

INDY RACING LEAGUE

TEAM GREEN, INC. APPEAL

DECISION

INTRODUCTION AND PRESENTATION OF THE ISSUES UNDER APPEAL:

On the 199th lap of the 2002 Indianapolis 500 mile race (the "Race"), an accident occurred in Turn Two, resulting in the IRL Officials calling for a yellow caution period. The IRL Officials determined that Car #3, driven by Helio Castroneves of Penske Racing, Inc. ("Penske Racing"), was the leader of the Race at the time the yellow caution period commenced, and that Car #26, driven by Paul Tracy of Team Green, Inc. ("Team Green") was in second place.

Car #26 passed Car #3 on the 199th lap. The IRL Officials ruled that the pass occurred after the yellow caution period had commenced. Team Green alleges that Car #26 passed Car #3 before the yellow caution period commenced.

The issues presented by the Appeal are:

1. Whether the determination by the IRL Officials is protestable or appealable, and if so,
2. Whether the IRL Officials properly determined that Car #3 was ahead of Car #26 at the commencement of the yellow caution period on lap #199.

PROCEDURAL SUMMARY:

Background For Appeal

The 2002 Indianapolis 500 mile race was completed on May 26, 2002, and the results of the Race were posted that evening listing Car #3 as the winner. Team Green filed a Protest claiming that Car #26 was ahead of Car #3 at the commencement of the yellow caution period on lap #199, and that Car #26 won the Race. A copy of the Protest was provided to Penske Racing, the IRL Entrant of Car #3. The Protest hearing was held on May 27, 2002, and lasted approximately 2½ hours. At the hearing, each team was given an opportunity to provide information, state its position, and respond to the information and statements of the other team. Brian Barnhart ("Barnhart"), Vice President of Racing Operations of the Indy Racing League, presided over the Protest hearing. At 3:40 p.m. on May 27, 2002, Barnhart issued his decision denying the Team Green Protest.

On June 3, 2002, Team Green filed an Appeal of the denial of its Protest. On June 4, 2002, Penske Racing presented a written request that the Appeal be dismissed on the grounds that the decision by the IRL Officials being challenged by Team Green was not appealable. On June 7, 2002, I informed the teams that, as President and Chief Executive Officer of the Indy Racing League, I would preside over the Appeal in accordance with the Rules and that the hearing on the Appeal was scheduled for June 17, 2002, at which time I would hear all issues presented by the teams. A subsequent request to delay the hearing date was denied.

Access To Information For Appeal

Team Green and Penske Racing each requested access to information from the IRL as part of their preparations for the Appeal hearing. Commencing on June 8, 2002, and continuing through June 16, 2002, the IRL made its information, data and personnel available to both Team Green and Penske Racing. Both teams were also given access to the Indianapolis Motor Speedway race track to take photographs, measurements, etc. The IRL made it clear that any proprietary information which was not owned by the IRL needed to be obtained from, and with the consent of, the owner of such information.¹ As a result, each team, led by its legal counsel, spent a considerable amount of time surveying the Indianapolis Motor Speedway, reviewing videos of the Race, and otherwise asking questions and reviewing data.

Appeal Hearing

The hearing on the Appeal commenced at 10:00 a.m. on June 17, 2002, and was completed at approximately 4:00 p.m. that day. In accordance with the Rule Book, each team was afforded the opportunity to present witnesses and exhibits, state its position, and respond to the witnesses, exhibits, and position presented by the other team. Each team was very well prepared, was represented by legal counsel, and professionally presented its position and the information and data which the team believed supported its position.

2002 INDY RACING LEAGUE RULE BOOK, INDY RACING LEAGUE 2002 HANDBOOK, ENTRANT LICENSES AND INDIANAPOLIS 500 ENTRIES:

As a condition of participation in the Indy Racing League, each team agrees to be bound by the terms of the IRL Rule Book. Relevant excerpts from the Rule Book, Indy Racing League 2002 Handbook, the Entrant Licenses and the Indianapolis 500 Entries are contained in the Appendix to this Decision.

POSITION OF TEAM GREEN:

1. Appealability of Decision by IRL Officials

Team Green asserts that there is no issue as to whether a Car was improperly passed during a yellow caution period because there is objective evidence (which Team Green refers to as an

¹ Penske Racing as well as other race teams did not want to provide certain of their proprietary information, and the teams involved in this Appeal ultimately agreed that such information would not be used by either of them in the Appeal.

"observable fact") that the pass occurred before the commencement of the yellow caution period. Team Green further asserts that the commencement of a yellow caution period is not a judgment call because there is objective evidence of when the track yellow lights came on.

2. Determination of the Leader at the Commencement of the Yellow Caution Period

Team Green asserts that Car #26 was ahead of Car #3 at the time the track yellow lights came on, and that those lights should control. Team Green asserts that the radio call of the yellow caution period by Race Control and the display of the yellow dashboard lights are irrelevant. Team Green further asserts that the dashboard yellow light did not come on in Car #26 before it passed Car #3 (based on the testimony of Paul Tracy) or on Al Unser Jr.'s Car, and that Dario Franchitti testified that Car #26 passed Car #3 before his dashboard yellow lights came on. Team Green asserts that the dashboard yellow lights are not reliable, the timing is inconsistent from Car to Car, and that the only clear evidence of when a yellow light came on is the track yellow lights, noting that the telemetry data only shows when a signal was received by the Car, not when the lights came on. Team Green further asserts that the display of one of the yellow caution flags (the red flag with the yellow cross)² should be disregarded since it might have been displayed by the IRL Official in reaction to the call from the Turn Two IRL Official Observer, not in reaction to the call from Race Control. Finally, Team Green asserts that Car #26 completed 200 laps before Car #3, and that under Rule 7.17 Car #26 therefore won the Race.

POSITION OF PENSKE RACING:

1. Appealability of Decision by IRL Officials

Penske Racing asserts that the decision as to whether a Car passed another Car during a yellow caution period is specifically listed as not protestable or appealable under Rule 11.2(D)(2), and that the decision by the IRL Officials that Car #26 passed Car #3 during the yellow caution period fits squarely within that Rule. Penske Racing further asserts that the decision by the Officials as to the position of the Cars at the commencement of a yellow caution period is a judgment call, and as such is not subject to protest or appeal under Rule 11.2(D). Penske Racing analogizes this decision by the IRL Officials to a homeplate umpire in baseball calling balls and strikes, and to a basketball official calling a foul.

2. Determination of the Leader at the Commencement of the Yellow Caution Period

Penske Racing asserts that, even if this judgment call were appealable, the standard of review should be whether the IRL abused its discretion in making its decision. Penske Racing asserts that the IRL did not abuse its discretion, and that no one has even accused the IRL of abusing its discretion, let alone provided any evidence of such abuse. Penske Racing further asserts that, regardless of the standard employed, Car #3 was ahead of Car #26 at the commencement of the yellow caution period, based on Car #3 being ahead when the radio call was made by Race Control, when the red flag with the yellow cross was displayed, when the dashboard yellow light on Car #3 was activated, and at the last time line under green flag conditions.

² This flag is displayed at the commencement of a yellow caution period at the entrance of the pits.

FINDINGS OF FACT:

League Administration of Yellow Caution Periods and the Purpose of Rule 7.14

In order to put these issues in the proper context, it is important to keep in mind the purpose of the yellow caution system. The yellow caution system is designed for the safety of the drivers. That seems to have been lost in all of this. The system is designed to protect the drivers by identifying, as soon as possible, an unsafe track condition, and then notifying, as soon as possible, the teams and drivers of the unsafe track condition so that the drivers will cease racing as soon as they are notified of the unsafe track condition.

Consequently, the IRL has implemented multiple systems to minimize the time needed to identify an unsafe condition, and to then notify the drivers, taking into account the need for back up notification systems in the event of any system failure or delay. As a result, the IRL has essentially four methods of communicating a yellow caution period: (i) radio instructions (teams are required to monitor and follow instructions from Race Control); (ii) track yellow lights; (iii) mandatory dashboard yellow lights; and (iv) yellow flags, including the pit-in red flag with the yellow cross (which is displayed upon the commencement of a yellow caution period and signifies that the pits are closed). While these systems typically are initiated within a fraction of a second of each other, they are not synchronized because they can't be. Even if you could synchronize them, that would delay the notification and defeat the safety objective. The IRL Officials have repeatedly instructed participants that they are to react to the first notification they receive of a yellow caution period, and that is universally understood among IRL competitors. As a reminder, the IRL Officials instruct the drivers and crew chiefs in mandatory drivers meetings to obey all yellow caution period notices, specifically mentioning the radio call from Race Control, the dashboard yellow lights, the track yellow lights, and the yellow flags, including the red flag with the yellow cross.

As a practical matter, the IRL Officials will call several yellow caution periods by radio throughout a Race. The IRL Officials do not have the benefit of knowing precisely when the yellow flag is displayed, the track yellow lights are displayed, or when the dashboard yellow lights are displayed. The IRL Officials use their judgment in deciding the placement of the Cars at the time the yellow caution call is made, relying on direct visual observation and television monitors in Race Control. That is the *only* possible way to officiate a race, and the IRL has consistently followed this methodology since the league's inception.

2002 Indianapolis 500 Mile Race

The mandatory drivers meeting was held on the Thursday before the Race (Carburetion day). All three of Team Green's drivers and crew chiefs, and both of Penske Racing's drivers and crew chiefs, were in attendance. Additional members of Team Green and Penske Racing were also in attendance. At that meeting, Barnhart specifically stated that the drivers were to obey all yellow caution period instructions, including the track and dashboard yellow lights, the radio call from Race Control, and the yellow flag, including the red flag with the yellow cross.

When the accident occurred on lap #199 involving Car #34 and Car #91, Barnhart received a radio call from the Turn Two IRL Official Observer reporting the incident. Barnhart immediately asked "what have you got", and was told "accident in two". At this time Barnhart is watching the line feed of the ABC broadcast showing Car #3 ahead of Car #26. Barnhart immediately alerted Mel Harder ("Harder") in Race Control³, stating "yellow, yellow, yellow, three is your leader," with Barnhart broadcasting over the director's channel. Harder immediately repeated "yellow, yellow, yellow, three is your leader" over the Race Control radio.

Following the Race, the IRL determined that Car #3 was ahead of Car #26 at the following times, and no evidence was presented by Team Green or Penske Racing to the contrary:

- (a) At the time of the accident involving Car #34 and Car #91;
- (b) At the time Race Control called the yellow caution period by radio;
- (c) At the time the red flag with the yellow cross was displayed;
- (d) At the time the yellow dashboard light system was activated;
- (e) At the last scoring time line before the yellow caution period commenced; and
- (f) At the time the yellow dashboard light radio on Car #3 received the yellow light signal.

The telemetry data on Car #3, when synchronized with the Race videos and IRL timing and scoring data,⁴ showed that the dashboard yellow light radio on Car #3 received the yellow light signal when Car #3 was in front of Car #26. The IRL obtained this telemetry data directly from Penske Racing, and it also matched up with the other telemetry data downloaded directly by the IRL from Car #3 following the Race. The analysis was performed by Jeff Horton ("Horton"), the IRL Director of Engineering, a highly experienced electronics engineer. Car #26 did not have data acquisition software installed on the Car to record the receipt of the yellow caution radio signal.

The videos of the Race can be interpreted as showing the track yellow lights coming on when Car #26 was outside Car #3 on the third turn. At that moment, Car #26 appears ahead of Car #3 by approximately four to six feet based on an imaginary start/finish line⁵ across the race track in turn three, but at that same moment Car #3 would be ahead of Car #26 by approximately ten to twelve feet based on the distance of the Cars to the actual start/finish line.⁶ The videos of the Race also show the display of the red flag with the yellow cross in the entrance to the pits when Car #3 was well ahead of Car #26.

³ The Race Control procedure for the Race followed standard Race Control procedure. Brian Barnhart was on the directors radio channel communicating to the IRL Officials, and Mel Harder was on the Race Control channel communicating to the teams, spotters, pace car, starters and pit tech officials. Harder sits to Barnhart's immediate right, with one hand on the on-board dash light activation toggle switch, and the other hand on the switch activating his Race Control radio. Barnhart alerts Harder by contact with his right hand to Harder's shoulder, and Harder immediately activates both switches and repeats Barnhart's decision on the Race Control radio.

⁴ The exact same Race videos and IRL timing and scoring data were used by Team Green in making its claims as to the placement of the Cars in relation to the track yellow lights.

⁵ Technically, this imaginary line would be perpendicular to the tangent of the curve.

⁶ The distance to the start/finish line is a geometric calculation based on the videos and other information provided by Team Green at the hearing.

ANALYSIS:

1. Appealability of Decision by IRL Officials

The IRL Officials must use their judgment in calling a yellow caution period throughout each Race. During the 2002 Indianapolis 500, the IRL Officials called five yellow caution periods. In officiating a race, the IRL Officials must use their judgment to determine the position of each Car relative to the position of each other Car at the commencement of each yellow caution period. The IRL Officials do not have the benefit of instant replay, telemetry data or any other device to make their judgment. Rather, when they call a yellow caution period on Race Control radio, they immediately determine the placement of all of the Cars from visual observation and from observation of television monitors in Race Control.

That is precisely why the Rule Book states that the decision whether a Car was improperly passed during a yellow caution period may not be protested or appealed. This is a determination Barnhart must make at the commencement of *every* yellow caution period during *every* race for *every* Car on the race track, whether the caution period commences on the first lap, the last lap, or any lap in between. Team Green's effort to second guess this decision is inconsistent with the purpose of this Rule.⁷

In addition to the foregoing specific Rule, the Rule Book also states the general rule that all decisions of the IRL Officials involving judgment are not protestable or appealable. That provision is equally applicable. The IRL Officials must use their judgment in determining the order of the Cars upon the commencement of yellow caution periods throughout each race.

Team Green's position is that the IRL Officials' determination as to the placement and order of the Cars upon the commencement of *any* yellow caution period during a race is protestable and appealable. Team Green's interpretation of the Rules is not logical and demonstrates the wisdom of this Rule. Team Green's claim that this decision by the IRL Officials is appealable presents the proverbial "catch-22" for Team Green. While it is not logical to claim that the IRL Officials' determination as to the order of the Cars on the commencement of a yellow caution period on lap #30 is appealable, there is also no logical basis for distinguishing the same determination upon the *commencement* of a yellow caution period on lap #30 and on lap #199, just because the Race happens to *end* during a yellow caution period on the latter but not the former.

Team Green's claim that there is objective evidence that the judgment of the IRL Officials was in error, based on evidence not available to the IRL Officials at the time they made the call, is tantamount to asserting a right to "instant replay" when the Rule Book does not provide for instant replay. Unlike the National Football League, the IRL Rule Book does not allow for instant replay challenges. At the time the IRL Officials had to make the call, they had to exercise their judgment. No amount of after-the-fact research into technical data changes the nature of the original decision.

⁷ Unlike sports such as football, basketball and baseball where action regularly stops (e.g., after a play, when a foul is called, after the third out in an inning, etc.), racing involves continuous, uninterrupted action at high speeds, except for red flag situations not applicable here.

For the reasons set forth in this Decision, I have determined that the placement of Cars at the commencement of a yellow caution period is a judgment decision which is not subject to Protest or Appeal. However, the Indianapolis 500 mile race is the biggest single day sporting event in the world. It was my judgment to hear the Appeal filed by Team Green before making a ruling on whether the IRL Officials' decision was subject to Protest or Appeal. My decision to listen to all of the arguments made by Team Green and Penske Racing before making any rulings was based on the unique facts and circumstances of this situation, and should not be construed as precedential for subsequent races.

2. Determination of the Leader at the Commencement of the Yellow Caution Period

Team Green's primary argument is that the nose of Car #26 was four to six feet in front of the nose of Car #3 in the third turn on lap #199 when the track yellow light came on based on an imaginary start/finish line at that point on the track, and that the track yellow light should govern over everything else. Team Green in effect asks the IRL to ignore the literal terms of, as well as the purpose and intent of, the Rules, ignore the radio call of the yellow caution period by Race Control, ignore the display of the yellow flags, and ignore both the activation and display of the on-board yellow light system, even though the IRL has instructed the teams to comply with those directions from the Officials.

Yellow caution periods are a part of racing. Historically, the signal for a yellow caution period was only the yellow flag. In addition to the yellow flags, technology now allows the use of yellow track lights, Race Control radio communications to the teams, and yellow dashboard lights in the race cars. The IRL utilizes all of these modes of communication in order to communicate to the teams and drivers as quickly as possible to promote safety. It is not a perfect system. Each of these modes of communication backs up the others in recognition that any can fail or be delayed in a given instance. These modes of communication are not integrated to initiate at the exact same point in time, because they can't be and synchronizing them exactly would delay the warning system and defeat the objective of maximizing safety. As a practical matter, these communications all occur within a very short period of time.

During a race, a yellow caution period begins when Race Control calls it on the radio. There is simply no alternative for the IRL Officials in running a race. That is how the IRL Officials have consistently conducted races since the IRL began operations. The Rule Book does not provide for "instant replay." The drivers are instructed to react to the first notice they receive of a yellow caution condition, whether a yellow flag, a yellow track light, a yellow dashboard light, or Race Control radio instruction. Barnhart testified that he was watching the television monitor line feed with Car #3 ahead of Car #26 when he called the yellow caution period. That determination required Barnhart to exercise his judgment. Penske Racing provided additional testimony and data supporting the conclusion that Car #3 was ahead at the time of the radio call by Race Control⁸, and Team Green presented no evidence to the contrary and did not dispute this

⁸ The telemetry data from Car #3 showed the receipt of the signal for the dashboard yellow lights at a time when Car #3 was ahead of Car #26, and that signal was sent at the time of the radio call of the yellow caution period by Race Control. In addition, Doug Boles of Panther Racing testified that he was a spotter for Car #4, was monitoring Race Control radio, and was watching the lead two cars (Car #3 and Car #26) at the time the yellow caution period was called by Race Control. Mr. Boles testified that Car #3 was ahead at the time the call was made.

finding by Barnhart on the Protest.⁹ While that is the end of the relevant analysis, Penske Racing provided further data supporting Barnhart's decision. Specifically, Helio Castroneves testified that his dashboard yellow light came on while he was ahead of Car #26, and he stated immediately following the Race that Car #26 passed him during the yellow caution period. In addition, Penske Racing presented video showing that the red flag with the yellow cross was displayed with Car #3 clearly ahead of Car #26. Penske Racing also presented data and testimony showing that Car #3 did not lift due to running out of fuel.¹⁰

Team Green's argument that the track yellow lights should be the "determining fact" is misplaced for several reasons.

First, that argument is violative of the purpose and intent of the Rules. A yellow caution period is called due to unsafe track conditions. Team Green's position is that a driver could ignore Race Control's instructions,¹¹ whether given by radio or by activating the yellow dashboard lights, ignore the red flag with the yellow cross, ignore instructions given to the drivers during the Carburetion Day drivers meeting, and race under known dangerous conditions until the track yellow light is displayed.¹² That position is contrary to the terms and clear intent of the Rules.

Second, Team Green's argument is not technically sound. Rule 7.14 refers to "yellow lights." The dashboard lights are yellow lights, as are the track lights. Rule 7.14 does not refer only to "yellow *track* lights." In fact, Rule 1.5 expressly refers to both track yellow lights and dashboard yellow lights. Team Green contends that the on-board yellow light system, also known as the "track condition radio," is intended only to let drivers know when the pits are open. Team Green's contention is simply not supported by the clear language of the Rule Book, the clear intent of the Rule Book and the consistent interpretation of the Rule Book. That contention is also squarely inconsistent with the instructions given by the Officials at the drivers meeting and inconsistent with the general understanding of the competitors. Finally, that contention is simply not logical. Each light system is designed and employed for the exact same purpose, each light system can fail, and each light system backs up the other. The drivers and crew chiefs are specifically told to pay attention to both systems. There is no logical basis for ignoring one but not the other. It is also illogical to claim that a *track condition radio* doesn't relate to track conditions, but only to whether the pits are open.

⁹ Team Green stated in its Appeal that it did not dispute the determination that Car #3 was ahead of Car #26 at the time Race Control called the yellow caution period, and publicly acknowledged that the information it presented at the hearing was not available to Barnhart in Race Control.

¹⁰The timing and reason for Car #3 lifting was disputed. It was not due to a lack of fuel, as Car #3 completed lap #199, lap #200, and lap #201 (victory lap), and still had over one gallon of fuel in its tank after the Race. Penske Racing claimed that the lift was in response to the dashboard yellow light, and Team Green claimed that the lift took place after the pass by Car #26 (Team Green presented its reconstruction of when it believed the lift took place). Given the other facts and the findings in this Decision, the question of when and why the lift occurred is not significant.

¹¹ Paul Tracy testified that he believed that he could ignore the yellow dashboard lights, although he admits to being told to react to them in the drivers meeting. Paul Tracy also testified that Team Green never notified him of the radio call of the yellow caution period by Race Control, even though he admits that he was told to react to the radio call by Race Control in that same drivers meeting. The crew chief for Car #26 also attended that meeting.

¹² The race teams are instructed to monitor Race Control radio and respond to a call for a yellow caution period. Paul Tracy testified that he didn't like being called on the radio, that he only allowed two team representatives to have radio contact with him, and that he never received a radio communication of the yellow caution period from his team.

Third, the argument that the track yellow light system is the "only reliable one"¹³ does not take into account that track light systems, like any other electrical system, can fail. In fact, the track yellow light system did fail the weekend of the 2002 Boomtown 500 at Texas Motor Speedway, and the drivers responded to the yellow dashboard lights. That situation illustrates the reason for the multiple warning system. To interpret the Rules as allowing a driver to ignore a yellow dashboard light and to ignore Race Control would be extraordinarily dangerous, inconsistent with the intent of the Rules, inconsistent with past practice, and would render the mandatory dashboard yellow light system meaningless.

Fourth, the IRL received technical data indicating that the dashboard yellow light came on in Car #3 while it was in the lead of the Race. Team Green has presented no evidence undermining the reliability of that data.¹⁴ Since the IRL began using the Delphi system¹⁵ in 1998, it has proven to be reliable, it is recognized as the state of the art system in the United States, and it has not caused any "false alarms". Team Green presented the testimony of Paul Tracy and video of Car #7 in support of its claim that the dashboard yellow lights did not come on in those two Cars prior to the pass, but the fact that the yellow dashboard light on those Cars may or may not have come on before or after the yellow dashboard light came on in Car #3 is simply irrelevant. There are elements which can delay receipt of the signal¹⁶, but nothing causes receipt of the signal before it is sent. The IRL cannot require teams to install dashboard yellow light systems, instruct drivers to react to a dashboard yellow light, and then when they do so, tell them, after the fact, that they would have been better off ignoring the instructions of the IRL Officials.

Fifth, Team Green claims that the red flag with the yellow cross should be disregarded because the timing and scoring information suggests, in Team Green's opinion, that the IRL Official *may* have waived the flag in response to the IRL Official Observer's radio call, not the radio call from Race Control. That claim is not well grounded. The flagman is an IRL Official, and the teams were specifically instructed to obey that flagman. Team Green can't have it both ways—claim that the time of the call of the yellow caution period by Race Control isn't important, but then claim that it is. The video clearly shows that the flag was displayed with Car #3 in the lead. The race teams are instructed to obey that flag, and they are entitled to rely upon that flag as an indicator of the commencement of a yellow caution period.

¹³ At the hearing, Team Green rephrased its argument as being that the track light system should count, and that the IRL Officials had not "counted" that system. Team Green misstates the position of the IRL Officials, which is that all yellow caution period systems count.

¹⁴ Horton testified that he tested the telemetry data provided by Penske Racing for Car #3 to verify that it had not been manipulated, using the testing procedures provided by Delphi and Pi Research. Horton also tested the data against the other telemetry data downloaded from Car #3 immediately following the Race as part of the customary post-race procedure. Team Green had a representative from Pi Research available at the hearing, but did not ask him to testify in response to Horton's testimony.

¹⁵ The Delphi system is a radio system. Race Control sends a radio signal to a radio in the Cars which activates the yellow dashboard lights to alert the drivers as to a dangerous track condition and the commencement of a yellow caution period, which is why it is called a "track condition radio." The system was employed because track lights on some tracks are poorly positioned and are more difficult for drivers to see than the yellow dashboard lights.

¹⁶ Team Green made the argument that the telemetry data only showed when the signal was received by Car #3, not when the dash light was lit. Any delay in the signal from the Car's radio to the dash light is almost certain to be a very small fraction of a second, and no evidence was presented showing any abnormality or malfunction in the Car's radio.

Team Green places tremendous emphasis on the track lights. For the reasons set forth above, the time in which the track lights come on¹⁷ becomes irrelevant if, as in this case, other yellow caution period instructions were previously sent. In terms of the track lights, reasonable people can differ as to whether Car #26 was in front of Car #3, or Car #3 was in front of Car #26, at the time the track yellow lights came on. The question is who was *ahead* at that point on the race track, *not* who would have won with an imaginary start/finish line in the middle of turn three. In order to win the Race, a Car was required to complete both laps #199 and #200. Car #3, being on the inside, had a ten to twelve foot shorter distance to the start/finish line than Car #26. Team Green claims that Car #26 had the better racing line, but that doesn't mean Car #26 was ahead, only that Car #26 may have been in a position to take the lead had the yellow caution period **not** commenced. This discussion further illustrates the need of Race Control to exercise its judgment in determining the positioning of Cars at the commencement of a yellow caution period.

Finally, Team Green claims that Car #26 completed 200 laps before any other Car and therefore should be declared the winner of the Race under Rule 7.17. That claim is without merit. Race Control immediately stated on radio that Car #3 was the leader, and directed Car #26 to fall back in line behind Car #3, which it did not do.¹⁸ Car #26 will not be rewarded for ignoring Race Control.¹⁹ The obvious intent of this Rule is to determine the finishing order of the Cars based on the order of completion of 500 miles in accordance with the rulings by the IRL Officials.

DECISION:

I hereby determine that the decision by the IRL Officials as to the order of the Cars upon the commencement of a yellow caution period is a judgment call and is not protestable or appealable. This proceeding and the arguments and information presented have demonstrated precisely why this is not a protestable or appealable decision.

While this decision is based on the foregoing determination, I have also exercised my right under Rule 11.2(D) to review the decision by the IRL Officials, and I have determined that the IRL Officials exercised the appropriate judgment, did not abuse their discretion and were correct in determining that Car #3 was ahead of Car #26 on lap #199 when the yellow caution period commenced. There is ample evidence to support that determination.

I commend both Team Green and Penske Racing on the professionalism they have repeatedly demonstrated throughout this process. Racing is both a business and a sport, and a tremendous amount of time, money and effort, not to mention "emotional capital", was invested in this process by everyone. It is completely understandable that Team Green would be frustrated and disappointed by not being able to run the last lap and a quarter under green flag conditions.

¹⁷ The videos used by both teams at the Appeal hearing reflected efforts to synchronize the videos to IRL timing and scoring data in order to reconstruct the position of the Cars on the race track at any given point in time. Without getting into the technical details, there is a margin of error in this reconstruction process. However, the same assumptions and data were used by both teams.

¹⁸ Since the yellow caution period commenced on lap #199, the pace car could not come out and pick up the leader before the end of the Race.

¹⁹ Ironically, under Team Green's theory, Scott Goodyear would have won the 1995 Indianapolis 500 mile race, not Jacques Villeneuve who drove for Team Green in that race. In that race, Scott Goodyear passed the pace car during a yellow caution period but ignored the instructions of Race Control to come in to the pits. In ignoring Race Control, Scott Goodyear was the first to "finish" 200 laps in that race.

The heritage of the Indianapolis 500 includes numerous stories of great competitors who failed to win the race for one reason or another. But for an incident on lap #171, Tomas Scheckter may have become the youngest winner of the Indianapolis 500. If Car #26 had not improperly passed Car #21 on lap #171,²⁰ requiring an extra lap to be run under yellow, the outcome of the Race may have been different. But for a wheel nut that wasn't tightened on lap #176, Gil de Ferran may have won the Race. Part of the mystique of the Indianapolis 500 mile race is that any single development over the course of a 500 mile race can impact the ultimate outcome.

The fact that the Race ended under yellow was not the fault of anyone involved in this proceeding. How it is handled, however, does reflect directly on the participants. In my opinion, this proceeding has highlighted the quality and integrity of the work done by Brian Barnhart and his staff, both during and after the Race, and has also shown the quality and integrity of the personnel employed by Team Green and Penske Racing.

Issued this 3rd day of July, 2002.

Respectfully submitted,

Anton H. George,
President and Chief Executive Officer,
Indy Racing League, LLC

²⁰ When Tomas Scheckter hit the wall on lap #171, Race Control called a yellow caution period (as it did on lap #199). Race Control determined that Car #21 was ahead of Car #26 at the commencement of the yellow caution period, and instructed Car #26 to fall back behind Car #21. Car #26 was slow to respond to Race Control, necessitating an extra yellow caution lap. The video presented by Team Green at the hearing confirmed Car #26 passing Car #21 during the yellow caution period.

APPENDIX

2002 INDY RACING LEAGUE RULE BOOK:

The relevant provisions of the 2002 Indy Racing League Rule Book ("Rule Book") include the following:

1.1 Governance—

A. General – These Rules govern the **2002** season and supersede all previous rules, bulletins and supplementary rules and regulations. These Rules shall apply to every Event which the IRL sanctions.

B. IRL Authority – These rules shall be applied, construed and interpreted by the Officials, and their interpretation shall be final and binding. The IRL reserves the right to revise these Rules at any time. The IRL shall have the right to authorize and supervise Events of any kind; to make and construe Rules and to render decisions concerning them; ...Any and all actions and decisions which the Officials are authorized and empowered to take under these Rules may be taken, or not taken, by the Officials in their discretion....

C. Officiating – The IRL will select Officials for each Event as the IRL deems appropriate. The Officials shall have the discretion and authority to take any and all actions and make any and all determinations which they deem necessary or appropriate during, or in connection with, an Event, including, without limitation, determinations as to whether a Rule violation has occurred.... The Officials shall be the final authority on the content of the official posting of all qualifications results and Race finishes....

D. Acceptance of Rules – Every Member who undertakes to organize or to participate in any way in any Event under the sanction of the IRL shall be deemed to have a full understanding of, and to accept, these Rules.

* * *

1.4 Event Control—

* * *

D. Race Control – IRL maintains a radio frequency to provide direct communication to the Entrants during on-track activities ("Race Control"). The information includes, but is not limited to, track conditions, yellow-flag (caution) procedure, and black-flag penalties...Each Entrant must have at least two (2) personnel monitor the frequency...Any Entrant failing to monitor the frequency shall be charged with knowledge of the matters discussed on such frequency, and is subject to penalty. Any Entrant or other Member failing to follow the directions of Race Control may be penalized.

* * *

1.5 Flag Signals –

* * *

Each track contains a caution light system to supplement the red and yellow flags. In addition, an on-board yellow light system is mandatory on all Cars.

* * *

7.1 Mandatory Activities –

A. Meetings –

(1) **Driver Meetings** – Prior to each Race, the IRL shall conduct one or more meetings of Drivers for the discussion and interpretation of these Rules and any specific Rules applying to that Race....

* * *

7.14 Yellow Flag (Caution) –The yellow caution period starts with the display of the yellow flag and/or yellow lights and ends with the display of the green flag and/or green lights. Racing ceases immediately upon display of the yellow flag and/or yellow light. The Officials may call a yellow caution period at any time for any reason. Their decision to call, not to call, or to end a yellow caution period may not be protested or appealed. Yellow caution period laps will be scored, unless stated otherwise by the Officials....During the yellow caution period, no Driver may pass another Car....

* * *

7.17 Race Completion –

* * *

B. Checkered Flag –

(1) The white flag will be displayed to the Race leader as the Race leader starts the Race leader's last lap, and will continue to be displayed to each successive Car until the Race leader completes its final lap.

(2) The checkered flag will be displayed to the Race leader as the Race leader completes the Race leader's last lap under momentum created by the Race leader's Car, and will continue to be displayed until each Car running has received the checkered flag.

(3) A Race will be considered completed by the race winner at the moment the checkered flag is displayed or at the moment the scheduled distance is completed by any Car, whichever occurs first, notwithstanding any subsequent situations, actions, or penalties. The Race will be considered completed when, after this moment, each Car still running on the track has had safe and sufficient opportunity

to return to the start/finish line. At this time, scoring will cease and the Event is completed. The Officials' decision may not be protested or appealed.

* * *

11.2 Right to Protest and Time Limits –

* * *

D. Decisions Not Subject to Protest or Appeal -- The following matters, and any others which may be designated as not subject to protest under these Rules, or which involve the exercise of judgment by the Officials during an Event, may not be protested or appealed and the decision of the Officials is final and binding:

- (1) Call, not call or end a yellow caution period.
- (2) Signal a Driver to pass the pace car during a yellow caution period, whether a proper passing signal was given during a yellow caution period, or whether the pace car or another Car was improperly passed during a yellow caution period.

* * *

Notwithstanding the foregoing, the Officials may review decisions regarding any of these areas as they deem appropriate.

XII.

APPEALS

12.1 Initiation of an Appeal - To the extent permitted under these Rules, any Member may appeal a determination by the Vice President, Racing Operations on the imposition of a penalty or on a protest. A Member may not appeal the decision to impose, or not impose, a black flag, disqualification, or other penalty imposed during an Event. An appeal may be initiated by submitting the following to the Chief Executive Officer by 5 p.m. E.S.T. of the Fifth (5th) business day following the release of the penalty notice or protest decision:

A. Written Notice of Appeal - The notice of appeal must contain reference to the specific action by the IRL from which an appeal is taken, the date of the occurrence, the reasons for the appeal, and specific reference to any Rules allegedly violated and the relief requested. The notice of appeal must be accompanied by copies of all written documents pertaining to the appeal, such as protests, responses, rulings, announcements, etc. The notice of appeal must clearly and explicitly state the basis of the appeal.

B. Appeal Fee - The appeal fee shall be Two Thousand Five Hundred Dollars (\$2,500). The appeal fee is in addition to any monetary penalty previously assessed.

C. Where more than one Member of the same Entrant is involved in the same violation of the Rules, the Chief Executive Officer may at his discretion allow one written notice of appeal and appeal fee to cover all such Members. In order to not lose any rights an Entrant may have, a request under this Rule 12.1 C. should be made and approved by the Chief Executive Officer within the five (5) day period.

12.2 Jurisdiction - The Chief Executive Officer shall have the exclusive jurisdiction to resolve all appeals. Notwithstanding the foregoing, the Chief Executive Officer shall have the right, in his discretion, to select an individual to resolve an appeal with all of the powers and responsibilities of the Chief Executive Officer set forth in this Rule XII. The jurisdiction of the Chief Executive Officer is limited to those matters and issues submitted to the Chief Executive Officer by the appellant. The decision which is the subject of the appeal shall not be stayed pending the appeal unless otherwise determined by the Chief Executive Officer and upon such terms as the Chief Executive Officer deems appropriate.

12.3 Advisory Committee - The Chief Executive Officer may select an advisory committee to assist in making a determination on an appeal. The members of the committee shall consist of individuals involved with automobile racing, but who do not have a financial interest in the outcome of the appeal. The advisory committee may make a recommendation as to the disposition of the appeal, but any determination is in the discretion of the Chief Executive Officer.

12.4 Hearing of the Appeal - The Chief Executive Officer may cause an investigation to be made into the matters surrounding the appeal and shall convene a hearing within thirty (30) days of receipt of the appeal unless the hearing date is extended by the mutual agreement of the Chief Executive Officer and the appellant. The appellant and any Members requesting an opportunity to participate in the proceeding and which the Chief Executive Officer determines to have a material interest in the proceeding shall be given notice of the hearing and shall be entitled to be heard and call witnesses. The effect on championship point standings does not constitute a “material interest”. In the Chief Executive Officer’s discretion, he may permit a Member to be represented by counsel.

12.5 Conduct of the Appeal Hearing - The hearing will be conducted according to the following procedures:

A. The hearing is not open to the public and admittance to the hearing is at the discretion of the Chief Executive Officer. The Chief Executive Officer shall conduct the hearing in an informal manner.

B. The Chief Executive Officer shall enumerate the parties and other necessary participants in the proceedings. The Chief Executive Officer may summon any Member to testify at the hearing.

C. The Chief Executive Officer shall exclude from the hearing room or from further participation in the proceedings any person who engages in improper conduct in relation to the hearing.

D. The Chief Executive Officer shall not be limited to the technical common law rules of evidence required in judicial proceedings but shall be satisfied the evidence submitted is of a type on which the Chief Executive Officer can rely. The Chief Executive Officer may exclude irrelevant, immaterial or unduly repetitious evidence.

E. All parties to the proceedings shall be permitted to present and cross-examine witnesses and to submit evidence, both oral and documentary. The burden of proof shall remain at all times on the appellant.

F. The Chief Executive Officer shall consider only evidence introduced during the hearing and there shall be no transcript of the hearing unless the Chief Executive Officer determines otherwise.

G. The Chief Executive Officer shall not consider matters not assigned as error in the original protest or matters outside the scope of the submission by the appellant.

12.6 Structure of the Appeal Hearing - The Chief Executive Officer shall conduct the hearing in the following manner. Prior to opening statements or the submission of proof by the appellant, the Chief Executive Officer may request that the Vice President, Racing Operations submit an explanation of the basis of his decision, along with whatever witnesses the Chief Executive Officer deems appropriate.

A. Opening Statements - The parties to the proceedings will be permitted to make opening statements, with the appellant making the first opening statement. Each party shall state the issue(s) before the Chief Executive Officer and a brief summary of the position of the party with respect to such issue(s).

B. Order of Proof - The evidence shall be received by the Chief Executive Officer in the following order:

(1) The appellant shall first submit and present evidence in support of the appeal. Upon the completion of direct examination, each witness shall be subject to cross-examination by the other parties and by the Chief Executive Officer.

(2) The other parties shall then be permitted to present evidence, and any witnesses presented shall be subject to cross-examination by the appellant, by other parties, and by the Chief Executive Officer.

C. Closing Arguments - Upon completion of the evidentiary portion of the hearing, all parties, beginning with the appellant, may make closing arguments.

12.7 Powers of the Chief Executive Officer - The Chief Executive Officer shall have the following powers:

A. To call, examine and cross-examine witnesses; to receive and rule upon relevant evidence; to regulate the course of the hearing and, if appropriate or necessary, to exclude persons or counsel for contemptuous conduct and to strike and disregard all testimony of witnesses refusing to answer proper questions; to dispose of procedural requests, motions or similar matters; to dismiss appeals or portions thereof; to require a party at any time to state its position concerning any issue in the appeal or its theory in support thereof; and to pronounce a just remedy within these Rules for the penalty, result or circumstance at issue.

B. To require the appellant to post an adequate bond to cover the costs of the appeal or any reasonable foreseeable economic harm to the IRL or other Members that might be caused by the appeal. If the Chief Executive Officer requires a bond, its form and substance shall be in the discretion of the Chief Executive Officer.

C. To order the appellant against whom a final decision is rendered to pay all costs and expenses, including attorneys' fees, incurred by the IRL and the other parties if the Chief Executive

Officer determines the appeal was frivolous; or to order the return of the appeal fee if the Chief Executive Officer determines such action to be appropriate.

D. To take any other action deemed appropriate for a just and expeditious conclusion of the hearing.

12.8 Determination of the Appeal – There is no deadline for the issuance of a decision by the Chief Executive Officer. The time frame will depend upon the nature of the appeal. It is anticipated that a decision will normally be issued within thirty (30) days.

12.9 Appeal Procedure Final - Decisions of the Officials on the interpretation of these Rules, scoring of positions and penalties shall be final and binding unless such decisions and penalties may be protested and/or appealed under these Rules, are protested and appealed within the time limitations and other procedures prescribed by these Rules, and such protests or appeals are pending. Any unappealed protest decision by the Vice President, Racing Operations or any appeal decision by the Chief Executive Officer on these or any other matters shall be final and binding. No court action of any kind may be taken. Any Member participating in an Event waives any rights such Member may otherwise have to be a party or to take any action in court seeking legal or equitable relief against any decision or action of any kind by the IRL or any Officials, and each Member acknowledges that participation in an Event by other Entrants, Drivers and Members is in part in reliance on this waiver. A Member's exclusive right to contest a decision or these Rules is within the protest and appeal procedure of the IRL, and any decision reached within this procedure is final and binding. If a Member initiates or participates in litigation in violation of the Rules, the Member agrees to reimburse the IRL and all of its affiliates for all costs of litigation, including travel expenses and attorneys' fees, and all membership privileges shall thereupon be suspended. The foregoing also applies if a Member initiates or participates in litigation unrelated to the administration of the Rules and the Member names the IRL as a party in the lawsuit and the IRL prevails, or the Member requests or compels the IRL's participation in a manner other than as a party to the lawsuit.

12.10 Compliance With Procedures - Any appeal which fails to comply with any of the foregoing requirements may be dismissed and disregarded. Any error not specifically raised in the protest or in appeal shall be deemed to have been waived.

12.11 Governing Law and Jurisdiction – These Rules shall be governed by and construed in accordance with the laws of the State of Indiana, including its choice of law provisions, and the Members submit to exclusive jurisdiction in Indianapolis, Indiana for any administrative or judicial proceedings. If any litigation involving a Member and the IRL is not dismissed pursuant to Rule 12.9, the Member agrees that the matter will be tried before a judge of competent jurisdiction and the Member hereby waives any right to trial by jury in such action.

* * *

INDY RACING LEAGUE 2002 HANDBOOK:

The relevant provisions of the Indy Racing League 2002 Handbook include the following:

GENERAL INFORMATION

* * *

This Handbook contains policies and procedures for all 2002 Indy Racing League Events. The Handbook supplements the 2002 Indy Racing League Official Rule Book.

* * *

RACE PROCEDURES AND OPERATIONS

* * *

Race Control Radio Frequency

The IRL requires that each Car have at least two (2) representatives who monitor the Race Control frequency (Rule 1.4(D), P.15). This must include each Car's spotter and a crew member who is located in the Entrant's assigned pit. The IRL will relay information via this channel directly to all Entrants through both group and individual instructions. The actual operations of the Event will take place over this frequency, as Race Control will be directing Entrants, pit tech officials, the pace car driver, and the Starter. . . Any Entrant or other Member who does not monitor the frequency will be held responsible for all matters discussed on such frequency, and is subject to penalty. Any Entrant failing to follow the directions of Race Control may be penalized.

* * *

2002 Entrant's License and Membership Application:

In order to participate in an Indy Racing League event as an Entrant, the race team must hold an IRL Entrant License. To obtain a license, a race team must submit a license application, and receive approval of its application from the IRL. Team Green and Penske Racing each submitted its 2002 Entrant's License and Membership Application, which was approved by the IRL. The License states in relevant part:

* * *

"Entrant acknowledges that Entrant has been provided with a copy of the 2002 Racing League Rule Book ("Rules") which is incorporated herein by reference, Entrant is familiar with the Rules, and Entrant agrees to abide by the Rules."

* * *

Official Indy Racing League Entry, Eighty-Sixth Annual International Sweepstakes Indianapolis 500 Mile Race:

In order to participate in any specific IRL event, the Entrant must submit an Entry for such event, and receive approval of its Entry. Team Green and Penske Racing each submitted its Official Indy Racing League Entry for the Eighty-Sixth Annual International Sweepstakes Indianapolis 500 Mile Race, which was approved by the IRL. The Entry states in relevant part:

* * *

10. **"Rules and Regulations.** Entrant understands and agrees that the 2002 Indy Racing League Rule Book, including all supplemental rules and regulations published by IRL for this Event ("Rules"), are incorporated by reference into this Entry and shall be considered a part of this Entry, and Entrant agrees to be bound thereby and by all decisions by IRL interpreting and applying the Rules. Entrant acknowledges that IRL and the Event Promoter have reserved and have the right to place additional rules and regulations into effect if, in the sole and absolute discretion of IRL and/or the Event Promoter, such additional rules and regulations become desirable. . . ."

* * *

12. **"Covenant Not To Sue.** Entrant, for itself and for Entrant Participants, covenants and agrees not to sue IRL, the Event Promoter, ACCUS-FIA, FIA, Indianapolis Motor Speedway Corporation, Indianapolis Motor Speedway, LLC, Race Participants, and their officers, members, agents, employees, representatives, and affiliates ("IRL Group") for any claim or liability arising from: (1) any alleged breach of contract; . . . or (3) any controversy that in any way involves interpretation or any application of the Rules, including an IRL ruling on a protest or appeal. Entrant also agrees that its only recourse with regard to the Rules is within the protest and appeal procedures of the Rules, and any decision of IRL is final. Entrant specifically agrees that this Covenant not to sue includes an equitable action to enjoin the Event or any activity associated with the Event."

* * *

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