence via video link. He stated that he drafted the Powerpoint slides. In cross examination, he accepted he was fluent in English but also required an interpreter. On the LHT operation he stated he would expect guides to brief customers on this. He would expect guides to be visible to a single customer being guided and to comply with their training. If a guide failed to explain the tether cord that would be wrong practice. He admitted that the warning on the LHT risk was not in the LA SSOB. On the Lynx 900 he stated most customers stay in ECO but moving up to Standard mode is not prohibited. For more experienced customers this was an option. He would not advise changing mode after 1 minute of riding. It would not be the time duration of riding which would determine the change of mode but instead how the customer behaves on the SM. When asked about change of mode instructions since the accident he admitted that now the Learning Key is used and the mode cannot be changed from ECO. But experienced customers can be given the advanced key for more power and acceleration. This decision was not as a result of the Claimant's accident but instead was an industry wide safety change.
41. I found that Mr Lainkari was a straightforward witness who gave honest and unmanipulated answers to the questions put to him. He admitted matters which factually did not assist LA's case openly in his evidence. I accept his evidence. However, he did not give witness statement evidence about LA's policy on the Learning Key and this was never bottomed out in evidence.
42. **Henry Valle** was the marketing manager of LA and is now the COO of LA. His degree included risk assessment qualifications. The first part of his witness statement is a glowing summary of LA and the quality of its business operation and awards. Some of the rest is mere hearsay which I place little weight upon. He consolidated the safety documentation aimed at minimising the risks. LA had never had an accident like the Claimant's accident before. In his experience the most common accident on SM safaris were caused by accidental throttle use when turning left. He asserted that had caused the accident in January 2021. Guides were required to use the SSOB to brief customers. Guides were thoroughly trained at the start of each season, during a two day course. In his opinion a safe separation distance when on safari would be 20-30 metres. He stated that Standard mode and sport modes had higher acceleration (throttle response) and top speed than ECO. Having reviewed matters after the accident he had not suggested any safety changes. It is noteworthy that at no part of the witness statement when describing training did Mr Valle describe the LHT risk, but at that time no allegation had been made in the Particulars of Claim or pre-action protocol letter relating to the accident having been caused by accidental acceleration.

43. In cross-examination he agreed that if AP had failed to follow the requirements of the SSOB briefing guidance that would be wrong and likewise if AP failed to follow the training guidance in the Powerpoint set out above. He then admitted that no guidance was provided on which mode to choose on the SMs in the written documents and he could not recall if training guidance was provided. He said that was a matter for the guide to decide. When pressed on why the SSOB made no mention of the risk of accidentally hitting the throttle on left hand turns, a matter clearly explained in the training in the Powerpoint slides, he was evasive and then a little arrogant. He did not know why there was nothing in the SSOB but stated that if everything was put in it would be too long. (This part of the slide contained 4 lines of text). It was put to him that this was the number 1 risk and it was not mentioned. He said that he “did not fully agree”. Customers might forget things if the briefing was made too long and in any event guides were trained about this risk. He restated that guides should look back especially “on the corners”. He could not explain, despite the allegations in the claim, whether LA had reviewed their safety documentation and included training and guidance on the choice of SM modes for beginners. He also stated that a post-accident investigation was not required by local law. He said it was a “difficult question” whether it was right to carry out no post-accident investigation involving, for instance, scale plans, mechanical examination of the damaged SM and marking of tracks in the snow.
44. I found Mr Valle to be a rather self-satisfied witness who did not adequately address the issues in this claim about the causes of the accident with any great enthusiasm. Instead, he was keen to market the excellence of LA and their safety processes. This approach rather undermined the credibility of his evidence when faced with the gaps in his own safety documentation concerning the number 1 risk on SM safaris and choice of SM power mode.
45. **Elliot Weir** was the head of brand experience for McLaren. He arranged these events. 95% of guests are customers who had bought cars. The experiences were designed to be exceptional. He praised LA for their quality and knowledge. Initially, they did night safaris to see the Northern Lights but it was too cold. Then he introduced short, guided SM tours, close to the car track. The track was designed and then flattened and maintained. His evidence related to what occurred after the accident. When he got to the car park, the ambulance was there. The Claimant was taken away and KM came to his hut. They spoke. KM told him that the Claimant got into accidents regularly and was an adrenaline junkie. He arranged for KM to be taken to the hospital. He was surprised when the Claimant returned the next day having self-discharged against medical advice. In the Claimant’s texts during his travel home sent to McLaren staff the Claimant accepted full responsibility for the crash. He spoke to Jouni Satta who told him the Claimant had gone too fast and lost control so he wrote that on his incident report.

46. In cross examination, Mr Weir said the information for his incident report came from AP as well. He submitted his report to his superiors and nothing came back. Covid had intervened and his superior had left the company. He recalled the conversation with KM and was quite clear that she had said the words set out. He said many of his guests were adrenaline junkies. He trusted AP.
47. Mr Weir was clearly doing his best to assist the Court. I accept his evidence. I prefer his recollection of the conversation with KM to her recollection.
48. **Jouni Satta** was co-guiding with AP during the incident. He wrote no witness statement at the time. His was dated 3.7.2023. He had worked for LA for a year and had worked for other SM safari providers before that. He had ridden SMs since the age of 15. He regarded the LA training and standards as higher than other suppliers. Jukka Lainkari had set up the Snowmobile Guide Association in 2019 to focus on safety. LA had a licence from the association. Mr Satta described the training provided by LA and how he was trained to provide a full briefing to customers covering, inter alia, the emergency stop button, tether cord, positioning on the SM, leaning in, the brake on the left, the throttle on the right, how to turn, driving on the right, hand signals and safe separation distances. Such distances are to be shorter in woods and longer on straights and vary between 5 and 20 metres. The training included pupil guides rehearsing the briefings. The training recommended a stop after 1 km to check customers' progress. It is noteworthy that at no part of the witness statement when describing training did Mr Satta describe the LHT risk, but no allegation had been made in the Particulars of Claim or the Claimant's pre-action protocol letter relating to the accident having been caused by accidental acceleration. Mr Satta went on to state that if a customer on a safari wants to go faster they can so long as they are driving safely and following instructions. The capabilities of riders are assessed after 0.5 to 1 km of riding and the first stop then occurs. They are asked how they feel at that time. There was no official safe distance guidance but in a wooded area 6-10 metres and on more open straights, 15-20 metres. He described how all guides provided briefings. As to the accident, Mr Satta stated that he recalled going to the hut and giving the Claimant and KM their clothing and gloves and getting the Claimant to sign the forms, then going over to the SMs outside. AP was lead guide that day and gave the briefing. Mr Satta would cover anything left out. They covered the same matters each time. They did 1-3 safaris per day. He set out the absolute bare minimum at para. 39. This included the throttle and how to operate it, driving position, the brake and how and when to use it, safe separation distances, the tether cord, the course and route and driving on the right of tracks if they were public tracks. They also covered the additional information (including para. 48), which LA required and explained best practices when driving, leaning in, how to drive safely. The briefing is never rushed. The briefing is repeated but concise. They cut out irrelevant briefing matters like crossing roads or complex hand signals. AP showed the Claimant how to sit on the SM and the handlebar use, how to accelerate and proper throttle hand positioning. AP informed the Claimant that coming off the throttle was the way to slow down and the throttle should never be used at the same time as the brake. The brake is

rarely needed. AP also described how to slow down at corners and to take corners and about steering correctly and leaning in. He stated that all SMs had a tendency to understeer. He described the Lynx Xtrim as very good for beginners. He had done hundreds of safaris with them. He warned that all users could become overconfident and had to follow instructions. The Claimant was eager to get going and rode confidently in ride 1 and close to the rear of AP. KM was not confident and was slower. They stopped after 600-700 m and KM was 30 m behind the Claimant. He described the track as delineated by the etching out, with several corners and straights, some in forest and some in the open. He does not recall the weather snowing and he considers the conditions were good. He said guides would always ensure to maintain visual contact with customers which meant not going too far ahead, thereby allowing customers to gauge where corners are. AP's job was to lead and keep an eye on the Claimant by "*looking back ... every few seconds and during corners*". Mr Satta did not hear the conversation between AP and the Claimant at the stop. He did discuss the Claimant's capabilities with AP and they decided he could go faster but KM could not. They would split into two groups. After 10-15 minutes he received AP's radio call about the crash. To save KM from a potentially nasty sight he told her to stay put and went forwards to the incident scene. He arrived and saw AP's SM 15-25 m in front. The Claimant was conscious but not completely aware. Soon the medic arrived and took over. They drove the Claimant back on a SM sat between them. Mr Satta gives no evidence about the state of the SM or the tether cord or the track made by the Claimant and made no effort to examine or preserve those tracks. He added at the end that the most common SM accident cause was turning left and accidentally accelerating.

49. In live evidence in chief Mr Satta stated that AP had told the Claimant to pull with his left arm when turning left and not to push with his right hand. (So this was instruction on the mechanics or operation of a safe LHT. But this does not inform the customer about LHT risks). In cross examination, about the tether cord, he stated that the jackets had a loop to which the tether should be attached although it could also be attached to the Claimant's wrist. He accepted that guides were not trained to change the mode at the first stop but it is not prohibited. He would not just ride off after a corner he would wait for customers with a separation distance of 6-10 metres in wooded areas at corners. On the briefing he accepted that the SSOB did not mention the LHT risk and his witness statement did not mention any briefing on the LHT risk in the two relevant paragraphs (I take into account that this was not a pleaded allegation in the Particulars of Claim). Mr Satta stated that it was "always explained" and AP did explain how to turn left hand corners and what to do operationally. He asserted that he did recall the briefing because of the accident, despite writing no note soon afterwards. He restated that separation awareness was important and looking back was important to ensure the customer was managing safely. At the first stop the Claimant wanted to go faster. If he had been guiding he would have looked back in straight 1 and on straight 2. If the Claimant had been 30-50 metres behind he would have slowed down at turn 1 and watched the Claimant slow down. As he came out of turn 1 he was asked: would he look again? and he said that was hypothetical. He was unclear in his evidence about what he said to

Elliot Weir after the accident. In re-examination he stated that he had guided safaris on plenty of other tracks in Standard mode. In final questioning he stated that half the Lynxs used by Lapland Safaris were 900s, they had more customers in their safaris so there was less chance to use Standard mode. On those, some were beginners using Standard mode and others were more experienced.

50. I found Mr Satta's evidence to have been delivered openly, truthfully, honestly and with no guile or side to it. That does not mean that his opinions on the standard of care on the main issues are determinative, but I generally accept his evidence.
51. **Arto Pitkanen** (AP) was the guide who led the Claimant round the track. His first account of the event it set out above in his Whatsapp message. His second was in his accident report form also set out above. His third will have formed the foundation of the factual assertion in the PAP letter of response set out above. His fourth was laid out (at least in part) in the defence. His fifth was in his witness statement (23.7.2023) provided long before the expert reports were exchanged. So, when he provided it the allegations he faced were those in the Particulars of Claim (inadequate briefing and inadequate guiding, but no allegation had been made that the accident was caused by accidental throttle use and no allegation was made that AP had failed to instruct on the LHT risks). In the witness statement AP stated he was 37 and lived locally. He had worked for LA since 2018 and he also had a full time job. He was a member of the SGAF. He set out what his briefings always contained: driving position, throttle use; brake use; safe distance of separation, tether cord use etc. He stated the law required a top speed of no more than 60kph. For straights separation of 20-30 m would be usual. He had been trained and he took pride in his job. He had been guiding for 17 years. No customer had had any accidents. He stated if customers wanted to go faster than ECO mode then Standard mode would be used if they were safe drivers. He would always tell the customer when changing mode. The change could occur after ride 1 during the first stop. At the end of the track he offered some customers sports mode because it is flat and open. Very few are changed to Standard mode. Only 3 had done so with him and they had to be sufficiently experienced. As to the debate on understeer his simple view was that the turning of a SM was different to that of a car. As to the briefing he always sat on the SM when giving it. He turns it on attaches the tether and gives the briefing then the customer sits on the SM and he explains again. For the Claimant they met in the hut and the Claimant explained he was a novice but had ridden jet-skis. On rider 1 the Claimant was confident and ready for Standard mode in AP's opinion. AP suggested the group split before KM and Mr Satta arrived at the stop. He said he would change the mode to Standard and did so. He accepted that mode was more powerful and had greater acceleration and the Claimant said he wanted that. AP informed the Claimant to be more careful and the Claimant said that he understood. They set off and went faster on the straights reaching 60 kph on longer ones and dropping to 10-20 kph on corners. After 10-20 corners and 2.4 km of riding including about 20 corners on ride 2, the crash happened. AP had looked back 10-20 seconds earlier (the pleaded case was 20-30 seconds) and seen the Claimant driving well. When he stopped the Claimant was

20-25 m behind him at the tree (AP had put 20m on his accident report). He ran back. The Claimant was face down in the snow the engine was not running so AP considered that the tether had done its job. He dug the Claimant's head out of the snow and turned him over. He made a radio call. The Claimant awoke before Mr Satta arrived. He was confused and disorientated. He asked what he was doing and where he was. AP explained the crash. Soon the Claimant asked that his helmet come off. AP refused but the Claimant did so anyway. AP checked him over and the Claimant sat up. He complained of RIGHT leg pain (an error in the witness statement). There was no complaint of loss of feeling. The medic arrived and checked the Claimant over. By then the Claimant was speaking normally. He was transported back on a SM and in the car park at the ambulance AP asked the Claimant what had happened. The Claimant said his glove became stuck in the throttle midway through the turn and he accidentally accelerated. AP stated that gloves becoming stuck was not a common problem. Accidentally pushing the throttle on a left turn was a common problem. He restated that he had instructed the Claimant during the briefing to take his hand off the throttle when braking and cornering. He returned to the scene to retrieve the SM some hours later and they took some photos. He set out his Whatsapp message describing the accident sent the next day (it is set out above). He asserted that he had done nothing wrong.

52. In his evidence in chief, given live he reiterated that he had told the Claimant that when turning left to pull the left hand bar but not to push the right hand bar. He admitted that he did not see the Claimant between making turn 1 and the crash. He last saw the Claimant on straight 1 some 20-30 metres behind. He was driving confidently. He explained the Claimant's position after the crash was lying in front of the SM, which had crashed into the tree, to the right of the tree where the marks in the snow are shown on photos. In cross-examination, he accepted that inexperienced customers posed the highest safety risk which was only ameliorated by thorough briefing and practice. He maintained that he explained the risks of left hand turns to the Claimant. As to not saying how long the ride would take he explained it was only 15-30 minutes for 1 lap with stops. He accepted that explaining the emergency stop is essential but was not listed in his witness statement as para. 22. He accepted that his essentials list did not state describing the track but that the track was simple. He accepted the joint Finnish experts' statement that looking back was required to check and the group should never be out of sight. He accepted that it was essential to cover the tether cord in the briefing and to fix it on. He could not say to where it was attached, the jacket or the wrist. He could not recall if he had taken it off the Claimant's jacket after the crash. He stated that he did both. As to separation he stated that on faster straights it was 20-30 m and 10-20 m on corners. On the change of mode he accepted that most customers stayed in ECO mode but the Claimant wanted more speed and said yes to AP's suggestion. He explained this because the Claimant had experience with motor vehicles and jet skis and those had the same basic principles. Some jet skis have the same throttles. He stated that he did not say "lets have some fun". He asked if the Claimant wanted to go faster and he did. Under pressured cross examination he stuck to his evidence about the briefing, the first stop and what he told the Claimant and that he checked the Claimant's

tether. He did accept that he had *changed* his evidence about the time between looking back and the crash from 20-30 seconds (in the Defence) to 10-20 seconds (in his witness statement). He repeated that the Claimant was 20-30 m behind him before turn 1 and the Claimant knew to slow down for the turn. The Claimant was not that far away, the forest was not thick, and so AP asserted that he did not need to look back again until after the two left turns. He showed the Claimant turn 1. Counsel returned to the same ground several times but AP did not change his answers. In relation to his Whatsapp record the day after he accepted that he had overestimated the length of ride 1 by a factor of 3. He accepted that he may have said “sporty mode” at stop 1. He stated that after Mr Wright’s report he had learned that the difference between ECO and Standard modes was perhaps not as much as he thought it would have been. He stated that he looked back before he braked at turn 1. He then travelled 100-150 metres until the crash or maybe 200 metres. He did not accept that he had altered his estimate of the post accident position of his SM for any sinister reason. Counsel then put a case to AP based on the assertion that the Claimant panicked as he went round turn 2 and he was going too fast at that time. AP did not accept that he ever suggested that the Claimant was going too fast. He did not accept that he was so far ahead that the Claimant could not see him as the Claimant rode out of turn 1. In re-examination AP explained that he did not look back on straight 2 because he had to navigate the turn and the Claimant was driving really well and confidently.

53. I am going to resolve the factual evidence issues once I have taken into account the expert evidence.

The expert evidence

Accident reconstruction

54. Craig Arnold reported for the Court instructed by the Claimant. His accident reconstruction qualifications were not challenged. He provided a useful plan. His main conclusions and opinions were on only three points.
- (1) Ride 1 lasted between 1 and 2 minutes covering between 400 and 600 metres at an average of 20 kph.
 - (2) If AP stopped his SM 30m past the crash site then he calculated the separation distance when the Claimant exited turn 1 would have been 45 metres and so the Claimant would not have been able to see AP. Thus, the Claimant’s version of events was to be supported by his expert opinion on separation distance.
 - (3) If the Claimant applied the throttle accidentally on turn 2 a collision would have been unavoidable in any event.
55. The rationale for those conclusions was set out in his report and the subject of cross examination. Opinions (1) and (3) were not challenged. Opinion (2) was challenged. I shall concentrate on separation distance, which was the issue. In his conclusion Mr Arnold stated that his calculations were estimates based on assumptions and were indicative. There was no physical evidence to confirm speeds. On AP’s evidence the separation distance was calculated at 34-37m by Mr Arnold. On the separation distance

at rest after the accident he calculated 45m of separation. He assumed that the Claimant was travelling at 60 kph or 66 kph on straights 1 and 2 and 20 kph on turn 1. He stated straight 1 was 62-80m long and, on the Claimant's case, the guide was 62-80m away when the Claimant exited the right-hand bend onto straight 1. He assumed that both the Claimant and the guide turned turn 1 at 20 kph and maintained a constant speed on both straight 1 (62-80m) and straight 2 (18-32m). He took an acceleration factor of 0.7g and calculated that if the Claimant continued to accelerate to the point of impact on turn 2 he would have been going at 92kph on impact. If he had only accelerated for 22.7 m on straight 2, at 0.7g he would have reached 66 kph at impact, which Mr Arnold described as *more reasonable*. He later wrote "*If the Claimant had slowed down from half way along straight 2 he could have turned at 20 kph safely*". To calculate the separation distance Mr Arnold used a reaction time estimate and assumed the Claimant accelerated at 0.7g for half of straight 2 to reach 66 kph and he maintained that speed (C562-563) until impact. He calculated that they would have been 37m apart when the Claimant exited turn 1, so the guide would have been out of sight.

56. There are some rather fundamental defects in Mr Arnold's assumptions. Firstly, the Claimant does not assert that he accelerated between turn 1 and turn 2. He cannot recall what he was doing in that period. Secondly, the acceleration factor assumed is at the very highest end. Mr Wright takes a much more likely and lower figure as I shall set out below. Thirdly, for any beginner, even a confident one, to use maximum acceleration after turn 1 on the straight shown below, would be careless in the extreme. The light is better in this photo (taken by Mr Wright), than it was on the night of the crash. This is the view exiting turn 1 and along straight 2. On any basis, with good light or poor, there are large trees straight ahead.



57. Fourthly, no rational person would continue at 66 kph down straight 2 and the Claimant does not assert such. What he wrote in his witness statement was: *“I applied my brake heading into the left-hand turn. I steered to the left and leaned into the turn. I can remember the turn being quite long. I remember negotiating the turn for some time before I lost control of the snowmobile. I remember reaching what I believe to be the apex of the turn before I lost control”* I pointed out above that this paragraph did not clearly distinguish between turn 1, straight 2 and turn 2, but one assertion which the Claimant definitely did not make was that he accelerated after turn 1.
58. Fifthly, as Mr Wright pointed out, the Claimant managed to turn 25 degrees at turn 2 and he would not have been able to make any such turn at 66 kph or 60 kph. He would have run straight off the track without any turn at those speeds. In my judgment, Mr Arnold did not consider this properly. For those reasons and the reasons set out below in cross examination I can place no weight on Mr Arnold’s separation distance reconstruction.
59. In his verbal evidence in chief, Mr Arnold stated that he attended the site in December 2024. Some trees had been removed in the area. The UTAC representative did not explain which trees. He stated that the Claimant could not have been thrown behind or through the tree which he hit and impact with the tree may have occurred and slowed his progress through the air. His helmet had been scratched. He may have had contact with the SM handlebars. All of this undermined Mr Wright’s throw distance calculations. In his opinion it was not possible to estimate the impact speed from the crash damage photos or the throw distance. He buttressed his reaction time assumptions with various papers showing that human reaction to audible sound was different to visual stimuli. All of this went to a dispute between the experts on the distance between where AP stopped his SM and where AP was when the Claimant hit the tree. The stopping position was eventually agreed at around 30 metres and it was agreed that AP was around 19m in front of the Claimant when the Claimant hit the tree, so I will not consider his evidence any further on these details. In cross examination, he agreed Mr Wright’s critical speed opinions for turn 1 as 38 kph and for turn 2 as 26 kph. He accepted that the Claimant’s likely speed on straight 2 would have been lower than 66 kph and that assuming top acceleration was “unlikely”, so he undermined his own assumptions in his report. He accepted that the relative speed difference between the Claimant and AP during the time from AP’s look back on straight 1 and the crash was the main determining factor of whether the Claimant could see AP when exiting turn 1. He accepted that he had used constant speeds as his assumption and that was also unlikely. He admitted that modelling with certainty was impossible. Mr Arnold accepted that it was possible that the Claimant accidentally gripped the throttle. He accepted that, in the joint report, he had agreed that the Claimant’s view exiting turn 1 would be up to 30 metres towards turn 2 in which to see AP and his red rear lights. He also accepted that the trees would provide a visual reference of there being no track straight ahead where they stood. He accepted that understeer was not a central causative

factor or even a factor but he had never ridden a SM. When shown the hospital records of the Claimant, which record that he said he accidentally hit the throttle, he accepted that if this occurred a collision was unavoidable. He accepted that the Claimant navigated turn 1 successfully so must have been travelling at less than 38 kph. It was put to Mr Arnold that the Claimant's case was that he thought it was one long turn so it would not make sense for him to accelerate on the turn intentionally. Mr Arnold agreed that such acceleration on a turn would be "foolish". In re-examination Claimant's counsel sought to open up an alternative case of intentional acceleration followed by accidental throttle application but no application to amend to support that case was ever made.

60. **Mr Wright** gave evidence instructed by the Defendant. He works in Ontario and has 30 years of experience. His conclusions were:

- (1) The lighting was sufficient for snowmobiling for up to one hour after sunset;
- (2) The visual clues for the Claimant for turn 2 were the banks, the groomed track and the trees.
- (3) He calculated the likely separation at the time of collision as 17.8m. He did not advise on the separation distance when the Claimant exited turn 1, which was the main factual reconstruction issue. That was odd.
- (4) The Claimant accelerated to over 26 kph, the critical cornering speed on turn 2, went off the track and his impact speed with the tree was around 40 kph.
- (5) It is more likely that the Claimant pressed the throttle when making turn 2 and that caused him to shoot off into a tree.

His opinions at (1)-(3) were not really much in issue. In Mr Wright's reasoning he wrote that the Claimant asserted the light was poor but not that it was so poor that no safari should ever have been started. The visual clues were agreed. The separation distance at the moment of impact was eventually agreed at 19m during the trial. At trial the first part of (4) was also agreed, so the critical speed of the turn 2 was 26 kph. Only the second part of his opinion at (4) was disputed by Mr Arnold who asserted that, with no engineer's inspection of the damaged SM, the estimate was too uncertain. I have carefully read the report and considered the cross examination of Mr Wright. I found Mr Wright's body throw evidence to have been undermined by Claimant's counsel's careful questioning. He assumed that the Claimant's body did not hit the tree directly in front of the SM. True it is that the Claimant asserts that he recalls throwing himself to the right (albeit odd that he recalls that and nothing of his ride along straight 2 and around the first part of turn 2). But it is also a fact that he suffered head injuries and bruising, a leg injury and was knocked out. I do not consider that it is safe to assume that he did not hit any hard objects during his flight from the SM and hitting the ground. As for Mr Wright's efforts to reconstruct the impact speed from the photos of the crash damage, using his own extensive SM crash testing, this was a brave effort but not one upon which I can rely. He himself accepted the huge uncertainty in using only photos, and poor ones at that. Mr Wright tested a comparable SM Xtrim 900 with a black key (so not a green Learning Key). He managed to get to 74 kph in ECO mode and found the throttle more sluggish in ECO than in Standard mode. He deconstructed Mr

Arnold's assumptions with logic and I agree with many of his criticisms of Mr Arnold's separation distance calculations. Most importantly, he advised that the Claimant manged to turn 25 degrees of the 57 degrees which make up turn 2. He concluded that the Claimant would have had to have been going at a much more appropriate speed on the first part of turn 2 to achieve that turn. He stated that accidental acceleration was likely to have forced him off where he in fact did come off. Had the Claimant been entering turn 2 at 60 or 66 kph he would have shot off much earlier. Thus, Mr Wright advised that it was more likely that the Claimant pressed the throttle when making the turn at turn 2.

61. In their joint report Mr Arnold and Mr Wright agreed the various distances and the plan and that there were visual clues for the Claimant of the presence of turn 2 when exiting turn 1. Those were: the red tail lights of the guide, if he was visible; the snowbanks either side and the contrast of the trees. Otherwise, they disagreed.
62. Generally, I was more impressed by Mr Wright's logic and approach than Mr Arnold's.

Snowmobile operation and guiding

63. **Bernhard Klammer** advised the Court instructed by the Claimant. In his report dated December 2024 he concluded that:
 - (1) on the basis of the Claimant's evidence the briefing was inadequate because it did not cover: dangerous areas on the track; understeer; the LHT risk of the rider engaging the throttle; riders needing to go at their own speed. Also, it should have included advice only to drive on the right hand side of the track.
 - (2) The Lynx Xtrim 900 was unsuitable for beginners unless used only in ECO mode and changing to Standard mode was a serious mistake.
 - (3) The guide was negligent for failing to give the Claimant a practice drive on open ground.
 - (4) The guide failed to accord with the standard of guiding by failing to set an appropriate pace and being separated from the Claimant by too great a distance and being out of sight as the Claimant exited turn 1.

His reasoning was that he knew 25 safari providers in Finland and Sweden and *none* used the Xtrim 900 for novices, the others used 500 and 600cc SMs. The Xtrim has a wide ski base and is more difficult to handle and tends to understeer when throttle is depressed, particularly on compacted tracks as distinct from deep snow. He asserted that no weight shifting was required, except at high speeds (contradicting the manufacturer's manual). The guide should have told the Claimant what was coming up on the track. Stopping there. I do not know how that could have been done usefully in the briefing. I do not consider that a description that the track was a rough oval and that there would be left and right hand turns, some of which would be in combination and some of which will be in the forest, would add anything of causative use for the Claimant. He advised that it would be impossible for the glove to stick to the throttle because the throttle was heated. This rather ignores a mechanical pinch of some sort but no explanation was provided by any witness on the intimate details of a throttle,

save for Mr Gale. Mr Klammer criticised AP for failing to look back on straight 2. He relied on the Powerpoint and asserted that a failure to warn of the LHT risk would be contrary to requirements. He relied on the fact that the guide's witness statement did not assert specifically that this warning was given (ignoring the fact that this allegation was not specifically pleaded). He then described what he asserted was "best practice". That is not the appropriate test in this case. The standard of care required was set out in the joint Finnish Safety Standard experts' report. He advised that he would not allow a change of mode after 1-2 minutes of driving in ECO for a beginner. That was far too early. He regarded travelling at 60 kph on the longer straights on ride 2 as too fast for a beginner with poor visibility, and 20 kph was too fast for sharp corners. He considered that turns 1 and 2 were challenging, even for an experienced rider, in that light. He would have ensured that he was visible as a guide, so he assumed the Claimant's facts for that advice. He relied on Mr Arnold's advice on the separation distance when the Claimant exited turn 1 and worked on the basis that AP was out of sight at that time. I have already rejected that advice as lacking in credibility. He advised that being out of sight would have been a serious mistake. He advised that failing to look back on straight 2 was a key error.

64. In the joint report with Mr Gale, Mr Klammer asserted that when AP looked back, the Claimant was 180 metres behind him (C982), on the Claimant's case. He had visited the track with Craig Arnold in December 2022 but he had not taken a photograph of the view looking back down straight 1 from turn 1. Mr Wright had taken one and that is referenced above in my definitions section. I find that it was not possible to see 180 metres back along straight 1.
65. In his live evidence in chief Mr Klammer disclosed that he had asked which trees had been removed and the UTAC staff member told him those on the left of straight 1 before turn 1 (this was not in his report). He abandoned his criticism of the failure to advise the Claimant to ride on the right-hand side of the track. He should not have made that allegation at all in my judgment. This was a one way private track. He asserted that in his time as an expert he had done 3 left turn accidental throttle grip cases (but the Claimant's pleaded case did not rest on that factual matrix). In cross examination, it was put to him that all his conclusions were based on the Claimant's version of events. He stated that he had to make some assumptions, he was trying to figure out what had happened. He was asked if, in his opinion, it was likely that the Claimant accidentally gripped the throttle and agreed. He stated that this was due to lack of guiding and hence the Claimant was going too fast. He stated that he understood that the guide was out of sight, the Claimant could not really see the track and realised it was a left turn and pushed the right handlebar operating the throttle. It was put to him that he was reconstructing the accident and he replied he was trying to figure out what happened. He denied being in business competition with LA. He accepted that at para. 4.6 of his report he made an error stating that the guides did not state in their witness statements how long the briefing was. He criticised the written SSOB for failing to include a requirement, as set out in the Powerpoint slide, about the LHT risk. However, if the

guides did advise on correct operation of the handlebars for LHTs then he did not maintain his criticism. He withdrew his criticism of the length of the briefing, having been shown Mr Satta's witness statement, if the Court accepted that. He was not aware that UTAC were asked to make a track suitable for beginners. He accepted that he had not seen the whole track. He maintained his opinion that the double left was a "dangerous part" of the track. He stated that a beginner could go on the track in ECO and probably nothing would happen. He admitted that a description of the track would not need a description of every turn but he considered that it should have included information about a double left and that it was potentially dangerous, so the guide should have said "go at my speed". He accepted that he was incorrect to criticise AP for failing to advise driving on the right-hand side and indeed accepted that such advice would make the ride more dangerous on the narrow one-way track. He would not use a double left hand turn on a beginners' track. He criticised LA for failing to provide a practice area for braking and turning on flat ground before setting off. He asserted that there being 12 turns in the first 600-700m would make it a slalom and it was put to him that he was being silly. The report from Mr Leinonen was put to him (it was an agreed report) and he rejected the contents on separation distances. He asserted that he had never done a safety briefing in 5 minutes. His company had only been audited by TUKES once. They had suffered no accidents. He was shown Finnish accident figures but his evidence on those became confusing and slightly frivolous. He was asked about the Xtrim and stated that he saw a black key on a photo after the accident. He described, having read the manual, how the Learning Key worked. He was shown his joint report with Mr Leinonen. He accepted that using the Xtrim 900 in ECO mode was satisfactory for Finnish standards. When pressed on whether changing to Standard mode with a customer's consent and a warning to be careful due to increased acceleration and some slower practice on the track soon thereafter, would be sufficient, he answered that it would probably be sufficient. On leaning in, he was shown what the other experts said and then descended into an accident reconstruction of the crash from the post event photos involving his expert opinion on whether the right ski was digging in more or less than the left ski. He conceded that his accusation that the group were yo-yoing in ride 1 was wrong and withdrew it. He maintained his criticism of AP for failing to look back after turn 1. He clarified that the reference to 180m in the joint report was the distance travelled by the guide between looking back and stopping. When it was put to Mr Klammer that the Claimant's case was that he thought it was all one long left turn and it would not make sense for him to accelerate on a turn, he admitted that it was unknown whether the Claimant intentionally pushed the accelerator or did so accidentally. It was put to him an accidental error was consistent with the hospital records. He agreed. He also agreed that it was consistent with his own opinion at C613 in which he wrote:

"In my opinion, when trying to steer the snowmobile to the left, he likely pushed with his right arm, instead of pulling with his left arm and slowing down, and so involuntarily pushed the throttle harder. This resulted in very hard

acceleration of the snowmobile (as it was in Sport Mode or Standard Mode) and the impact with the tree.”

Despite this being in the Claimant’s own expert report it was never pleaded. In re-examination he stated that if the throttle was pushed accidentally when the Claimant was going at a safe speed then what the guide was doing was causally irrelevant. However, if he was already going fast he said one has to look at the relevant factors. He noticed that the tracks of the SM were on the right hand side (I do not understand how he could conclude that after all the other SMs which attended after the crash had caused tracks: Mr Satta, the Medic, then AP and others who arrived to take the SM away). He returned to his theory about the right ski being in deep snow at the outside of turn 2 and that sinking into snow could have caused the accidental acceleration. Alternatively, he postulated that the Claimant panicked or tried to turn left and pushed with his right hand. He did not know which. He pointed to the arrow on the agreed plan on turn 2, at the start of the straight line to the tree and suggested that the acceleration occurred there. He came up with new evidence at the end of cross examination stating that he had tested the Xtrim 600 and 900 and that latter was very strong and he had needed to sit down. I do not understand why he did not put that in his report if he actually did do so.

66. After Mr Klammer’s evidence Mr Chapman for the Defendant highlighted the unpleaded case being advanced by Mr Klammer about accidental acceleration being caused by bad guiding. He submitted that no such case had been pleaded and no amendment application had been made. This warning to the Claimant was left over for legal submissions.
67. **Mr Stanley Gale** gave evidence to the Court instructed by the Defendant to advise on breach of duty as an expert on SM operation. He lives in Colorado and runs the Rocky Mountain Ski and Snowsports Consultancy. Under the heading “Background” on page two of his report he wrote this:

“The Claimant was individually operating his snowmobile and following the guide in front of him, *who was in full view*. The Claimant admittedly lost control, and he drove his snowmobile off the prepared track and into a tree, suffering injury as a result.” (I have added the italics).

That was not the background. One of the key issues in the case was whether the guide was in full view. Apparently, Mr Gale had not quite grasped that was in issue. Under the heading “Qualification and Experience” he wrote:

“It is my opinion that Dr Cannestra was provided with appropriate training and an equally appropriate safety briefing prior to the snowmobile safari. Moreover, the manner in which the tour was conducted by trained guides was also wholly appropriate. The defendant, McLaren Automotive

Events Limited, and its subcontractors, employees and staff members met, indeed, exceeded their responsibilities to conduct the tour in a reasonably safe manner before, during, and after the incident in which Dr Cannestra sustained injury.”

68. These conclusions were not qualifications. Thereafter in the whole report he assumed the version of the disputed facts provided by the guides was the only version which the Court should accept and ignored the version given by the Claimant. Mr Gale visited the site and stated that he had read all of the documents provided to him. He drove a Lynx Xtrim 900 on the “same course” which was reopened and reconstructed for him. AP led him around it. Correctly, he stated at para. 4.1 that findings of fact were for the Court and not for him. He stated that he would summarise the *factual common ground*. He then provided a summary including the following statements:

- (1) “everyone was using a Lynx Xtrim snowmobile routinely used for these snowmobile tours”. He ignored the pleaded issue over whether the Lynx 900 was appropriate for beginners.
- (2) He stated that “Before getting on the snowmobiles, the Claimant and his partner received a safety briefing from the lead guide, Mr. Pitkanen. They were given appropriate and fully comprehensive instructions and rider education covering all aspects of operating the snowmobile.” This was a wholly inaccurate statement and assumed the answer to one of the key factual issues in the claim was already decided in the Defendant’s favour.
- (3) He then stated: “After the initial safety briefing by Mr. Pitkanen, the Claimant and his partner then mounted their respective snowmobiles and received another follow-up safety briefing and additional instruction. The safety briefings included how to start the snowmobile, the need to lean into turns and the way in which to do so, as well as the location and operation of the throttle, the brake, and the emergency kill-switch button. Mr. Pitkanen also showed them the safety tether-cord kill switch, its purpose and effect, and how to perform an emergency stop.” These were not agreed facts, they were in issue.
- (4) He advised that 5 minutes is sufficient time for an adequate briefing which was a statement of opinion not a recitation of the circumstances. He advised that “In addition, there is factual evidence in the assistant guide’s witness statement which corroborates that the safety briefing was complete and met the standard of care. The safety briefing was itself reasonable in content and form.” He completely ignored the Claimant’s evidence and accepted the Defendant’s evidence on the factual issues relating to the adequacy of the briefing when providing this opinion.
- (5) At para. 4.5 he stated: “Their sitting positions were checked, and the emergency tether cord was attached to their clothing.” Again, he completely ignored the Claimant’s evidence and accepted the Defendant’s evidence when writing this sentence.
- (6) He then wrote: “There is an issue raised in the Claimant’s pleaded case as to the mode in which the snowmobile was being operated. While it is a matter

for the Court, it *may be reasonably safe to conclude on the evidence* that the lead guide switched the Claimant's mode from eco mode, a reduced-power mode, to Standard mode, a full-power mode." It is not any part an expert's function to advise the Court on what conclusion it is "safe" to make on the evidence relating to disputed issues of fact.

69. Mr Gale summarised the pleaded allegations in para. 5 and carried out his expert analysis of the briefing in para. 7.

- (1) He advised that: "I have considered that neither the Claimant nor his partner, Ms. Mealor, voiced any concerns about the safety briefing before they began the tour or when they stopped for the rest break. Taking into account that they competently operated their snowmobiles after the safety briefing, I have concluded that the pre-trip briefing covered all of the essentials and was therefore reasonably sufficient." The fact that a beginner raises no questions does not prove a safety briefing was adequate. Nor does the fact that the beginners rode for 600-700m without mishap.
- (2) Mr Gale identified some factual issues relating to the content of the briefing and then advised that: "This conflict can only be resolved by the trial judge. However, with respect to the safety briefing, *in my opinion, on the balance of probabilities and with regards to reasonable expert certainty* based upon the training of the guides, the briefing complied with the industry norms, standards, and practices" (my italics). Mr Gale went further. At para. 7.4 he advised: "I observed, on my inspection trip, what I was told was a typical safety briefing, and in my opinion, it is *unlikely to within a reasonable degree of expert certainty* that both of the guides failed to properly and satisfactorily provide the routine and basic briefing. This dispute is up to the Court to decide." I consider that these sentences were a litmus test for assessing Mr Gale's impartiality and he failed the test. He sought to provide his expert opinion on issues of fact based upon something he described as "reasonable expert certainty". I have no idea what that is. Was Mr Gale the reasonable expert? Was he saying that he was "certain", being an expert, that the guides' evidence of fact should be preferred over the Claimant's evidence of fact? If so, these statements were a breach of his duty of impartiality. He was advocating the defence version of the facts.
- (3) Mr Gale then recited AP and Mr Satta's evidence and that of the other defence witnesses and advised the Court that: "Based upon the evidence I have reviewed, it is my expert opinion that the training and safety briefing provided to Dr. Cannestra, on balance, more than likely exceeded the standard of care in the industry." He made no attempt to advise the Court on the Claimant's version of events, as supported by KM and whether, if the Court accepted their evidence, the briefing would have been inadequate.

70. Mr Gale advised on the adequacy of the guiding at para. 8.
- (1) He rode the reconstructed track and advised that it was suitable for beginners. On this matter he has considerable experience and expertise and I accept his evidence.
 - (2) Mr Gale used the Claimant's previous experience of riding jet-skis as a form of experience for riding SMs. I do not find his reasoning at all convincing. Firstly, jet-skis travel on water. The means of propulsion (a moveable water jet) is completely different to a fixed revolving track under a SM. Secondly, the handlebars of jet-skis come in various configurations for the throttles. Mr Gale made no analysis of whether the Claimant's jet-ski had a thumb activated throttle on the right-hand side or a revolving handlebar throttle. Nor any analysis of whether the right-hand throttle was in front of (finger operated) or behind (thumb operated) the right handlebar. In addition, there is no brake on the left handlebar of a jet-ski.
 - (3) Mr Gale advised on the left turns where the Claimant had his accident. He wrote this: "It is my opinion that the Claimant did not need Mr. Pitkanen to set the pace or to follow the guide on the path around the gradual bend on the track. Indeed, one can rent snowmobiles on "self-guided" trails with much more acutely angled curves and bends and without any safety briefing or guide at all. The prepared and well-maintained track was much easier to use than other self-guided trails and guided trails I have been on and studied. This prepared track was suitable for a novice to be self-guided in any mode and without any guide at all." This rather misses the point. The Claimant was on a guided tour. If he had rented a SM and simply gone out alone he would have been assuming his own risk.
 - (4) Mr Gale considered the SM itself and his research on the choice of mode led him to rely on advice given on a website for a forum community dedicated to Ski-doo snowmobile owners and enthusiasts. He used this forum to support his expert evidence that acceleration in ECO mode was sluggish. He advised that the track was safe for the Claimant because it had reasonable width and because the Claimant had negotiated many turns upon it.
 - (5) Mr Gale considered the accident and advised that AP was in the Claimant's full view on turn 2. He completely ignored the Claimant's version of events when giving his opinion. He advised that the high snow-banks shown in the post-accident photos provided clear visual reference for the turn. He then reconstructed, upon a post-accident photo, what he advised were the tracks of the AP's and the Claimant's SMs.
 - (6) Bizarrely, at para. 9.17 (1) Mr Gale asserted that he took the photo which he copied into his report and then marked, as a circle, his estimate of the approximate location of AP's SM after the crash. In fact, the photo was taken by LA staff, soon after the crash and actually showed AP's SM to the right of the circle drawn by Mr Gale in its actual position. Mr Gale did not spot that.
 - (7) Mr Gale rode the track behind AP and considered the Lynx 900 to be simple to use. He drove in ECO and Standard mode and did not find any "appreciable

difference”, except that ECO was more sluggish. He advised the Court that the throttle is spring-loaded so, once released, it automatically disengages. I found his photos at C776 and 777, which showed the throttle and tether cord, to be helpful. He did not consider that using Standard mode had any influence on the Claimant’s failure to control his SM. He did not consider that the glove which the Claimant wore would be likely to get stuck in the throttle.

- (8) Mr Gale did his ride in daylight so his comments on visibility are not helpful.
- (9) In his conclusions, Mr Gale advised that AP’s briefing was adequate, the guiding was reasonable, changing the mode on the Claimant’s SM was reasonable and that the Lynx Xtrim 900 does not understeer. He agreed with Mr Jaako Leinonen’s report.
- (10) In his supplementary report Mr Gale corrected an error on the Lynx SM he drove.

71. In cross examination the gross fault-lines in Mr Gale’s approach in his report were highlighted by Mr Block KC. He was taken through the main opinions in Mr Leinonen’s report and agreed with them. When asked why, at the start of his report, he had stated that AP was within sight of the Claimant throughout, he explained that when he followed AP round the track he had been in full view all of the time. He then said he had “tested the evidence” of the Claimant. However, he agreed that he had not generally recited the Claimant’s version of the facts in his report – that the guide went so far ahead that he was out of sight – and he had not recorded that this was a key issue in dispute. He accepted that in his reconstruction he had ridden the track in daylight not at sundown and that it was not snowing. He could not explain why he had put his conclusion on the quality of guiding under the heading “qualifications”. He was asked what his advice would be to the Court if the tether was not attached to the Claimant and he refused to accept that it was not attached. When pressed, he stated that if the Court so found he would not change his opinion. He explained this by asserting that, in his opinion, tether cord use is not always explained by guides. He also stated that he would not change his opinion even if AP was driving so far ahead that the Claimant could not see him. Mr Gale asserted that the Claimant should have stopped and put his hand up. He refused to accept Mr Satta’s evidence that the Lynx Xtrim 900 suffered from understeer. He explained that his extensive internet research into which mode riders use only produced the Chat Forum he recited in his report. He accepted that in his report he had assumed that the facts asserted by the guides were true. He stated that in North America that is what he did when giving expert evidence. He did not see it as a failing to ignore the Claimant’s version of the facts. It was put to him that he was acting as an advocate for the Defendant in seeking to persuade the Court to accept the guides’ version of events. He denied that. He asserted that his review of the evidence led him to advise the court on which version of events was more likely. For instance, when challenged on the tether cord evidence he asserted that, because the Claimant did not raise it straight after the accident, his evidence was unlikely to be correct. He asserted that, if no tether had been worn that would have been the Claimant’s fault not the guides’ fault. When questioned on visibility during sunset when the accident happened, he asserted that the Claimant

could see the guide and also the tracks in the snow, because these were “the first tracks of the afternoon”. Counsel put to him that a group had driven the track right before the Claimant and KM went out, so he was wrong. He then retreated into asserting that it had been groomed during the day. At this stage I gained the impression that Mr Gale was making his evidence up as he went along. He asserted that Mr Arnold’s reconstruction was unreliable, but ignored the fact that Mr Arnold and Mr Wright had agreed a plan during the trial which was based on Mr Arnold’s plan. When questioned on his assertions that the briefing was *within a reasonable degree of expert certainty* likely to have been adequate, he explained that he had considered all of the evidence and tested it and weighed it. When counsel asserted that it was the Judge’s job to weigh the evidence he agreed and then denied weighing the evidence himself. Eventually when faced, fact by fact, by Claimant’s counsel, with the pleaded and asserted breaches he accepted that, if proven, the guide would have fallen below a reasonable standard of guiding. On the accident itself, he asserted that there was no need for AP to look back on straight 2 because he had looked back before turn 1. Mr Gale could not explain why he written that there was “no evidence” to support understeer for the Lynx Xtrim 900, in the light of Mr Satta’s witness statement asserting just that it understeered. He could not explain why he had put the circle showing where he “estimated” AP’s SM had stopped after the accident, on a photo which actually showed the very snowmobile in position after the accident.

72. There was a joint expert report from Mr Klammer and Mr Gale but very little was agreed. They did not even talk to each other before producing it.

Assessment of the expert evidence on snowmobile operation and guiding

73. Guidance was given on experts’ duties by Cresswell J in *National Justice Campana Naviera v Prudential* [1993] 2 Lloyd’s Rep 68, at paras 81-81. This has subsequently been approved at the highest level, with only slight amendment

“The duties and responsibilities of expert witnesses in civil cases include the following:

1. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation: *Whitehouse v. Jordan* [1981] 1 W.L.R. 246 at 256, *per* Lord Wilberforce.
2. An expert witness should provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within his expertise: *Polivitte Ltd. v. Commercial Union Assurance Co. plc* [1987] 1 Lloyd's Rep. 379 at 386, Garland J. and *Re J* [1990] F.C.R. 193, Cazalet J. An expert witness in the High Court should never assume the role of an advocate.
3. An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion (*Re J, supra*).

4. An expert witness should make it clear when a particular question or issue falls outside his expertise.
5. If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one (*Re J, supra*). In cases where an expert witness, who has prepared a report, could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report: *Derby & Co. Ltd. and others v. Weldon and others, The Times*, 9 November 1990, *per* Staughton L.J.
6. If, after exchange of reports, an expert witness changes his view on a material matter having read the other side's expert's report or for any other reason, such change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the court.
7. Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports ...”

74. Regretfully, I am driven by the evidence to find that Mr Gale was a partial witness who acted as an advocate for the Defendant’s case. He not only ignored the Claimant’s evidence and adopted the guides’ evidence, he positively sought to persuade the Court to find facts in the Defendant’s favour. His report was littered with errors and illogicality. His research on modes of operation of SMs was flimsy and unimpressive. He strayed into accident reconstruction. He made things up in the witness box and he estimated facts when the actual facts were staring him in the face. I am unable to rely on the vast majority of his evidence.
75. Mr Klammer was clearly doing his best to assist the Court. He was precise, logical and well prepared. However, his expert evidence depends to a substantial extent on the Court accepting the Claimant’s account of events. He tended only to focus on the Claimant’s factual version and rather ignored the guides’ factual version. He made a factual error about how far back AP could see when he looked back before turn 1. He said 180 metres, when the accident reconstruction experts agreed it was 62-80 metres. In addition, he tended to mix up what he considered to be best practice with the actual local standard, which was what reasonable guides would do to keep the Claimant safe, in so far as they reasonably could, when briefing and guiding customers. He passed overly strict opinions on a number of issues and he had to withdraw some of his criticisms in cross examination. I do not accept his opinion that the Lynx Xtrim 900 should not ever be used by inexperienced riders in Standard mode. I consider that the joint Finnish Law expert’s opinion in their agreed report is the correct approach. I do not accept his evidence that a practice area must be used for beginners to learn the control on a Lynx Xtrim 900. I consider

that the open and easy 600-700m slow procession of ride 1 was not an unreasonable way to train the Claimant in the use of the SM. I do not consider that the LHR risk has to be explained to customers, however I do accept that safe LHT SM operation must be clearly explained.

Assessment of the accident reconstruction expert witnesses

76. I consider that Mr Arnold was a helpful and straight forward expert. His plan and his calculation about the guide's stopping distance were helpful and his separation distance at the time of the impact likewise. However, I cannot rely on Mr Arnold's opinion about the separation distance when the Claimant exited turn 1 because it was deeply faulted by inaccurate and unlikely assumptions.
77. I was favourably impressed with Mr Wright. His report was thoughtful and well researched. He gave evidence openly and flexibly, as an expert should. His omission to advise on the key issue, separation distance at the time the Claimant exited turn 1, was odd, but it is not for me to guess the tactics behind such an omission. The parties may lead the expert evidence which they wish to lead so long as they and the expert do not mislead the Court. Where Mr Wright and Mr Arnold's opinions clashed, I generally accept the opinions of Mr Wright.

Assessment of the credibility of the Claimant, Miss Mealor, AP and Mr Satta

78. In my judgment, the fundamental problem with the Claimant's witness statement and evidence at trial was that it was contradictory to what he said after the accident to AP and to the hospital doctors. I do not accept that both or either of AP and a doctor independently came up with the same theory for his crash, or that he denied their theories and yet they still recorded those accounts, despite his denial. I consider that the records made independently by AP and the doctor at the second hospital, corroborated in part by the first hospital records, are likely to be accurate. Thus, I consider that the Claimant changed his evidence between February and July 2020. I do not consider that his explanation of having an unclear or muddled recollection is likely to be correct either. The medical notes record no pre or post traumatic amnesia. To the contrary, they record that he could recall the mechanism of the accident. Furthermore, the way the Claimant and his then partner later set about a line by line barrage of criticism of the briefing was inappropriate, artificial and at odds with his making no such allegations straight after the accident. He is a Medico-legal expert in the USA. He understands records and liability for negligence. If he believed that AP had sped off leaving him desperately trying to catch up, I consider that he would not have omitted some mention of that. Instead, he admitted full responsibility and offered to pay for the SM and explained that he accidentally pushed the accelerator.
79. The Claimant's case also altered again as the claim progressed. The PAP allegations were not the same as the Particulars of Claim. The pleaded claim was founded on the accident being caused by too much speed at turn 2, not accidental throttle. The cause of the speed was the alleged absence of the guide, who had driven too far ahead, leaving

the Claimant desperate to catch up. This was so despite the Claimant's own expert, Mr Klammer, favouring accidental throttle as the cause. Yet no alternative case was introduced by an application to amend before trial. Further, as the trial progressed, there was a perceptible shift to an alternative claim that the accident was caused by accidental throttle. This shift was highlighted by defence counsel during the trial but it did not lead to an application to amend. In final submissions, Mr Block KC bravely and elegantly attempted to weld the accidental throttle claim onto the pleaded claim, but the Claimant himself had never based his evidence for the Court on that having occurred and denied that he ever said he had caused accidental throttle after the accident.

80. In his live evidence the Claimant gave focussed, well controlled answers and avoided straying off his chosen piste. But I found his evidence illogical and contrived. For a man with substantial experience of driving super cars, with very high intelligence and a clear understanding of the dangers of driving at speed on corners, he based his case on ignoring those dangers and desperately wanting to keep up with a guide. He served and relied on Mr Arnold's reconstruction, which was based on the assumption that he used maximum acceleration along straight 2 and reach 60-66 kph going around turn 2. This was an inherently unlikely and deeply faulted assumption.
81. AP wrote his witness statement with frankness and gave his evidence in the same way. He freely admitted he did not look back in straight 2. He was always going to face criticism for that. He took it on the chin. In my judgment he was not the sort of witness who would tailor his evidence. I was impressed by his honesty. Likewise, I found Mr Satta to be a straightforward and helpful witness who was doing his best to give his evidence fairly. Some of his evidence implied criticism of AP but he did not shrink from setting out his opinion on guiding standards.
82. Where the evidence of the Claimant contradicts the evidence of AP, I prefer AP's factual account. I reject KM's evidence of the conversation with Mr Weir. I accept AP's evidence about when he looked back in straight 1, what he saw and the separation distance. I accept AP's evidence about what the Claimant said at the ambulance and I accept the hospital records of what the Claimant said there.

Findings of fact

83. On the balance of probabilities, taking into account all the evidence, I make the following findings of fact.
84. The LA safety documentation is not criticised by the joint Finnish Law experts and no pleaded allegation of breach arose from it. The SSOB did not cover change of mode, did not expressly state that LHT risks had to be explained (although it did cover them impliedly under briefing on throttle operation), and did not require proper post-accident investigation and preservation of evidence at the scene. These matters, although raised in cross examination, were not pleaded as breaches of duty.

85. The Lynx Xtrim 900 was appropriate for use by LA for the McLaren customers. It should only be used in ECO mode initially. The Learning Key issue was never properly addressed and I can make no findings upon it. In both ECO mode and Standard mode, the SM which the Claimant rode probably had a similar top speed, however acceleration was more sluggish in ECO. I make no finding on whether or not this SM suffered from understeer at all or more or less than any other SM. That term was used by different witnesses in different ways. Understeer on cars on roads means that when the wheel is turned the car does not turn as much as the angle requested through steering input. So, the front tyres struggle for traction, causing the vehicle to under-rotate and push wide through a turn. A snow mobile has skis on the front and the mechanics of how those and the drivetrack interact was not explained to me with clarity. I understand that if a SM goes faster than the critical speed on a corner it will not turn sufficiently and will run off the track. That could be called understeer, but I do not find the terminology helps to resolve the issues. When turning a corner, either the SM is going slow enough to have enough traction under the front skis and assistance from weight positioning, so that it will turn the corner, or when going too fast, it will have inadequate traction and will shoot off the corner.
86. The Claimant and KM were given a SM operation briefing after signing 3 forms which informed them of the legal conditions for being able to ride SMs. Those included age, driving licence, alcohol, medical conditions and the insurance excess. One of the forms made it clear that SM riding is arduous and not without risk. The Claimant agreed to follow the instructions given. The Claimant did not disclose his essential tremor. In my judgment he should have disclosed it. The decision would then have been made for LA or McLaren by a medic, not just the Claimant. I do not have evidence about what decision would have been made despite the medic giving evidence.
87. The briefing by AP, in the presence of Mr Satta, covered all the relevant matters set out in the SSOB guide. I do not consider that they both ignored the Powerpoint and the training which they received about LHTs. Specifically, I find that the briefing covered the steering, braking, turning and proper use of the throttle. It covered instructing the Claimant to release the throttle to slow down. The Claimant was told that when turning left he should pull with his left hand and should not push with his right, because he might grip or press the accelerator. In relation to para. 29 of the Particulars of Claim I find that the briefing covered the emergency stop button and the tether cord. The Claimant was utterly familiar with tethers because he owned a jet-ski which used tethers. He knew that it had to be connected. It covered leaning in and positioning. It did not cover driving on the right and did not need to. It covered keeping proper separation distances. The Claimant was informed to follow the guide's pace and maintain a safe separation. The main part of the briefing took place with AP sitting on a SM and later the Claimant sat on a SM and the briefing was repeated. The Claimant's PAP assertion was incorrect about the lack of any briefing whilst sitting on SMs. I do not consider that there was a requirement in local Finnish Law to describe the track. It was for beginners, roughly oval and was short. I do not accept that the double left turns

were dangerous per se, especially when the guide was in sight of the Claimant as he exited turn 1. There was no need to advise no overtaking on this relatively narrow track. There was no requirement to have a separate practice area. Informing the Claimant that he would be riding around an oval track with left and right turns would have provided no safety benefit. There was no dangerous corner or corner combination per se which had to be pointed out to the Claimant. I find that the Claimant knew what a 900cc engine meant.

88. I find that the visibility, temperature, track and light snow did not make running a snowmobile safari unsafe. The light was flat. The SMs had their headlights on. These highlighted the banks each side of the track. The trees were visible in contrast to the snow. Ride 1 took 1-2 minutes and covered 600-700 metres at lowish speeds. That was the standard LA practice distance and complied with local standards. It had not caused dangers during over 2 years of use. Both the Claimant and KM were tethered. He drove faster than KM and he drove confidently. Both guides noticed that. A gap was created between the Claimant and KM. The Claimant was not intent on sharing the SM experience with KM in a procession. He wanted more speed. AP noticed and offered it. The Claimant asked KM if she minded if he rode away with AP, leaving her alone with Mr Satta and she agreed. AP changed the mode to Standard and informed the Claimant that it was more powerful and/or sporty and advised him to take more care. He agreed willingly, with no reluctance. He wanted more speed. He should have understood that being guided at higher speed would be more challenging and risky. I consider that he did understand this. He also understood that they would go through trees. I find that he was tethered. He knew tethers were a safety device. I make no finding who connected the tether, but I find that AP checked that it was connected.
89. I find that AP did not ride at excessive speed. He guided at a safe speed and maintained a safe separation from the Claimant taking into account the visibility and the snow falling. AP and the Claimant set off a bit faster and AP gradually increased the speed as the Claimant successfully negotiated 10 or more turns, both left and right. The Claimant was getting what he desired, speed and excitement. As AP went up to 60 kph on longer straights, he observed the Claimant driving confidently. They negotiated more turns safely, after using a higher speed on the longer straights.
90. When AP came to straight 1, AP looked back before braking and saw the Claimant riding 20-30 m behind. The total look back distance along the track was 62-80 m to the right hand curve at the start of straight 1. AP then braked for turn 1, his rear lights were on. The Claimant probably got closer to AP because he was still on the straight when AP braked down to 10-20 kph and turned.
91. On straight 2, AP did not look back. As the Claimant exited turn 1, I find that AP was in sight ahead, probably 18-20 m away. I find that AP rode around turn 2 at a safe speed showing the Claimant how to do so and the line to follow. I do not know what the Claimant did on straight 2. He cannot recall. He never looked at his speedo, which

was careless. I do not consider it likely that he applied maximum acceleration. There were trees dead ahead. He may have used the throttle to some extent to maintain speed or increase it a little. He just followed the guide. I do not find that the Claimant was trying to catch up. In any event he reached turn 2 and turned through 25 degrees, then squeezed or pushed the throttle by mistake with his right hand and shot straight forwards into a tree. In whatever mode, that accidental throttle use would have caused him to go straight off the track. The difference between modes is not so great as to have avoided the impact.

92. In the last second before impact he ducked right and, at impact, was thrown slightly to the right of the tree. I find that his left leg was in contact with the SM and/or the tree and was injured. His forehead suffered an impact on the left side, probably with the tree, but it was not a full on blow, so the helmet was not dented or cracked, only scuffed. He ended up face down on the far side and to the right of the tree, with his legs away from the tree and his head towards it. The throw distance calculation does not assist on his impact speed. It was clearly over 26 kph or he would not have exited the track. I do not find that the Claimant panicked. He just made an error. The tether cord is visible on the ground to the right of the SM in the photos. I consider that it disconnected from the SM when his body was thrown off. I do not know how it became disconnected from his body. This was never properly investigated by LA.
93. When AP heard the impact he was probably about 19 m further down the track. When the Claimant accidentally accelerated, the gap was probably similar. AP stopped 30 m from the crash. After the accident the Claimant was cared for by AP, regained consciousness and had regained composure by the time the medic had given some care to him. He was able to ride back on a SM between a rider and another passenger. At the ambulance in the car park he told AP that he accidentally pressed the throttle in the middle of turn 2 and blamed his glove. At the first hospital he told medics he was going 30 kph. At hospital 2, he told a medic he accidentally hit the gas instead of the brakes. He considered that he himself was the cause of the accident. He did not blame AP for rushing him or disappearing.

The Law

94. There is no dispute on the duty of care or the standard of care. I have summarised the law above.

Applying the law to the facts

95. On my findings of fact, the pleaded claim was not made out on the mechanism of the accident. It was not caused by “out of sight” guiding. It was not caused by the Claimant going too fast because he was trying to keep up with a disappeared guide. It was caused by accidental throttle use by the Claimant due to failing to follow the instructions which he had been given about safe operation during a left turn, with the guide well in sight before both turns 1 and 2.

96. I do not consider that supplying the Lynx Xtrim 900 in ECO mode to the Claimant breached the local standard. I consider that about 5 minutes was an appropriate length for a briefing for just 2 customers. I find that the briefing complied with local Finnish standards. All of the allegations of negligence in the Particulars of Claim were not made out save for one, which I shall now consider. AP did not look back on straight 2. I find that he should have looked back and this was a breach of duty. I accept Mr Satta's and Mr Klammer's evidence on this. However, this failure had no causative effect. I find that the Claimant would have been 20 or so metres behind AP on straight 2, going at AP's pace and driving confidently.
97. As for the decision to change the mode of the Xtrim 900 at the stop, the joint Finnish Law experts agreed that, after a reasonable time of riding, such a decision can be made by the guide for a beginner. Despite my express request for them to be asked what they meant, neither party led evidence from them jointly in response. Mr Klammer advised that 600 -700 m was too short to decide. Mr Wright, who was not called as the SM expert for the Defendant, said that there was not much difference in acceleration but there was a more sluggish acceleration in ECO. I have rejected most of Mr Gales's evidence as lacking impartiality. The joint experts in Finnish Law agreed that changing the mode was commonly done. The mode decision was a matter of judgment in the particular circumstances. AP was not guiding a 17 year old, new car driver. He was guiding a mature, supercar and jet-ski aficionado, who had ridden confidently and wanted more speed. The Claimant was prepared to leave his partner behind to increase his own enjoyment. He had managed 10-12 turns before the stop. AP was going to guide him around the rest of the track. On balance, I do not consider that the Claimant has discharged the burden of proof just by Mr Klammer's opinion. I consider that, on this issue, Mr Klammer was applying his own best standard instead of the local industry standard. LA use Xtrim 900s for beginners. Some, but not many, want more speed and acceleration. Some are given just that after a safety briefing and practice. Whilst this is a managed freedom of choice point, on balance I consider that AP was within the local standard to allow the change to Standard mode, so long as: (1) he gave the two part warning: there will be more power so take more care, and (2) he combined that with a slow speed build up on ride 2, and (3) he used in-sight guiding on straights and corners, all of which I find that he did. In any event, I do not consider that the change of mode had any proven causative effect on the accident. Once the Claimant had made the error of pressing the throttle at the apex of turn 2, the "die was cast".

Conclusions.

98. The claim will be dismissed and judgment will be entered for the Defendant at a consequential hearing, unless an agreed order is provided covering costs.
99. I am grateful to both counsel for their professional and co-operative approach to the trial.

END