



AMERICA'S CUP ARBITRATION PANEL

ACAP36/07-02

IN THE MATTER

of the Protocol
governing the 36th America's Cup

IN THE MATTER

of an Application by
American Magic
New York Yacht Club ("NYYC")
(hereinafter altogether the "**Applicant**")

regarding ACWS Cagliari / Coronavirus (COVID-19) outbreak

24 March 2020

AMERICA'S CUP ARBITRATION PANEL

Case No. ACAP36/07 Decision 02

DECISION ON COSTS

1. On 18 March 2020, the Arbitration Panel has issued a first Decision (on the merits) regarding Case ACAP36/07.
2. Pursuant to Article 53.4(k) of the Protocol and Art. 14.3 of the RoP the Panel is “empowered [...] to fix and determine costs” of an application “as it considers just and equitable”. In doing so the Panel shall have “regard to all relevant matters which may include:
 - a) *the outcome of the Application;*
 - b) *the reasons for the decision;*
 - c) *whether the decision is of universal application or for the benefit of a significant number of competitors or the event and, if so, it would normally result in a minimal or no award of costs;*
 - d) *the conduct of the Parties prior to and during the Application or any hearing, including procedural conduct which may include obstructive or delaying conduct;*
 - e) *whether the application related solely to the Racing Rules and only required a relatively straightforward application of the Racing Rules, and if so it would normally result in no award of costs; and*
 - f) *whether the decision has the effect of providing an interpretation or compliance with the documents referred to in Article 16.1 of the Protocol”.*
3. Pursuant to Art. 53.3 of the Protocol the fees and expenses of the Panel are to be “recovered on a user pay basis from the Parties involved”. Pursuant to Art. 14.3 of the RoP, the Arbitration Panel shall fix and determine the costs of an application, “including imposing the costs to the losing party”.
4. The attendances of the Panel regarding Case ACAP36/07 have, so far, been significant; they have been described in its aforesaid first Decision dated 18 March 2020.
5. The Panels’ fees relating to Case ACAP36/07, including the present decision and the activity of the Administrative Secretary, amount to **NZD 34’650**. No expenses have been incurred by the Panel.
6. In its Decision dated 18 March 2020, the Panel stated that:

*“32. The issue of costs will be the subject matter of a separate decision. As things currently stand, it is the Panel’s intention to order that the Application Fee paid by NYYC (amounting to NZD 8’000) shall be borne by NYYC and that all Panel’s costs exceeding the Application Fee shall be borne in equal shares by the four Parties involved in this case. Should any Party have different views regarding the allocation of costs, such Party may file through ECAF a short submission in that respect **by no later than Friday 20 March 2020 midnight (New Zealand time)**”.*
7. None of the Parties have filed any submission about the suggested allocation of costs.

AWARD OF COSTS

8. The Panel fees awarded in respect of Case 36/07 (including this decision) amount to **NZD 34'650** and shall be paid by the Parties as follows:
 - i. NYYC shall bear the cost of the Application Fee (amounting to **NZD 8'000**), which it has already paid;
 - ii. the balance of the Panel's fees, amounting to **NZD 26'650**, shall be borne in equal shares by each of the Parties. Accordingly, each of the four Parties is hereby ordered to pay the sum of **NZD 6'662.50**.
9. Each Party shall bear in full the costs of its counsel, if any.

PAYMENTS DUE DATE

10. All costs awards as ordered above are required to be paid to the Panel's Bank Account **within 7 days as of the date of this decision**.

David Tillett, Graham McKenzie, Henry Peter
36th America's Cup Arbitration Panel