

ANDERLINI & EMERICK LLP

† P. TERRY ANDERLINI

G. CHRIS ANDERSEN
CONSTANTINE P. TSAGARIS
MARIA C. OSTRAND
ANDREW S. ANDERLINI

ATTORNEYS AT LAW
411 BOREL AVENUE
SUITE 501
SAN MATEO, CALIFORNIA 94402-3520

MERRILL G. EMERICK (RET)

OF COUNSEL
MCSWEENEY LAW GROUP, APC
BRIAN J. MCSWEENEY

† PAST PRESIDENT STATE BAR

TELEPHONE (650) 212-0001
TELECOPIER (650) 212-0081

THOMAS J. BARGER
HENRY H. EAVEY

INFO@AELAWLLP.COM
WWW.AELAWLLP.COM

September 6, 2013

VIA E-MAIL:

David Tillett (dtillet@dbh.com.au)
Bryan Willis (bwillis@gmail.com)
Graham McKenzie (gmackconsulting@gmail.com)
Josje Hofland (josjehofland@inter.nl.net)
John Doerr (jd@johndoerr.co.uk)

Christiane Admiraal (cadmiraal@planet.nl)

Chairman Tillett and Members of the America's Cup 34 International Jury:

I write on behalf of Dirk de Ridder, who is the party most immediately and dramatically affected by the Jury's recent rulings in America's Cup Jury Case AC31, and I do so with the consent and support of Andrew Walker and his counsel.

We were terribly disappointed by the Jury's decision because the Jury's factual findings were not supported by competent evidence, but in light of the Jury's oft-expressed predisposition throughout this matter we do not expect the Jury to change its beliefs and suspicions regarding the facts. It is clear, however, that the Jury is obligated to examine the *process* by which the hearings were conducted and the decisions were reached, because that process was so fundamentally flawed that none of the parties received a fair hearing, irrespective of the outcome.

In regard to the process, we reserve rights as to all issues and we are exploring all avenues of relief, but some of the most egregious violations of due process include the following:

1. Lack of Connection Between Alleged Rule Violations and Punishment. The events that were the subject of Jury Case AC31 took place more than one year ago, between June and August of 2012, during a race series having virtually no connection with or impact upon the challenge for or defense of the America's Cup, and the races were conducted in boats that were never contemplated for use in the America's Cup, yet the jury elected to punish the parties and

their team by imposing penalties that were clearly calculated to damage their team's defense of the America's Cup and to provide a grossly unfair advantage to the challenger.

2. Application of Wrong Standard of Liability. Rule 69 is reserved for only the gravest of offenses involving a gross breach of good sportsmanship, and for that reason a competitor cannot be found to have violated Rule 69 without an express finding that the competitor *knowingly and intentionally* committed the violation. Section N.2.7 of the ISAF Judges Manual regarding Rule 69 states "Unlike normal protests where it is assumed that if there is a rule infringement it was not done on purpose 'intent' is fundamental to a gross breach of good sportsmanship." The Jury nevertheless concluded that there were Rule 69 violations without any evidence of the requisite knowledge and intent, and it applied a simple negligence standard ("knew or should have known") in its initial charges and its ultimate findings, despite the clear ISAF instructions to judges that this lower "knew or should have known" standard is not appropriate for Rule 69 allegations.

3. Conflicts of Interest and Appearance of Impropriety. The Jury acted as investigator, cop, prosecutor, witness, judge, jury and executioner, and those jurors who acted as investigators and witnesses were obliged to recuse themselves in light of their status and clearly stated predispositions. ISAF guidelines for race officials state "It is vital that our sport is seen to be fair and without bias by all involved." This cannot be said of Jury Case AC31. Hearing Chair Willis and Juror McKenzie interviewed a significant number of witnesses, not all of whom were disclosed, and not all of whom testified at the hearing. Hearing Chair Willis and Juror McKenzie nevertheless gave evidence at the hearing and during the Jury's deliberations as to what was said in these interviews without disclosing the full results of their investigation to the parties, they refused to release their notes and witness statements, and they failed to offer themselves for cross-examination regarding the evidence they gave or possessed. Hearing Chair Willis and Juror McKenzie should have listed themselves as witnesses and disqualified themselves as jurors in this proceeding.

4. Refusal to Release Evidence to Parties and Violations of Fair Principles for Taking Evidence. The Jury's deliberate tactic of "trial by surprise" and refusal to disclose all evidence (*including potential exculpatory evidence*) is wholly antithetical to the Racing Rules and the justice systems of virtually all civilized countries. Section M5.1 of the Racing Rules instructs that a Rule 69 hearing is conducted under the same rules as other hearings and that the jury must "[u]se the greatest care to protect the competitor's rights" yet the jury's deliberate withholding of evidence utterly failed this directive.

We were advised that the Jury took pre-hearing statements from approximately eighteen witnesses, yet the Jury refused to provide these statements to the parties and adopted a policy that these statements were "confidential" and could not be released other than to the witness who gave the statement. The Jury expressed shock and surprise that the six parties exchanged their witness statements among themselves, despite the fact that fundamental fairness dictated we do so. Thus, the Jury acted with the full "benefit" of all of the statements and other evidence it collected, but the Jury intentionally withheld substantial volumes of evidence from the parties and their counsel, who were not even provided the names of non-testifying witnesses, nor was

any other evidence released to the parties other than evidence that the Jury elected to offer against the parties during the course of the hearing.

Moreover, the jury actively solicited and relied upon unreliable evidence in the form of hearsay, speculation and supposition. Section M3.2 of the Racing Rules instructs the Jury to "[t]ry to prevent leading questions or hearsay evidence" yet the Jury repeatedly asked leading questions, the Jury solicited and relied upon hearsay, and the Jury repeatedly sought and relied upon other unreliable forms of evidence.

5. Refusal to Allow Adequate Time to Prepare a Defense. The AC31 hearing did not involve a typical review of events that occurred on the water or ashore only a few hours earlier. Indeed, this hearing addressed a lengthy series of events involving many people that took place more than a year earlier in Venice, Newport, San Francisco and perhaps elsewhere. The parties were given only a few days to prepare their defenses. While this amount of time might have been generous if the case involved a recent event on the water, it clearly was inadequate for these charges.

6. Unauthorized Release of Hearing Transcripts. The proceedings of the AC 31 hearing were reported by a certified shorthand reporter, who prepared daily transcripts that were agreed and ordered to be confidential. At the Jury's request, the parties authorized the confidential transcripts to be used by the Jury and OTUSA in the AC33 proceeding involving OTUSA. At no time, however, did the parties authorize release of the transcripts to other competitors or organizations, and at no time did the Jury suggest that it would release the transcripts to others. As the record indicates, all parties and counsel were shocked to learn that the Jury released the confidential daily transcripts to Team New Zealand, ACEA and ACRM. At our insistence the Jury requested these organizations to return the transcripts, but because the Jury released the transcripts electronically, we have not received and will never receive full assurance that all copies have been returned or irretrievably destroyed, or that there will be no unauthorized use of information from these transcripts. Team New Zealand's "legal advisor" acknowledged that he reviewed the transcripts before deleting them from his computer.

This series of errors by the Jury reveals an utter lack of due process having been afforded to the parties, and as a result some of OTUSA's key sailors have been excluded from the America's Cup; some of these sailors also now face further disciplinary action from ISAF and their national sailing federations. These violations of due process virtually destroyed the integrity of the Jury and its decisions, and they threaten the careers and livelihoods of some of the world's best sailors.

The Jury's actions as to these sailors, and the Jury's carryover of these improprieties into Jury Case AC33, utterly demolish any perception of fairness, they undermine the integrity of the competition for the America's Cup, and they threaten to determine the outcome of the America's Cup challenge, despite the fact that the alleged misconduct had nothing to do with the America's Cup.

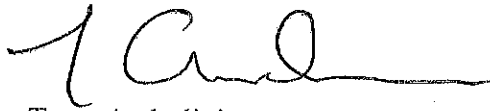
The only just remedy for the Jury's improprieties is to withdraw the Jury's decisions in AC 31 and AC33, restore the parties to their pre-hearing status, and (if the Jury still believes the

parties have not been punished enough already), schedule a proper hearing of these charges to be held before a new, impartial jury after the Cup campaign concludes, provide the parties the time and resources to prepare a proper defense, and provide a hearing procedure that will be objectively fair and consistent with the Racing Rules and universally recognized principles of fairness and justice.

Time is of the essence, and we request your reply before 12:00 a.m. September 7, 2013.

Very truly yours,

ANDERLINI & EMERICK LLP

A handwritten signature in black ink, appearing to read 'T. Anderlini', written in a cursive style.

Terry Anderlini

cc: Dirk DeRidder
Benjamin Ballard, Esq.
ISAF Review Board