

Did you have a collision with damage?

Advice for sailors and judges

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Sailors: Did you have a collision with damage? You need a protest hearing, especially if it is serious damage or injury.

Many insurance companies want to see the protest committee decision on who broke the rules and is at fault. If the damage is likely to involve an insurance claim, it is important to get a good protest hearing and a good written decision from it.

Dick Rose wrote an article in *Sailing World* magazine many years ago that said to use the protest committee as rules experts to determine what happened on the water and apply the rules, not the courts. This is still true today.

Before you race: You may not like protesting, but you need to know how to protest on the water and where your red protest flag is if your boat is over 6 meters long. Know if the sailing instructions have any extra requirements on protests before you get ashore (like notifying the race committee after finishing). Make sure that you know how to file a valid protest.

On the water: It is very important that you protest on the water whenever there is a collision. If you have a collision, hail the word “protest” immediately, and if your boat is longer than 6 meters fly the red protest flag as soon as possible (think within 10 seconds after the incident). If required to, notify the race committee right after finishing. If it is obvious that there is serious damage or injury, or danger to crew, the hail and flag requirement is waived, but you still need to attempt to inform the other boat within the protest time limit that you intend to protest them. When possible, it is best to just do the hail and flag at the time of the incident.

On shore: First thing – look up the protest time limit in the sailing instructions. Then file a written protest before the time limit so it can be heard. And note the protest must be in writing and identify the protestor, the protestee, and the incident (RRS 60.3) when it is delivered. Double check that the boats, race number and day are all correct. You don’t need a lot of extra detail – the incident description needs only to be sufficient that the other boat and the protest committee know what the protest is about. Something like “At the first windward mark, I was on starboard, the other boat was on port, we hit, and I got a hole in my boat” is fine. You don’t have to go into the exact distances and timing.

Note: You want a hearing to be held, and you can have a valid protest heard, even if one or both boats took a penalty (retiring, turns, scoring or other post-race penalties before the hearing). Make sure you have photos of the damage and, if possible, an estimate of repair

costs for the hearing, so the protest committee has adequate information to make their decision.

After racing, you may realize the damage is much more extensive than you thought on the water, even if you were able to continue racing with no or little speed or performance impact. And we all know repairs cost more than we expect. You will be much happier that you filed a protest and have the protest committee decision in hand when you talk to your insurance company.

An insurance broker told us: “insurance carriers often ask for a report from the protest committee or police stating who was at fault. Police reports rarely state who is at fault. If you don’t have a protest decision, the boat owner’s insurance company is left paying out on the claim with no real recourse of going to the other boat’s carrier, and then either raises the boat owner’s premium or drops him.”

The competitor should file the protest as stated above. If you (boat involved in the collision) failed to file a protest, you may still have a remedy, but it depends on the protest committee. Talk to the protest committee (chair) and if they learn of serious damage or injury, even after the protest time limit, they can file a protest against both boats and hear the protest (see rule 60.4(c)(1)). But it is their decision on filing and not your decision. So to protect yourself, hail protest and fly your flag at the time of the incident, and file your hearing request within the protest time limit.

Finally, if your boat has been physically damaged, or a crew member injured, by a boat that was required to keep clear and has taken a penalty or has been penalized by the protest committee, you may be eligible for redress as well (see rule 61.4(b)(2) or (3)).

Protest Committee (PC): When there is damage, the PC is encouraged to hear the protest and write up a good and full decision. If injury or serious damage may exist, make sure the PC has experienced judges. It may make sense to delay the hearing to allow time to gather damage information. Serious damage is discussed in WS Case 141.

PC filed protest: If the PC learns of an incident involving a boat that may have resulted in injury or serious damage, rule 60.4(c)(1) allows the PC to protest both boats. Rule 60.4(c) says that the validity requirements in rule 60.4(b) do not apply to a protest from the PC. So the PC can learn of the possible injury or serious damage from any source including a boat with a conflict of interest, an invalid protest, a boat in the collision, or hearing about it in the parking lot, even after the protest time limit.

The PC can then file a protest against both boats see rule 60.4(c)(1). A PC can decide there is a good reason to extend the protest time limit if they are protesting under 60.4(c)(1), (2) or (3).

The US Sailing Prescription for rule 65.1(b) states: “A protest committee shall find facts and make decisions only in compliance with the rules. No protest committee or US Sailing appeal authority shall adjudicate any claim for monetary damages. Such a claim is subject to the jurisdiction of the courts.” While this means the PC does not decide who directly pays, the PC is involved because it decides what happened and which boat(s) violated *The Racing Rules of Sailing*. As Dick Rose said in his article, we want the PC to decide what happened on the water, not the courts.

US Sailing Prescription to rule 65.1(c) “... a boat agrees that responsibility for monetary damages arising from a breach of the rules shall be based on fault as determined by application of the rules, and that she shall not be governed by the legal doctrine of ‘assumption of risk’ for monetary damages resulting from contact with other boats.”

Note: Additional information is available in Dave Perry’s *Understanding the Racing Rules of Sailing through 2028*. It is available from the US Sailing bookstore or through the US Sailing Racing Rules app.

Conclusion: If you may have serious damage or injury, know all the steps you must take to file a valid protest so you have the PC decision for your insurance carrier when you get your boat repaired.

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