

Jed Pearsall  
Yacht *Amorita*  
64 Washington Street  
Newport, RI 02840

September 4, 2007

**Via DHL**

NARRAGANSETT BAY YACHTING ASSOCIATION  
Ronald A. Hopkins  
65 Hazard Avenue  
East Providence, Rhode Island 02914

US SAILING Appeals Committee  
United States Sailing Association  
15 Maritime Drive, Post Office Box 1260  
Portsmouth, RI 02871

RE: *Sumurun's* Appeal to the Protest Committee Decisions  
Triple Boat Collision during the Rounding of the Windward  
Mark at the Robert Tiedemann Classic Yachting  
Weekend on July 7, 2007 at Newport, RI

Gentlemen:

Pursuant to rule F6, the below comments to *Sumurun's* appeal are submitted on behalf of *Amorita*, the New York 30 #9, that was run over and instantaneously sunk by *Sumurun* during a mark rounding at the Robert Tiedemann Classic Race in Newport, RI on July 7, 2007.

These comments are submitted without prejudice. *Amorita* has been salvaged and deemed to be in condition to be repaired. At this point, she is seeking compensation for her damages from *Sumurun* who will not admit liability. Nothing in these comments shall be deemed an admission on behalf of *Amorita's* or a waiver of her rights.

**INTRODUCTION**

*Sumurun's* appeal is a cynical post-hoc attempt to alter the facts in order to avoid liability. It is symptomatic of the arrogant way in which *Sumurun* has been handled not only in the race in question but also in other events she has entered. Moreover, the faulty recitation of basic facts and denial of responsibility illustrates that *Sumurun* has chosen to disregard elementary standards of sportsmanship and fair sailing. This time, *Sumurun's* handling resulted in the sinking of a highly regarded classic yacht and significant damage to a second irreplaceable classic yacht. The only blessing here is that, remarkably, no one was physically injured or killed. It is our sincere hope that US SAILING will look closely at this incident and will act to the highest extent possible within its jurisdiction to prevent future losses as a result of *Sumurun's* irresponsible handling during sailboat races.

In regard to this incident, *Sumurun*, at best, misjudged the speed with which she was overtaking *Alera* and *Amorita*. This coupled with the helmsman's reckless attempt to duck inside the smaller boats to round the mark led to the unexpected collisions which were not reasonably avoidable by either *Alera* or *Amorita*. Under the circumstances, *Sumurun*'s failure to take responsibility and acknowledge that she broke the racing rules amounts to a violation of good manners and sportsmanship and possibly gross misconduct under rule 69.

In his appeal, Mr. Towbin sets forth three arguments, all three of which interpret the facts found and those in the appendix incorrectly. Moreover, *Sumurun*'s arguments are inconsistent with the racing rules.

**1. "THE PROTEST COMMITTEE LACKED JURISDICTION TO HEAR THE PROTESTS AFTER SUMURUN HAD RETIRED FROM THE RACE"**

Mr. Towbin contends that the protest committee lacked jurisdiction to hear the protests after *Sumurun* had retired from the race. He is wrong. Jurisdiction to hear a protest and *Sumurun*'s retirement from the race are mutually exclusive. The protest committee was required to hear the protests in order to determine liability regardless of whether *Sumurun* had retired. Penalties are only for scoring purposes.

Rule 63.1 mandates that the protest committee *shall* hear all protests that have been delivered unless it allows a protest to be withdrawn. In this case, there is no allegation that the protests were not properly delivered or that the protests had been withdrawn. As such the protests should have been and were properly heard. In addition, the U.S. prescription to rule 68(a) says that a boat that retires from a race does not necessarily admit liability for damages. So if a boat voluntarily retires after an incident, fault can be determined only by the protest committee. Therefore, in this case the committee not only had jurisdiction to hear the protests it was required to hear them.

Rule 44.1 states that a boat that caused injury or serious damage "by her breach" shall retire. Before the hearings, the protest committee asked *Sumurun*'s professional full time captain and helmsman if they had retired for the purposes of rule 44.1. They did not acknowledge that they had breached a rule or that they had retired under rule 44.1. Furthermore, *Sumurun* stated that her retirement did not constitute acceptance of a penalty for a rules violation. Therefore, the exemption from further penalty in rule 44.4(b) would not apply to *Sumurun*. This is clearly supported by ISAF Case 99.<sup>1</sup>

Even if *Sumurun* could not have been penalized further, it's not clear that she was. The protest committee's decision to hear the protests was certainly not a penalty. In

---

<sup>1</sup> *Sumurun* claims that Case 99 supports their case, but in fact the opposite is true. In the Case 99 incident, the boat that broke a rule retired for the purposes of rule 44.1 so according to rule 44.4(b) she was exempt from further penalization. In the situation at hand, however, *Sumurun* apparently did not retire under of rule 44.1. Case 99 explains that she is therefore not entitled to the protection of rule 44.4(b) and may be penalized further.

addition, it is irrelevant for scoring purposes whether a boat receives a DSQ or DNF, since both are scored one point more than the number of boats entered in the series. Even if *Sumurun* is scored DNF instead of DSQ, this should not change the protest committee's decision that *Sumurun* broke rule 12.

The protest committee had jurisdiction and properly found that *Sumurun* had breached a racing rule and caused the incident. *Sumurun*'s appeal should be denied and her disqualification confirmed.

**2. "THE ALERA BORE OFF AND DID NOT GIVE SUMURUN ROOM TO KEEP CLEAR IN VIOLATION OF RULE 16.1"**

Mr. Towbin contends that *Alera* bore off and did not give *Sumurun* room to round the mark (rule 18.2d). US Appeal 92 offers a clear explanation of the responsibilities of the give-way boat (B) in a situation like this. It says, "As the boats neared the mark, B should have anticipated that A was about to change course to round the mark, and she should have been aware that rule 18.2(d) permitted A to change course without giving B room to keep clear, as would otherwise have been required by rule 16.1." Mr. Towbin is correct that *Alera* had the right of way and *Sumurun* was required to keep clear. However, rule 16 does not apply to *Alera* in this situation because she was the right of way boat changing course to round the mark. Therefore, contrary to *Sumurun*'s contention, *Alera* was never required to give *Sumurun* room and according to rule 18.2(d), rule 16 did not apply between *Alera* and *Sumurun*.

When *Alera* reached the two-length zone around the mark, she was clear ahead of *Sumurun*. This is supported by the photographs (obtained after the hearing and attached hereto) and by *Sumurun*'s statement in her appeal that *Alera* was "ahead of *Sumurun* but *Sumurun* was fast overhauling her." Therefore, rule 18.2c applied between the two boats and required *Sumurun* to keep clear of *Alera* until both boats had passed the mark. When *Sumurun* hit *Alera*'s transom, *Sumurun* had not yet passed the mark; therefore, she clearly broke rule 18.2c in addition to rule 12. (see exhibits. 6 and 10) Even if *Sumurun* became overlapped inside *Alera* during the rounding, she was not entitled to room and had to keep clear. (rule 18.2(c))

With regard to rule 14, *Sumurun*, the give way boat, was obliged to avoid contact if reasonably possible. It was 'reasonably possible' for *Sumurun* to avoid contact by luffing up to windward of the two boats ahead of her or going to leeward of the mark or by easing her sails to slow the speed with which she approached. Since *Sumurun* did not avoid contact which was reasonably possible, the protest committee should have also found that *Sumurun* violated rule 14.

On the other hand, *Alera*, the right of way boat, had no obligation to act to avoid contact until it was clear that *Sumurun* was not keeping clear.<sup>2</sup> As the photographs show,

---

<sup>2</sup> US Appeal 92 is distinguishable from this incident. In that case, the larger give way boat did not change her course and thus the committee found that, at the moment it became clear that there would be a collision, it was possible for the right of way boat to avoid contact. Here, however, it was not until *Sumurun* changed

all three boats were on a port tack approaching the mark. (see exhibit 6) *Alera*, ahead of *Sumurun*, expected that *Sumurun* would pass to windward. It was not until *Sumurun* turned to starboard in an attempt to round the mark closely that *Alera* recognized the possibility of a collision. Mr. Towbin admitted in his appeal that, “At the mark *Sumurun* was hard to starboard trying to turn...” (see exhibits 8-11) At this point, when it became clear that *Sumurun* was not keeping clear, it was impossible for *Alera* to get out of the way. (rule 14(a)) ISAF Case 87, which states that a right of way boat need not anticipate that the other boat will not keep clear, supports *Alera*’s position.

It should be noted with regard to Mr. Towbin’s contention that *Sumurun* was restricted in her ability to maneuver given her size and close proximity to the mark that *Sumurun* was able to turn to windward or leeward to avoid the boats clear ahead. Furthermore, the racing rules do not define a vessel restricted in its ability to maneuver and there is no racing rule that gives a vessel restricted in its ability to maneuver the right of way to change its course to round a racing mark. Here, *Sumurun* chose to approach close behind *Alera* and *Amorita* even though she was obliged under the racing rules to keep clear and to avoid contact.

*Sumurun*’s appeal should be denied and she should be found to have violated rules 12, 14 and 18.2(c). *Alera*’s exoneration should be confirmed under 64.1(b).

### 3. “AMORITA WAS THE WINDWARD BOAT AND REQUIRED TO KEEP CLEAR OF SUMURUN”

Finally, Mr. Towbin contends that *Amorita* was the windward boat and required to keep clear of *Sumurun*. This argument fails since Rule 18 was in effect between *Sumurun* and *Amorita*. Even if *Amorita* breached rule 11, which she did not, she would be entitled to exoneration under Rule 64.1(b).

When *Amorita* entered the two-length zone around the mark, *Sumurun* was clear astern and thus she was required by rule 18.2(c) to keep clear of *Amorita* until both boats passed the mark. At the time of the incident, it is clear from photograph 9816 (see exhibit 6 and 10) that *Sumurun* had not yet passed the mark.

In determining fault between *Sumurun* and *Amorita*, one must also include *Alera* since all three boats were part of the same incident. In this regard, the protest committee found that “*Sumurun* hit *Alera*’s transom and continued along *Alera*’s starboard side becoming entangled in *Alera*’s boom and main sheet, causing *Alera* to spin to windward, hitting *Amorita*’s stern and causing *Amorita* to spin to leeward, whereupon *Amorita* was rammed broadside by *Sumurun*.” (see exhibit 2) The protest committee also found that “contact between *Alera* and *Amorita* caused *Amorita*’s change of course into the path of *Sumurun*.” (see exhibit 2) Mr. Towbin alleged in his appeal that there “was no rule that

---

her course to starboard, 40 feet off *Alera*’s transom, that a collision was imminent. At that moment, it was impossible for *Alera* to get out of the way. Furthermore, in Appeal 92, there was *doubt* with regard to overlap. In this case, there was no overlap with *Sumurun* when *Alera* entered the two-length zone. This fact has not been challenged.

required *Sumurun* to stay clear and avoid contact” with *Amorita*. This is absurd. As *Sumurun* approached the mark, she was required under rules 12 and 18 to keep clear of *Amorita* who had entered the two-length zone clear ahead and was rounding the mark. Furthermore, rule 14 required that *Sumurun* avoid contact if reasonably possible. As described in point 2 above, it was reasonably possible for *Sumurun* to keep clear and avoid contact.

Mr. Towbin also said in his appeal that “*Sumurun* had not seen *Amorita* due to *Alera*’s large sail.” This is a not an acceptable excuse for failing to keep a good lookout. *Sumurun* had ample time to see and opportunity to avoid *Amorita* during her approach to the mark as she marched up on *Alera* and *Amorita* who had both reached the mark and were rounding. However, as seen in the photographs there was no one forward of the main mast on the 94 foot *Sumurun* at any time. (see exhibits 7-10) Placement of a lookout as far forward as possible was logical, prudent and required by the International Rules for Preventing Collisions at Sea.

Even if *Amorita* was found to have broken rule 11, which she did not, *Amorita* should be exonerated under rule 64.1(b) because she was compelled to break rule 11 when *Sumurun* broke rule 12.<sup>3</sup> (rule 64.1(b)) Finally, it was not reasonably possible for *Amorita* to avoid contact since she never anticipated that there would be a collision.<sup>4</sup> (rule 14) However, *Sumurun* should have been found to have violated rule 14 since she was the keep clear boat and she could have reasonably avoided the incident.

*Sumurun*’s appeal should be denied, she should be found to have breached rules 12, 14 and 18.2(c) and her disqualification should be confirmed.

### **CONCLUSION**

It is clear from the evidence reviewed both during and after the hearing that *Sumurun* broke rules 12, 14 and 18.2(c). Therefore *Sumurun*’s appeal should be denied and she should remain solely and completely liable for the damages caused by this incident to both *Alera* and *Amorita*. We also feel that the appeals committee should ask the protest committee to initiate a hearing under rule 69 with regard to *Sumurun*’s conduct both on and off the race course.

Respectful submitted,

---

Jed Pearsall, *Amorita* Owner

---

<sup>3</sup> See ISAF Case 10 which states that when two boats make contact both may be exonerated when a third boat that broke a rule caused the incident.

<sup>4</sup> See ISAF Case 87 which states that a right of way boat need not anticipate that the other boat will not keep clear.

## APPENDIX

### FACTS NOTED BY THE PROTEST COMMITTEE<sup>5</sup>

- *Alera* and *Sumurun* approached the windward mark on port tack;
- Wind approximately 12 kts.-15 kts, slack tide, 2-3 foot sea;
- *Amorita* to weather of *Alera* and *Sumurun* approached the windward mark, a bell, *Alera* had over stood slightly and had born off to round the mark;
- *Sumurun* hit *Alera*'s transom and continued along *Alera*'s starboard side becoming entangled in *Alera*'s boom and main sheet, causing *Alera* to spin to windward, hitting *Amorita*'s stern and causing *Amorita* to spin to leeward, whereupon *Amorita* was rammed broadside by *Sumurun*;
- Contact between *Alera* and *Amorita* caused *Amorita*'s change of course into the path of *Sumurun*.
- *Amorita* sank within 30 seconds.
- The protest committee found that *Sumurun* was the keep clear vessel and that she had violated rule 12.
- The protest committee found that *Alera* violated rule 16.1 but was exonerated by rule 64.1(b) because *Sumurun* violated rule 12 causing *Alera*'s violation.
- The protest committee found that *Alera* did not violate rules 14 and 15.

### FACTS THAT WERE DISCUSSED AT THE PROTEST HEARINGS

- For the purposes of this race, Racing rules, 10, 13, 14, 15 and 16 were modified with regard to the definition of "keep clear." In this race keeping clear required that "One boat *keeps clear* of another when she is more than one of her hull lengths away from the other boat, the other can sail her course with no need to take avoiding action and, when the boats are overlapped on the same tack and the leeward boat can change course in both directions without immediately making contact with the windward boat (Sailing Instructions 1.4)<sup>6</sup>;
- *Amorita* was on a port tack;
- *Sumurun* was clear astern as the boats approached the mark;
- *Sumurun* was overtaking at significant closing speed;
- *Sumurun* changed her course to starboard immediately prior to the incident when *Sumurun* was within one-half boat length of *Alera*'s transom<sup>7</sup>;
- *Sumurun* never delivered a protest against *Alera* or *Amorita*;
- Before the protest hearing, the protest committee asked *Sumurun*'s captain and helmsman the reason for *Sumurun*'s retirement. Specifically, they were asked if they were retiring under rule 41.1, admitting their liability or if there were other circumstances that caused them to retire. *Sumurun*'s captain and helmsman stated that they did not admit any breach or liability under 44.1;

---

<sup>5</sup> See exhibits 1 and 2.

<sup>6</sup> See exhibit 3.

<sup>7</sup> See exhibit 11.

- *Sumurun*'s captain stated before the protest committee that the bowman (who was not at the bow but rather at the mainmast) had said immediately before the collision that there was not enough room to pass to windward and that they must duck under *Alera*;
- *Sumurun*'s captain further stated before the protest committee that, as a result of the bowman's call, *Sumurun*'s helmsman bore off changing *Sumurun*'s course to starboard;
- *Sumurun*'s captain stated before the protest committee that the bowman was stationed at the mast to call the rounding of the government mark.<sup>8</sup>

**OTHER FACTS BASED UPON EVIDENCE  
AVAILABLE AFTER THE HEARING**

- Just before the collision, there was no one forward of the mainmast on *Sumurun*<sup>9</sup>;
- *Sumurun* first hit the windward portside of *Alera*'s transom<sup>10</sup>;
- *Amorita* expected *Sumurun* to overtake her to windward;
- *Alera* expected *Sumurun* to overtake her to windward;
- *Alera* did not anticipate a collision until *Sumurun* bore off about 40 feet off *Alera*'s stern;
- At the time *Sumurun* bore off, *Alera*'s main sheet was being paid out to round the mark but *Alera*'s helm had not been turned down yet.
- *Sumurun* did not have a bubble or a luff in any of her sails<sup>11</sup>;
- *Sumurun* could have held her course to pass to windward of the smaller boats ahead in order to avoid the incident;
- *Sumurun* did not let fly or ease of any of her sails after ramming *Alera*;
- *Sumurun* did not hit the government mark<sup>12</sup>;
- *Sumurun* lowered her sails after ramming *Alera* and sinking *Amorita*<sup>13</sup>;
- Both *Amorita* and *Alera* sustained significant damage<sup>14</sup>;
- There were no personal physical injuries or deaths;
- To date, there is no evidence that *Sumurun* sustained any damage, despite repeated requests for a joint survey, the name of a diver, if any, and/or repair records.

---

<sup>8</sup> The fact that the bowman was stationed at the mast to call the rounding of the mark and that the bowman stated that *Sumurun* "could not make it" leads to the conclusion that the bowman informed the helmsman that *Sumurun* could not make it around the mark inside the smaller boats ahead. However, the helmsman disregarded the bowman's warning and attempted to round the mark regardless of the clear and present danger of colliding with the smaller boats ahead.

<sup>9</sup> See exhibits 7-10.

<sup>10</sup> See exhibit 14.

<sup>11</sup> See exhibits 6-10, Photos 9813-9818

<sup>12</sup> See exhibits 6-10 and 15, also note Photos 9813 -9818, as *Sumurun* passes, the buoy stood straight up.

<sup>13</sup> See exhibit 6.

<sup>14</sup> See exhibits 13 and 14.

## **CORRECTIONS TO FACTS PRESENTED IN THE APPEAL**

- *Amorita* and *Alera* were in Class 3-White Class and started at 13:20<sup>15</sup>;
- Mr. William Doyle is the Chair of the Museum of Yachting and aboard *Amorita*. At the skipper's meeting, he instructed ALL boats to maintain a safe distance (defined as 1 boat length of the larger boat as modified by the Sailing Instructions 1.4) from each other. In this regard, he emphasized that there would be larger vessels on the course. However, there was no specific instruction that smaller boats had any special obligation to avoid *Sumurun*;
- Neither *Sumurun*'s captain nor Mr. Towbin attended the skippers meeting where safety issues were discussed. However, after the meeting, William Doyle briefed *Sumurun*'s captain and Mr. Towbin with regard to Sailing Instruction 1.4.

---

<sup>15</sup> See exhibit 5.

## EXHIBITS

1. *Alera* Protest;
2. *Amorita* Protest;
3. Sailing Instructions;
4. Notice of Race;
5. Final Results and Cumulative Scoring;
6. Contact Sheet #1-4 Photos 9773, 9812-9816, 9817-9818, 2358-2361, 2362 – 2367, 2368-2370, 9819-9822;<sup>16</sup>
7. Photo 9813 and enlargements of *Sumurun* cockpit, bow and *Alera* cockpit;
8. Photos 9814 and enlargements of *Sumurun* cockpit, bow and *Alera* cockpit;
9. Photo 9815 and enlargements of *Sumurun* cockpit, bow and *Alera* cockpit;
10. Photo 9816 and enlargements of *Sumurun* cockpit; *Sumurun* bow and triple boat collision;
11. Photos 9813-9816, enlargements showing *Sumurun*'s change of course at the mark;
12. (a) Photo 2362 *Amorita* bowman at sinking, (b) Photo 2368 *Amorita* bowman getting aboard *Sumurun* without assistance, (a) Photo 2370 *Alera* after contact; (b) Photo 9819 *Sumurun* after contact;
13. (a) *Amorita* salvage tow and (b) *Amorita* damage;
14. (a) *Alera* port transom where *Sumurun*'s stem first touched, (b) *Alera*'s boom showing *Sumurun* bottom paint along top port side, (c) *Alera*'s aft toe rail;
15. (a) *Sumurun* starboard side after incident and (b) Photo 9822 *Sumurun* starboard side after incident.
16. Chart of course showing wind direction at the time of the incident, by *Amorita*.

---

<sup>16</sup> Pictures by Billy Black. Enlargements were not produced by Billy Black. Billy Black has authorized *Amorita* to reproduce these photographs for the appeal comments. These photographs are subject to copyright and may not be reproduced or distributed without the express written permission.