

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**

**AFFIDAVIT OF THOMAS F. EHMAN, JR. IN SUPPORT OF GGYC'S  
MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO  
DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT**

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 BMW ORACLE Racing. As such, I am one of the team's representatives in talks and negotiations with other teams and regatta officials and advise team management on same and, broadly, on rules compliance. 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 rules advisor, team manager, marketing consultant, Organizing Committee Executive, Challenger of Record Manager, Challenger Commission Chairman, Class Rule Commission Co-Chairman, and author/lecturer/commentator.

2. Among other affiliations, I have been a member of the New York Yacht Club since 1981, a member of the Golden Gate Yacht Club since 2001, a founding member of the Gstaad (Switzerland) Yacht Club in 1998, and a member of the Swiss Yachting Federation since

1998. I was Executive Director (COO) of the United States Yacht Racing Union (the United States of America's national governing body for the sport) from 1979 to 1984, and I served in various capacities with the International Sailing Federation ("ISAF"), including as head of the United States of America's 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. I have a working knowledge of Spanish from my six years of Spanish courses and from living in Spain over the past two years.

3. I submit this affidavit in support of the Golden Gate Yacht Club's ("GGYC's") Motion for Summary Judgment and in opposition to Societe Nautique de Geneve's ("SNG's") Motion to Dismiss and for Summary Judgment and to clarify factual inaccuracies contained in defendant's motion.

**I. SNG HAS NOT CITED PRECEDENT FOR ITS ACCEPTANCE OF CLUB NAUTICO ESPANOL DE VELA AS CHALLENGER OF RECORD**

4. The Affidavit of Hamish Ross, dated September 21, 2007, asserts that the following yacht clubs are "examples [of] 'new' clubs ... [that] have been permitted to compete as challengers" (Ross Aff. ¶¶ 41-46):

- Sun City Yacht Club
- Secret Cove Yacht Club
- Mercury Bay Boating Club
- Southern Cross Yacht Club
- Royal New Zealand Yacht Squadron
- Cortez Sailing Association
- Nippon Yacht Club
- Deutscher Challenger Yacht Club

5. SNG claims that the acceptance of challenges from these yacht clubs is “precedent” for SNG’s acceptance of Club Nautico Espanol de Vela (“CNEV”) as Challenger of Record. (SNG Memorandum of Law at 16).

6. Seven of the eight yacht clubs identified by SNG (Ross Aff ¶¶ 41-46) have never been a Challenger of Record. As the Affidavit of Hamish Ross states, “[t]he first challenger to issue a challenge under the Deed in respect of any particular America’s Cup is now generally referred to as the ‘Challenger of Record’”. (Ross Aff. ¶ 9). The Deed of Gift grants the Challenger of Record and the Defender the power to determine the terms of the match for the America’s Cup. As the Deed provides:

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...

7. Since the inception of the challenger selection series in 1970, Mutual Consent Challengers have been accepted into the America’s Cup by the Challenger of Record and the Defender, which may “by mutual consent, make any arrangement satisfactory to both.” *Id.*

8. Based upon my personal knowledge and historical research, I have identified all of the Challengers of Record over the history of the America’s Cup on the attached Exhibit A. Sun City Yacht Club, Secret Cove Yacht Club, Southern Cross Yacht Club, Royal New Zealand Yacht Squadron, Cortez Sailing Association, Nippon Yacht Club and Deutscher Challenger Yacht Club do not appear on Exhibit A because none has been a Challenger of Record.

9. Far from providing a precedent for CNEV's challenge, the Mutual Consent Challengers cited in the Affidavit of Hamish Ross illustrate the utter inadequacy of CNEV as Challenger of Record, by demonstrating what a bona fide yacht club is. For example, unlike CNEV, the Royal New Zealand Yacht Squadron ("RNZYS"), which was a mutual consent challenger in 1987 was actually formed in 1859, was incorporated through a "warrant to fly the Blue Ensign by the British Admiralty in 1902, has subsequently been awarded a warrant to fly the New Zealand Blue Ensign by H.R.H Queen Elizabeth" and is "New Zealand's premier yacht club." (Ross ¶ 46; Kearney Exs. O, P).

10. The only Challenger of Record cited by SNG is the Mercury Bay Boating Club ("Mercury Bay"). However, SNG fails to advise the court that Mercury Bay was established in 1948, 39 years before its challenge in 1987, and that it held an annual racing program of some 25 races a year. (Kearney Ex. G). In 1986, nine months before issuing its challenge, Mercury Bay incorporated what had been a longstanding bona-fide yacht club. By contrast, CNEV incorporated a previously non-existing shell entity only days before issuing its notice of challenge.

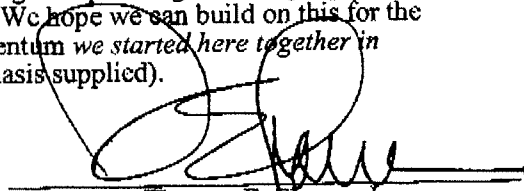
## **II. THE SUCCESS OF THE 32<sup>ND</sup> AMERICA'S CUP WAS A COLLABORATIVE EFFORT**

11. Although SNG claims sole credit for the success of the 32<sup>nd</sup> America's Cup (Ross Aff ¶ 17), GGYC, and its representative racing team, made possible the success of the 32<sup>nd</sup> America's Cup by vigorously negotiating for challenger rights, as memorialized in the Protocol Governing the Thirty-Second America's Cup. I participated directly in GGYC's negotiations with SNG as our team's Head of External Affairs and one of the team's principal negotiators. The negotiations were lengthy and at times contentious. They resulted in a revised America's

Cup Class Rule ("Version 5"), various Protocol amendments, event plan and Challenger Selection Series plan that were widely supported and, by all accounts, resulted in hugely successful Louis Vuitton Cup and America's Cup regattas. GGYC fulfilled the responsibilities of a legitimate Challenger of Record, attempting to protect the interests of the challenger community.

12. The Affidavit of Hamish Ross states that "[p]rior to filing this lawsuit GGYC credited the success [of the 32<sup>nd</sup> America's Cup] to 'SNG's stewardship, [under which] the 32<sup>nd</sup> America's Cup delivered some of the most hotly-contested racing in recent Cup history and brought Cup sailing to more people worldwide than ever before.'" (Ross Aff. ¶ 17). This statement selectively quotes GGYC and is entirely misleading. The complete quote is as follows:

We [GGYC] will endeavor to work with SNG to mutually agree to appropriate terms for the 33<sup>rd</sup> America's Cup to keep the event exciting and fair for all. Under SNG's stewardship, the 32<sup>nd</sup> America's Cup delivered some of the most hotly-contested racing in recent Cup history and brought Cup sailing to more people worldwide than ever before. We hope we can build on this for the future and continue the momentum we started here together in Valencia. (Ross Ex. C, emphasis supplied).

  
Thomas F. Ehman, Jr.

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

Sworn to before me  
this \_\_\_ day of September, 2007

\_\_\_\_\_  
Notary Public

## **EXHIBIT A**

## CHALLENGERS OF RECORD FOR THE AMERICA'S CUP<sup>1</sup>

<b>Challenger of Record</b>	<b>Year(s)</b>
Royal Thames Yacht Club	1870, 1964, 1974
Royal Harwich Yacht Club	1871
Royal Canadian Yacht Club	1876
Bay of Quinte Yacht Club	1881
Royal Yacht Squadron	1885, 1893, 1895, 1934, 1937, 1958
Royal Northern Yacht Club	1886
Royal Clyde Yacht Club	1887
Royal Ulster Yacht Club	1899, 1901, 1903, 1920, 1930
Royal Sydney Yacht Squadron	1962, 1967, 1970, 1983
Yacht Club d'Hayeres	1977, 1980
Yacht Club Costa Smeralda	1987
<b>Mercury Bay Boating Club</b>	1988
Royal Perth Yacht Club	1992
Yacht Club de France-Sete	1995
New York Yacht Club	2000
Yacht Club Punta Ala	2003
Golden Gate Yacht Club	2007

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<sup>1</sup> The Deed of Gift provides “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.” This initial challenger, accepted under the Deed of Gift, is the so-called “Challenger of Record.” Additional challengers (“Mutual Consent Challengers”) can only be accepted through the mutual consent of the Challenger of Record and the Defender.