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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 Rule 63.1 requires a protest committee to hear all protests that have been delivered unless it allows a protest to be withdrawn.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 DNF, not DSC.

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, *Alera*

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