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January 7, 2007⁸

Via DHL

Ms Patricia Seidenspinner
US SAILING Appeals Committee, Secretary
1935 Iowa Avenue
St. Petersburg, Florida 33703

RE: *Amorita v. Sumurun*

Dear Ms. Seidenspinner:

I feel compelled to comment on Mr. Towbin's letter dated December 13, 2007, received on December 26, 2007, and Mr. Bonds comments to same dated December 29, 2007, received on January 3, 2008.

Many of the points raised in Mr. Towbin's recent letter regarding the Racing Rules reiterate arguments already set forth. As such, *Amorita* relies upon her earlier submissions rather than wasting the Committee's time. With regard to new allegations not raised to date, *Amorita* comments briefly below.

Mr. Towbin's new assertion that "*Amorita* failed to keep clear as she was closer than the requisite one hull length from *Alera*"¹ is incorrect for two reasons. First, it has not been established as a fact that *Amorita* was within one boat length of *Alera*. Such a finding is contradicted in the *Alera v. Sumurun* protest, wherein *Alera* stated that *Amorita* was to windward and ahead of *Alera*.² *Alera*'s statement is confirmed by the incident photographs.³ Second, the definition of *keep clear* as modified by the Sailing Instructions applies only to rules 10, 13, 14, 15 and 16.⁴ It did not apply for the purposes of rules 11 or 18. As a result, *Amorita* could not have violated the modified definition since it did not apply to her as a windward boat in a rounding situation.

In an attempt to deny that rule 18 applies, Mr. Towbin quotes *Alera*'s Aug. 30, 2007 comment that "there was no suggestion at the hearing that the incident took place

¹ *Sumurun*'s Dec. 13, 2008 letter, pg. 6 para. 3.

² See statement by *Alera* in the *Alera v. Sumurun* protest *Amorita* Exh. 1.

³ *Amorita* Exh. 10(c).

⁴ Sailing Instruction 1.4: "In accordance with the US SAILING prescription to rule 86.3, the following rules will be tested for this regatta. For the purposes of rules 10, 13, 14, 15 and 16, the definition of *keep clear* is changed to: **Keep Clear:** One boat *keeps clear* of another when she is more than one of her hull lengths away from the other boat, the other boat can sail her course with no need to take avoiding action, and, when 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." (See *Amorita* Exh. 3)

within the two boat length circle”⁵ However, he fails to acknowledge *Alera’s* Sept. 10, 2007 clarification of the aforementioned sentence, i.e. “should read: There was no suggestion that *Alera* tacked within the two boat length circle. AKC”⁶ This fact is further clarified by *Sumurun’s* repeated statements that the protests were related to a “mark rounding incident.”⁷

It should be noted that the alleged quote from Clay Mock (i.e. that the US Prescription to rule 68 to the IYRR’s...was intended “to clarify that US SAILING judges were not to determine liability”) is not supported by any reference or citation.⁸ We can only assume, that, at best, this is a partial statement wherein Mr. Mock explained that the US Prescription to rule 68 as written was intended to clarify that, while US SAILING judges shall continue to find facts, determine violations and allocate fault in compliance with the rules, US SAILING judges shall not determine monetary damages.

As seen throughout the appeal process, not only does Mr. Towbin question the jurisdiction of the Protest Committee, now he challenges the authority of US SAILING in stating that the rules “are not adequate and do not possess the requisite procedural and substantive safeguards necessary for proper adjudication...”⁹ It is clear by these accusations that Mr. Towbin will ignore the authority of US SAILING and seek to be heard in the Court of Law. In view of the fact that Mr. Towbin (i) is a member of US Sailing, (ii) has agreed to the substantive rules and the adjudicating forum by voluntarily entering the race (iii) and has fully participated in the hearing and appeal process with the guidance of legal counsel, his challenges to the authority of US SAILING appear to be a violation of RRS 3.

In this regard, it is obvious that Mr. Towbin’s defense strategy seeks to delay resolution of this matter by challenging the US SAILING procedure in the Courts despite the fact that he is aware that this issue has already been adjudicated. Legal counsel has advised the undersigned that the leading case on point is JUNO SRL v. S/V ENDEAVOUR, 865 F. Supp. 13 (D. Me. 1994), *aff’d in part and rev’d in part*, 58 F.3d 1(1st Cir.1995)¹⁰ As I understand that case, on Appeal, the Judge upheld the findings of fact and the allocation of fault by the international jury. The Court also found that the procedures established in the Racing Rules met the requirements of due process. The only question that was left for the Court of Law was that of monetary damages.

In addition, Mr. Towbin’s recent allegation of “questionable propriety of private discussions between *Amorita* and the Protest Committee...”¹¹ is false, without merit and offensive. *Amorita* categorically denies this accusation. Furthermore, we find it

⁵ *Sumurun’s* Dec. 13, 2008 letter, pg. 4 para. 1 and pg. 5 para. 2.

⁶ See *Alera’s* 9/10/07 revised comments attached hereto as Exh. 18.

⁷ *Sumurun’s* appeal dated July 20, 2007, pg. 1 para. 1; *Sumurun’s* letter dated Dec. 13, 2007 pg 6, para 2.

⁸ *Sumurun’s* Dec. 13, 2008 letter, pg. 1 para. 3.

⁹ *Sumurun’s* Dec. 13, 2008 letter, pg. 2 para. 1.

¹⁰ See Exh.19, attached hereto. Also see Tulane Maritime Law Journal Article entitled “Yacht Racers Contract Out of Colregs: Juno SRL v. S/V Endeavour” by G. Hans Sperling, 21 Tul.Mar.L.J.217 commenting on the Juno Case, attached hereto as Exh. 20.

¹¹ *Sumurun* Letter dated Dec. 13, 2007. pg. 7. para. 2.

particularly disturbing that, as the Fleet Captain of the New York Yacht Club, Mr. Towbin has now challenged the integrity of the Chairman of his own yacht club.

At this point, Mr. Towbin's attempt to shift his responsibility as the wrongdoer by challenging the legitimacy of the process and the authority of US SAILING has clearly risen to a violation of the rules, good manners and sportsmanship.

On another note, with due respect to Mr. Bonds, I find it necessary to offer two clarifications regarding his recent comments to *Sumurun*'s second appeal. First, Mr. Bonds stated that "the smaller boats ...crossed well ahead (4-5 *Sumurun* lengths) and tacked for the mark."¹² For clarity sake, it should be noted that while Mr. Bonds is correct in that one of the smaller boats, *Alera*, crossed ahead of *Sumurun*; *Amorita* never crossed tacks with *Sumurun*. Rather *Amorita* was on port during the approach as well as during the attempted rounding of the mark. No party has set forth an allegation to the contrary.

Second, as reiterated throughout these proceedings, it is *Amorita*'s position that rule 18 applied in this situation since it applies when "boats are about to round or pass a mark they are required to leave on the same side...until they have passed it." (RRS 18.1) There is no doubt that *Amorita* reached the two-length zone clear ahead of *Sumurun* and that all three boats were in the process of rounding the mark at the time of the incident. As a result, even though an overlap did not exist, rule 18 was in effect and *Sumurun* was required to keep clear of *Amorita*.

Once again, *Amorita* thanks the US SAILING Appeals Committee for their time and consideration.

Respectfully submitted,



Jed Pearsall, *Amorita* Owner

CC: Via US Mail

Mr. John Bonds, Protest Committee Chairman
Ronald A. Hopkins, NBYA Appeals Committee Chairman
Mr. Terry McClinch, *Alera*
Mr. A. Robert Towbin, *Sumurun*

¹² Mr. Bonds' letter dated Dec. 29, 2007 to *Sumurun* letter dated Dec. 13, 2007, pg. 1 no. 2.