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Ronald A. Hopkins, Chair
NBYA Appeals Committee
65 Hazard Avenue
East Providence RI 02914

Re: Appeal by Mr. A. Robert Tobin, *Sumurun*

Dear Mr. Hopkins:

There appear to be several issues involved. I will address them in turn.

A. The question of jurisdiction. When the protests were submitted, the protest committee considered this question quite explicitly. Had *Sumurun* retired in consequence of her rules violation? If so, the protest was moot and no hearing should be conducted. Mr. Tobin was invited into the jury room and asked specifically about his actions. He was somewhat unclear in his remarks. Finally, in response to the question, "Did you retire in consequence of a rules violation on your part?" he answered "No, we retired because of the terrible situation which had resulted." He was then asked, "Did your retirement constitute the acceptance of a penalty for a rules violation?" He replied in the negative. The jury excused him, and concluded that a hearing under these circumstances was still required to satisfy the protests lodged. Had Mr. Tobin stated that he was accepting a penalty for a breach of the rules, we would have accepted his retirement under Rule 44.1, and there would have been no hearing.

The jury then decided that the protest was valid under the provisions of Rule 61.1(a)(3) and that the required notification was given.

B. Facts found. The facts found by the protest committee are clearly stated in their report. *Alera* and *Amorita* were clear ahead of *Sumurun* as the three boats approached the windward mark on port tack. *Sumurun* overtook *Alera* and collided with her initially on the transom, then continued down her starboard side and became entangled in the running rigging of *Alera*'s main boom. The impact spun *Alera* to port, and she collided with the starboard quarter of *Amorita*, overlapped to windward of *Alera*. That impact caused *Amorita* to spin to starboard into the continuing path of *Sumurun*, who then collided with her, causing her to sink almost immediately.

Testimony during the hearing established that *Alera* and *Amorita* had both crossed on starboard tack well ahead of *Sumurun* before the incident (some 3-5 boat lengths of *Sumurun*). As *Sumurun* closed quickly, according to the party representing her, she initially thought to turn to port and go around the two boats, wide of the mark. But an observer on the bow of *Sumurun* advised the helmsman that he "couldn't make it," and

the helm was reversed in an attempt to go inside at the mark, despite having no rights to do so. The chain of collisions resulted from this decision. There was no dispute about these facts in the hearing between the parties. There were no obstructions on either side of *Alera* which restricted *Sumurun*'s choice of avoiding action, except for the buoy, which is surrounded by water easily navigable by these boats. *Sumurun* collided with the buoy on her starboard side in the attempt to round inside, shortly before *Amorita* came across her bows and was sunk by that impact.

C. The Decision: Given the facts of the case, the jury concluded unanimously that *Sumurun* had violated Rule 12 in failing to keep clear of *Alera*, who was clear ahead until the instant of contact. Consequently, *Sumurun* was disqualified.

D. Different Facts Presented by Appellant:

Alera, having crossed clear ahead on starboard and tacked, was clear ahead initially, *but then bore away across the bows of Sumurun*, "squeezing her toward the mark." Appellant presents as fact that *Alera* thus tacked too soon and too close, and then bore off resulting in *Sumurun* being unable to round the mark without contacting both *Alera* and the mark.

These contentions were not presented in the hearing, and are not supported by the facts found. Specifically, the jury found that *Alera* had not tacked too soon or too close, but rather that *Sumurun* waited too long to take decisive avoiding action. Further, testimony in the hearing established that *Alera*'s bearing away was conducted as she was rounding the mark, assuming the next course of the race. *Sumurun*, as an overtaking boat, had no rights to room between *Alera* and the buoy in any case. Finally, Rule 16 does not apply when Rule 18d is in force

The further contention that *Amorita* as windward boat was responsible for the resultant collision with *Sumurun* is rather incredible. The boat was out of control, due to the collision of *Sumurun* with *Alera* and *Alera*'s resulting collision with *Amorita*. The laws of physics, not the Racing Rules, came into play after *Sumurun* collided with *Alera*, and none of the boats could prevent what occurred thereafter. Nevertheless, the causal initiation of that chain collision was *Sumurun*'s violation of Rule 12.

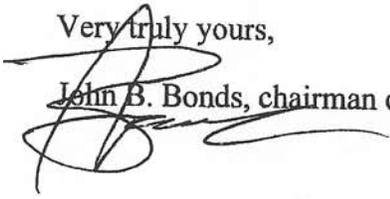
E. Summary of the Appeal (in bold print) with responses:

1. **Lack of jurisdiction**: *Sumurun*'s owner specifically advised the protest committee that he had not retired as a penalty, but for other unspecified reasons. As a result, the hearing was convened.

2. ***Alera*** responsible for the initial collision because she bore off to round the mark. Rule 18d is specific on her rights to do so. She was exonerated in her breach of Rule 16.1, as her course deviation following the initial collision was caused entirely by *Sumurun's* violation of Rule 12.

3. ***Amorita*** was the windward boat and obligated to keep clear of *Sumurun*. Clearly she would have done so had she been unmolested and not involved in the chain of collisions initiated by *Sumurun's* violation of Rule 12. Furthermore, under Rule 18.2(c), *Sumurun*, a boat which was not overlapped when *Amorita* entered the two-length zone, was required to keep clear of *Amorita*.

Very truly yours,


John B. Bonds, chairman of the jury