



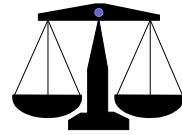
# AMERICA'S CUP 32

## AMERICA'S CUP JURY JURY NOTICE JN043

2<sup>nd</sup> July 2006

Protest by Luna Rossa Challenge  
Protest and Request for Redress by BMW ORACLE  
Racing

**CASE ACJ019**



To: Challengers and Defender, ACM, Chief Measurer ('Parties')

**Protest by Luna Rossa Challenge ITA 84 v BMW ORACLE Racing USA 87**

**Protest by BMW ORACLE Racing USA 87 v Luna Rossa Challenge ITA 84**

**Request for Redress by BMW ORACLE Racing USA 87**

**Date of Incident: 1<sup>st</sup> July 2006, Petit-final series, Division 1**

**Date of Hearing: 1<sup>st</sup> July 2006 at 20h00 and 2<sup>nd</sup> July 11h00**

### **Luna Rossa Challenge ('Luna Rossa') Protest**

[1] Luna Rossa delivered a protest at 19h05 on 1<sup>st</sup> July 2006.

[2] Luna Rossa submitted that:

*'Incident: Crossing of ITA-84 and USA-87 while sailing upwind in the first leg of the race which resulted in serious damage around five pm today.*

*Red flag was displayed immediately.*

*Luna Rossa retired as the result of the serious damage.*

*Rule broken: 14'*

### **BMW ORACLE Racing ('BMW ORACLE') Protest**

[3] BMW ORACLE delivered a protest at 19h24 on 1<sup>st</sup> July 2006.

[4] BMW ORACLE submitted that:

*'Approximately 70% up leg 1, USA 87 on port tack, ITA 86 on starboard tack.*

*USA 87 bore away to take the stern of ITA 86.*

*ITA 86 then luffed through head to wind.*

*Before ITA 86 completed onto port tack, USA 87 had to luff to try and avoid contact with ITA 86.*

*Contact occurred between the bowsprit of USA 87 and ITA 86's port quarter. The bowsprit of USA 87 could not be used in any manner for the duration of the race*

*ITA 86 was penalised by the umpires.*

*USA 87 has damage that is unlikely to be repaired in time for racing Sunday.'*

### **Protests Heard Concurrently**

[5] As both protests related to the same incident, the Jury determined that both protests should be heard concurrently.

### **Validity of Protests**

[6] The time limit for delivering protests was 19h50. Both protests were delivered within the time limit.

[7] Immediately after the incident occurred, both Luna Rossa and BMW ORACLE displayed a red flag. The Umpires were informed of each boat's protest.

[8] The Jury determined that the requirements of the Racing Rules of Sailing ('RRS') Appendix C6.1(b) and C6.4(b) had been met and that the protests were valid.

### **Procedural Matters**

[9] At the commencement of the hearing the Jury Chairman advised that one of the Jury members (David Tillett) was present on the Umpire boat of the match race.

[10] It was agreed that Luna Rossa would be treated as the Protestor and would proceed first with their submissions and evidence.

### **Submissions**

#### **Luna Rossa Submissions and Evidence**

[11] Luis Sáenz and Marco Mercuriali represented Luna Rossa.

[12] Luis Sáenz submitted that BMW ORACLE could have reasonably avoided contact with Luna Rossa and BMW ORACLE therefore breached RRS rule 14.

[13] Francesco de Angelis gave evidence while viewing video footage taken from on-board BMW ORACLE and from a camera-boat. The footage was provided by Americas Cup Television Host Broadcaster.

[14] Francesco de Angelis stated that he had a good view of the entire incident from his position on Luna Rossa. BMW ORACLE was on port tack and Luna Rossa was on starboard tack. BMW ORACLE's Bowman signalled to the helmsman to bear away as they approached Luna Rossa. Contact between the two boats occurred. In his view BMW ORACLE could have avoided the contact.

[15] Francesco de Angelis was stood down, pending any evidence that Chris Dickson, the helmsman of BMW ORACLE might give during the hearing.

## **BMW ORACLE Submissions and Evidence**

[16] Russell Green and Richard Slater represented BMW ORACLE .

[17] Chris Dickson gave evidence after viewing the same video footage that had been presented earlier when Francesco de Angelis gave evidence.

[18] Chris Dickson stated that BMW ORACLE was sailing close-hauled on port tack. He decided to dip the stern of Luna Rossa. BMW ORACLE bore away for approximately 15 seconds to a course lower than close-hauled. His intention was to pass behind Luna Rossa to get to the right-hand side. At the last second, Luna Rossa spun into a tack. He considered that it was then too dangerous to pass behind Luna Rossa and immediately luffed. A collision occurred between the bowsprit of BMW ORACLE and the stern of Luna Rossa. He believed he had done all he could to keep clear.

[19] A document was produced showing the track of BMW ORACLE leading up to the incident. Chris Dickson stated that BMW ORACLE's speed increased from 10 to 12 knots whilst sailing the lower course resulting in a closing speed of 6 metres per second.

[20] Chris Dickson stated that he was able to see Luna Rossa through the mainsail window on BMW ORACLE, or see Luna Rossa's rig above his forestay.

[21] Chris Dickson stated that his Bowman was aware that he wished to dip the stern of Luna Rossa and was positioned on the bow to assist. He made hand signals, as evidenced by the on board video footage, to assist with performing a dip. The Bowman's hand signals showed that as the circular motion of his wrist became faster, BMW ORACLE was getting closer to Luna Rossa. When the Bowman's hand changed to an 'up' position, that indicated BMW ORACLE needed to luff. The contact occurred within a few seconds of the hand signals changing from 'down' to 'up'.

## **Francesco de Angelis Recalled**

[22] Luis Sáenz re-called Francesco de Angelis. He stated that at the time of the incident he did not see the bow of BMW ORACLE coming down or changing course with the bow only going up at the 'latter stage'.

## **Jury Witnesses**

[23] The Jury called evidence from the Umpires aboard the umpire boat and wing boat of the match race.

## **Chris Simon**

[24] Chris Simon stated that he was the Blue Umpire calling Luna Rossa. The incident occurred on the fourth cross of the boats. The wing boat had advised that there was a separation between the boats of 15 metres at the first cross, which became 3 metres on the second and third crosses. As BMW ORACLE approached the fourth cross she bore away to go behind Luna Rossa and that there was a possibility of a dial down. When the boats were two lengths apart, Luna Rossa luffed hard and began to tack; BMW ORACLE then luffed.

[25] At that point there was 'no way out' for BMW ORACLE. He stated that in his view it was very unexpected that Luna Rossa would tack and if Luna Rossa had held her course, BMW ORACLE would have passed behind her. The contact was caused by the stern of Luna Rossa coming up very quickly, with the manoeuvre starting too close to give BMW ORACLE any option that would have enabled them to avoid contact.

[26] The Umpires penalised Luna Rossa for breaking RRS rule 13.1. The Umpires also decided that the infringement by Luna Rossa was not deliberate and that there was no change of control, and therefore the umpires did not give a 'red flag penalty' or a 'double penalty'.

### **Shane Borrell**

[27] Shane Borrell stated that he was the 'Yellow' Umpire aboard the umpire boat with Chris Simon. BMW ORACLE started to dip and as Luna Rossa went head to wind, it was obvious that the two boats were going to collide. Luna Rossa was 10-15 degrees past head to wind when the contact occurred. He believed the intention of BMW ORACLE was to dip. He presented further evidence, which corroborated that of Chris Simon.

### **Garry Deane and Philippe Gomez**

[28]. Garry Deane and Philippe Gomez gave evidence as the wing boat Umpires. As the two boats approached each other, the wing Umpires observed that BMW ORACLE on port tack bore away approximately 15 degrees.

[29] They twice called an overlap between the two boats after Luna Rossa passed through head-to-wind.

### **Ken McAlpine**

[30] The Chief Measurer, Ken McAlpine, gave evidence and provided a damage report in accordance with Notice of Race ('NoR') section 2.4(d)(iii)(b). He stated that he had inspected both boats and produced photographs of the damage to each boat. The Jury determined that the photographs were confidential to the Jury.

[31] In his opinion, the damage to Luna Rossa was serious. The damage to Luna Rossa involved structural implications that would take at least a week or more to repair. The damage to BMW ORACLE would require a closer examination (the bow area is difficult to access) before the extent of the damage could be determined.

[32] Luna Rossa would be unable to sail in the match race the following day. It had not been possible within the time available to determine whether BMW ORACLE could sail the following day, but if the America's Cup depended on it then the boat could probably sail. Otherwise the answer was that the boat could not race.

### **Oral Decision**

[33] At 23h00, a summary of the conclusions and the Decision was given orally at the close of the hearing in relation to the Protests.

### **Conclusions and Decisions**

[34] BMW ORACLE, close-hauled on port tack, was on a collision course with Luna Rossa, close-hauled on starboard tack.

[35] At about 5 lengths distance, BMW ORACLE bore away about 20 degrees and sailed a straight course for about 4 boat lengths, with the intention of passing astern of Luna Rossa.

[36] When about 1.5 boat lengths separated the two boats, Luna Rossa began to luff quickly and continued through head-to-wind.

[37] BMW ORACLE bore away and then, realizing she could no longer keep clear by passing astern of Luna Rossa, she luffed.

[38] Contact occurred between BMW ORACLE 's bow and Luna Rossa's port quarter causing serious damage to both boats.

[39] It was not reasonably possible for BMW ORACLE to avoid contact.

[40] Luna Rossa's protest was dismissed.

[41] Luna Rossa luffed and began to tack in a position that made contact inevitable and therefore failed to avoid contact when it was reasonably possible to do so.

[42] Luna Rossa broke RRS 14, and was disqualified.

[43] BMW ORACLE was eligible for redress.

### **Redress**

[44] After delivery of the oral summary of the Conclusions and Summary in respect of the protests, the Chairman invited BMW ORACLE to make a submission in relation to redress. BMW ORACLE responded by explaining that the damaged boat is currently unusable. The Chairman drew the attention of BMW ORACLE to paragraph 7.2 of the Sailing Instructions for Act 12. BMW ORACLE advised that they have no other boat in measurement compliant mode nor capable of being put into measurement compliant mode in time to race. They asked to be awarded the Petit-final of Division 1.

[45] The Chairman drew the attention of the parties to NoR section 2.4(d)(iii)(b) which requires the Jury to apportion percentage responsibility for damage, and asked them if they wished the Jury to do so. BMW ORACLE replied that they did, and a date and time was set for that hearing of 2<sup>nd</sup> July at 11h00.

[46] The Jury retired and returned with a decision on redress:

### **Decision on Redress**

[47] The Jury granted redress to BMW ORACLE as follows: BMW ORACLE is excused from further participation and is awarded one point for the match scheduled for 2<sup>nd</sup> July. BMW ORACLE therefore wins the Petit-final of Division 1, and is to be scored 3<sup>rd</sup> place in Act 12.

### **Apportioning Percentage Responsibility for Damage**

[48] The protest hearing reconvened at 11h00 on the 2<sup>nd</sup> July.

[49] Submissions were made by Luis Sáenz and Richard Slater concerning the provision in NoR section 2.4(d)(iii)(b) that '... the Jury shall apportion the percentage responsibility for any injury or damage, serious or otherwise, to the yachts involved in the incident.'

[50] Russell Green submitted that Luna Rossa had been found to have breached RRS rule 14 and that there was no evidence of BMW ORACLE breaking any rule and there should be an apportionment of responsibility of Luna Rossa 100%, BMW ORACLE 0%.

[51] Luis Sáenz submitted that a finding that Luna Rossa had broken RRS rule 14 did not mean that there should be an apportionment with Luna Rossa being required to pay for all of BMW ORACLE 's damage. Equity principles should be applied to the apportionment. He submitted that Luna Rossa would meet its own damage costs and 10% of BMW ORACLE's damage costs.

## Decision on Costs of Repairs

[52] The process under NoR section 2.4(d)(iii)(b), requires the Jury to apportion responsibility and this would normally relate to the total cost of repairs to both boats. The process of assessing responsibility for damage is quite different to determining whether a boat broke a racing rule.

[53] NoR paragraph 2.4(d)(iii)(b) provides the Jury with a wide discretion in apportioning the percentage responsibility for damage.

[54] The parties agreed that Luna Rossa would be responsible for the cost of repairs to the damage to her own boat, and that the Jury's apportionment would apply only to the cost of repairs to the damage to BMW ORACLE.

[55] The Jury directed Luna Rossa to pay to BMW ORACLE 80% of BMW ORACLE's cost of repairs.

[56] The Jury directed that the damage costs shall be agreed by the parties in consultation with the Chief Measurer. The damage costs shall not include normal operating expenses such as contracted employee costs.

[57] Leave was given to the parties to apply to the Jury if they are unable to agree.

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)