

Backgrounder to the lawsuit brought by the Golden Gate Yacht Club

Overview:

When Alinghi won the 31st America's Cup in 2003 it made history returning the trophy to Europe for the first time since its conception in 1851. Team syndicate head, Ernesto Bertarelli, had a vision to modernise the event. He installed an independent organiser; AC Management, introduced a broadcast friendly racing format that raised awareness while also extending the competition and exposure for entered teams and developed a purpose built Port America's Cup in Valencia, Spain.

The 32nd America's Cup is widely recognised as the greatest in the history of the event. Aside from the Match between Alinghi and Emirates Team New Zealand (ETNZ) being the closest in history, there are a few figures that support the claim:

- Transformation of Valencia's Port area into a purpose built venue
- 6.4 million visitors during the 32nd America's Cup
- 4,000 million cumulative TV viewers
- A budget surplus of more than 60 million Euros distributed among teams participating in the 32nd America's Cup, giving them a financial base to begin their 33rd campaign
- An economic impact on Valencia 10 times greater than that in Auckland in 2003, with 73,000 jobs created over the four year period according to a recent study published by the Valencian Regional Government

Summary:

In July 2007, Alinghi won a second consecutive America's Cup 5-2 against Emirates Team New Zealand in what was widely claimed as the greatest America's Cup of all time. In order to maintain the momentum created by such unprecedented success, Société Nautique de Genève accepted the Spanish Club Náutico Español de Vela as Challenger of Record and the two set out a Protocol calling for a two year cycle, a new class of yacht and an innovative racing format.

The Defender and entered challengers formed a joint consultation programme led by Tom Schnackenberg, an independent consultant, and by 31 October 2007 AC Management published the AC90 Class Rule. Next came the Competition Regulations, also created in consultation with the same group of entered challengers and by 15 December 2007 12 challengers had met the entry deadline and were preparing to race in a multi-challenge 33rd America's Cup in 2009.

In parallel, the Golden Gate Yacht Club, represented by BMW Oracle Racing, slammed down a hostile challenge contesting the validity of the Spanish yacht club and dragged the dispute into the New York Supreme Court for resolution. Alinghi and the SNG, along with the entered challengers, attempted to resolve BMW Oracle's issues going so far as amending the Protocol and altering the displacement of the AC90 – a fundamental parameter of the class rule – to prove no design advantage.

However, the GGYC consistently shifted the goalposts with its demands rendering a settlement impossible.

On 27 November 2007, New York Supreme Court's Justice Cahn ruled CNEV invalid and imposed the GGYC as Challenger of Record. This point was strongly contested by SNG as the GGYC's challenge certificate is ambiguous and contradictory and goes against the intention of George Schuyler, founder of the America's Cup.

On 12 May 2008, Justice Cahn issued his final court order granting SNG the 10-month notice period required by the Deed of Gift to prepare for a Deed of Gift Match. This final order put racing in March 2009 during the Deed of Gift's Northern Hemisphere no-race period and forced SNG to seek clarification from the Appellate Division. This appeal was heard on 5 June along with the appeal regarding the CNEV and GGYC validity.

Fast forward to 29 July 2008 when the Appellate Division of the New York Supreme Court ruled in favour of SNG, declaring CNEV the rightful Challenger of Record for the 33rd America's Cup and denying GGYC this status. In the same breath Justices David Saxe, Karla Moskowitz, Rolando Acosta, Leland DeGrasse and Eugene Nardelli put the America's Cup back on track for a multi-challenger event.

Celebrations among the entered challengers and the Defender were short-lived however as four days later, on 1 August 2008, BMW Oracle took the case to the Court of Appeals. Alinghi and the SNG as the Defender continued to plan the 33rd America's Cup along with the 18 entered challengers from 10 countries. The Defender signed an agreement with the Host Venue, Valencia for the 2009 pre-regattas and the new class rule - the AC33 - was published, as were the competition regulations. The 33rd America's Cup was well and truly underway.

The oral hearing before the New York Court of Appeals was held on the 10 February 2009 and SNG, CNEV and GGYC argued their positions before six justices in a 30 minute session. Judges Smith, Graffeo, Ciparick, Read, Pigott and Jones ruled in favour of the American team, imposing BMW Oracle Racing and the Golden Gate Yacht Club as the Challenger of Record on the 2 April.

The defending yacht club, SNG, invited the American Challenger of Record to a meeting in Geneva to seek mutual consent on the terms of the 33rd America's Cup and on the 23 April, Brad Butterworth (Alinghi team skipper), Fred Meyer (SNG vice-commodore) and Lucien Masméjan (SNG counsel) attended on behalf of the Defender. Discussions on the shape of the next event were had during the two hour session, during which the America's Cup defending yacht club, Société Nautique de Genève (SNG), confirmed that it accepts the Golden Gate Yacht Club's (GGYC) challenge for the 33rd America's Cup – as ordered by the court – and informed representatives of the American yacht club that its team, Alinghi, will be ready to race their 90x90ft boat (as stated in the GGYC Notice of Challenge) in 2010.

During the meeting, SNG expressed its willingness for the challenger selection to be open to other yacht clubs and encouraged GGYC to do so by offering them more time for teams to prepare if necessary. It was also stated that the SNG would be

flexible and ready to discuss other terms of the 33rd America's Cup such as race format, venue or calendar.

Instead of arranging the follow-up, discussed at the conclusion of the 23 April meeting, GGYC decided on 28 April to renew its legal proceedings, filing contempt of court charges regarding the date of the Match. The defending yacht club asked that the court also address the matter of the pending GGYC Custom-House Registry during the 14 May hearing to save time in getting the competition back on the water as soon as possible.

The presiding judge at the hearing on 14 May, Justice Shirley Werner Kornreich of the NY Supreme Court, ruled on the issues immediately. She declared that unless an alternative date is agreed through mediation (which she also ordered must take place), then the Justice Cahn 12 May 2008 Court Order is in effect and a match must be raced in February 2010 in Valencia or any other venue of the Defender's choosing (so in the Northern or Southern Hemisphere). In another important decision, Justice Kornreich ordered the GGYC to stick to the specifications of their Notice of Challenge or risk disqualification and instructed the Challenger of Record to provide the Custom-House Registry as soon as possible.

Fast forward to July 2009 and the Alinghi multihull is launched and sailing first on Lake Geneva and later in Genoa, Italy, and BMW Oracle Racing has taken the Cup to the NY courts for a fourth time in parallel to launching their most recent boat; still without presenting the Customs House Registry to the Defender.