



# AMERICA'S CUP 32

## AMERICA'S CUP JURY JURY NOTICE JN025 Jury Decision ACJ011



26<sup>th</sup> June 2005  
3 pages

To: Challengers and Defender  
Copies: ACM, Chief Measurer, Jury, Umpires, Media Centre

JURY HEARING ACJ011 25<sup>th</sup> June 2005 21h30 local in Valencia (and continued on 26<sup>th</sup> June)

PROTEST: Race Committee vs. Victory Challenge (SWE 63)

Date of Incident: 25<sup>th</sup> June 2005

The Measurement Committee reported to the Race Committee on 25<sup>th</sup> June 2005 at 19h24 that Victory Challenge had failed a Post-Race Measurement for compliance with ACC Rule 36.12<sup>1</sup>.

The Race Committee thereafter lodged a Protest against Victory Challenge pursuant to Racing Rules of sailing (RRS) rule 78.3<sup>2</sup> alleging that Victory Challenge had four compartments situated in the vicinity of the keel/mast, two of which contained sea water and that such compartments were not sealed nor did they contain limber holes, in contravention of ACC Rule 36.12.

### Jurisdiction

The Jury Chairman brought the parties' attention to the fact that one of the five appointed Jury members was not available, and that the remaining members of the Jury believed that there was an urgent need to resolve the issue and that resolution cannot be reasonably delayed without disrupting the Event (Protocol, Article 21.1(c)<sup>3</sup>).

Both the Race Committee and Victory Challenge agreed that the four members of the Jury present should hear the Request for Redress.

### Validity

The Protest was received at 18h42 on the 25<sup>th</sup> June 2005. The time limit for lodging protests was 19h39. The Protest was lodged within the time limit.

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<sup>1</sup> ACC Rule 36.12: 'Compartments or containers that hold liquid in a manner that may increase performance are prohibited. Any compartment or space which could hold water shall be drained with limber holes of size consistent with the rapid draining of that compartment.'

<sup>2</sup> RRS 78.3: 'When a measurer for an event decides that a boat or personal equipment does not comply with the class rules, he shall report the matter in writing to the race committee, which shall protest the boat.'

<sup>3</sup> Protocol, Article 21.1(c): 'Size of the Jury: The quorum for meetings of the Jury shall be all five members. However, if some members are unavailable for any reason, the quorum may be reduced provided that: (i) the remaining members of the Jury believe there is an urgent need to resolve an issue before all five members of the Jury will be available, and resolution reasonably cannot be delayed without disrupting the Event; (ii) the jurisdiction of the remaining Jury is limited to only those urgent matters requiring resolution to avoid disrupting the Event ...'

## HEARING

The hearing was scheduled for 21h30 on 25<sup>th</sup> June. Victory Challenge advised the Jury that they required more time to prepare their case and asked that the matter be rescheduled to the following morning at 09h00.

The Race Committee did not object and the Jury rescheduled the hearing to 09h00 on 26<sup>th</sup> June 2005.

## PROCEDURAL GUIDANCE

The Chairman explained that pursuant to the rules governing the event, as the matter concerned a measurement issue, the Jury's jurisdiction was limited to the finding of relevant facts, and that any matter concerning the measurement of an Americas Cup Class (ACC) yacht or the interpretation of the ACC Rules are entirely within the jurisdiction of the Measurement Committee.

Such findings of the Jury would be delivered to the Measurement Committee which would then decide on matters of interpretation, and whether there had been an infringement, of ACC rules, and provide their report to the Jury.

The Jury would then be bound by that report and would make its decision based on the Measurement Committee's findings.

## EVIDENCE AND SUBMISSIONS

Ken McAlpine, the Chairman of the Measurement Committee, gave evidence that at the conclusion of race 4 he conducted a Post-Race Measurement on Victory Challenge. On arrival at the dock he observed a structural arrangement forming four large compartments in the mast/keel area capable of containing water. Two of these compartments were almost full of salt water containing a total volume of approximately 160-180 litres (160-180 kg).

At this time Magnus Holmberg representing Victory Challenge expressed concern that further discussion of the structures in question would reveal confidential design information, and requested that any further evidence concerning design information be heard in private.

The Jury Chairman advised that the Jury's policy is to allow observers to be present throughout the hearing. Nevertheless the Jury would consider requests for confidential design evidence to be heard in private. Submissions were invited from the observers and Hamish Ross representing Alinghi stated that the Defender was supportive of the principle that evidence regarding design information be heard in private.

There being no submissions to the contrary, the Jury agreed to Magnus Holmberg's request.

On completion of the confidential design evidence, the Observers were invited to return into the hearing room. The Jury Chairman summarised the issues as:

1. Approximately 160-180 litres of salt water were found by the Chairman of the Measurement Committee in the mast/keel area and this was accepted by Mr Holmberg.
2. Victory Challenge asserts that within the meaning of ACC Rule 36.12:
  - (i) that the place where the water was located, was not a 'compartment' or a 'space', and
  - (ii) the weight and position of the water could not increase the performance of the boat in the conditions on the day of the race, nor indeed in any conditions.
3. Victory Challenge asserts that the water was present because of water ingress from the area of the keel bolts, a problem experienced during the regatta.

4. Victory Challenge asserts that the water ingress occurred primarily during the period after the finish of the race while being towed to the dock.

The Jury then referred the issue together with the finding of its fact of 160-180kg of water being found in the mast/keel area by the Measurers at the dock to the Measurement Committee. The Jury requested the Measurement Committee to prepare a report for the Jury in respect of ACC Rule 36.12.

Mr McAlpine advised that the Measurement Committee would immediately convene by conference call as the third member was not present at the venue, and that their Report could be submitted to the Jury within half an hour.

As Mr Holmberg and his crew needed to leave the dock shortly to be in time for the start of the final fleet race, the hearing was adjourned and scheduled to reconvene immediately after the conclusion of the race.

After learning of the finishing time of the race, the hearing was scheduled to reconvene at 16h15.

Mr McAlpine presented his Report to the Jury and a copy was supplied to Mr Holmberg and the Race Committee Chairman, Mr Dyer Jones. Mr Holmberg retired for a short period to consider the report. A copy of the Report is attached.

The Report included the finding by the Measurement Committee that SWE 63 breached ACC Rule 36.12.

In making its decision the Jury was bound by the Measurement Committee's Reply.

The parties and the observers were given the opportunity to make final submissions including the matter of the application of a penalty.

The Jury retired and returned to announce its decision.

## CONCLUSION

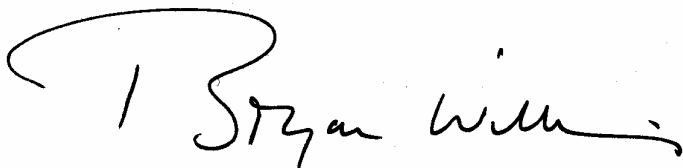
The Jury is satisfied that the breach occurred throughout Race 4.

Under RRS 64.1(a) the Jury has no discretion but to disqualify Victory Challenge.

The Jury was satisfied that the breach was inadvertent and that there was no intention by Victory Challenge to break a rule.

## DECISION

Victory Challenge (SWE 63) is to be scored as disqualified for Race 4.

A handwritten signature in black ink that reads "Bryan Willis". The signature is written in a cursive style with a large, looping initial "B".

Bryan Willis

America's Cup Jury:  
Graham McKenzie, Henry Menin, David Tillett, Bryan Willis (Chairman)