

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
THOMAS F. EHMAN, JR.**

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

THOMAS F. EHMAN, JR., being duly sworn, deposes and says:

1. I am an American citizen over the age of 18 and Head of External Affairs for Golden Gate Yacht Club's racing representative, BMW ORACLE Racing. I have been involved with every America's Cup event since 1980, ten in total counting this latest edition, and I have served in many roles, including Team Manager, Organizing Committee Executive, Challenger of Record Manager, Challenger Commission Chairman, and Class Rule Commission Co-Chairman.

2. I was Executive Director (COO) of the United States Yacht Racing Union (the United States of America's national governing body for the sport of sailing) from 1979 to 1984. I served in various capacities with the International Sailing Federation ("ISAF"), including as head of the American delegation and a member of the ISAF Council, from 1980 through 1998. Over the past three decades, I have served as a judge for many international yacht racing events, including the 1992 and 1996 Olympics.

3. "Photogrammetries" is a technique used to establish reliable measurements from images or video. At least since 1987, most if not all America's Cup teams have used this technique to measure the design dimensions of competitors' vessels for analysis of relative performance. Societe Nautique de Geneve ("SNG") has had an ongoing surveillance program of Golden Gate Yacht Club's ("GGYC's") challenge vessel since the vessel's launch, including taking video and photos from boats and a helicopter, from which they can easily obtain detailed and precise measurements of the vessel.

4. Among SNG's first observers of the GGYC racing team's sea trials were Tom Schnackenberg and Franck Proffit, senior members of SNG's racing team ("Alinghi"). This took place in the waters off Anacortes, Washington in early September, 2008, soon after the GGYC challenge vessel was first launched.

5. Over the next several months SNG/Alinghi team members Franck Proffit, Warwick Fleury and John Barnitt closely tailed GGYC's vessel off San Diego, California in a speed boat, the *Fish Box*, taking photographs of the vessel. Indeed, in a CBS News article, dated Dec. 14, 2008, a true and correct copy of which is appended hereto as Appendix A, it was reported that following the GGYC's challenge vessel is "another boat in the chase, not for racing but for . . . spying, carrying men with cameras and binoculars. They're not-so-secret agents working for Alinghi, the Swiss team which holds the cup. They're trying to figure out what makes the American boat sail so fast."

6. Therefore, SNG/Alinghi certainly knew the dimensions of GGYC's challenge vessel well before SNG disclosed its measurement rules to GGYC on August 6, 2009.

7. The first agreement between ISAF (then IYRU) and America's Cup competitors, which related to an America's Cup event, was executed for the 28th America's Cup (1992). I negotiated that agreement on behalf of the defender, San Diego Yacht Club, along with the head of the Challenger of Record Committee on behalf of all Challengers. In every Cup event since (and including) the 28th America's Cup the defender and challenger of record have either co-signed and/or mutually consented to the terms of the agreement executed with ISAF. I have been involved in each of these negotiations in various capacities. In the 32nd America's Cup the challenger of record, GGYC, mutually consented with the defender, SNG, to the terms of the ISAF agreement and pre-approved its execution, not by SNG, but by America's Cup Management, which itself was a creature of the Protocol and mutual consent.

8. All such prior agreements with IYRU/ISAF related to the America's Cup have been the result of a mutual consent process between the defender and the challenger in which a Protocol was in place before the ISAF agreement was signed.

9. During the 27th America's Cup campaign in 1988 between the defender, San Diego Yacht Club ("SDYC"), and the challenger, Mercury Bay Boating Club ("MBBC"), I participated in mutual consent discussions on behalf of SDYC with MBBC's representatives throughout the period leading up to the issuance of the Notice of Race ("NoR") for that match. The issuance of the NoR was viewed as a mere formality. The rules were the standard IYRU rules, the U.S. Yacht Racing Union ("USYRU") prescriptions, and the standard U.S. Coast Guard safety rules extant at the time and in use by SDYC when MBBC challenged in July 1987. The rules issued in the NoR had been discussed with MBBC's representatives well prior to its issuance. Before the NoR was issued, both the defender and challenger understood that the rules caused no measurement or racing problems for either competitor or their respective yachts.

10. SNG, in its July 20, 2009 papers, argues that it has changed the RRS rules precluding non-manual power and movable ballast in regattas for certain particular classes of boats (i.e., in particular classes entitled M1, M2, and M3). Class rules prescribe criteria which are intended to be used in relation to a specific class of vessel being raced in an event, not as general rules for a club. The ACVL rules are only applicable to vessels that wish to race within a class of ACVL. The America's Cup vessels being constructed for the next Cup match are too large to fit into the criteria for vessels of the M1, M2 or M3 classes and therefore these ACVL class rules can have no application for this America's Cup match

11. The following media publications, among others, have contacted me requesting a copy of the agreement entered into between SNG and the International Sailing Federation, dated June 5, 2009, and expressing their desire to publish articles with and about the agreement:

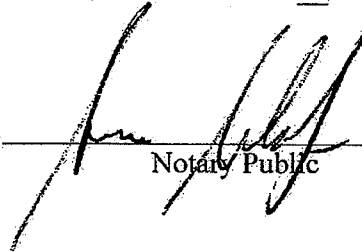
- o Stuart Alexander (GBR), veteran America's Cup journalist and yachting writer for *The Independent* (UK).
- o Alan Block (USA), Deputy Editor and America's Cup correspondent for *Sailing Anarchy*.
- o Bob Fisher (GBR), veteran America's Cup journalist and columnist for *Yachts & Yachting* Magazine (UK) and yachting writer for *The Guardian* (UK).
- o Cory Friedman (USA), legal commentator and columnist for *Scuttlebutt* (North America).
- o Richard Gladwell (NZL), veteran America's Cup journalist, editor of the USA and New Zealand editions of the *Sail-World* newsletter and website.
- o Craig Leweck (USA), Publisher and Editor of *Scuttlebutt* (North America).
- o Eric Sharp (USA), veteran America's Cup journalist and outdoor writer for the *Detroit Free Press*.
- o Stuart Streuli (USA), Senior Editor of *Sailing World* magazine.

- o Bernie Wilson (USA), veteran America's Cup journalist and sports writer for the Associated Press.



Thomas F. Ehman, Jr.

Sworn to before me this 2 day of Sept, 2009



Notary Public

-
- Figure 1 is a line graph with the x-axis labeled 'Number of documents signed by a notary' ranging from 0 to 100 in increments of 20. The y-axis is labeled 'Probability of a document being signed by a notary' ranging from 0.0 to 1.0 in increments of 0.1. A solid black curve starts at (0, 1.0) and decreases monotonically, passing through approximately (20, 0.9), (40, 0.8), (60, 0.65), (80, 0.45), and ending at approximately (100, 0.2).

Signature of Document Signer No. 2 (if any)

County of San Diego

2 day of September, 2009, by
Date Month Year
(1) Thomas F. Ehman, Jr.
Name of Signer

(and

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Place Notary Seal Above

OPTIONAL

Signer(s) Other Than Named Above: _____

©2007 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.NationalNotary.org Item #5910 Reorder: Call Toll-Free 1-800-876-6827

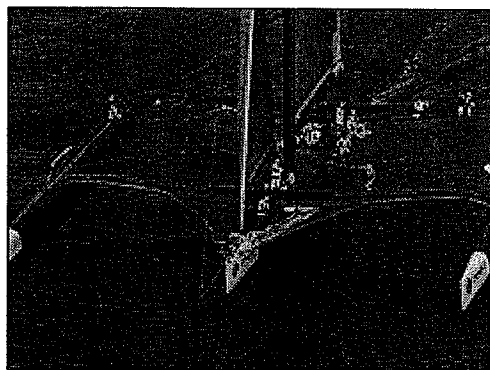
Appendix A



Dec. 14, 2008

The Fastest Racing Yacht Ever?

A Billionaire With A High-Tech Vessel Launches A Shot Across The Bows Of The America's Cup



BMW Oracle Racing's 90-foot trimaran goes through sea trials off Anacortes, Wash., on March 9, 2008. It has a mast as tall as a 16-story building and a mainsail twice as big as a 747's wing. (AP/BMW Oracle, Gilles Martin-Raget)

(CBS) *A controversial new breed of yachtsman is fighting both on the seas and in the courts to win the America's Cup, whose trophy was named for the legendary yacht that won a famous race back in 1851. Jerry Bowen takes us on a high-speed ride on a high-tech yacht in pursuit of bringing the cup back to America.*

The America's Cup is not for the meek or humble. It's a high-stakes, high seas race that requires big money, and even bigger egos.

In the late '70s, media mogul Ted Turner was such a man. He captured the prize with his yacht *Courageous*, and earned the nickname "Captain

Outrageous" for his attitude - and his under the table / over the top drunken celebration.

From its beginning 157 years ago, the race for the cup has always been colorful, if not controversial.

In 1983 when the Americans lost the cup for the first time ever, the Yanks complained that the victorious Australian boat had an advantage, a secret keel that made it faster.

The Aussies kept the cup, and the keel controversy became part of racing lore ... the "do anything" attitude to get a competitive edge, says America's Cup historian John Rousmaniere.

And the gentlemen are at it again.

If horse racing is the sport of kings, then this is the sport of billionaires, spending tens of

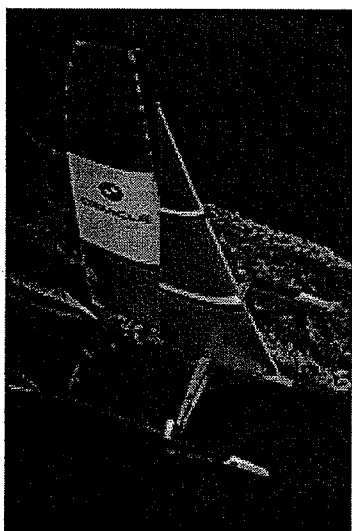
millions of dollars on a fast boat to capture the oldest trophy around, the America's Cup.

A sea battle between land-locked Switzerland, the current holder of the cup with its winning yacht Alinghi and San Francisco's Golden Gate Yacht Club, led by an American original who desperately wants the cup back.

His name is Larry Ellison. And Larry Ellison hates to lose:

"Well, we built the sailboat to go as fast as we know how to make a sailboat go," he said, speaking of his hydrofoil trimaran. "She'll go about three times faster than the wind speed."

There has never been anything like it. We took a look during its initial sea trials off of San Diego last month, and its profile is massive.



The mainsail is twice as large as a Boeing 747 wing ... its mast as tall as a 16-story building ... the footprint, 90 feet by 90 feet - the size of a baseball infield.

"I've got a Bugatti, which is the fastest car in the world. And it's astonishingly fast, you know? It goes over 250 miles an hour," Ellison said. "But it's nothing like driving this boat."

Ellison can easily afford Bugattis, big boats, and monstrously big houses. He co-founded software giant Oracle and is one of the richest men in the world, worth billions.

His primary home in Northern California cost \$200 million. And the boat he's built to challenge the Swiss, a joint project with automaker BMW, has cost upwards of \$20 million.

So far.

Jim Spithill is the helmsman, the boat's driver. **Bowen** asked, does he know yet how fast the boat can go?

"No, we don't," Spithill said. "But certainly up towards, you know, 40 knots. On purpose, we're

taking things very slowly and very conservatively. I mean, who knows? We could have a serious crack at a speed record."

To keep the boat light, there is netting instead of flooring. To reduce drag there are three light hulls instead of a traditional single heavy one. But each innovation brings new dangers:

"This boat, you make a mistake, it's catastrophic," Spithill said. "You tip over, you know, people are gonna be killed. It will hurt badly. And that's 'cause of the speed you're traveling and the fact that a boat like this, once it flips over, it's done."

Caution is not thrown to the wind.

For safety, one chase boat follows with a diver and doctor.

There's a second chase boat loaded with computers that monitors the boat's performance like a high speed athlete in training, crunching data sent from the yacht's many sensors.

On this day the wind was 20 knots (about 23 miles an hour). And the yacht was doing 30 knots (nearly 35 miles an hour).

Bowen, in a chase boat with two motors of 600 hp, found that even in a light wind, he could barely keep up.

And there's still another boat in the chase, not for racing but for ... spying, carrying men with cameras and binoculars. They're not-so-secret agents working for Alinghi, the Swiss team which holds the cup. They're trying to figure out what makes the American boat sail so fast.

"I can't imagine another sport on the face of the Earth that has that kind of intrigue for a writer like me," said author Joseph Wambaugh, best-known for his mystery and non-fiction books about cops. His 1996 novel "Floaters" is based on an earlier America's Cup race held off San Diego:

"It has spies, it has security, it has espionage," he said.

And it's all part of the game, says Russell Coutts, skipper of the American yacht.

"You know, it's a little bit like a dog fight," he said.

"There's some obvious things that somebody looking from the outside can pick up and, you know, learn. But the reality is there's nothing like sailing the real boat."

And New Zealand native Coutts is considered to be the best. In fact he was the skipper of the Swiss boat when it first won the America's Cup.

And when Coutts and the Swiss had a bitter parting of the ways, Larry Ellison snapped him up for the U.S. team ... no surprise to author Wambaugh.

"This is a rich man's game I call a blood sport," he said.

And the blood is being spilled in court.

After Alinghi won the America's Cup for the second straight time in 2007, Ellison sued to become the sole legitimate challenger. The case, being heard in New York State, is on appeal. Arguments are scheduled for early next year

Bowen commented that when Ellison talks about his boat, he has a twinkle in his eye. "I mean, you're having fun."

"It's been a very interesting project to build this thing," Ellison said. "To build something that goes this fast. And it's even more fun to sail. So now, we got to get it out onto the water against Alinghi and see if she is what we think she is, which is the fastest sailboat that's ever been built."

Fastest perhaps ... but that doesn't mean it will ever make it to the America's Cup starting line.

Ellison and his novel yacht have just taken a shot across all three of its bows.

The Swiss and at least 16 other nations have announced they're going ahead with the next America's Cup regatta no matter how the American billionaire does in court.

After all his maneuvering and all the money he's spent, Ellison and his fast boat could still end up in the dry dock of nautical history - a very expensive footnote in the story of this long-running gentlemen's sport.

For more info:

- [Alinghi: Defender of the 33rd America's Cup](#)

- America's Cup
 - BMW Oracle 90
 - Jobson Sailing
 - "A Picture History of the America's Cup" by John Rousmaniere
 - The Seamen's Church Institute
-

© MMVIII, CBS Interactive Inc. All Rights Reserved. This material may not be published, broadcast, rewritten, or redistributed.