

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

Jed Pearsall; William Doyle,  
  
Plaintiffs,

v.

S/Y SUMURUN her engines, boilers,  
tackle, furniture, apparel, etc., *in rem*;  
SUMURUN Inc.; Robert Towbin; Armin  
Fischer; ABC Corp and John Doe,  
  
Defendants,

CIVIL ACTION NO. 08-CV-\_\_\_\_

**VERIFIED COMPLAINT**

NOW COME Plaintiffs, by and through counsel, Michael X. Savasuk, and allege as follows for their Verified Complaint against defendants:

1. This action involves an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure with respect to a collision between three sailing vessels on United States navigable waters and falls within the Court's pendent, ancillary, and supplemental jurisdiction as to the remaining aspects of the claim. Plaintiffs seek recovery for the loss of the vessel and for consequential and punitive damages as a result thereof.
2. Plaintiff Jed Pearsall was at all times mentioned, and still is the owner of the vessel, AMORITA (USCG Doc. No. 201864), a sailing yacht designed by Nathaniel Herreshoff built in 1905, and was aboard said vessel at the time of the

subject collision. Mr. Pearsall is an individual residing at 64 Washington Street, Newport, RI 02840.

3. Plaintiff William Doyle was at all times mentioned, and still is an individual with an interest in the vessel AMORITA and was aboard said vessel at the time of the subject collision. Mr. Doyle maintains an office and place of business at 25 Mill Street, Newport, Rhode Island 02840.
4. Upon information and belief, the vessel SUMURUN (USCG Doc. No. 661596), a sailing yacht designed by William Fife and built in 1914, is now, or during the pendency of this action will be, within the admiralty and maritime jurisdiction of this Honorable Court or is otherwise subject to jurisdiction pursuant to Rule 4(k)(2) of the Federal Rules of Civil Procedure. Further, it is believed that SUMURUN is documented under the laws of the United States and is registered on the island of Antigua in the Caribbean Islands.
5. Defendant, Sumurun Inc. is believed to have been at all times mentioned, and still is, a corporation duly organized under the laws of a foreign sovereign or one of the States of the United States and an owner and/or manager of the vessel, SUMURUN. Sumurun Inc. maintains a registered address at 1010 Fifth Avenue, Apt 11B, New York, NY 10028.
6. Defendant, Armin Fischer, is believed to have a past, present and/or future ownership interest in the vessel SUMURUN and is believed to have been at all times mentioned, and still is, the skipper of the vessel SUMURUN and an employee of defendants Sumurun Inc. and/or A. Robert Towbin. Mr. Fischer maintains a residence at 52 E Fork Rd, Camden, Maine 04843.

7. Defendant, A. Robert Towbin, is believed to have been at all times mentioned, and still is, an owner of the vessel SUMURUN. Mr. Towbin maintains an office and place of business at 665 5th Avenue, New York, NY 10022 and resides at 1010 Fifth Avenue, Apt 11B, New York, NY 10028.
8. Upon information and belief, defendants engaged in the business of yacht racing and/or the provision of services related to such activities, and conduct said activities in U.S. navigable waters as a whole within the meaning of F.R.C.P. 4(k)(2).
9. Upon information and belief, defendants engaged in the business of yacht chartering and/or the provision of services related to such activities, and conduct said activities in U.S. navigable waters as a whole within the meaning of F.R.C.P. 4(k)(2).
10. On July 7, 2007, the Sailing Yachts SUMURUN, ALERA and AMORITA entered a sailing race in Newport, Rhode Island.
11. Pursuant to the Sailing Instructions, the race was governed by the Racing Rules of Sailing f/k/a The International Rules of Sailing.
12. SUMURUN interest (includes all Defendants) participated in the race knowing that it was governed by the Racing Rules of Sailing.
13. SUMURUN interest agreed to the adjudicating forum for determinations of fault under the Racing Rules of Sailing

14. SUMURUN interest was apprised of the procedures for determining a violation of the Racing Rules of Sailing.
- 15.
16. The Racing Rules of Sailing provide a three tier process which includes two opportunities to appeal on the issues of fault, rule interpretation and procedure. These appellate bodies commonly issue published opinions and comprise a considerable body of jurisprudence relied upon by yacht racers and international juries.
17. SUMURUN interest entered the race knowing that a boat was responsible for damages arising from any breach of the Racing Rules of Sailing.
18. At approximately 2:30 p.m. on the day of the subject race, Owner Robert Towbin was at the helm of SUMURUN.
19. Approaching the racing mark, Owner Robert Towbin was “fast overhauling” the smaller boats clear ahead.
20. Owner Robert Towbin was advised that “there was not enough room.”
21. Nonetheless, Owner Robert Towbin reversed the helm and attempted to round a racing mark off Beavertail Point in Newport, Rhode Island inside the smaller boats.
22. Owner Robert Towbin acted in an arrogant, malicious, outrageous and extreme manner.

23. At the mark off Beavertail Point, SUMURUN collided with both ALERA and then AMORITA, the collisions causing extensive damage to the vessel AMORITA, as more fully alleged below.
24. During the rounding of the mark off Beavertail Point, SUMURUN was navigated in a careless and grossly negligent manner, with wanton disregard for safety at sea.
25. The subject collision occurred on the race course during the race and therefore was subject to the Racing Rules of Sailing.
26. The subject collision and resulting damages were not caused or contributed to by any fault or neglect on the part of the vessel AMORITA, those in charge of that vessel, or those for whose actions plaintiffs are responsible.
27. The subject collision and resulting damages were caused or contributed to by Mr. Towbin's aggressive, malicious and outrageous sailing tactics, and the following fault, gross negligence and wanton disregard of the vessel SUMURUN, those in charge of the vessel, and those for whose actions defendants are responsible:
  - a. SUMURUN negligently attempted to overtake the smaller sailing vessels ahead;
  - b. SUMURUN was proceeding at an immoderate rate of speed under the circumstances;
  - c. Those in charge of the vessel SUMURUN were careless, grossly negligent, and inattentive to their duties under the circumstances while overtaking vessels ahead;
  - d. SUMURUN attempted to round the mark, inside of the smaller boats, even though she did not have the right or the room to do so;

- e. It became clear to the operators of SUMURUN that a collision would occur when SUMURUN negligently changed her course in the direction of the smaller vessels ahead in an attempt to round the mark;
  - f. SUMURUN failed to navigate so as to avoid striking the vessel AMORITA;
  - g. Those in charge of the vessel SUMURUN failed to take proper action when the risk of collision was or should have been apparent to the operators of SUMURUN;
  - h. The vessel SUMURUN failed to keep clear, to slow, stop, or change its course to avoid a collision when it saw or should have seen that there was danger of collision;
  - i. SUMURUN failed to give any signal indicating her intended course;
  - j. SUMURUN failed to hail the smaller boats ahead;
  - k. SUMURUN struck AMORITA broadside causing AMOIRTA to sink and her crew to abandon ship;
  - l. After the collision, AMORITA was held afloat, below the surface of the water, by her rigging which was fouled on the stem of SUMURUN;
  - m. SUMURUN did not render aid to the crew or to the vessel, rather, without permission from AMORITA's owner and without even placing a line on AMORITA to mark her location, SUMURUN cut AMORTIA away sinking her to the bottom of Narragansett Bay.
28. On July 8, 2007, the day following the collision, a hearing was conducted by the protest committee which consisted of a panel of experts who are well versed in yacht racing.

29. SUMURUN interest, having been notified of the allegations and the time and place of the hearing, appeared before the forum, submitted to its jurisdiction, presented evidence and argument and was permitted to introduce and rebut evidence and witness testimony, to cross-examine opposing witnesses and argue orally.
30. SUMURUN interest did not file a protest against or allege any fault against AMORITA for the collision.
31. The protest committee found that SUMURUN breached the Racing Rules of Sailing thereby causing the collision and exonerated ALERA from any contributing fault (see Exh. A1 & A2).
32. SUMURUN, represented by legal counsel, submitted again to jurisdiction of the forum, presented evidence and argument thus exercising the right to appeal under the Racing Rules of Sailing to the Narragansett Bay Yachting Association (NBYA) Appeal Committee.
33. The NBYA Appeal Committee, in a written opinion, also found that SUMURUN breached the Racing Rules of Sailing thereby causing the collision and exonerated both ALERA and AMORITA from any contributing fault (see Ex. B).
34. SUMURUN, again, exercised her right to appeal under the Racing Rules of Sailing submitting to the jurisdiction of the US Sailing Review Board by presenting evidence and argument.

35. The US Sailing Appeals Committee found that SUMURUN breached the Racing Rules of Sailing and caused all the collisions. (see Ex. C);
36. The US Sailing Appeals Committee's determination of fault is final and binding on the parties.
37. In a case directly on point, JUNO SRL v. S/V ENDEAVOUR, 58 F3d 1 (Maine 1995), the US Court of Appeals, First Circuit held that "[b]y entering a regatta with sailing instructions that unambiguously set forth special, binding "rules of the road," participants waive conflicting rules...and must sail in accordance with the agreed-upon rules." The Court further found that the findings of the agreed upon forum "were final and binding on the parties..."
38. SUMURUN was properly found at fault for the subject collision through private resolution of disputes in an agreed upon forum akin to arbitration which met the requirements for due process and SUMURUN is therefore responsible for the collision.
39. As a direct and proximate result of the subject collision caused by SUMURUN, the vessel AMORITA was severely damaged, and plaintiffs have suffered damages, losses, and expenses in the total amount to date estimated at \$1,000,000.00 as fully outlined in the Schedule attached hereto, no part of which has been paid, although payment has been duly demanded.

**WHEREFORE**, fault for said collision having already been determined, plaintiffs respectfully request that:



- A. defendants SUMURUN Inc.; Robert Towbin and Armin Fischer be required to appear and answer this Complaint;
- B. that process *in rem* issue against the vessel S/Y SUMURUN her engines, boilers, tackle, furniture, apparel, etc., and
- C. that the S/Y SUMURUN be arrested, and
- D. that all persons claiming any interest in the S/Y SUMURUN be required to appear and answer this Complaint;
- E. that the vessel S/Y SUMURUN, her engines, boilers, tackle, furniture, apparel, etc., be condemned and sold to satisfy plaintiff's damages as alleged above, with legal interest on the above amount from July 7, 2007 until paid, and costs; and
- F. that the court enter judgment for plaintiffs and against defendants for the full amount of plaintiffs' actual damages, together with interest until paid, and costs; and
- G. that the court enter judgment for plaintiffs and against defendants for the consequential damages; and
- H. that the court enter judgment for plaintiffs and against defendants for punitive damages; and

I. that plaintiffs are granted such other and further relief as the court may deem just and proper.

Dated: Portland, Maine  
March 5, 2008

/s/ Michael X. Savasuk  
Michael X. Savasuk, Esq.  
Maine Bar No. 2708  
P.O. Box 267  
Portland, Maine 04112-0267  
(207) 773-0788  
Email: [mxslaw@maine.rr.com](mailto:mxslaw@maine.rr.com)  
*Local Counsel for Amorita*

*OF Counsel:*

Jessica De Vivo, Esq.  
*Counsel for Amorita*  
Cichanowicz, Callan, Keane, Vengrow &  
Textor  
61 Broadway, Suite 3000  
New York, New York 10006  
Ph: 212-344-7042 / Fx: 212-344-7285  
Email: [jdevivo@cckvt.com](mailto:jdevivo@cckvt.com)

**VERIFICATION**

JED PEARSALL declares that the following statement is true under the penalties of perjury:

I am the registered Owner of the Sailing Yacht AMORITA (USCG Doc. No. 201864) in the above captioned matter. I have read the foregoing Complaint and believe the allegations contained therein to be true. Such belief is based upon personal knowledge and information and from reviewing various documents and materials in the public domain.

Dated: Newport, RI  
November 14, 2007

By: /s/ Jed Pearsall  
Jed Pearsall  
*Amorita Owner*  
64 Washington Street  
Newport, RI 02840

State of New York }  
County of New York }ss.

Sworn to before me this 14<sup>th</sup> day of November 2007:

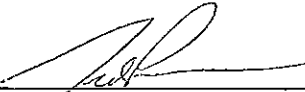
Patrick Michael DeCharles, II  
Patrick Michael DeCharles, II  
Notary Public, State of New York  
No. 02DE5020061  
Commission Expires 11/8/09

**VERIFICATION**

JED PEARSALL declares that the following statement is true under the penalties of perjury:


I am the registered Owner of the Sailing Vessel AMORITA (USCG Doc No. 201864) in the above captioned matter. I have read the foregoing Complaint and believe the allegations contained therein to be true. Such belief is based upon personal knowledge and information and from reviewing various documents and materials in the public domain.

Dated:           New York, New York  
                  November 14, 2007

By:   
\_\_\_\_\_  
Jed Pearsall  
Amorita Owner  
64 Washington Street  
Newport, RI 02840

State of New York    }  
                                  } ss:  
County of New York }

Sworn to before me this 14 day of November 2007

  
\_\_\_\_\_  
Patrick Michael DeCharles, II  
Notary Public

**PATRICK MICHAEL DE CHARLES II**  
Notary Public, State of New York  
No. 02DE5020061  
Qualified in New York County  
Commission Expires 8 Nov 2009

A AMIN Fischer  
Capt



# PROTEST FORM

also for requests for redress and reopening

www.ussailing.org

Date & time received 7/7/07 1655  
 Received by Alex Number (1)

Fill in and check as appropriate

1. EVENT Veedeman Organizing authority Museum Yacht Club Date 7/7/07 Race no. 1

2. TYPE OF HEARING

- Protest by boat against boat
- Protest by race committee against boat
- Protest by protest committee against boat

- Request for redress by boat or race committee
- Consideration of redress by protest committee
- Request by boat or race committee to reopen hearing
- Consideration of reopening by protest committee

Bob Tobin  
- SUM-RUN  
RIGHT PROVIDER  
ALERA

3. BOAT PROTESTING, OR REQUESTING REDRESS OR REOPENING

Class white Sail no. 1 Boat's name Alera ALERA  
 Represented by knight coolidge Tel. (207) 529-5204 E-mail coolidge@midcoast.com

4. BOAT(S) PROTESTED OR BEING CONSIDERED FOR REDRESS

Class Gold Sail no. Sum 14 Boat's name Sumurun SUMURUN

5. INCIDENT

Time and place of incident 6 PM, south of Beavertail  
 Rules alleged to have been broken 12 Witnesses \_\_\_\_\_

6. INFORMING PROTESTEE How did you inform the protestee of your intention to protest?

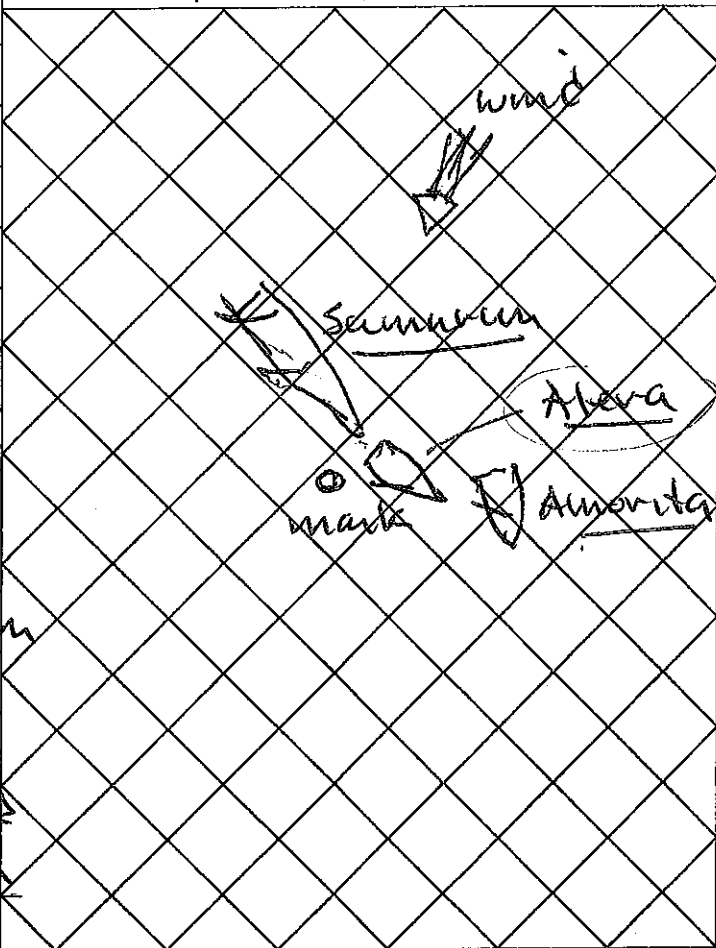
- By hailing When? \_\_\_\_\_ Words used \_\_\_\_\_
- By displaying a red flag When? after clearing damage
- By informing her in some other way Give details by radio to Race Committee

7. DESCRIPTION OF INCIDENT

(use another sheet if necessary)  
Yacht Alera on  
port tack approaching  
mark with Amorita  
to weather and  
slightly ahead.  
Sumurun on port  
tack overtaking  
Sumurun struck  
Alera's transom.  
Sumurun rode  
over Alera's transom  
and struck main  
boom to leeward,  
spinning Alera toward  
the wind. Sumurun  
then struck Amorita.

just  
see out  
mark

Diagram: one square = one hull length  
 Show position of boats, wind and current direction, marks.



**THIS SIDE FOR PROTEST COMMITTEE USE**

Fill in and check as appropriate

Number \_\_\_\_\_

Heard together with numbers \_\_\_\_\_

Withdrawal requested; signature \_\_\_\_\_  Withdrawal permitted

Protest time limit \_\_\_\_\_  Protest, or request for redress or reopening, is within time limit  Time limit extended

Protestor, or party requesting redress or reopening, represented by \_\_\_\_\_

Other party, or boat being considered for redress, represented by \_\_\_\_\_

Names of witnesses \_\_\_\_\_

Interpreters \_\_\_\_\_

**Remarks**

Objection about interested party .....

Written protest or request identifies incident .....

'Protest' hailed at first reasonable opportunity .....

No hail needed; protestee informed at first reasonable opportunity .....

Red flag conspicuously displayed at first reasonable opportunity .....

Protest or request valid; hearing will continue

Protest or request invalid; hearing is closed

**FACTS FOUND** ALERA AND SUMURUN APPROACHED THE WINDWARD MARK ON PORT TACK. WIND APPROX 12KTS. SLACK TIDE 2-3 FOOT SEAS. ALERA HAD OVERSTOOD SLIGHTLY AND HAD BORN OFF TO ROUND THE MARK, SU. HIT ALERA'S TRANSOM AND CONTINUED ALONG ALERA'S STARBOARD SIDE AND ALSO HIT THE MARK, BECOMING ENTANGLED IN ALERA'S BOOM AND MAIN SHEET.

Diagram of boat \_\_\_\_\_ is endorsed by committee.

Committee's diagram is attached.

**CONCLUSIONS AND RULES THAT APPLY**

SUMURUN VIOLATED RULE 12

**DECISION**

Protest:  dismissed Boat(s) SUMURUN is (are)  disqualified

penalized as follows \_\_\_\_\_

Redress:  not given  given as follows \_\_\_\_\_

Request to reopen a hearing:  denied  granted

**PROTEST COMMITTEE**

Members JOHN BOND PETER GERARD NOB FLEW

Chairman's signature \_\_\_\_\_ Date & time 7/8/07 1045

Written decision requested

When \_\_\_\_\_

By whom \_\_\_\_\_

Date provided \_\_\_\_\_



# PROTEST FORM

also for requests for redress and reopening

Date & time received 07/08/07 19:15

Received by \_\_\_\_\_ Number 2

Fill in and check as appropriate

1. EVENT Robert Fiedemann Organizing authority MOY Date 7/7/07 Race no. 1

2. TYPE OF HEARING
- Protest by boat against boat
  - Protest by race committee against boat
  - Protest by protest committee against boat
  - Request for redress by boat or race committee
  - Consideration of redress by protest committee
  - Request by boat or race committee to reopen hearing
  - Consideration of reopening by protest committee

3. BOAT PROTESTING, OR REQUESTING REDRESS OR REOPENING  
Class 2 Sail no. 9 Boat's name AMORITA Tel. 401-849-2109  
Represented by Jed Percell Address 69 WASHINGTON ST NEWPORT RI 02840

4. BOAT(S) PROTESTED OR BEING CONSIDERED FOR REDRESS  
Class 1 Sail no. \_\_\_\_\_ Boat's name SUMURU

5. INCIDENT  
Time and place of incident windward mark Rule(s) alleged to have been broken 18-2 c  
Witness(es) \_\_\_\_\_

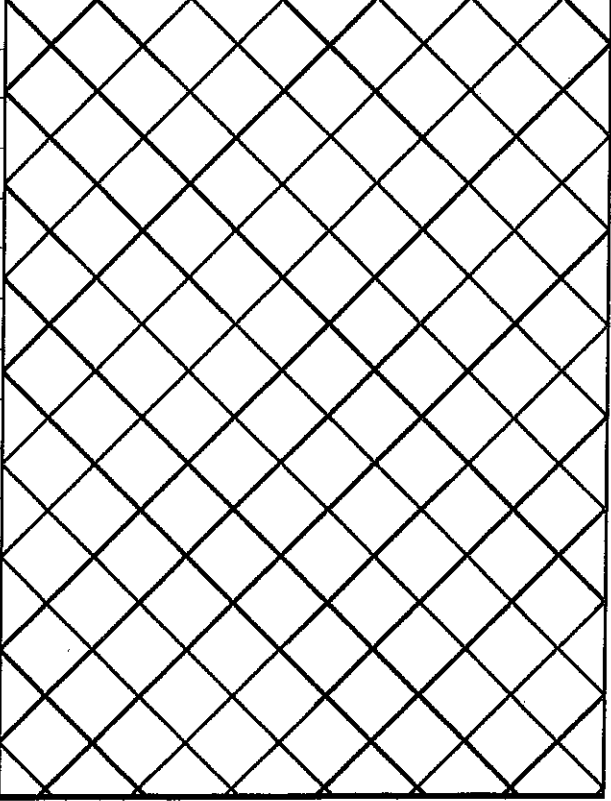
6. INFORMING PROTESTEE How did you inform the protestee of your intention to protest? NO
- By hailing When? \_\_\_\_\_ Word(s) used \_\_\_\_\_
  - By displaying a red flag When? \_\_\_\_\_
  - By informing her in some other way Give details \_\_\_\_\_

7. DESCRIPTION OF INCIDENT (use another sheet if necessary)

Diagram: one square = one hull length  
Show position of boats, wind and current direction, marks

SUMURU, from clear  
astern, hit Alera,  
forcing Alera into  
AMORITA.

The location of the impact  
from Alera span  
AMORITA 90° at  
which SUMURU struck  
and sank AMORITA



64.1(2)

THIS SIDE FOR PROTEST COMMITTEE USE  
Fill in and check as appropriate  
Number 2  
Heard together with numbers \_\_\_\_\_

Withdrawal requested; signature \_\_\_\_\_  Withdrawal permitted  
Protest time limit \_\_\_\_\_  Protest, or request for redress or reopening, is within time limit  Time limit extended  
Protestor, or party requesting redress or reopening, represented by \_\_\_\_\_  
Other party, or boat being considered for redress, represented by \_\_\_\_\_  
Names of witnesses \_\_\_\_\_

Interpreters \_\_\_\_\_  
Remarks \_\_\_\_\_  
Objection about interested party .....   
Written protest or request identifies incident .....   
'Protest' hailed at first reasonable opportunity .....   
No hail needed; protestee informed at first reasonable opportunity....   
Red flag conspicuously displayed at first reasonable opportunity.....   
 Protest or request valid; hearing will continue  Protest or request invalid; hearing is closed

**FACTS FOUND** JURY ACCEPTED PROTEST LATE - NO HAIL OR PROTEST FLAG  
JUST AS PROTESTING BOAT SANK, JURY ACCEPTED PROTEST VALIDITY  
CONDITIONS: WIND APPROX 12-15 KTS. SLACK TIDE. 2.3 FOOT SEAS.  
AMORITA (AM) TO WEATHER OF ALERA (AU) & SUMURUN (SU) APPROACHED  
THE WINDWARD MARK, A BELL, ALERA HAD OVERSTOOD SLIGHTLY AND  
HAD BORN UP TO ROUND THE MARK. SU HIT ALERA'S TRANSOM  
AND CONTINUED ALONG ALERA'S STB SIDE BECOMING ENTANGLED  
IN ALERA'S BOOM AND MAIN SHEET, CAUSING ALERA TO SPIN TO  
WINDWARD, HITTING AM NEAR AM'S STERN AND CAUSING AM  
TO SPIN TO LEEWARD, WHEREUPON AM WAS RAMMED BROADSIDE  
BY SU. AM SANK WITHIN 30 SECONDS

Diagram of boat \_\_\_\_\_ is endorsed by committee.  Committee's diagram is attached.

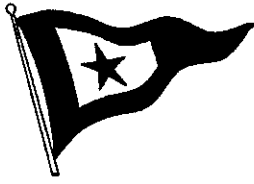
**CONCLUSIONS AND RULES THAT APPLY** ~~ALERA~~ <sup>ALERA</sup> DID VIOLATE RULE 16-1  
ALERA DID NOT VIOLATE RULE 14 & IS EXONERATED BY RULE 64.1(b) BECAUSE  
SUMURUN VIOLATED RULE 12. CONTACT BETWEEN ALERA & AM CAUSED  
AM'S CHANGE OF COURSE INTO THE PATH OF SU.

**DECISION**  
Protest:  dismissed Boat(s) SUMURUN is (are)  disqualified ALERA IS EXONERATED  
 penalized as follows \_\_\_\_\_

Redress:  not given  given as follows \_\_\_\_\_  
Request to reopen a hearing:  denied  granted

**PROTEST COMMITTEE**  
Members JOHN BOHANNON PETER GERARD, NORTON FLEMING  
Chairman's signature \_\_\_\_\_ Date & time 07/08/07 11:20  
Written decision requested  
When \_\_\_\_\_  
By whom \_\_\_\_\_  
Date provided \_\_\_\_\_





## Narragansett Bay Yachting Association

Ronald A. Hopkins  
65 Hazard Avenue  
East Providence, Rhode Island 02914

September 26, 2007

A. Robert Towbin  
1010 Fifth Avenue  
New York, NY 10028

Dear Mr. Towbin,

This is the Appeals Committee's decision on your appeal of the Museum of Yachting's, Robert Tiedemann Classic Regatta's, Protest Committee's decision, held July 7, 2007, in Newport, RI.

Summary:

This appeal concerned boats sailing at or near a mark of the course to be left to starboard, designated as RG "NR" Bell near Beavertail Point. Parties include Sumurun, sail number 14, a 94' ketch; Alera, sail number 1; and Amorita sail number 9, both New York 30's.

The Protest Committee, in valid protests by both NY 30's, ruled in each protest that Sumurun USA14, broke rule 12 and scored her DSQ. Sumurun USA14 appealed, stating in her appeal that the protest committee lacked jurisdiction, incorrectly applied the rules, and that Alera USA1 broke rule 16.1 by changing course in front of her.

Discussion:

In reviewing the rules that apply, we shall discuss each point and the rules that apply to each separately.

- The Protest Committee lacked jurisdiction.

Sumurun in her appeal claimed the Protest Committee lacked jurisdiction to conduct the hearing and disqualify her because she had retired. Sumurun further stated that she broke no rule and did not retire in compliance with rule 44.1, but for other reasons.

A fundamental principal in the sport of sailing, as stated in the preamble to Part 1 of the The Racing Rules of Sailing, "is that when competitors break a *rule* they will promptly take a penalty, which may be to retire." Sumurun retired, but not in compliance with rule 44.1, acknowledging "taking a penalty". Rule 44.1 states, "A boat that may have broken a rule of Part 2 while *racing* may take a penalty at the time of the incident. Her penalty shall be a Two-Turns Penalty unless the sailing instructions specify the use of a scoring penalty or some other penalty. However, if she caused injury or serious damage or gained significant advantage in the race or series by her breach her penalty shall be to retire."

Sumurun further stated she could be penalized no further, as she retired. Sumurun by her own statements did not acknowledge breaking a rule, and dropped out of racing for other reasons. She as a result of this form of retirement, should have been scored "DNF" (Did not finish) which in itself is not a "penalty" as described in the Preamble, or in rule 44.1. While we acknowledge for scoring purposes in this regatta, there is no difference in score between a DNF, a RET (Retired after finishing) or a DSQ (disqualification), each has different implications within The Racing Rules of Sailing.

The Protest Committee received 2 protests from the NY30's with regard to this incident, and was required by rule 63.1 which states in part, "The protest committee shall hear all *protests* and requests for redress that have been delivered to the race office unless it allows a *protest* or request for redress to be withdrawn." A protest by definition is "an allegation under rule 61.2 by a boat, a race committee or a protest committee that a boat has broken a rule."

The Protest Committee was required upon receiving a protest, to conduct a hearing (rule 63.1) to find facts (rule 63.6), and if a protest committee decides that a boat that is a party to a protest hearing has broken a rule, it shall disqualify her unless some other penalty applies (rule 64.1(a))

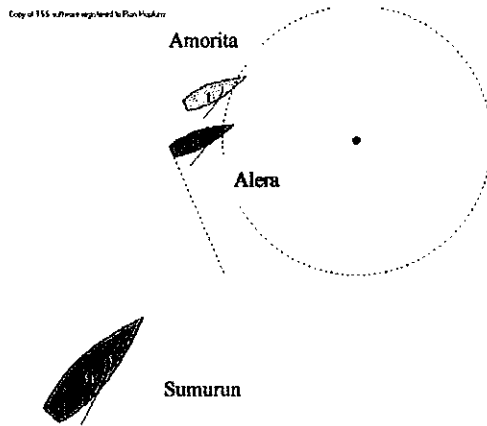
- Rule 44.4 Limits Further Penalty

Sumurun in her appeal cites rule 44.4 as to the protest committee's application of a further penalty, stating that she could not be penalized further, as she retired. However, rule 44.4(b) clearly states that a boat "that takes a penalty shall not be penalized further with respect to the same incident unless she failed to retire when rule 44.1 required her to do so." Sumurun had not "taken a penalty" as described above so the protest committee was correct in its decision to disqualify Sumurun.

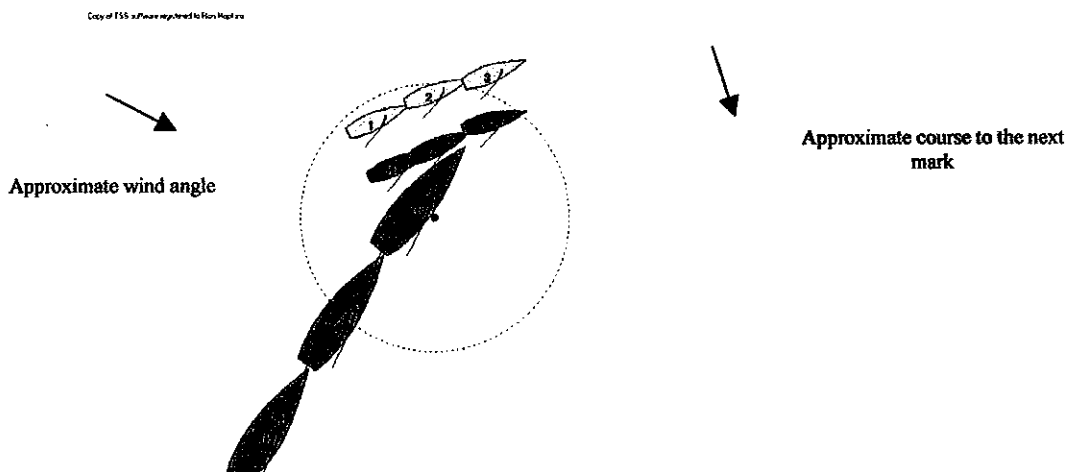
- Alera bore off breaking rule 16.1

[Diagrams produced by the Appeals Committee from Protest Committee facts found]

The Protest Committee's facts found indicate that Alera and Amorita entered the two-boat length zone, clear ahead of Sumurun.

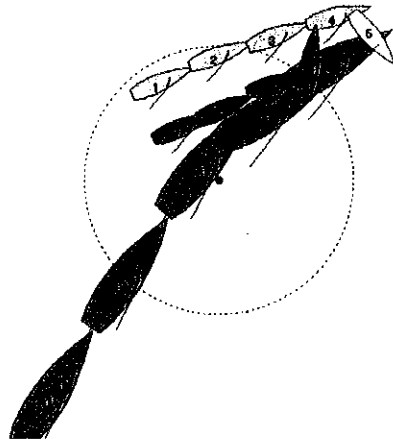


Sumurun, entering faster from clear astern was "keep clear" boat as referred to by rule 18.2 ( c). 18.2 ( c) states, "If a boat was *clear ahead* at the time she entered the *two-length zone*, the boat *clear astern* shall thereafter *keep clear*." The "thereafter" in this rule means during the entire period she was rounding. Rule 18.2 (d) states "when after the starting signal rule 18 applies between two boats and the right-of-way boat changes course to round or pass a *mark*, rule 16 does not apply between her and the other boat." Rule 18 applied between Sumurun as she was still rounding the mark and Alera, who was clear ahead. Rule 16.1 did not apply.



After Sumurun contacted the stern of Alera, Alera was forced into Amorita, subsequently causing Amorita to twist into the path of Sumurun. Sumurun then made contact with the starboard amidships of Amorita, causing her to sink.

Copy of 155 - Photo prepared by Ron Hopkins



**Decision:**

The Protest Committee's decision to disqualify Sumurun, USA14 is UPHELD.

The Appeals Committee agrees that Sumurun broke rule 12, but adds rule 14 and 18.2 ( c).

The Appeals Committee finds that the situation took place at a mark or around a mark, and not "while approaching" as found by the original protest committee, but found the facts and application of the rules consistent and in agreement with the decision.

Alera's change of course into Amorita was caused by the contact with Sumurun, compelling her to break rule 16.1. Alera is exonerated under rule 64.1 (b) for the contact between her and Amorita.

The change of course by Amorita and her breaking of rule 16.1 was caused by the contact with Alera, Amorita did not break rule 14, and her breach of rule 16.1 is exonerated by rule 64.1 (b)

Very truly yours,

Ronald A. Hopkins, Chair  
NBYA Appeals Committee

Cc/ Narragansett Bay Yachting Association

NBYA Appeals Committee

Mr. John Bonds (Chief Judge, Robert Tiedemann Yacht Regatta Protest Committee)

The Museum of Yachting (Organizing Authority, BestLife Classic Yacht Regatta)

Parties to the Appeal

US Sailing, Race Administration Director

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<sup>1</sup> All terms stated in italic indicate a definition as defined and published in "The Racing Rules of Sailing"

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January 9, 2008

Mr. A. Robert Towbin  
1010 Fifth Avenue  
New York, NY 10028

Reference: File 07-09

Dear Mr. Towbin:

This is the US SAILING Appeals Committee's decision on your appeal of the Narragansett Bay Yachting Association Appeals Committee's decision on the protests *Alera vs. Sumurun* and *Amorita vs. Sumurun*, arising from an incident in Race 2 of the 2007 Robert H. Tiedemann Classic Yachting Weekend regatta on July 7, 2007, at the Museum of Yachting.

The protest committee decision to hear the protests was correct. Rule 63.1 requires a protest committee to hear all protests that have been delivered unless it allows a protest to be withdrawn. Whether or not the protestee has taken a penalty is irrelevant.

The purpose of a protest hearing is for the protest committee to find the facts and apply the rules to the incident under protest. In doing so, it will determine whether any boat that is a party to the hearing has broken a rule and is to be penalized (see rules 63.6 and 64.1(a)). The assertion that the sole purpose of a protest hearing is to determine a boat's score is incorrect.

Although *Sumurun* claimed that she did not retire because she had broken a rule, she nevertheless took the penalty prescribed by rule 44.1 by retiring at the time of the incident. Since she had caused serious damage, retiring was the required penalty. Rule 44.1 does not require a boat to state why she is retiring, nor does the protest committee need to determine her reason. It was sufficient in this case for the protest committee to determine that *Sumurun* had broken a rule and had retired at the time of the incident. However, since she took the correct penalty, the protest committee erred in further penalizing her by disqualifying her (see rule 44.4(b)). She should have been scored DNE, not DSQ.

We agree that an appeals committee is required to base its decision on the facts found by the protest committee (see rules 70.1 and F5). The facts are to be supplied in writing, including, when relevant, a diagram of the incident. In deciding this appeal, we have used only the facts supplied by the protest committee. We have not considered the diagrams, photographs or other information supplied or implied by the association appeals committee or by any of the parties.

In considering the facts, an appeals committee may decide that rules not mentioned in the protest committee's decision apply to an incident (see rule 71.3). The failure of a protest committee to mention a rule in its decision does not make that rule inapplicable.

The protest committee found as fact (see the diagram) that the collision between *Sumurun* and *Alera* occurred when *Sumurun* was less than one length from the mark and had not yet passed it; therefore rule 18 applied (see rule 18.1). It also found as fact that *Alera* was clear ahead of *Sumurun* when she reached the two-length zone (see the December 14, 2007, email from Mr. Bonds in reply to the Appeals Committee's request). Since *Sumurun* was clear astern prior to the collision, she was required by both rule 12 and rule 18.2(c) to keep clear of *Alera*. By colliding with *Alera* she broke both rules. The protest committee also found that *Sumurun* touched the mark, thereby breaking rule 31.1.

When *Amorita* reached the two-length zone, she too was clear ahead of *Sumurun* (see the December 14, 2007, email from Mr. Bonds in reply to the Appeals Committee's request); therefore *Sumurun* was required to keep clear of her (see rules 12, 18.1 and 18.2(c)). When *Amorita* turned to leeward into the path of *Sumurun* because of the collision with *Alera*, *Amorita* may have broken rule 16.1, which was in effect because her course change was not made to round the mark (see rule 18.2(d)). It is not clear whether *Sumurun* had passed the mark by the time *Amorita* turned to leeward. If not, *Amorita* still held the right-of-way under rule 18.2(c) and was breaking rule 16.1 by changing course too close to *Sumurun*. Alternatively, if *Sumurun* had passed the mark, then rule 18 no longer applied and *Amorita* was required by rule 11 to keep clear. In either case, any breach of a rule by *Amorita* was caused by *Alera*'s contact with her, which had been caused by *Sumurun*'s collision with *Alera*. *Amorita* is therefore exonerated under rule 64.1(b) for breaking any rules in connection with her contact with *Sumurun*.

When *Alera* and *Amorita* were passing the mark before the first collision, *Amorita*, to windward and outside of *Alera*, was both keeping clear of *Alera* under rule 11 and giving her room under rule 18.2(a). (We note that the one hull length stipulation in the experimental definition Keep Clear in sailing instruction 1.4 did not apply to the application of rule 11.)

When *Alera* luffed as a result of the collision with *Sumurun*, *Amorita* failed to keep clear as a windward boat under rule 11. However, *Alera*'s luff was limited by rule 16.1, and we agree with the protest committee that *Alera* failed to give *Amorita* room to keep clear when she changed course and broke rule 16.1 as a result. Therefore, under rule 64.1(b), *Amorita* is exonerated from her breach of rule 11. Furthermore, *Alera* was forced to change course away from the mark as a result of the contact between *Sumurun* and *Alera*. Therefore *Alera* was compelled to break rule 16.1 by *Sumurun*'s breach of rules 12, 14 and 18.2(c), so *Alera* is also exonerated under rule 64.1(b).

Rule 14 required all the boats to avoid contact with each of the others "if reasonably possible." *Sumurun* was first required to avoid contact with *Alera*. We find that it was reasonably possible for her to do so, and therefore she broke rule 14. Later, *Sumurun* was required to avoid contact with *Amorita*, and could have done so if she had avoided contact with *Alera*. She therefore broke rule 14 again. Neither *Alera* nor *Amorita* broke rule 14. By the time it was clear that *Sumurun* was not going to keep clear of *Alera*, it was not reasonably possible for *Alera* to avoid contact. Similarly, when *Sumurun* collided with *Amorita*, it was not reasonably possible for *Amorita* to avoid contact. In the collision between *Alera* and *Amorita*, it was not reasonably possible for either of them to avoid contact with the other.

Accordingly, the appeal is denied. In breaking rules 12, 14 and 18.2(c), *Sumurun* caused all the collisions. She also broke rule 31.1. However, because she took a penalty by retiring, her score is changed from DSQ to DNF.

Very truly yours,

US SAILING Appeals Committee

Patricia Seidenspinner, Secretary

cc: Mr. Terry McClinch, *Aleza*

Mr. Jed Pearsall, *Amorita*

Mr. John Bonds, Chairman, Museum of Yachting Protest Committee

Mr. Ronald A. Hopkins, Chairman, Narragansett Bay Yachting Association Appeals Committee

US SAILING Appeals Committee

Ms. Lacey Given, Race Administration Director, US SAILING

Amorita Costs

Item Description	Company	Cost through 2/15/2008
Initial Diving / Guarding Amorita After Sinking at Coast Guard request	Safe Sea	\$12,000.00
Raising / Salvage	Safe Sea	\$50,000.00
Lifting /Railway Hauling Amorita at Boatyard	Conanicut Marine	\$1,710.02
Removal of Debris from Hull	Gail M. Rutledge	\$1,200.00
Supervision / Consulting on Salvage (10 hours)	Andy Giblin	\$800.00
Stabilization of hull, Removal of damaged pieces	McLave, Philbrick, and Giblin	\$1,720.00
Outside Storage	Conanicut Marine (\$308.00/mo)	\$1,848.00
Replacement of Handheld Electronics, Charts	West Marine	\$2,786.07
Replacement of ancillary items: coolers, first aid kits, blankets, jackets, life jackets, flags, etc.		\$2,000.00
Cell Phone (Bill Doyle)	American Cellular	\$395.88
Cell Phone (Jed Pearsall)	T-Mobile	\$117.70
Cell Phones (Brian Sweenor, John Larson)		\$500.00
Repair / Restoration of Amorita	McLave, Philbrick, & Giblin	\$838,974.00
Color Copying (Amorita Book)	Performance Research	\$800.00
Bank Expenses (borrowing for salvage costs)	Citizens Bank (\$487.50/mo)	\$3,412.50
Medical Expenses (Post Traumatic Stress Disorder)	therapist / MD / prescriptions	\$2,400.00
Repair of Damage to Bill Black's Boat during rescue		\$2,200.00
Transport of Amorita to CT	Noank Marine Service	\$4,060.07
6-month covered storage of Amorita	Noank Marine Service	\$3,628.00
Initial Dismantling of Structure, Engine	MPG	\$5,984.50
Expert Fees	Dellenbaugh	\$3,300.00
Fees associated with US Sailing Appeal	CCKVT	\$26,868.00
Preparations to raise Amorita (10 hours, Jed Pearsall, 10 hours Bill Doyle)	Performance Research	\$5,000
Raising Amorita (10 hours, Jed Pearsall, 10 hours Bill Doyle)	Performance Research	\$5,000
Cleaning, Emptying Amorita (8 hours Bill Doyle)	Performance Research	\$2,000
Assembling Amorita History Book (20 hours, Bill Doyle)	Performance Research	\$5,000
Meeting with Lloyd's Surveyor (3 hours, Jed Pearsall, Bill Doyle)	Performance Research	\$1,500
Meeting with Boat Repair Shops (16 hours, Bill Doyle)	Performance Research	\$4,000
Meeting with Expert Witnesses (10 Hours, Bill Doyle)	Performance Research	\$2,500
Appeal (10 hours, Bill Doyle, 5 hours, Jed Pearsall)	Performance Research	\$3,750
<b>TOTAL</b>		<b>\$995,454.74</b>