

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X	
GOLDEN GATE YACHT CLUB,	:
	:
Plaintiff,	:
	: INDEX NO. 602446/07
v.	:
	: IAS Part 54
SOCIÉTÉ NAUTIQUE DE GENÈVE,	:
	: Hon. Shirley Werner Kornreich
Defendant,	:
	:
v.	:
	: AFFIRMATION OF
	: BARRY R. OSTRAGER
	:
CLUB NÁUTICO ESPAÑOL DE VELA,	:
	:
Intervenor-Defendant.	:
-----X	

BARRY R. OSTRAGER, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms under penalty of perjury:

1. I am a member of the firm Simpson Thacher & Bartlett LLP, counsel to Société Nautique de Genève (“SNG”) in the above-captioned action. I submit this Affirmation, in further support of SNG’s Order to Show Cause why an order should not be entered compelling Golden Gate Yacht Club (“GGYC”) to provide SNG with a Custom House registry of its challenge vessel described in its Notice of Challenge (and launched on August 25, 2008, and relaunched on July 6, 2009) within 14 days, or face disqualification.
2. Because this claim for relief is related to the order to show cause sought on July 14 by GGYC, SNG requests that this order to show cause be heard on the same schedule, with opposition papers due July 20, 2009 and a hearing set for July 21, 2009, at 10:00 am.
3. Attached hereto as Exhibit A is a true and correct copy of the Deed of Gift.

4. Attached hereto as Exhibit B is a true and correct copy of a letter from Marcus Young and Norbert Bajurin of GGYC to SNG, dated July 11, 2007, attaching GGYC's Notice of Challenge and GGYC's Certificate of Name, Rig, and Specified Dimensions of Challenging Vessel.

5. Attached hereto as Exhibit C is a true and correct copy of a letter from Fred Meyer and Alec Tournier of SNG to Marcus Young of GGYC, dated April 28, 2008.

6. Attached hereto as Exhibit D is a true and correct copy of a letter from Marcus Young of GGYC to Fred Meyer and Alec Tournier of SNG, dated April 29, 2008.

7. Attached hereto as Exhibit E is a true and correct copy of a letter from Fred Meyer and Alec Tournier of SNG to Marcus Young of GGYC, dated May 6, 2008.

8. Attached hereto as Exhibit F is a true and correct copy of a GGYC press release entitled "GGYC Statement on 'Custom-House Registry,'" dated May 20, 2008.

9. Attached hereto as Exhibit G is a true and correct copy of a letter from Fred Meyer and Alec Tournier of SNG to Marcus Young of GGYC, dated August 22, 2008.

10. Attached hereto as Exhibit H is a true and correct copy of a BMW Oracle Racing press release, "New boat hits the water," dated August 25, 2008.

11. Attached hereto as Exhibit I is a true and correct copy of a letter from Fred Meyer of SNG to Marcus Young GGYC, dated April 23, 2009.

12. Attached hereto as Exhibit J is a true and correct copy of a BMW Oracle Racing press release, "BMW Oracle Racing back on the water in San Diego," dated July 6, 2009.

13. Attached hereto as Exhibit K is a true and correct copy of an order of this Court, in the above captioned matter, dated May 26, 2009.

14. Attached hereto as Exhibit L is a true and correct copy of the Affidavit of Michael D. Drummond, dated May 11, 2009.

15. Attached hereto as Exhibit M is a true and correct copy of an article from the *Associated Press* entitled *BMW Oracle Racing refloats its America's Cup boat*, dated July 6, 2009, by Bernie Wilson.

16. Attached hereto as Exhibit N is a true and correct copy of Orders of this Court, in the above captioned matter, dated May 15, 2009.

17. Attached hereto as Exhibit O is a true and correct copy of a BMW Oracle Racing press release, "BMW Oracle Racing starts on-water testing program in San Diego," dated July 8, 2009.

18. Attached hereto as Exhibit P is a true and correct copy of an order of this Court, in the above captioned matter, dated May 1, 2009.

19. Attached hereto as Exhibit Q is a true and correct copy of the Transcript of a Hearing held before this Court, in the above captioned matter, on May 14, 2009.

20. No prior application for the same or similar relief has been made to this court.

Dated: July 15, 2009

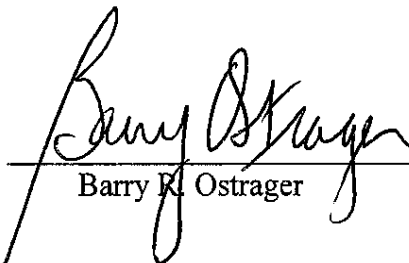
By: 
Barry R. Ostrager

EXHIBIT A

DEED OF GIFT

This Deed of Gift, made the twenty-fourth day of October, one thousand eight hundred and eighty-seven, between George L. Schuyler as sole surviving owner of the Cup won by the yacht AMERICA at Cowes, England, on the twenty-second day of August, one thousand eight hundred and fifty-one, of the first part, and the New York Yacht Club, of the second part, as amended by orders of the Supreme Court of the State of New York dated December 17, 1956, and April 5, 1985.

WITNESSETH

That the said party of the first part, for and in consideration of the premises and of the performance of the conditions and agreements hereinafter set forth by the party of the second part, has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over, unto said party of the second part, its successors and assigns, the Cup won by the schooner yacht AMERICA, at Cowes, England, upon the twenty-second day of August, 1851. To have and to hold the same to the said party of the second part, its successors and assigns, IN TRUST, NEVERTHELESS, for the following uses and purposes:

This Cup is donated upon the conditions that it shall be preserved as a perpetual Challenge Cup for friendly competition between foreign countries.

Any organized Yacht Club of a foreign country, incorporated, patented, or licensed by the legislature, admiralty, or other executive department, having for its annual regatta an ocean water course on the sea, or on an arm of the sea, or one which combines both, shall always be entitled to the right of sailing a match of this Cup, with a yacht or vessel propelled by sails only and constructed in the country to which the Challenging Club belongs, against any one yacht or vessel constructed in the country of the Club holding the Cup.

The competing yachts or vessels, if of one mast, shall be not less than forty-four feet nor more than ninety feet on the load water-line; if of more than one mast they shall be not less than eighty feet nor more than one hundred and fifteen feet on the load water-line.

The Challenging Club shall give ten months' notice, in writing, naming the days for the proposed races; but no race shall be sailed in the days intervening between November 1st and May 1st if the races are to be conducted in the Northern Hemisphere; and no race shall be sailed in the days intervening between May 1st and November 1st if the races are to be conducted in the Southern Hemisphere. Accompanying the ten months' notice of challenge there must be sent the name of the owner and a certificate of the name, rig and following dimensions of the challenging vessel, namely, length on load water-line; beam at load water-line and extreme beam; and draught of water; which dimensions shall not be

exceeded; and a custom-house registry of the vessel must also be sent as soon as possible. Center-board or sliding keel vessels shall always be allowed to compete in any race for this Cup, and no restriction nor limitation whatever shall be placed upon the use of such center-board or sliding keel, nor shall the center-board or sliding keel be considered a part of the vessel for any purposes of measurement.

The Club challenging for the Cup and the Club holding the same may, by mutual consent, make any arrangement satisfactory to both as to the dates, courses, number of trials, rules and sailing regulations, and any and all other conditions of the match, in which case also the ten months' notice may be waived.

In case the parties cannot mutually agree upon the terms of a match, then three races shall be sailed, and the winner of two of such races shall be entitled to the Cup. All such races shall be on ocean courses, free from headlands, as follows: The first race, twenty nautical miles to windward and return; the second race an equilateral triangular race of thirty-nine nautical miles, the first side of which shall be a beat to windward; the third race (if necessary) twenty nautical miles to windward and return; and one week day shall intervene between the conclusion of one race and the starting of the next race. These ocean courses shall be practicable in all parts for vessels of twenty-two feet draught of water, and shall be selected by the Club holding the Cup; and these races shall be sailed subject to its rules and sailing regulations so far as the same do not conflict with the provisions of this deed of gift, but without any times allowances whatever. The challenged Club shall not be required to name its representative vessel until at a time agreed upon for the start, but the vessel when named must compete in all the races, and each of such races must be completed within seven hours.

Should the Club holding the Cup be for any cause dissolved, the Cup shall be transferred to some Club of the same nationality, eligible to challenge under this deed of gift, in trust and subject to its provisions. In the event of the failure of such transfer within three months after such dissolution, such Cup shall revert to the preceding Club holding the same, and under the terms of this deed of gift. It is distinctly understood that the Cup is to be the property of the Club subject to the provisions of this deed, and not the property of the owner or owners of any vessel winning a match.

No vessel which has been defeated in a match for this Cup can be again selected by any Club as its representative until after a contest for it by some other vessel has intervened, or until after the expiration of two years from the time of such defeat. And when a challenge from a Club fulfilling all the conditions required by this instrument has been received, no other challenge can be considered until the pending event has been decided.

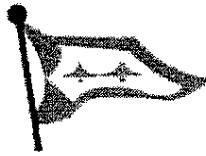
AND, the said party of the second part hereby accepts the said Cup subject to the said trust, terms, and conditions, and hereby covenants and agrees to and

with said party of the first part that it will faithfully and will fully see that the foregoing conditions are fully observed and complied with by any contestant for the said Cup during the holding thereof by it; and that it will assign, transfer, and deliver the said Cup to the foreign Yacht Club whose representative yacht shall have won the same in accordance with the foregoing terms and conditions, provided the said foreign Club shall, by instrument in writing lawfully executed, enter with said party of the second part into the like covenants as are herein entered into by it, such instrument to contain a like provision for the successive assignees to enter into the same covenants with their respective assignors, and to be executed in duplicate, one to be retained by each Club, and a copy thereof to be forwarded to the said party of the second part.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal, and the said party of the second part has caused its corporate seal to be affixed to these presents and the same to be signed by its Commodore and attested by its Secretary, the day and year first above written.

GEORGE L. SCHUYLER, (L.S.) In the presence of THE NEW YORK YACHT CLUB H. D. Hamilton. by Elbridge T. Gerry, Commodore (Seal of the New York Yacht Club) John H. Bird, Secretary

EXHIBIT B



GOLDEN GATE YACHT CLUB
#1 Yacht Road, San Francisco, California USA 94123

11 July 2007

The President
Société Nautique de Genève
Port Noir, Lake Geneva
Geneva, SWITZERLAND

Dear Sir:

Enclosed Challenge for the 33rd America's Cup

On 3 July 2007 Société Nautique de Genève (SNG) announced the acceptance of a challenge for the 33rd America's Cup from the Club Náutico Español de Vela (CNEV).

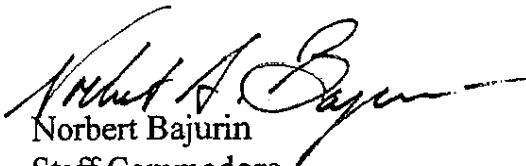
We respectfully submit that the challenge is invalid. Among other deficiencies, it is not from a *bona fide* yacht club, but from an entity organized in the form of a yacht club only a few days before the challenge was accepted by SNG and which has never had an annual regatta on an open water course on the sea or an arm of the sea as required by the Deed of Gift. It is also apparent that this "Challenger of Record" has not performed any of the duties of the Challenger as contemplated by the Deed of Gift, but has simply delegated to the Defender the authority to determine all of the "conditions" governing the match. This undermines the fundamental purpose of the Deed of Gift to preserve this competition as a Challenge Cup.

Attached is a *bona fide* challenge from the Golden Gate Yacht Club (GGYC). GGYC hereby demands recognition as the legitimate Challenger of Record for the 33rd America's Cup. GGYC is fully prepared to meet all of the obligations of the Challenger, as provided by the letter and spirit of the Deed of Gift, in accordance with the history and tradition of the oldest trophy in international sport.

Sincerely,

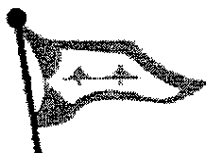
A handwritten signature in black ink, appearing to read 'Marcus Young', with a long horizontal line extending to the right.

Marcus Young
Commodore
Golden Gate Yacht Club

A handwritten signature in black ink, appearing to read 'Norbert Bajurin', with a long horizontal line extending to the right.

Norbert Bajurin
Staff Commodore
Golden Gate Yacht Club

enclosure



GOLDEN GATE YACHT CLUB
#1 Yacht Road, San Francisco, California USA 94123

11 July 2007

The President
Société Nautique de Genève
Port Noir, Lake Geneva
Geneva, SWITZERLAND

Dear Sir:

Notice of Challenge for the America's Cup

It is with much pleasure that the Golden Gate Yacht Club (GGYC) hereby formally challenges Société Nautique de Genève (SNG) to a match for the America's Cup.

This Notice of Challenge is given in accordance with the America's Cup Deed of Gift dated 24 October 1887 between George L Schuyler and the New York Yacht Club as amended by Orders of the Supreme Court of the State of New York dated 17 December 1956 and 5 April 1985.

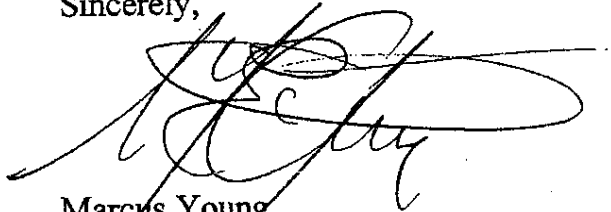
We are pleased to confirm that GGYC:

- (a) is incorporated in the United States of America, in the State of California;
- (b) maintains a membership of more than 200 members;
- (c) operates as a yacht club and has objectives consistent with the furtherance of yachting activities;
- (d) is a member of our national sailing authority, US SAILING; and
- (e) has an annual regatta, the Sea Weed Soup Perpetual Trophy that, among other GGYC regattas, is and has been held annually on an arm of the sea, namely San Francisco Bay.

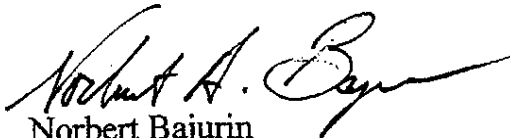
To comply with the requirements of the Deed of Gift that ten months' notice be given, and recognizing the period permitted by the Deed of Gift for a match in the Northern Hemisphere, we name 4 July 2008 as the date of the first race, 6 July 2008 and 8 July 2008 as the dates for the second and, if necessary, third races. GGYC acknowledges that the Deed of Gift contemplates negotiations between the Challenger and the Defender that may alter and supplement these terms, and nothing in this Challenge is intended to circumvent consensual negotiations in the spirit of the Deed of Gift toward a Protocol comparable in scope, and similar in terms, to that used for the 32nd America's Cup. However, should SNG be unwilling to participate in the establishment of a Protocol through a consensual process, then the match shall proceed as expressly set forth in the Deed of Gift.

Also in accordance with the requirements of the Deed of Gift, attached is the Certificate as to the name, rig and specified dimensions of the challenging vessel. The "Custom House" registry of the challenging vessel will be sent as soon as possible. It is again acknowledged that the dimensions of the challenging and defending vessel for the proposed match may be altered as a result of the consensual process contemplated in the Deed of Trust – provided that SNG is willing to engage in that process.

Sincerely,



Marcus Young
Commodore
Golden Gate Yacht Club



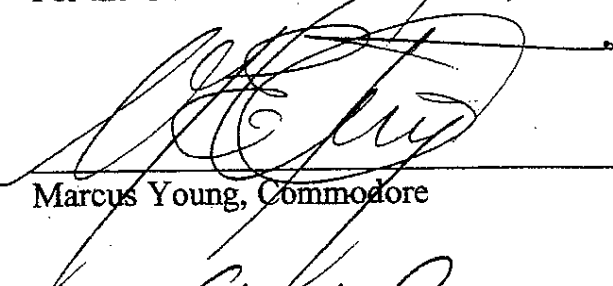
Norbert Bajurin
Staff Commodore
Golden Gate Yacht Club

**CERTIFICATE
OF NAME, RIG AND SPECIFIED DIMENSIONS OF
CHALLENGING VESSEL**

I, Commodore Marcus Young, certify the details set out below as to the name, rig and specified dimensions of the keel yacht to represent **Golden Gate Yacht Club** in a match for the America's Cup to be sailed in accordance with the Notice of Challenge herewith:

1. **Name:** *USA*
2. **Owner:** Oracle Racing, Inc.
3. **Rig:** Single-masted, sloop-rigged
4. **Dimensions:**
 - (a) Length on Load Waterline – 90 feet
 - (b) Beam at Load Waterline – 90 feet
 - (c) Extreme Beam – 90 feet
 - (d) Draught of water (hull draft) – 3 feet
 - (e) Draught of water (boards down) – 20 feet

For the **Golden Gate Yacht Club**,



Marcus Young, Commodore



Norbert Bajurin, Staff Commodore

EXHIBIT C



SOCIÉTÉ NAUTIQUE DE GENÈVE

28 April 2008

Marcus Young
Commodore
Golden Gate Yacht Club
#1 Yacht Road
San Francisco, California USA 94123

Dear Commodore,

As you know, the Deed of Gift expressly requires that, in addition to the delivery of a notice of challenge and a certificate specifying the challenging vessel, "a custom-house registry of the vessel must also be sent as soon as possible". Our records indicate that the Golden Gate Yacht Club still has not sent Société Nautique de Genève a custom-house registry nor any Coast Guard certificate of documentation, despite the fact that it has been over nine months since GGYC delivered its notice of challenge.

When Lucien Masméjan and Fred Meyer met on March 27, 2008 with GGYC's representatives, Russell Coultts and Tom Ehman, Mr. Coultts confirmed that GGYC and/or BMW Oracle had already started to build their challenge boat. GGYC has subsequently confirmed the same fact through press releases and other public announcements.

To the extent GGYC intends to pursue its claim to be challenger under the Deed of Gift, GGYC must comply with the Deed's requirement to provide SNG with a custom-house registry of the vessel named *USA* and specified in further detail in the certificate accompanying its July 11, 2007 notice of challenge. If it is GGYC's contention that it has not yet obtained such a registry, please describe the steps that GGYC has taken in order to obtain such registry. The Deed of Gift expressly requires this registry to be provided "as soon as possible". Furthermore, this was affirmed in the GGYC notice of challenge.

There is no reason preventing GGYC from obtaining such a certificate so that it can be provided to SNG "as soon as possible", as required by the Deed of Gift.

As GGYC is fully aware, a challenger's failure to comply with requirements under the Deed of Gift will render its challenge void. If GGYC persists in its non-compliance, SNG will have no choice but to consider the challenge of the first challenge received from a yacht club which is willing to comply with the Deed of Gift. We thus look forward to your prompt response.

In the meantime, SNG reserves its rights in all respects including in respect of Justice Cahn's declaration of GGYC as challenger of record.

Yours sincerely,


Fred Meyer
Vice-commodore
Société Nautique de Genève


Alpc Tournier
Secretary General
Société Nautique de Genève



EXHIBIT D

GOLDEN GATE YACHT CLUB



#1 Yacht Road, San Francisco, California 94123

April 29, 2008

<p>Fred Meyer Vice-commodore Société Nautique de Genève Port Noir CH-1223 Cologny Switzerland</p>	<p>Alec Tournier Secretary General Société Nautique de Genève Port-Noir CH-1223 Cologny Switzerland</p>
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Gentlemen:

I am writing in response to your letter dated 28 April, 2008. We are in full compliance with the requirements of the Deed of Gift, including without limitation with regard to the "custom-house registry." As the fiduciary trustee of the America's Cup under the Deed of Gift, you know, or should know, the procedures for obtaining a registry in the United States for a new vessel. Following that procedure, we are in communication with a U.S. Coast Guard approved measurement organization. We are following the customary process for obtaining the tonnage certificate and then the Certificate of Documentation from the U.S. Coast Guard, which we will provide as soon as possible. Finally, we reject the several other self-serving and erroneous assertions contained in your letter.

Sincerely yours,

GOLDEN GATE YACHT CLUB


Marcus Young
Commodore

EXHIBIT E



SOCIÉTÉ NAUTIQUE DE GENÈVE

May 6th, 2008

Marcus Young
Commodore
Golden Gate Yacht Club
#1 Yacht Road
San Francisco, California 94123

Dear Commodore,

I write in response to your letter dated April 29th, 2008.

GGYC acknowledges its obligation under the Deed of Gift to provide a custom-house registry of GGYC's challenging vessel, yet it is apparent from your letter that GGYC hopes it may comply with this requirement as and when it suits GGYC.

As you will be aware, up until the 1887 Deed it was a requirement that the custom-house registry be provided with the Notice of Challenge. Allowing it to be furnished as soon as possible afterward is a courtesy which may not be taken as a license to withhold this information for "as long as possible".

As GGYC itself has emphasized, it has been nearly 10 months since GGYC issued its purported challenge in July 2007. GGYC has throughout that time period failed to comply with the Deed of Gift's clearly stated requirement that a custom-house registry of the vessel be provided "as soon as possible".

We reiterate our April 28th request that GGYC provide a full and complete explanation of the steps GGYC has taken in complying with its obligation to apply for, obtain and provide to SNG the Coast Guard certificate of documentation of its challenge vessel, which vessel GGYC has confirmed, has been under construction for quite some time.

Absent GGYC's prompt compliance with the Deed of Gift, including without limitation its provision of a full and complete copy of the Coast Guard certificate of documentation for its challenge vessel named *USA* currently under construction, SNG will have no choice but to seek appropriate recourse and ensure that the terms of the Deed of Gift are fulfilled.

Yours sincerely,


Fred Meyer
Vice-commodore
Société Nautique de Genève


Alec Tournier
Secretary General
Société Nautique de Genève

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05/06/2008 3.16 PM

EXHIBIT F



GOLDEN GATE YACHT CLUB

#1 Yacht Road, San Francisco, California USA 94123

GGYC Statement on "Custom-House Registry"

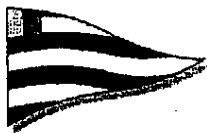
(Updated 20 May 2008)

We are in full compliance with the requirements of the Deed of Gift, including with regard to the "custom-house registry." We are following the customary process for obtaining the tonnage certificate and then the Certificate of Documentation from the U.S. Coast Guard which we will provide as soon as possible. This has no bearing on Alinghi's ability to get ready to race.

The Société Nautique de Genève (SNG) letter of April 28, 2008, GGYC's reply of April 29, SNG's subsequent letter of May 6, and GGYC's subsequent reply of May 19 are posted below.

- Ends -

EXHIBIT G



SOCIÉTÉ NAUTIQUE DE GENÈVE

August 22nd, 2008

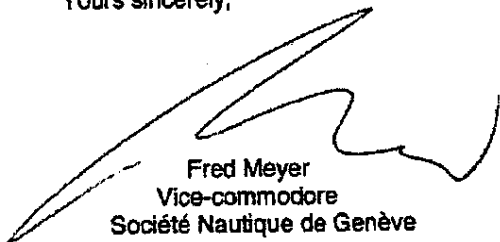
Marcus Young
Commodore
Golden Gate Yacht Club
#1 Yacht Road
San Francisco, California 94123

Dear Commodore,


We understand that GGYC continues to contend that it is the proper Challenger of Record for the 33rd America's Cup, notwithstanding the decision of the Appellate Division, First Department, of the New York State Supreme Court holding CNEV's challenge to be valid and proper under the Deed of Gift. As GGYC remains in breach of the Deed of Gift's express requirement that it provide the Defender with a custom house registry of its challenge vessel "as soon as possible", we request GGYC either to send the custom house registry of its challenge vessel or to withdraw their claim in the New York court. In light of the fact that GGYC's notice of challenge proposed a race to have been held *last month* (July 2008), there is no legitimate basis for GGYC not to have both obtained and provided to SNG such documentation before that date.

To the extent that GGYC continues its baseless claim to be Challenger of Record, SNG reiterates its demand that GGYC cure its non-compliance with the Deed of Gift. GGYC advised over three months ago in April 2008 that it was in the process of obtaining a Coast Guard Certificate of Documentation for the challenge vessel named *USA* specified in its Notice of Challenge, and Russell Coutts has recently stated in several interviews to the media that this vessel will be launched on the water at the beginning of next month. Thus, there is no reason whatsoever that a full and complete copy of the Certificate of Documentation for GGYC's challenge vessel cannot be provided "as soon as possible" as expressed by the Deed of Gift.

Yours sincerely,



Fred Meyer
Vice-commodore
Société Nautique de Genève

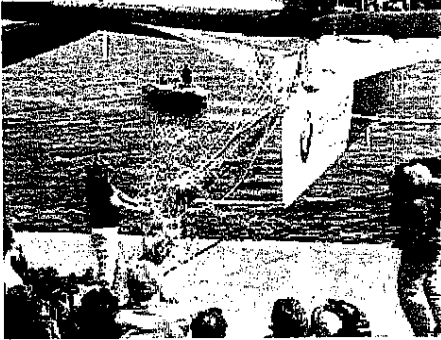


Alec Tournier
General Secretary
Société Nautique de Genève



EXHIBIT H

- Overview
- Current
- Archive
- Results
- Live Ticker



25.08.2008 CET

New boat hits the water.

BMW ORACLE Racing's new 90-foot multihull yacht touched water for the first time today and the trimaran was commissioned with the traditional bottle of champagne smashed across the bow.

In a team gathering at the water's edge, the carbon fiber boat was lowered into Fidalgo Bay in front of the boat yard where it was constructed on the Anacortes waterfront. Melinda Erkelens, Golden Gate Yacht Club board member and BMW ORACLE Racing team member, broke a bottle of Moët et Chandon as she commissioned the new BMW ORACLE Racing 90.

"We have learned a lot and developed a lot of new technology in building this boat and I'm really looking forward to testing it on the water," said team CEO and Skipper Russell Coutts. "It is going to be an interesting challenge and we will need to build up slowly and carefully to testing its full potential," Coutts said.

The team expects sea trials to begin in early September once the fit-out is complete and structural load tests are conducted dockside.

The team partnered with Van Peteghem and Lauriot Prévost (VPLP) of France and one of the most successful skippers in multihull racing, Franck Cammas, to design the innovative trimaran.

Led by Mark Turner and Tim Smyth, the BMW ORACLE Racing construction team has worked in a purpose-built composite yacht construction facility housed in a 100-foot x 200-foot, three-story shed. Janicki Industries in nearby Sedro-Woolley provided high-tech precision tooling.

Bringing unique technological competence and setting new standards in the area of intelligent lightweight design, BMW has been a key partner in developing the boat. BMW aeronautical engineers, Christoph Erbeling and Thomas Hahn, have stayed with the design team since the 32nd campaign providing unique expertise in finite element analysis, which is a key tool for fulfilling EfficientDynamics requirements in the automotive

industry.

The yacht is a key element of the team's preparation for the next America's Cup, representing San Francisco's Golden Gate Yacht Club (GGYC), on which a ruling is expected from the New York State Court of Appeals in the next six months.

Related Box

More News.

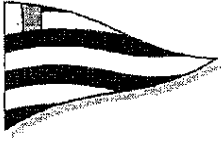
12.07.2009

RC 44 Malcesine Cup - Podium Finish in Fleet Racing.

11.07.2009

RC 44 Malcesine Cup - Fleet Racing, Day Two.

EXHIBIT I



SOCIÉTÉ NAUTIQUE DE GENÈVE

Mr Marcus Young
Commodore
The Golden Gate Yacht Club
1 Yacht Road
San Francisco
California 94123
USA

23 April 2009

33rd America's Cup

Dear Commodore

We are writing to you following the second meeting we had with representatives of your Yacht Club at SNG on April 23, 2009.

Contrary to what you indicated in your letter dated April 7, 2009, you have unilaterally elected to breach the confidentiality of our discussions and decided to make public all your letters and proposals. We deeply regret it as this is not in the spirit of positive discussions and negotiations.

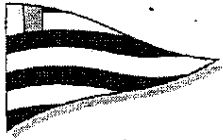
At this stage and as condition for any further mutual agreement discussions, we request that you finally declare your challenging vessel.

On July 11, 2007, you issued a Certificate of Name, Rig and specified Dimensions of a 90 by 90 feet keel yacht named USA. Although your Certificate was referring to a keel yacht, you kept the position throughout the Court proceedings that the Certificate was indeed referring to a multi-hull vessel. As a consequence, Justice Cahn ruled in your favour in two orders, dated March 17, 2008 and May 12, 2008, which have now both entered in force.

At the first meeting that was held with regard to your challenge at SNG on March 27, 2008, your representatives, Mr. Russell Coutts and Mr. Tom Ehman, insisted on setting an early date in October 2008 for us to race your challenging vessel. They indicated that such vessel was well under construction and that it was going to be launched soon. This was confirmed by a press release issued by BMW Oracle Racing on April 9, 2008.

As a consequence, we required you to deliver the Custom House Registry Certificate and in a letter of April 29, 2008, you indicated that you "were in communication with a US Coast Guard approved measurement organization" and that you were "following the customary process for obtaining the tonnage certificate and then the Certificate of Documentation from the US Coast Guard". You confirmed this again in your letter of 19th May 2008.





SOCIÉTÉ NAUTIQUE DE GENÈVE

In your press statements and letters of August 2008, we could read that your challenging vessel had "touched water" and that it was a giant trimaran, which had a waterline beam and length as per your Certificate. However, and contrarily to what you promised, you still have not delivered the Custom's House Registry Certificate and you keep referring in some of your letters to a mono-hull keel yacht.

We now require you to confirm in good faith that the boat that you have launched on August 22, 2008 in Anacortes (USA), is the vessel described in your Certificate dated July 11, 2007, and named USA and we invite you to deliver immediately the corresponding Custom House Registry.

We further draw your attention to the fact that – based on your Certificate and your aforementioned declarations – we have been building a giant multi-hull to meet your challenge on the water. We did so in good faith based on the aforementioned declarations and we have assumed that you were acting like us in good faith. If it were proven not to be the case, we would have to reserve the right to claim for the damages arising for our Yacht Club.

We now assume that you will declare your boat in the coming days and we confirm that we are happy to discuss with you any other issue related to the Match for the America's Cup including the organisation of a Challenger Selection Series and a reasonable extension of time to allow challengers an opportunity to prepare.

At this stage, we wish to confirm arrangements for the 33rd America's Cup, if no further mutual agreement can be reached and it had to be conducted under the default terms of the Deed of Gift. We have been guided by the terms of your notice of challenge, the Deed of Gift and the rulings of the New York Courts. We advise as follows:

1. It is our intention to meet you on the water in accordance with the terms of the Deed. To accomplish this, we will adhere strictly to all aspects of your notice of challenge dated 11 July 2007, the Deed and the decisions of the Courts.
2. Our vessel, if of one mast, shall be not less than forty-four (44) feet nor more than ninety (90) feet on the load water-line; if of more than one mast it shall not be less than eighty (80) feet nor more than one hundred and fifteen (115) feet on the load water-line.
3. In accordance with your notice of challenge which specified Match dates for a Northern Hemisphere venue and given both clubs are situated in the Northern Hemisphere, you are advised that Société Nautique de Genève will select a venue in the Northern Hemisphere, with the consequence that pursuant to the express terms of the Deed under which we are both bound, the scheduled dates for the match shall be 3 May 2010 for the first race, 5 May 2010 for the second race and if required 7 May 2010 for the third race. In any case, one (1) week day shall intervene between the conclusion of one (1) race and the start of the next race. These dates are the very earliest dates permitted for the Match by the Deed after expiry of your tolled 10 month notice period.





SOCIÉTÉ NAUTIQUE DE GENÈVE

4. Three (3) races shall be sailed and the winner of two (2) of such races shall be entitled to the Cup. All such races shall be on ocean courses, which may include a venue in the Mediterranean, Baltic, North, Red, Black or other similar Sea, free from headlands, as follows:

The first race twenty (20) nautical miles to windward and return; the second race an equilateral triangular race of thirty nine (39) nautical miles, the first leg of which shall be a beat to windward; the third race (if necessary) twenty (20) nautical miles to windward and return.

5. These ocean courses shall be practicable in all parts for vessels of twenty two (22) feet draught of water and shall be selected by the America's Cup Committee of Société Nautique de Genève. The Committee will undertake a selection process over the next several months and will announce its decision not later than six months prior to the Match.
6. The races shall be sailed subject to such rules and sailing regulations as may now or hereafter be promulgated by the Société Nautique de Genève, so far as they do not conflict with the provisions of the Deed of Gift. No time allowances shall be permitted.
7. The representative vessel of the Société Nautique de Genève shall be named at the time agreed upon for the start of the Match. This vessel shall be of such dimensions as are consistent with the Deed of Gift. All design and construction elements, including such items as number of hulls and particulars of rigging, shall be of our choosing.
8. Société Nautique de Genève may adopt regulations clarifying and implementing the provisions of the Deed of Gift related to measurement of the challenging vessel and its compliance with the notice of challenge. We will promptly advise you of the adoption of any such regulations.

We look forward to racing in the 33rd America's Cup and if successful we hope to welcome a challenger for the 34th America's Cup, providing for an open multi challenger event where the cost of competition allows all competitors a realistic chance of winning.


Fred Meyer

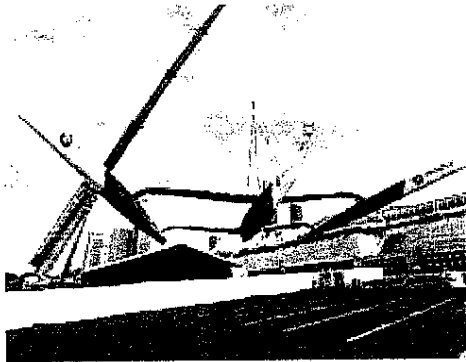
Vice-Commodore and Chairman of America's Cup Committee



EXHIBIT J

- Overview
- Current
- Archive
- Results
- Live Ticker

06.07.2009 CET



BMW ORACLE Racing back on the water in San Diego.

BMW ORACLE Racing today launched their trimaran in San Diego as the team prepares to sea trial the 90-foot by 90-foot high-tech racing machine. The mast will be installed dockside and the boat will be load-tested before the huge multihull is tested by the crew in the waters off Point Loma.

"We are really excited to get out on the water," said helmsman James Spithill (AUS). "We still have plenty to do to complete sea trials and be ready for the America's Cup in February so every day counts. It is only seven months until the America's Cup so we are now in the home stretch."

BMW ORACLE Racing is the Challenger for the 33rd America's Cup. The team will meet the Swiss Defender Alinghi in a best two-of-three head-to-head duel starting February 8. The venue for the competition will be named by the Defender by August 8.

The team will test the trimaran in San Diego this summer.

"This is cutting-edge technology and sailing. We look forward to testing how fast is fast," said Spithill.

Related Box

More News.

12.07.2009

RC 44 Malcesine Cup - Podium Finish in Fleet Racing.

11.07.2009

RC 44 Malcesine Cup - Fleet Racing, Day Two.

EXHIBIT K

COMMERCIAL DIVISION
NEW YORK COUNTY SUPREME COURT

PRESENT: Hon.

JUSTICE SHIRLEY WERNER KORNREICH

Justice

Part 54

Index No. 602446/07

-----X
Golden Gate Yacht Club,

Plaintiff,

- against -

ORDER OF REFERENCE TO
ALTERNATIVE DISPUTE
RESOLUTION

Societe Nautique de Amerique,
Defendant.
-----X

This matter having come before the Court on May 17, 2009 and due deliberation having been had, it is hereby ORDERED that

(1) This case is referred to the Alternative Dispute Resolution Program of the Commercial Division; (2) an alternative dispute resolution proceeding shall be conducted in accordance with the Program's Rules; and (3) proceedings in this action, including discovery and motion practice, shall not be stayed unless the undersigned Justice has initialed the box below:

All proceedings shall be stayed during the ADR process.

In the event the ADR proceeding fails to resolve this case, the parties shall appear for a conference with the court on _____ at _____ AM/PM.

Dated: 5/26/09

[Signature]

J.S.C.

EXHIBIT L

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Golden Gate Yacht Club,

Plaintiff,

v.

Societe Nautique de Geneve,

Defendant,

Club Nautico Espanol de Vela,

Intervenor-Defendant.

Index No. 602446/07

AFFIDAVIT OF MICHAEL D.
DRUMMOND

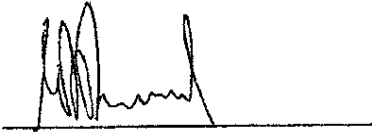
VALENCIA, SPAIN) ss.:

MICHAEL D. DRUMMOND, being duly sworn, deposes and says:

1. I am over 18 years old and have personal knowledge of the facts set forth in this affidavit.
2. I am a member of the design team building Golden Gate Yacht Club's ("GGYC") America's Cup challenge vessel, as described in its Notice of Challenge with accompanying Certificate of Challenging Vessel. Construction of GGYC's challenge vessel has not been completed.
3. The boat that began sea trials in August 2008, referenced in Societe Nautique de Geneve's cross-motion dated April 30, 2009, has been since March 2009 taken apart.
4. Based on a construction schedule premised on a February 2010 race date, completion of GGYC's challenge vessel is expected to occur this summer.



DATED: May 11, 2009



Michael D. Drummond

Pasaporte de Nueva Zelanda nº AB295218.-----

LEGITIMACIÓN: En Valencia, mi residencia a once de Mayo de dos mil nueve.-----

Yo, JOSE-MANUEL FUERTES VIDAL, Notario del Ilustre Colegio de Valencia.-----

DOY FE de que la firma que precede, es la perteneciente a Don Michel-David Drummond, con Pasaporte de su nacionalidad número AB295218. Dicha firma ha sido puesta en mi presencia, y así resulta del Acta número 865/09 del Protocolo, autorizada por mí el día de hoy conforme al artículo 207,2,2ª del Reglamento Notarial.-----

En dicha acta, Don Michel-David Drummond declara conocer el contenido del documento, cuya firma aquí se legitima y quiere que produzca los efectos que le sean aplicables conforme a lo previsto en la legislación de Estados Unidos.---

Libro Indicador 329/2009.-----

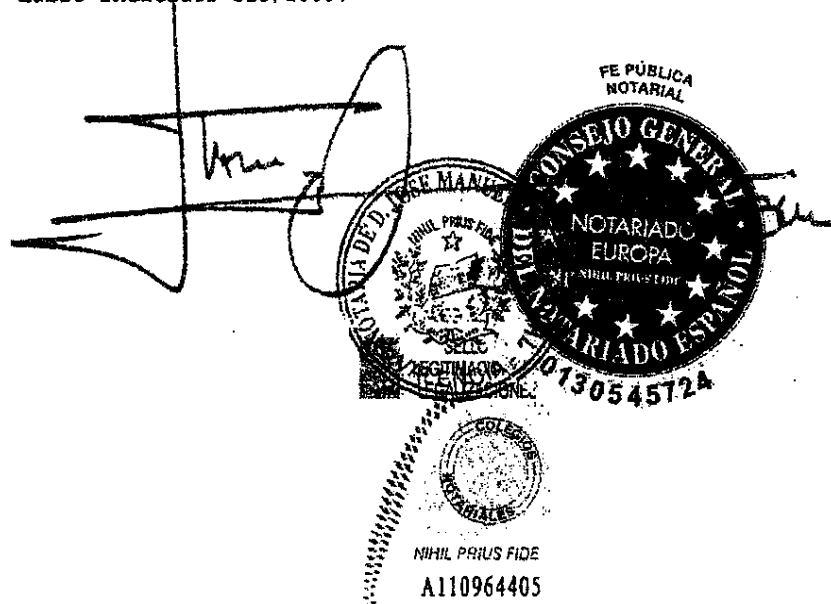


EXHIBIT M



Next ▶

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The Associated Press State & Local Wire

July 6, 2009 Monday 10:13 PM GMT

SECTION: SPORTS NEWS

LENGTH: 575 words

HEADLINE: BMW Oracle Racing refloats its America's Cup boat

BYLINE: By BERNIE WILSON, AP Sports Writer

DATELINE: SAN DIEGO

BODY:

From San Diego Bay to Lake Geneva, it's going to be a busy week for the bitter rivals set to sail for the **America's Cup** in February.

The challenger, BMW Oracle Racing of San Francisco, relaunched its massive trimaran on Monday after the carbon-fiber boat was significantly modified during the last four months.

The space age-looking craft, which is 90 feet long and wide, was moved by crane from a temporary boatshed to its berth on San Diego Bay. It will be refitted with its mast before being load-tested to make sure it's seaworthy. Sailing on the Pacific Ocean is scheduled to resume later this week.

"This is cutting-edge technology and sailing. We look forward to testing how fast is fast," helmsman James Spithill said in a statement.

BMW Oracle Racing is scheduled to face two-time defending America's Cup champion Alinghi of Switzerland in a best-of-3 series starting Feb. 8 for the oldest trophy in international sports.

Whether this boat, known as BOR 90, is the boat that will face Alinghi remains to be seen. BMW Oracle Racing, owned by software tycoon and sailor Larry Ellison, has refused to confirm or deny reports it is building a second boat. Ellison is believed to have spent between \$10 million and \$20 million on the boat that was relaunched Monday.

If BMW Oracle Racing is building a new trimaran, the current one would at least serve as a sparring partner.

Early Wednesday morning, with the Alps as a backdrop, a giant helicopter is scheduled to lift Alinghi's equally exotic-looking catamaran from a boatyard in Villeneuve and launch it on Lake Geneva. The Swiss cat, which has been described as resembling a praying mantis, is 90 feet on the waterline and reportedly has a bowsprit that makes it 120 feet overall. It's believed to be not quite 90 feet wide.

The rare one-on-one showdown is the result of a convoluted, two-year court fight in which the American syndicate's backing yacht club was declared the rightful Challenger of Record.

Alinghi gets to pick the venue. A decision is due by Aug. 8, six months before the first race. The Swiss reportedly are considering Abu Dhabi, United Arab Emirates, apparently feeling their catamaran would excel there in light wind and flat water.

With the size and speed of the giant multihulls, it could be the most spectacular racing in the 158-year history of the America's Cup.

BMW Oracle Racing's trimaran is capable of sailing 2 to 2 1/2 times the speed of the wind. Its mast is as high as a 16-story building and the mainsail is twice the size of a Boeing 747's wing. The boat's three hulls would cover the diamond on a major league baseball field, and are just shorter than an NBA court.

Boats that size can be lethal, too. BMW Oracle Racing's sailors have been cautious while sailing their big boat, including wearing crash helmets and life vests, hardly the normal America's Cup attire.

BMW's sailors are en route to San Diego to resume testing the trimaran. The outer hulls, or floats, appear to have been significantly reshaped.

"We are really excited to get out on the water," Spithill said. "We still have plenty to do to complete sea trials and be ready for the America's Cup in February so every day counts. It is only seven months until the America's Cup so we are now in the home stretch."

The trimaran was launched late last summer in Anacortes, Wash., and underwent initial sea trials on Puget Sound. It was barged to San Diego and underwent two testing sessions on the Pacific Ocean.

LOAD-DATE: July 7, 2009

Next ►

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EXHIBIT N

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Kornreich
Justice

PART 54

Golden Gate Yacht Club

INDEX NO. 602446 109

MOTION DATE _____

- v -

MOTION SEQ. NO. 007

Societe Navitique de

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

RECEIVED
MAY 15 2009
JAS. MOTION SUPREME COURT - CLERK

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with the decision of the court on the May 14/09 heard

FILED

MAY 18 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 5/14/09

JUSTICE SHIRLEY WERNER KORNREICH

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Kornreich
Justice

PART 54m

Golden Gate Yacht Club

INDEX NO. 602446/07

MOTION DATE _____

- v -

MOTION SEQ. NO. 008

Societe Navifique et al

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the decision/order of the court on the May 14/09. *Need*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
MAY 18 2009
COUNTY CLERK'S OFFICE
NEW YORK

RECEIVED
MAY 15 2009
JAS MOTION SUPPORT OFFICE
FIRST SUPREME COURT CIVIL

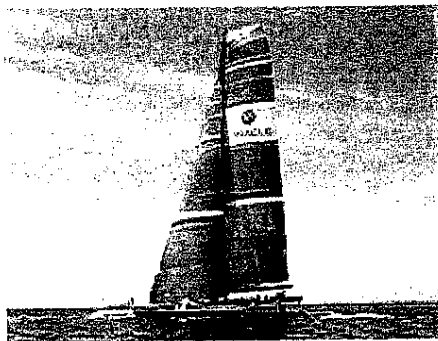
Dated: 5/14/09

JUSTICE SHIRLEY WERNER KORNREICH
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST

EXHIBIT O

- Overview
- Current
- Archive
- Results
- Live Ticker



08.07.2009 CET

BMW ORACLE Racing starts on-water testing program in San Diego.

BMW ORACLE Racing today started sea trials of their 90-foot by 90-foot high-tech racing machine in the waters off Point Loma in San Diego.

Helmsman James Spithill (AUS) guided the newly modified BOR 90 trimaran off the dock at 11:30am sharp local time. The 16-story mast was installed on Monday and on Tuesday the team conducted a series of engineering tests to ensure the boat was ready to take to the water for the next phase of sea trials.

The team will ease into this next round of testing as structural and other tests continue on the water. "As we gain more confidence with the boat, we'll certainly be out there pushing it and seeing what we can get out of it," Spithill said.

"It's breaking new ground," says the team's 30-year-old helmsman. "This has never been done before, so it's an incredible opportunity for the sailors on both teams, and all the people involved; designers, builders. These boats have the most amazing power-to-weight ratio. There's nothing else that's ever been done on this sort of scale."

BMW ORACLE Racing is the Challenger for the 33rd America's Cup. The team will meet the Swiss Defender Alinghi in a best two-of-three head-to-head duel starting February 8. The venue for the competition will be named by the Defender by August 8.

Related Box

More News.

12.07.2009

RC 44 Malcesine Cup - Podium Finish in Fleet Racing.

11.07.2009

RC 44 Malcesine Cup - Fleet Racing, Day Two.

EXHIBIT P

APPROVED

COMMERCIAL DIVISION
SUPPORT OFFICE

MOT X-MOT

[Handwritten Signature]
CLERK'S
INITIALS

PRESENT:

At Commercial Division Part 54, of the
Supreme Court of the State of New York,
held in and for the County of New York, at
the Courthouse located at 60 Centre Street,
New York, New York, on 1st day of
~~April~~, 2009.

MAY

HON: SHIRLEY WERNER KORNREICH, JUSTICE

MOTION SEQUENCE # 008

-----x
:
GOLDEN GATE YACHT CLUB,
:
:
Plaintiff,
:
:
v.
:
:
SOCIÉTÉ NAUTIQUE DE GENÈVE,
:
:
Defendant,
:
:
v.
:
:
CLUB NÁUTICO ESPAÑOL DE VELA,
:
:
Intervenor-Defendant.
:
-----x

Index No. 602446/07

IAS Part 54

Hon. Shirley Werner Kornreich

ORDER TO SHOW CAUSE

Upon reading and filing the annexed affirmation of Barry R. Ostrager, dated April 30, 2009, and the exhibits attached thereto, including the accompanying memorandum of law, dated April 30, 2009 and upon all prior papers and proceedings had herein, it is hereby

ORDERED that Golden Gate Yacht Club ("GGYC"), or its attorneys, show cause before this Court, at Commercial Division Part 54, Room 418, at the New York County Courthouse, 60 Centre Street, New York, New York 10007, on the 14th day of May, 2009 at 9:30 o'clock of that day, or as soon thereafter as counsel can be heard, why an order should not be entered disqualifying GGYC as the Challenger of Record for failure to provide a Custom House

This document has
NOT been
E-Filed

registry of its challenge vessel as required by the Deed of Gift governing the America's Cup, or in the alternative, compelling GGYC to provide Société Nautique de Genève ("SNG") with a Custom House registry of its challenge vessel described in its Notice of Challenge (and launched on August 25, 2008) within 30 days, and granting such other and further relief as the Court deems just and proper; and it is further

ORDERED, that GGYC shall serve and file any opposing affidavits and memoranda no later than the 11th day of May, 2009; and it is further

ORDERED that delivery of a copy of this Order to Show Cause, together with the papers upon which it is based, shall be served by personal service and electronic mail upon Lathan & Watkins LLP, Attn: James V. Kearney, as Counsel for GGYC, at its offices located at 885 Third Avenue, Suite 1000, New York, New York 10022

(James.Kearney@lw.com), on or before the ^{noon or 11} 4 day of ^{May} 2009, shall be good and sufficient service.

ENTER:


J.S.C.
JUSTICE SHIRLEY WERNER KORNREICH

**ORAL ARGUMENT
DIRECTED**


J.S.C.

EXHIBIT Q

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 54

----- X

GOLDEN GATE YACHT CLUB,
Plaintiff,
- against -

SOCIETE NAUTIQUE DE GENEVE,
Defendant.

----- X

CLUB NAUTICO ESPANOL DE VELA,
Intervenor-Defendant.

----- -X

Index No. 602446/07
May 14, 2009
Motion
60 Centre Street
New York, New York

BEFORE:
HONORABLE SHIRLEY WERNER KORNREICH,
Justice.

APPEARANCES:
LATHAM & WATKINS, LLP
Attorneys for the Plaintiff
53rd at Third
885 Third Avenue
New York, New York 10022-4864
BY: JAMES V. KEARNEY, ESQ.,
Of Counsel

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SIMPSON THACHER & BARTLETT LLP
Attorneys for the Defendant
425 Lexington Avenue
New York, New York 10017-3954
BY: BARRY R. OSTRAGER, ESQ.
JONATHAN K. YOUNGWOOD, ESQ.
GEORGE S. WANG, ESQ.
Of Counsel

BARBARA STROH, CSR, CRR, CMR
OFFICIAL COURT REPORTER

‡

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Proceedings

THE COURT: I'm going to -- I'm going to hear
from Golden Gate first, since the first application was
Golden Gate.

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Am I correct?

MR. KEARNEY: Yes, your Honor.

THE COURT: The application is, basically, it is an application for contempt in terms of when the race, the American Cup Race, is to be run.

MR. KEARNEY: Yes, your Honor.

THE COURT: Okay. There does seem to be an issue with regard to the deed, which requires that the race not be run between November 1 and May.

Am I correct?

MR. KEARNEY: That's an issue that's been raised, yes, your Honor.

THE COURT: What's your argument?

MR. KEARNEY: It's that that issue was raised in the trial court before the order and judgment of Justice Cahn originally.

THE COURT: But it was at a different time period at that point, was it not?

MR. KEARNEY: No, it was not, your Honor. It was precisely the same issue, and Justice Cahn resolved it in the May 12 opinion and order.

Prior to the May 12 opinion and order, May 12

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Proceedings

of 2008 -- this litigation is going on so long, we've got to get the years right.

Prior to that order, SNG raised this issue, precisely this same issue four different times, and we have cited in our affirmation and put into our affirmation their letters and memos where they raise it precisely.

9 Justice Cahn looked at that, and Justice Cahn
10 said -- ordered, rather, that the race date would be
11 ten months after notice of entry of his order.

12 THE COURT: I understand, but what date would
13 that have been?

14 MR. KEARNEY: When he did that, he understood
15 that ten months from May 12 would put the race into the
16 winter months, so to speak.

17 THE COURT: I believe it was October, wasn't
18 it?

19 MR. KEARNEY: No, it would put the race into,
20 I believe, March, which was still in the northern
21 hemisphere during the wintertime.

22 THE COURT: That's right. So I don't think
23 that issue came up before Justice Cahn because it did
24 not conflict with the deed at that point.

25 MR. KEARNEY: Well, let me explain why that's
26 not correct, your Honor.

‡

5

1 Proceedings

2 It did precisely come up before Justice Cahn,
3 and the reason is this: The argument was made that the
4 race could not be conducted in Valencia in the
5 wintertime from November to May.

6 THE COURT: Right.

7 MR. KEARNEY: That argument was made to
8 Justice Cahn.

9 Justice Cahn then issued an order, and he had
10 a decision, but he issued an order on May 12, and the
11 order said that this race will occur ten months from

12 now, which puts it into March, which counsel argues,
13 and argued at the time, was in contravention of the
14 deed.

15 Justice Cahn also said that the race will
16 occur in Valencia, which had been litigated as well.
17 That was an order of this court, your Honor.

18 What happened next?

19 THE COURT: Is it your position that it is to
20 take place in Valencia now?

21 MR. KEARNEY: It's our position that --

22 THE COURT: Or is it -- because I read in your
23 papers that you would not -- that you would be amenable
24 to a southern hemisphere race.

25 MR. KEARNEY: Absolutely. It's our position,
26 your Honor --

6

1 Proceedings

2 THE COURT: So that goes against what Justice
3 Cahn said, then.

4 MR. KEARNEY: No, it does not. Let me explain
5 why, if I can.

6 THE COURT: Yes.

7 MR. KEARNEY: The order says that the race
8 should occur and the location of the race should be
9 Valencia or any other venue selected by SNG, which is
10 consistent with the deed, right?

11 THE COURT: Right.

12 MR. KEARNEY: So the conflict that you're
13 referring to can be completely resolved. It's not an
14 irreconcilable conflict, assuming that there is one.

15 It can be completely resolved by SNG, by the
Page 5

16 trustee simply deciding to have the February race in a
17 southern hemisphere.

18 Then there is no conflict. The trustee would
19 be abiding by that provision of the judge's order.

20 THE COURT: I understand that, but you earlier
21 said that Justice Cahn in his decision, in his order
22 said that it was to take place, the race was to take
23 place in Valencia.

24 MR. KEARNEY: well, Justice Cahn said it will
25 take place in Valencia unless SNG decides to have it
26 someplace else.

7

1 Proceedings

2 So Justice Cahn is saying that the race can be
3 in Valencia, and it can be in Valencia during the
4 winter months. He's saying that after the same issues
5 about conflict had been presented.

6 Let me put this out: Then that order and
7 judgment was appealed to the Appellate Division and the
8 Court of Appeals. SNG decides which arguments they're
9 going to make, all right?

10 They attack that judgment on a whole lot of
11 arguments, okay? And the Court of Appeals has ruled,
12 and the Court of Appeals has issued a mandate to this
13 court that this court enforce the judgment, all right?

14 The court, I would respectfully submit, has no
15 authority to do anything other than to enforce the
16 judgment.

17 I direct the court to the Mount Sinai decision
18 we have in our brief, which is --

19 THE COURT: The Davis case.

20 MR. KEARNEY: Pardon?

21 THE COURT: Was it Mount Sinai, Davis?

22 MR. KEARNEY: It stands for this

23 proposition -- it stands for this proposition: That
24 is, that in the present posture of this case, counsel
25 --the court cannot entertain counsel's arguments that
26 the decision was wrong, the order was wrong.

8

1 Proceedings

2 That Mount Sinai case makes it clear that
3 counsel can't come and argue to a separate judge in the
4 same court what they already argued before Justice
5 Cahn.

6 They can't, in essence, appeal again the
7 judgment order that they already appealed all the way
8 up to Albany, which is exactly what is happening here.
9 They're coming back and asking for a do-over, let's do
10 a do-over. Let's try these arguments again.

11 THE COURT: By the same token, the two of you
12 can decide and determine when the race should be. It
13 can be changed, that date can be changed, on consent,
14 can it not?

15 MR. KEARNEY: That's exactly right. The two
16 of us can. But here's the rub, your Honor.

17 THE COURT: what is the rub there?

18 MR. KEARNEY: You must understand -- and
19 that's what it is. It is what it is.

20 If you look -- and it comes from their April
21 23 letter to us, which is in my affirmation on 007, in
22 exhibit D, your Honor, their April 23 letter.

23 THE COURT: April of which year?

24 MR. KEARNEY: April 23 of '09. This is what
25 constitutes the contempt. Here's what they say --

26 THE COURT: You're saying it's going to be in

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1 Proceedings

2 May, but there had been negotiations, there had been
3 talks prior to that.

4 Let me ask you one other thing: Is the
5 race -- are you committed to a multi-hull vessel?

6 MR. KEARNEY: We would enter our discussions
7 and --

8 THE COURT: I'd like to know. I'm asking you
9 right now, is there a commitment to a multi-hull
10 vessel?

11 MR. KEARNEY: We, Golden Gate --

12 THE COURT: I think that's a yes-or-no. It
13 just seems to me that -- it appears to me that the
14 vessel -- I know that there's been the challenge, and
15 looking at the letters, continuously in the past the
16 Golden Gate stated they've already applied to the Navy
17 for a tonnage certificate and also for what's required.
18 Now, I've forgotten what it's called.

19 MR. KEARNEY: A custom house registry.

20 THE COURT: That's right.

21 MR. KEARNEY: Or a certificate of
22 documentation.

23 THE COURT: That's right, CHR, as it was
24 called, that you've already applied for this, and now
25 you've changed your position and said we've taken the

26 vessel apart, even though there have been trials on

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1 Proceedings

2 this vessel, and which everybody assumed was the vessel
3 you were going to race. It seems a little slick that,
4 all of a sudden, this vessel has been taken apart.

5 MR. KEARNEY: Can I explain that.

6 THE COURT: Yes, I'd like to hear. And I'd
7 like to hear why there has been an application and, all
8 of a sudden, there is no application.

9 MR. KEARNEY: An application?

10 THE COURT: An application to the Navy and for
11 the tonnage certificate. It seems to me that perhaps
12 Golden Gate is playing fast and loose.

13 MR. KEARNEY: I'd like to explain that, if I
14 can.

15 THE COURT: Yes, I'd like to hear, but you
16 still haven't answered my question. Is it going to be
17 multi-hulled or not?

18 MR. KEARNEY: Here's the answer: We have
19 consistently said that we would prefer a conventional
20 America's Cup on mono-hulls with multiple challengers.
21 We have consistently said that.

22 After we won the Court of Appeals, we sent a
23 letter to SNG, saying we would like to meet with them
24 to discuss exactly that. We wanted a multi-challenger
25 mono-hull race, not with the multi-hulls, okay?

26 THE COURT: Shouldn't they have notice of what

11

2 kind of race you want? You want the race to take place
3 in February, am I correct?

4 MR. KEARNEY: Can I say something.

5 THE COURT: That's a short period. Shouldn't
6 they know what kind of boat you plan on using?

7 I mean your argument is that the CHR -- I'm
8 going to use that term because it's easier for me --
9 doesn't really tell them what kind of boat, that your
10 challenge tells them the dimensions and the type of
11 boat, that the CHR is only to assure that it's from a
12 different country and the country that the boat is
13 coming from.

14 If that's the case, what you should be able to
15 tell them now is what kind of boat you intend to race.
16 That just seems fair.

17 MR. KEARNEY: Okay, if they insist on a
18 default match, okay, we will compete in a multi-hull.
19 There is no question about that.

20 If we can mutually agree to the conventional
21 America's Cup, letting all our challengers in, if
22 that's possible -- and that's what we wanted to do, and
23 that's what we said we wanted to do -- then we will
24 compete in the mono-hull. But they said to us -- in
25 the April letter they changed their position.

26 They said to us they don't want to have to a

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1 Proceedings
2 conventional America's Cup and mono-hulls. That means
3 we must come in with a multi-cup because that's what we
4 described in our initial challenge certificate, so it's

5 their action that dictates what boat we have to come in
6 with now.

7 We had to prepare, your Honor, for that
8 contingency during the past litigation of two years
9 that that may happen, even though we want to have a
10 mono-hull race, a conventional multi-challenger
11 mono-hull race.

12 But we had to get prepared for that. So we
13 will be prepared with a multi-hull for the February
14 race, as required by this judgment, and they know that.

15 THE COURT: I have a question for you,
16 counsel.

17 MR. KEARNEY: Yes.

18 THE COURT: Is it feasible to do a mono-hull
19 race in February at this point? Is there enough time
20 for other challengers to build mono-hull boats if it's
21 going to be in February?

22 MR. KEARNEY: I would say if it's going to be
23 a mono-hull race, conventional America's Cup mono-hull
24 race, it would be by mutual consent.

25 THE COURT: That's not my question.

26 MR. KEARNEY: Part of the consent, your Honor,

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1 Proceedings

2 would be to get a race date that would probably be
3 later 2010, 2011, because it would take longer to get a
4 group of seven to ten challengers together, but that
5 only happens if there's mutual consent, and the
6 judgment works cohesively with the deed in this
7 respect, your Honor.

8 THE COURT; I understand. I understand all of
Page 11

9 this. I've read your papers. I just have some
10 questions.

11 MR. KEARNEY: I understand. Can I address
12 the CHR a moment, your Honor.

13 THE COURT: Yes.

14 MR. KEARNEY: Here's our position on the CHR.
15 The first is that the court has no authority to rule on
16 that motion because the court, again, is limited to
17 enforcing the judgment.

18 You can't come after an action has proceeded,
19 a judgment has been upheld by the Court of Appeals and
20 bring a new claim, all right, on a motion and expect --

21 THE COURT: why is there a new claim? The
22 deed specifically says -- and I don't believe there's
23 been any ruling on this -- that you're supposed to turn
24 over the CHR car as soon as possible, and it says
25 "must."

26 So why is that any kind of new claim?

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1 Proceedings

2 MR. KEARNEY: Because this case is over. The
3 judgment has been rendered. The Court of Appeals --

4 THE COURT: It's not over as to that issue.

5 MR. KEARNEY: Yes, it is.

6 THE COURT: why is it?

7 MR. KEARNEY: It's over. You know--

8 THE COURT: Please, counsel.

9 Did the Court render a decision as to the CHR?
10 It looks to me, through the papers, that continuously
11 and consistently, Golden Gate kept telling the court

12 and writing to SNG that you're working on a CHR, that
13 you were going to give them the CHR.

14 Surprisingly, in your reply papers you say
15 you've taken the boat apart and, therefore, you have to
16 reapply for a new CHR? I don't think that the courts
17 previously ruled on this.

18 MR. KEARNEY: Let me explain.

19 THE COURT: Yes.

20 MR. KEARNEY: It doesn't matter what the court
21 previously ruled. In fact, the court did not
22 previously rule. This was not in the case.

23 It was not a claim. There's been no pleading
24 about it, there's been no discovery about it, there's
25 been no claim.

26 This case -- your jurisdiction is purely

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1 Proceedings

2 limited to enforcing the judgment. Otherwise, this
3 case is over. If they want to bring a preliminary
4 action, they can. Let me go to the merits.

5 THE COURT: But if I--

6 MR. KEARNEY: Let me go to the merits.

7 THE COURT: Please, counsel. Don't interrupt.

8 If I buy your argument, that means they have
9 no recourse if you don't follow the rest of the deed.
10 It means that all I can do is enforce the judgment of
11 the Court of Appeals, and if you breach other terms of
12 the deed, SNG has no recourse; is that your argument?

13 MR. KEARNEY: They have recourse. They can
14 bring an action, but they can't do it here. They can't
15 bring it here. That's my argument, and that's what the

16 cases say.

17 Let me go to the merits. Let me say this:
18 That in July 2007 Golden Gate put out a challenge.
19 They challenged for the America's Cup, July 11.

20 On July 23 of that year SNG rejected the
21 challenge. They not only rejected the challenge. They
22 sent it back.

23 THE COURT: I understand all of this. I read
24 the papers.

25 MR. KEARNEY: Not only that. They said under
26 the deed they cannot consider our challenge.

16

1 Proceedings

2 They maintain that position throughout two
3 years of litigation and all the briefing.

4 So what they're saying is that during this
5 period of time GGYC had none of the privileges -- had
6 none of the benefits of being a challenger, but now
7 they're coming in and saying that during that period of
8 time we should have done the following, we should have
9 done the following.

10 Listen to this. We should have completed the
11 construction of a multi-million-dollar multi-hull.

12 THE COURT: It looks like you did that.

13 MR. KEARNEY: Let me say, we should have
14 completed that, and we should have then gotten the CHR.
15 we should have done all those things they claim during
16 this two-year period of time.

17 we should have done all those things during
18 that period of time when we didn't know we would be the

19 challenger, we had none of the rights and privileges of
20 the challenger.

21 THE COURT: I read it, and I understand your
22 argument, but I think the facts refute what you're
23 saying because it looks to me from the facts that
24 Golden Gate, in fact, did do all of that.

25 That they built a multi-million-dollar craft,
26 that they put it to sea, that there were trials, and

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1 Proceedings

2 all of that was done, and that they stated in letters
3 specifically that they were working on getting the CHR.

4 So let me hear from the other side.

5 MR. KEARNEY: Let me just --

6 THE COURT: No, let me hear from the other
7 side. Could you have a seat.

8 MR. KEARNEY: Thank you.

9 THE COURT: Counsel.

10 MR. OSTRAGER: Good morning, your Honor, and
11 thank you.

12 I think premature and slick would fairly
13 characterize the behavior of GGYC in making the
14 application for contempt that they made to your Honor,
15 as your Honor clearly knows from carefully reviewing
16 the record.

17 THE COURT: I don't think their application
18 was premature, frankly. I don't believe I have much
19 authority beyond what the Court of Appeals has directed
20 unless you both come to terms with regard to the date.

21 MR. OSTRAGER: Well, to be perfectly clear,
22 there were almost a full year of proceedings before

23 Justice Cahn. Justice Cahn ultimately issued an order.
24 The order that Justice Cahn issued reads as
25 follows: Quote "Ordered that the location of the match
26 shall be in Valencia, Spain or any location selected by

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Proceedings

2 SNG, provided SNG notifies GGYC in writing not less
3 than six months in advance of the date set forth for
4 the first challenge match race of the location it has
5 selected for the challenge match race, and it is
6 further ordered that GGYC and SNG may engage in a
7 mutual consent process and make any arrangements
8 satisfactory to both as to the dates, courses, number
9 of trials, rules and sailing regulations and any other
10 conditions on the challenge match race in accordance
11 with the deed of gift."

12 Now, that order is entered on May 12. As of
13 May 12 GGYC was the challenger of record, and GGYC
14 remained the challenger of record until the Appellate
15 Division reversed Justice Cahn.

16 THE COURT: What possible authority do I have
17 to change the date set by the Court of Appeals?

18 MR. OSTRAGER: The long and the short of this
19 is you have Mr. Masmejan's affidavit. He is seated
20 next to me. He described a meeting that was had
21 between SNG and GGYC last month.

22 At the meeting there was absolutely no
23 discussion with respect to race dates. SNG told GGYC
24 that it was SNG's view that it would be best to have
25 the race in May because these multi-hulled vessels go

26 at three times the speed of wind and it's dangerous to

19

1 Proceedings

2 the sailors to have a northern hemisphere race in
3 February.

4 THE COURT: What about a southern hemisphere
5 race?

6 MR. OSTRAGER: SNG is absolutely committed to
7 a northern hemisphere race. There will be a northern
8 hemisphere race.

9 We thought we were going to have a discussion
10 with them as to when that would be. We're going to
11 have a northern hemisphere race.

12 Whatever they agree to, wherever -- when they
13 agree to it at such date they agree to it, as such date
14 as the court directs, but we're going to have a
15 northern hemisphere race.

16 We thought we were going to have a discussion
17 with them. We thought we were going to have a
18 discussion with them as to why May would be a better
19 date than February.

20 We thought we were going to have a discussion
21 with them about the Italian challenger that wants to
22 participate in a multi-hull elimination series.

23 THE COURT: Let me ask you the same thing: Is
24 it possible to have a multi-hull race with challengers
25 at this point?

26 MR. OSTRAGER: Yes, it's possible.

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1 Proceedings
Page 17

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THE COURT: As early as May?

MR. OSTRAGER: It's definitely possible.

THE COURT: Is it possible to have it in February?

MR. OSTRAGER: It would be difficult to have it in February, but SNG is committed to defending the cup at such time as GGYC agrees or at such time as the court directs --

THE COURT: Now --

MR. OSTRAGER: -- in the northern hemisphere.

THE COURT: Has SNG changed its position by building a multi-hull vessel based upon what Golden Gate has previously said?

MR. OSTRAGER: Golden Gate submitted a notice of challenge. It's exhibit C to my affidavit. It specified a 90-foot-by-90-foot multi-hulled vessel.

In accordance with the deed of gift, the defender is entitled in the certificate of challenge to know the vessel that the challenger is going to challenge, and so SNG is preparing to defend in a multi-hull the challenge that SNG -- that GGYC, rather, has made.

As your Honor pointed out, all through April 2008 and all through May of 2008, when GGYC was the challenger of record, GGYC proceeded to build for

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Proceedings

10-plus million dollars a multi-hull vessel.

They launched that vessel in August in correspondence in April, and May they told SNG they

5 would provide a customs house registry as soon as
6 possible. They told SNG they were going to give us
7 that customs house registry.

8 And the purpose of that customs house registry
9 is to confirm that the vessel that they build conforms
10 to the notice of challenge they gave us, so that we
11 know that the vessel that they have launched and the
12 vessel that they're going to challenge is the vessel
13 specified in the challenge that was made pursuant to
14 the deed of gift.

15 THE COURT: They would be held to the notice
16 of challenge no matter what, would they not?

17 MR. OSTRAGER: Correct.

18 THE COURT: So what does the CHR do?

19 MR. OSTRAGER: The CHR confirms that the
20 vessel that's been built conforms to the notice of
21 challenge so that they don't show up on race day with a
22 vessel that's other than -- different from the one
23 specified in the notice of challenge, so we have to
24 come running back to court.

25 THE COURT: If they showed up on race day or
26 shortly before race day with the CHR that did not

22

1 Proceedings
2 conform to the notice of challenge, they would be --

3 MR. OSTRAGER: In default.

4 THE COURT: They would be disqualified,
5 clearly.

6 MR. OSTRAGER: They would be disqualified.

7 THE COURT: Why do you need the CHR, then?

8 MR. OSTRAGER: The gift specifically specifies

9 that there is supposed to be a CHR issued as soon as
10 possible after the vessel is built.

11 THE COURT: But it doesn't give a date.

12 MR. OSTRAGER: No, it says as soon as
13 possible.

14 They built and launched the vessel. It's been
15 in all the newspapers. It's been on television.

16 THE COURT: Well, newspapers are hearsay. But
17 they've made statements.

18 MR. OSTRAGER: We know from their web site, we
19 know from physically seeing the vessel in the water, we
20 know from viewing it on television that they built and
21 launched the vessel.

22 THE COURT: You have the right now at this
23 point to take the vessel apart and apply for a new CHR.
24 What's your position on that?

25 MR. OSTRAGER: That's their position. Our
26 position is that if they built the vessel and it's the

23

1 Proceedings

2 vessel that's described in the notice of challenge and
3 it's the vessel they said they were going to give us a
4 CHR certificate for as soon as possible in April and
5 May -- and, by the way, your Honor, it takes two days
6 to get from the Coast Guard a CHR. That's how long it
7 takes to get a CHR, two days.

8 THE COURT: well, there's nothing from the
9 Coast Guard saying that, is there?

10 MR. OSTRAGER: There are regulations that are
11 promulgated.

12 THE COURT: we don't know how long it takes.

13 MR. OSTRAGER: It takes two days. I represent
14 that as an officer of the court.

15 THE COURT: what I'm trying to tell you is
16 there is nothing in the deed. It says as soon as
17 possible, but there's no cutoff date, and there has
18 been case law that says that the challenging vessel
19 does not have to be built at the time of challenge, but
20 they do have to conform to the challenge, to the
21 dimensions and the type of vessel given in the
22 challenge; am I correct?

23 MR. OSTRAGER: Yes. I just want to be clear
24 about our position. We are going to have a northern
25 hemisphere race, and it's going to take place on a date
26 mutually agreed to by GGYC which, for reasons I cannot

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1 Proceedings

2 explain, has refused to engage in good-faith
3 discussions, as the Court of Appeals directed it to,
4 with respect to when the race is to take place.

5 THE COURT: The Court of Appeals also stated
6 it was to be ten months if they don't agree to another
7 date.

8 MR. OSTRAGER: If we have to have the race in
9 the northern hemisphere in February, we will have the
10 race in the northern hemisphere in February.

11 we think that before they come running into
12 this court seeking contempt, they have a minimum
13 irrefutable responsibility to have a discussion of the
14 issue before they file a motion for contempt.

15 THE COURT: Can you have the race in the
Page 21

16 northern hemisphere, rather than the southern
17 hemisphere if it's in February?

18 MR. OSTRAGER: They say in their papers that
19 if a court issues an order, however erroneous that
20 order may be, we have to comply with it, and we're
21 prepared to comply with it.

22 THE COURT: But the order of the Court of
23 Appeals does not say it has to be in the northern
24 hemisphere.

25 MR. OSTRAGER: The challenger has the
26 undisputed, uncontested right to designate any venue

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1 Proceedings

2 issues. That's what Judge Cahn's order says. It says
3 the location of the match shall be in Valencia or any
4 other location selected by SNG.

5 THE COURT: But that's not what the Court of
6 Appeals said.

7 MR. OSTRAGER: The Court of Appeals reinstated
8 this order, so if we accept Mr. Kearney's argument as
9 literally being what he means, we're going to have a
10 match in Valencia, Spain or any other location selected
11 by SNG.

12 And I'm representing to the court that we are
13 going to have a match in the northern hemisphere. It
14 may be Valencia, or it may be another location in the
15 northern hemisphere.

16 Now, we believe, because of the safety of the
17 sailors and because of the pendency of a multi-hull
18 challenge by an Italian challenger, that GGYC should be

19 directed to comply with that portion of the Court of
20 Appeals order that directed the parties to negotiate in
21 good faith to deal with the circumstances as
22 appropriate.

23 But if GGYC refuses to engage and insists on
24 proceeding in accordance with the literal terms of
25 Justice Cahn's order, even though we, who participated
26 in a year 's worth of hearings before Justice Cahn,

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1 Proceedings

2 don't believe that's what he fully intended to
3 accomplish, we will comply with this order.

4 We are not in contempt of anything. We are
5 going to comply with this order. We will have a match
6 race in the northern hemisphere, either Valencia or
7 another location that we're entitled to pick under the
8 deed of gift.

9 And as far as the CHR is concerned, we think
10 that GGYC has engaged in ultimate bad faith, and
11 they're compounding that bad faith by what we refer to
12 in our papers as oralgate.

13 They're sending spies to look at the
14 construction of our vessel, which we don't think is
15 very sportsmanlike.

16 THE COURT: At this point I'm going to issue
17 my decision.

18

19 MR. KEARNEY: May I be heard on CHR, your
20 Honor.

21 THE COURT: No, I think you've taken long
22 enough. I think you've argued as to the issues. I'm

23 just going to issue my decision at this point.

24 At this point, in regard to Golden Gate
25 Yacht's application for contempt, I'm directing SNG to
26 hold the race as per the order of the Court of Appeals

27

1 Proceedings

2 and Justice Cahn in February as the order required.

3 Should SNG not do so, I am then going to give
4 the other party, Golden Gate, the opportunity to move
5 for contempt.

6 MR. OSTRAGER: You need not be concerned, your
7 Honor. We will comply.

8 THE COURT: In regard to SNG's application, I
9 am stating right now that, although the deed does not
10 require a certain date, the deed does require that the
11 vessel conform to the challenge dimensions.

12 If the CHR does not conform to the challenge
13 dimensions, it is this Court's belief, and my
14 direction, that Golden Gate will be disqualified, and I
15 am directing Golden Gate, in good faith, to abide by
16 the deed, to make application for the CHR as soon as
17 possible and providing it as soon as possible.

18 That's the order of the Court.

19 I would ask that the parties step up, so we
20 can discuss mediation, perhaps.

21 (Conference at the bench)

22 (End of proceedings)

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CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT
OF THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS
PROCEEDING.

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BARBARA STROH, CSR, CMR, CRR
Senior Court Reporter

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