



23<sup>rd</sup> September 2011

**JURY CASE AC05  
JURY NOTICE JN011  
DECISION**

1. At about 20h00 on 18<sup>th</sup> September, Ian Murray, the Race Director, asked the Plymouth Jury (Bryan Willis, Graham McKenzie and Josje Hofland), to hear claims from teams in relation to the Fleet Race held earlier in the day in which three boats suffered damage in two related incidents.
2. The parties assembled before the jury were:
  - (i) Representing Aleph: Bertrand Pacé and Marcus Hutchinson
  - (ii) Representing Green Comm Racing: Anthony Nossiter and Luca Devoti
  - (iii) Representing Artemis Racing: Terry Hutchinson and Andrew Palfrey
  - (iv) ACRM: Race Director Ian Murray and CFO Tim Cumming
  - (v) Umpires: Mike Martin (Director of Umpiring), Shane Borrell, Roger Wood, Andrew Baglin.

#### ISSUES

3. In two incidents (one immediately following the other) three boats were damaged. There was a dispute between GREEN COMM and ALEPH as to which team was responsible for damage in the initial incident, and between GREEN COMM and ARTEMIS in the following incident. In an earlier meeting with the Race Director, the parties involved had been unable to agree on liability for the costs of repairs to the damage.

#### JURISDICTION

4. The Fleet Race was the final race of the America's Cup World Series Regatta at Plymouth. The affected parties and witnesses were about to disperse to different parts of the world. All the parties indicated they wished to take the opportunity to have the matter heard by the Jury that evening while the relevant persons were all present and the evidence was fresh in their minds. All parties agreed to submit to the jurisdiction of the Jury, acting as an arbitral body, to address to what extent, if any, each Party was liable for the costs of repair.

5. Protocol Article 15.4 provides that: 'The Jury shall act ... as ... an arbitral body'. Article 15.4(b) provides that the jury has the power 'to resolve disputes between Competitors ... that cannot be resolved by the terms of any Rule'
6. Protocol Article 15.1(f) prescribes that 'The quorum of the Jury shall be ... three members ... for issues during and concerning America's Cup World Series Regattas'.

## EVIDENCE

7. The Jury determined that as a matter of procedure the parties and witnesses in respect of the incident involving GREEN COMM and ALEPH would be heard first without ARTEMIS representatives being present. It would then hear the parties and witnesses in respect to the incident involving GREEN COMM and ARTEMIS at which time the ALEPHI representatives would not be present. The decision reflects all of such Parties' representations.
8. Anthony Nossiter (GREEN COMM) explained that his team had had little opportunity to practice racing in its AC45 boat. The weather conditions during this race were testing with wind-strengths often over 30 knots. The starting line was oriented to the wind in such a way that boats started on a starboard tack reach. At about one minute before the start of the race, GREEN COMM was reaching on port tack towards other boats that were reaching towards the starting line on starboard tack. GREEN COMM attempted to tack through 180 degrees on to starboard tack, but failed to get past head-to-wind. GREEN COMM lost way and started to move backwards. ALEPH, on a starboard reach, approached GREEN COMM and was forced to alter course to avoid contact. Anthony Nossiter claimed that ALEPH could have done more to avoid contact, by altering course earlier and either bearing away to pass astern of GREEN COMM or luffing to pass to windward. Instead, ALEPH chose to 'power-up' to start resulting in contact even though it must have been obvious to them that GREEN COMM had temporarily lost control.
9. Bertrand Pacé, the skipper of ALEPH, said that although his boat held right-of-way, he was aware that when ALEPH approached GREEN COMM he had an obligation to avoid damage. He tried to avoid contact by bearing away to pass astern of GREEN COMM, but when GREEN COMM started to move backwards, he decided it would not be possible to avoid contact by continuing to bear away to go astern as he would have capsized. In an effort to minimize damage he decided instead to luff. ALEPH's port bow struck GREEN COMM on her starboard hull amidships, piercing a hole in her hull. He denied that ALEPH had, just prior to the contact, 'pulled the trigger' to get to full speed.

10. After disengaging their boat from ALEPH, GREEN COMM became entangled with ARTEMIS.
11. Terry Hutchinson, skipper of ARTEMIS RACING claimed he had done everything he could to avoid contact. When ARTEMIS, below close-hauled on starboard tack, saw ALEPH fast approaching on port tack after getting untangled from GREEN COMM, ARTEMIS continued straight on towards GREEN COMM in order to cross ALEPH at speed and not be hit by her. ARTEMIS luffed, lost her speed and ended up stationary on GREEN COMM's starboard side. Both boats started to drift backwards. When ARTEMIS was clear astern of GREEN COMM, she bore away to clear GREEN COMM's stern, but a gust made her accelerate quickly and bury her starboard bow under GREEN COMM's port rudder. ARTEMIS claimed that GREEN COMM put herself in a position where it was impossible for ARTEMIS to avoid her. ARTEMIS also stated that as soon as both boats started going backwards, she was no longer in control and all she could do was to attempt to minimize damage.
12. GREEN COMM claimed that because she was still recovering from the incident with ALEPH, she had no opportunity to keep clear of ARTEMIS, despite doing everything she could to avoid the collision. In addition, GREEN COMM claimed that by bearing away behind her, thus gaining speed quickly, ARTEMIS had not taken the best avenue open to her to avoid a collision with GREEN COMM.
13. Mike Martin presented telemetry evidence which depicts images of the boats from above, based on accurate positional information from each boat 10 times a second. At the time of the contact between GREEN COMM and ALEPH, ALEPH was traveling at about 10.7 knots. The Jury also saw video footage of the incidents. The Parties were separately invited to comment on this evidence as it was replayed several times at actual and slow motion speeds. There was no dispute that this evidence was a true depiction of the incidents.
14. The two umpires in the umpire boat on the water (Shane Borrell and Roger Wood) gave evidence. The 'booth umpire' (Andrew Baglin) explained that in each of the two incidents, a penalty was given to GREEN COMM for not keeping clear. [The 'booth' is on-shore where umpires watch the telemetry and communicate with umpires on the water.]

## CONCLUSION

15. Due to the difficult conditions and perhaps partly due to the limited experience of the GREEN COMM crew in sailing what is a new class of Americas Cup boat, GREEN COMM failed to pass head-to-wind onto starboard tack to gain right-of-way status.

16. ALEPH and ARTEMIS in turn each acted reasonably in attempting to avoid damage.

#### DECISION ON LIABILITY

17. GREEN COMM's decision to sail away from the starting line on port tack, and tack on to starboard in front of oncoming boats, and her subsequent failure to pass head-to-wind, thereby remaining the 'keep-clear' boat, was the cause of both incidents and the resulting damage.

18. Based on the above, the Jury apportions liability as follows:

In the incident involving GREEN COMM and ALEPH, the total of the damage to both boats shall be added together and GREEN COMM shall pay 100% and ALEPH 0%

In the incident involving GREEN COMM and ARTEMIS, the total of the damage to both boats shall be added together and GREEN COMM shall pay 100% and ARTEMIS 0%.

#### COSTS

19. As the hearing took place before the Jury members had left the venue, the Jury makes no award of costs.

#### SUMMARY OF DECISION

20. Shortly before the start of the Americas Cup Fleet Race on Sunday 18<sup>th</sup> September 2011 in Plymouth, GREEN COMM, a 'keep-clear' boat on port tack, attempted but failed to tack through 180 degrees into a right-of-way position. ALEPH, right-of-way on starboard tack, collided with GREEN COMM causing serious damage. Before GREEN COMM had successfully extricated herself from that situation, ARTEMIS, right-of-way on starboard tack, collided with GREEN COMM causing further damage.

21. Liability is awarded as follows

In the incident involving GREEN COMM and ALEPH, the total of the damage to both boats shall be added together and GREEN COMM shall pay 100% and ALEPH 0%

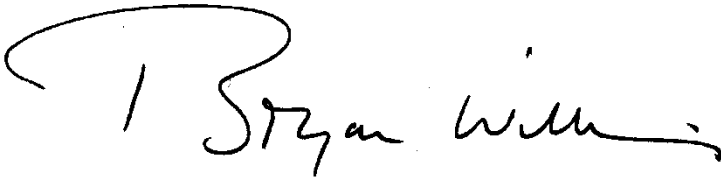
In the incident involving GREEN COMM and ARTEMIS, the total of the damage to both boats shall be added together and GREEN COMM shall pay 100% and ARTEMIS pay 0%.

## THE COST OF REPAIRS

22. After the conclusion of the hearing, the Jury was informed of estimates for repair by the Regatta Director, of estimates of the cost of repairs based on inspections carried out by staff with the required expertise. The repairs would not be able to be carried out and the actual cost determined until such time as the boats reached San Diego to where they were about to be shipped for the next Regatta in November. The quantum of the costs of repair were not addressed at the hearing. The Regatta Director's estimates were:

- (i) Artemis: €100,000
- (ii) Green Comm: €30,000
- (iii) Aleph: €20,000

23. The actual repair costs may be determined by the Race Director. If such determination is not accepted by any Party, they may revert to the Jury for a determination.

A handwritten signature in black ink, appearing to read "Bryan Willis". The signature is fluid and cursive, with a large initial "B" and "W".

Bryan Willis  
Jury Chairman, Plymouth.

Plymouth Jury: Josje Hofland, Graham McKenzie, Bryan Willis