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December 19, 2007

Mr. Terry McClinch, *Alera*
20 Commercial Street
Boothbay Harbor, ME 04538

Mr. Jed Pearsall, *Amorita*
64 Washington Street
Newport, RI 02840

Mr. John Bonds, Chairman of the Protest Committee
253 Hobcaw Dr.
Mount Pleasant, SC 29464-2568

Mr. Ronald A. Hopkins, Chairman NBYA Appeals Committee
65 Hazard Avenue
East Providence, Rhode Island 02914

Reference: File 07-09

Dear Mr. McClinch, Mr. Pearsall, Mr. Bonds and Mr. Hopkins:

Please find enclosed a copy of Mr. A. Robert Towbin's response to our invitation to send written comments to the US SAILING Appeals Committee dated December 7 and 14. Mr. Towbin sent this response to our committee on December 13, 2007.

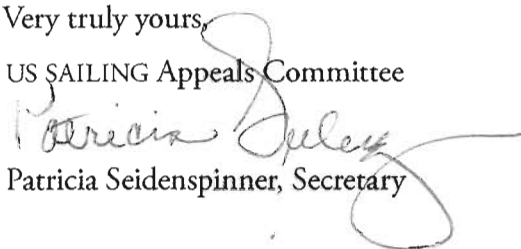
By copies of this letter, the parties to the hearing, the protest committee and the association appeals committee are reminded that they may send written comments to the US SAILING Appeals Committee; copies are to be sent to all parties and all committees involved (see rule F6). Such comments must be sent within 15 days of receipt of this letter. An address list is enclosed.

Please note: all correspondence with the US SAILING Appeals Committee is to be mailed to Patricia Seidenspinner, Secretary (see the address list).

Please refer to File 07-09 in any correspondence.

Very truly yours,

US SAILING Appeals Committee


Patricia Seidenspinner, Secretary

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

December 13, 2007

Via Federal Express

Ms. Patricia Seidenspinner, Secretary
US Sailing Appeals Committee
1935 Iowa Avenue
St. Petersburg, FL 33703

Re: Appeal of Association Appeals Committee Decision
The Robert Tiedemann Classic Yachting Weekend
Organizing Authority - Museum of Yachting
Race Committee Support by the New York Yacht Club
July 7-8, 2007
Your Ref: 07-09

Dear Ms. Seidenspinner:

Please accept this submission as SUMURUN's response to the comments from AMORITA and the Protest Committee received by the undersigned on November 28, 2007 upon my return from a trip overseas.

We are constrained to submit this response in order to address new matters raised by AMORITA and the Protest Committee including, in particular, the diagram recently created by the Protest Committee and submitted for the first time on this appeal. It is regrettable that the "facts" in this matter appear to have become a moving target as new information beyond that considered at the original hearing has been introduced on the first appeal and yet again on this appeal.

As a preliminary matter, it is apparent AMORITA's objective has been to turn the Protest Committee into a court of law. Thus, AMORITA has argued that the Protest Hearing was necessary despite SUMURUN's retirement from the race because US Sailing is required to adjudicate liability for damages as a result of this incident. The plain language of the Prescription to Rule 68, however, prohibits US Sailing judges from determining liability. This has been the policy of US Sailing since at least 1994 when Clay Mock, Chair of the U.S. Sailing Association's Legal Committee,

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declared that the U.S. Prescription to the IYRRs, which became effective on July 14, 1994, was intended "to clarify that U.S. Sailing judges were not to determine liability." The reason for the Prescription is obvious: The function of a protest committee is to determine competitive standing in the sport of racing - nothing more. The Rules and procedures are designed for this purpose and are practical and effective in this regard. They are not adequate and do not possess the requisite procedural and substantive safeguards necessary for proper adjudication of legal liability resulting from a collision.

With regard to the merits of the original Protest Hearing and the appeals, AMORITA has been very quick to blame SUMURUN and to defend ALERA while diverting analysis of her own actions. However, close examination of the Rules as applied between AMORITA and ALERA to the facts established at the Protest Hearing, or even based on the diagram recently produced by the Protest Committee, clearly demonstrates that AMORITA was to windward and therefore the give way and keep clear boat as to ALERA. AMORITA did not keep clear of ALERA by more than a one hull length distance as prescribed by the Sailing Instructions, and her failure to stay clear was not compelled by SUMURUN. Accordingly AMORITA should be disqualified.

1. The Protest Committee did not have jurisdiction because SUMURUN retired.

AMORITA responded to the issue of jurisdiction by urging that the Protest Committee was compelled to proceed with a hearing in order to determine fault. This is just plain wrong. The Prescription to Rule 68 clearly repudiates any notion that a protest committee is authorized to adjudicate liability for damages. Consistent with this Prescription is the Rule 68 (a) principle that a boat retiring from a race, as occurred here, does not admit liability for damages.

AMORITA also argues that retirement can never occur without expressly admitting a rule violation. This is incorrect for many reasons. In the first instance, the foregoing mandate of Rule 68 renders impermissible any construction under Rule 44.1 requiring that a boat which retires must admit to a penalty. Additionally, there is no rule that expressly requires admission of a violation as a prerequisite to taking a penalty, as a penalty can be taken even if there is doubt whether a violation occurred. There is no time limit for taking a penalty, and the Rules allow a competitor to retire

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even after finishing. In these circumstances, a protest committee must close a hearing once it establishes that a boat subject to a protest hearing retired before finishing.

Moreover, retirement as a procedure is only referenced under Rules 44.1 and 44.4(b). It is not referenced in Appendix A - Scoring, and is not listed as a finishing position under A4.2. Retirement during a race, therefore, is only recognized under Rule 44.1. The prohibition with regard to further penalty under Rule 44.4(b) specifically references retirement under Rule 44.1, therefore supporting the conclusion that, by definition, retirement during a race under Rule 44.1 is not subject to further penalty based on Rule 44.4(b), even if a competitor refuses to admit to a breach of the Rules.

The line of questioning directed toward SUMURUN during the Protest Hearing with regard to the retirement unfairly demanded acknowledgment of a breach at the time of retirement. In response, SUMURUN presented a valid reason for retiring - to assist fellow sailors - notwithstanding that no reason was required under the Rules. Nonetheless, the Protest Committee improperly pressed forward with the unnecessary hearing.

2. The Association Appeals Committee improperly changed the Protest Committee's findings of fact.

AMORITA argues that the Association Appeals Committee merely "confirmed" the findings of the Protest Committee and "clarified" the relevant Rules. This is incorrect. The Association Appeals Committee was required to accept the Protest Committee's findings of fact in accordance with Rule F5, but instead allowed the Protest Committee to change the facts in an apparent attempt to invoke Rule 18 and thereby avoid the application of Rule 16.1 to ALERA. Having rejected the application of Rule 18 at the time of the hearing, the Protest Committee inexplicably reversed course on appeal. Even though the Protest Committee never prepared a diagram, the Association Appeals Committee found it convenient to improperly create one despite the absence of any information from the witnesses as to the relative positioning of the boats at the time the boats reached the two boat length circle. Although the foregoing diagram was prepared in an apparent attempt to support the application of Rule 18, the diagram in fact shows that the collision between AMORITA and SUMURUN occurred after the two boats were past the mark, and accordingly AMORITA as the windward boat should have been disqualified pursuant to Rule 11 on that version of the facts.

Now the Protest Committee has created yet another diagram, some five months after the incident, which is alleged to have been agreed to by the Protest Committee and the parties. SUMURUN never agreed to the diagram. The diagram submitted was the original protest form of ALERA as modified by the Protest Committee to illustrate a Rule 18 situation. The Protest Committee at the time never endorsed the diagram which could have been done by the simple expedient of placing a check mark on ALERA's original protest form. Ironically, even ALERA would later state on appeal that "there was no suggestion at the hearing that the incident took place within the two boat length circle."

Moreover it is also apparent that the Protest Committee's recent diagram is completely different from the diagram created by the Association Appeals Committee, and exemplifies the inconsistency and unreliability of the fact finding process in this matter. While the diagram is neither reliable nor relevant, it too demonstrates that all the boats were sailing off the wind, that AMORITA had passed the mark and was on course to the next mark, that AMORITA was the windward most boat prior to the collision and therefore, AMORITA was in violation of Rule 11 and should be disqualified.

We now address AMORITA's arguments related to the Rule interpretations on this appeal.

- a. The Protest Committee never ruled at the Protest Hearing that Rule 18 applied.

Contrary to AMORITA's contention, it is indisputable that the Protest Committee did not find during the Protest Hearing that Rule 18 applied. If the Protest Committee had found at the hearing that Rule 18 applied it would have so stated in its factual findings, its written conclusions or its references to the applicable Rules. However, the Protest Committee did not do so.

By asserting Rule 18 for the first time on appeal, and also on this appeal by submitting its diagram in that regard, the Protest Committee deprived SUMURUN the opportunity at the hearing to address the factual issues relating to Rule 18. Indeed, the diagram recently produced by the Protest Committee supports the conclusion that AMORITA should have been disqualified for violating Rule 11 or Rule 18.2(a) for failing to keep clear of ALERA. AMORITA was required by the Sailing Instructions to maintain a distance of at least one hull length from ALERA. The diagram produced

cc: Mr. A. Robert Towbin, *Sumurun*
US SAILING Appeals Committee

Encl.: Copy of Mr. Towbin's letter dated December 13, 2007
File 07-09 Address list

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