



GOLDEN GATE YACHT CLUB

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GGYC BRIEF TO THE NEW YORK STATE COURT OF APPEALS – HIGHLIGHTS

September 29, 2008 – Today, the Golden Gate Yacht Club (GGYC) submitted its appeal brief to the New York State Court of Appeals in the suit against Société Nautique de Genève (SNG) , the Swiss club that holds the Cup, and Club Náutico Español de Vela (CNEV) over the future of the America’s Cup.

The San Francisco-based club is asking the court to declare GGYC the legitimate Challenger of Record, and to rule that CNEV’s challenge of SNG in 2007 is invalid under the 19th century “Deed of Gift” that governs the oldest trophy in international sport.

The following are verbatim excerpts from today’s 45-page submission illustrating what is at stake:

What the case is about (Pages 2-3)

“This case involves an attempt by the current Defender to circumvent the rules of the America’s Cup by installing a sham yacht club as Challenger of Record ... With the consent of that faux challenger, the Defender published a Protocol for the 33rd America’s Cup that granted itself, through its self-appointed management company, unprecedented and lopsided control of the contest, including the power to hire the referees and other officials, to establish ‘unilaterally’ the rules for all racing events, and to accept or reject ‘at its sole and entire discretion’ any entry from challenging competitors. “

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“To protect the historic spirit of the Cup, Golden Gate Yacht Club (‘GGYC’), the Challenger of Record for the 32nd America’s Cup, presented its own Notice of Challenge on July 11, 2007. In its challenge, GGYC expressed its desire to negotiate a Protocol ‘comparable in scope, and similar in terms, to that used for the 32nd America’s Cup,’ which included a challenger selection series and rules specifying monohull sailboats approximately 75 feet in length. GGYC remains ready and willing to participate in an America’s Cup open to all eligible competitors and based on evenhanded rules that preserve the integrity of the Cup.”

Why GGYC has taken the case to the Court of Appeals (Pages 3-4)

“The motion court agreed that the current sham Challenger of Record is not eligible, and that, under the terms of the Deed, GGYC is the Challenger of Record. The Appellate Division, First Department, reversed. Its decision contorts the plain language of the Deed and should be reversed.

“[T]he simple, straightforward conditions that the creator of the America’s Cup Deed articulated in order to protect the competition from abuse should be respected and given effect. Failure to do so will destroy the America’s Cup as we know it”

Why CNEV is not a legitimate Challenger of Record (Page 18)

“At the time of its purported challenge, CNEV undeniably did not satisfy the Deed’s simple criteria for a Challenger of Record. It was not an ‘organized Yacht Club’ but a shell entity, incorporated only days before and lacking any and all of the characteristics of a real yacht club—such as members, vessels, and facilities.

“CNEV also had never conducted a sailing race of any kind, let alone an annual ocean course regatta on the sea or an arm of the sea. It is simply an alter ego of a sailing federation, RFEV, which is in league with the Defender SNG and traded control of the event in return for keeping the Cup in Valencia, Spain.”

Why the Protocol is Unfair (Pages 10-11 and 18)

“The Protocol granted SNG the unilateral power to: (1) set the Sailing Instructions, Racing Rules, Event Regulations, and ACC Rules (which specify the boat design and construction rules); (2) withhold many of these rules until 60 days before the match; and (3) change the rules even days before the match.

“The Protocol also granted SNG the power to determine the format for the match, and to appoint the Race Committee, Measurement Committee, and Umpires. Finally and most importantly, it gave SNG the unilateral power to expel, without recourse, any challenger that disputed SNG’s authority under the Protocol. “

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“By agreeing to all of SNG’s demands for a Protocol so one-sided that it provoked immediate condemnation from the sailing community, CNEV promptly confirmed why the Deed’s eligibility criteria should be taken seriously.”

Why the fate of the America’s Cup hangs on the outcome of the case (Pages 11 and 31)

“The Protocol caused a massive rift within the international sailing community. Although a few yacht clubs agreed to its terms, six competitors from the 32nd America’s Cup signed a joint letter condemning the Protocol as ‘the worst text in

the history of the America's Cup,' one that would 'jeopardi[ze] the participation and survival of the event'....

"These fears were partially realized when Louis Vuitton, which had sponsored the challenger elimination series for more than twenty years, cited the questionable nature of the Protocol as a reason for its decision to withdraw sponsorship for the 33rd America's Cup."

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"The America's Cup is the premier event in sailing, and represents an enormous investment in time and resources by all parties involved.

What GGYC wants (44 and 32-33)

"But GGYC has also made it clear that its preference, then and now, is to negotiate terms for a conventional America's Cup regatta governed by a Protocol similar to the one used in the last Cup.

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"Under the plain words of the Deed, the America's Cup is intended to be a challenger-driven event, wherein a Defender must accept any qualified challenge, and face possible defeat, under the simple and explicit rules in the Deed unless it can mutually agree with the Challenger of Record on other rules. In theory, a Defender and a pliable or captive Challenger of Record could agree to rules giving lopsided advantage to the Defender, or even specifying a race a hundred years hence.

"The Deed's only safeguards are the eligibility criteria ... which (correctly interpreted and respected) ensure that the Challenger of Record is a serious entity with the means and the incentive to remain independent of the Defender."

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Editor's Note: For additional background, please go to www.ggyc.com.

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