

Alinghi backgrounder – comment and corrections

On 2 June 2008 Alinghi posted a backgrounder on their website on issues surrounding the court case leading up to the next America’s Cup. As the document contains numerous inaccuracies and omissions the following table summarizes points that we believe need to be corrected and clarified.

A full backgrounder on the case posted by GGYC can be read [here](#), or a summary of key dates can be read [here](#).

SNG/Alinghi Backgrounder	GGYC Comment
<p>Overview: “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...</p>	<p>AC32 was a great success. That is why most syndicates were surprised when Alinghi introduced a radical new protocol, which they also rejected as totally unbalanced in Alinghi’s favor. The Alinghi backgrounder does not mention these serious concerns raised by other syndicates.</p> <p>On July 16, 2007, six syndicates who had participated in the previous event signed a letter stating that the new protocol put the “very survival” of the America’s Cup at risk. (See this letter here.)</p> <p>The syndicates wrote: “In our collective role as past Challengers and prospective Challengers, our opinion is that this Protocol is the worst text in the history of the America’s Cup and more fundamentally, it lacks precisely the mutual consent items which are required.”</p> <p>This letter was signed by Areva Challenge, BMW ORACLE Racing, Emirates Team New Zealand, Luna Rossa, Mascalzone Latino, United Internet Team Germany, and later by Victory Challenge.</p> <p>Among many new unexpected rule changes, the protocol allowed the defender to appoint all referees, dismiss any syndicate at any time, test out its boats against challengers and require compliance with a new design rule.</p>

<p>“In order to maintain the momentum created by such unprecedented success, Société Nautique de Genève accepted 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.</p>	<p>Far from being a vehicle for continuing the momentum of success, CNEV has been shown to be a sham yacht club that enabled Alinghi to “self-deal”. It had been in existence for only a matter of days, had no boats, no clubhouse, no membership (apart from some founding officers), and had never run a regatta. No previous Challenger of Record had agreed to granting such wide-ranging advantages to the defender.</p> <p>In the same letter quoted above, syndicates from the previous regatta called for CNEV to resign as Challenger of Record in order to prevent further litigation, saying: “You are well aware that serious questions have been raised about the legitimacy of the newly created and purely instrumental entity called ‘Club Náutico Español’ to advance a Challenge under the provisions of the Deed of Gift. In the sincerest hope that the America’s Cup competition will not have to endure the turmoil associated with litigating that issue, but will rather move forward with the balanced and fair procedures and protocols that have historically characterized this competition, we ask you to dissolve ‘Club Náutico Español’ and withdraw your Challenge within the month of July 2007.” (See this letter here.)</p> <p>Later, on November 4, 2007, CNEV’s two top officers told Spanish reporters that CNEV was a “legal adjustment”, which Alinghi’s management company, ACM, had asked them to create in secret. (See a news report by Spain’s <i>Sport</i> here.)</p> <p>(English language reports on the above appeared on Scuttlebutt and Valencia Sailing on November 4.)</p>
<p>“The Defender and entered challengers formed a joint consultation programme led by Tom Schnackenberg, an independent consultant, and by 31 October AC Management published the AC90 class rule. Next came the Competition Regulations, also created in consultation and by 15 December 2007 12 challengers had met the entry deadline prepared to race in a multi-challenge 33rd America’s Cup.....</p>	<p>The new protocol and the new design rule were not created as part of a consultative process. In fact, when concerns were raised by syndicates the defender’s response was to refuse to make any changes.</p> <p>Nearly three weeks after receiving the protest letter from syndicates noted above, on August 6, AFP reported: “America’s Cup champions Alinghi said Monday they would not go back on hotly contested rule changes which the Swiss syndicate plan to introduce for the next event scheduled for 2009 in Valencia, Spain.” Michel Hodara, the chief operating officer of ACM, Alinghi’s management company, told reporters that, although some fine-tuning of the design would be done: “We have no intention of going back (on decisions that have been taken).” (See AFP report here.)</p>

	<p>Although a majority of challengers who had signed the July 16 letter did not enter, among the challengers who signed-up each would have had their own reasons. Some entered immediately in order to continue fundraising.</p> <p>Emirates Team New Zealand (ETNZ) has since confirmed it opposed the protocol but entered for financial reasons. On March 6, 2008, ETNZ launched legal action against Alinghi, ACM and Ernesto Bertarelli seeking compensation for delays to the event. ETNZ said the defenders “abused their competitive power to stifle other teams,” and refused to accept a “completely reasonable” settlement offer from GGYC. (See a <i>New Zealand Herald</i> report on this here.)</p> <p>On July 13 Louis Vuitton, a major partner in the Cup for 25 years, withdrew from the event. The company’s long-time America’s Cup manager, Bruno Troublé, later publicly confirmed his firm opposition to the new protocol and support for the GGYC court action. (Read news report here.)</p> <p>Contrary to any impression that he was involved in the protocol from the outset, Tom Schnackenberg was, according to Alinghi’s own backgrounder, appointed on September 7, well after it became clear that Alinghi faced serious resistance from challengers to the new protocol.</p> <p>Alinghi’s backgrounder states 12 challengers had met the entry deadline. However ETNZ has confirmed it received financial incentives to enter, and it is widely understood this applied to other challengers. The defender has not revealed how many of these were normal challenges and how many had their fees waived or paid for by ACM.</p>
<p>“Meanwhile, in parallel, the Golden Gate Yacht Club led 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.....</p>	<p>When GGYC filed a formal challenge it explicitly stated that it intended to engage with the defender in a mutual consent process, “toward a protocol comparable in scope, and similar in terms, to that used for the 32nd America’s Cup.” (See the challenge and covering letter here.)</p>

<p>“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 boat, a fundamental parametre of the class rule, to prove no design advantage. However, the GGYC consistently shifted the goalposts with its demands rendering a settlement impossible.</p>	<p>On November 15 GGYC put up a compromise proposal supported by a majority of challengers to resolve all issues and enable a conventional event to proceed. This did not shift the goal posts. This proposal set out a full and final fair offer in an attempt to rectify the protocol. It was supported by a majority of the challengers including Team Origin, ETNZ and Shosholoza. (See the letter here.)</p> <p>As noted above, on March 6, 2008, ETNZ confirmed the November 15 offer was “completely reasonable” and that Alinghi had no good grounds for refusing.</p> <p>Prior to this GGYC had also offered the names of ten internationally respected governmental or sporting leaders as potential mediators. Alinghi rejected all these offers and made no counter offer.</p>
<p>“On 27 November, New York Supreme Court's Justice Cahn ruled CNEV invalid. He also, without further analysis, imposed the GGYC as Challenger of Record. This point is strongly contested by SNG.</p>	<p>Justice Cahn is a highly respected judge on the New York bench whose November 27 decision disqualified CNEV and affirmed GGYC as the valid challenger of record.</p> <p>The decision was widely reported in the yachting media and full overviews of the issues and on the judgment in Scuttlebutt can be read here, and in Sail World here.</p>

<p>“The GGYC’s challenge certificate is ambiguous and contradictory and goes against the intention of George Schuyler, founder of the America’s Cup, who states in the Deed of Gift that <i>‘the challenged party has a right to know what the yacht challenging is like, so it can meet her with a yacht of her own type if it is so desired’</i>. As Defender and trustee of the America’s Cup, the SNG has a duty to follow the terms set forth in the Deed of Gift and to preserve the long-term stability of the competition.</p>	<p>The Deed sets out very simple requirements for what the challenger must disclose relating to the boat’s dimensions. These are that the challenger must state 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.”</p> <p>In its challenge GGYC met the Deed’s requirements. Having heard the defender’s new argument on this point on January 14, Justice Cahn in the New York State Supreme Court again rejected the defender’s claims in his March 17 ruling. He noted the defender had contradicted these claims in their own evidence, saying: “GGYC’s Certificate (Meyer Aff, Exh C) is valid in that it contains all of this information and, therefore, complies with the requisites set forth in the Deed. Notably, SNG does not argue that the Certificate does not fulfill these requirements set forth in the Deed (Mot Br at 6). Although SNG now claims that there is ambiguity about the racing vessel set forth in GGYC’s Certificate, the record on the Prior Motion contained evidence <i>submitted by SNG</i> indicating its belief that there was no ambiguity in GGYC’s Certificate.” (Justice Cahn – see the full decision here.)</p>
<p>“SNG and Alinghi look forward to getting the 33rd America’s Cup back on track and getting on with organising a major world class sailing event for 2011 in Valencia, Spain, in conjunction with the 12 other international teams that have already agreed to the Protocol setting forth the rules of the race.</p>	<p>The track record to date is clear: Alinghi has repeatedly rejected negotiation or compromise and has sought further litigation and delay.</p> <p>The defender initially claimed the GGYC failed to serve its court papers on the date nominated in an interview with BYM in August 2007, and that this justified efforts on their part to seek further delay. This claim was not correct and was not repeated when the matter came before the Court.</p> <p>Alinghi introduced new claims on December 27, a full month after Justice Cahn’s ruling in GGYC’s favor, alleging for the first time that the challenge certificate was deficient. These were rejected by the court in its decision of March 17. Alinghi’s new claims could have been raised in September on their motion for summary judgment. Alinghi’s litigation tactic delayed the final court order by almost six months from the initial November decision that declared GGYC the valid challenger.</p>

**33rd America's Cup timeline: July 2007-
January 2008**
JULY

July 3: Alinghi wins the 32nd America's Cup 5-2 against Emirates Team New Zealand. The Swiss become Defender for the second time. This puts Switzerland and Alinghi in the history books, along with the USA and New Zealand, as a multiple America's Cup winner.

BMW Oracle was the 32nd America's Cup Challenger of Record. It lost 5-1 to Luna Rossa in the Louis Vuitton Semi Finals.

SNG accepts Club Náutico Español de Vela, CNEV, as Challenger of Record for the 33rd America's Cup.

July 5: AC Management presents the Protocol for the 33rd America's Cup. It announces a new class; the AC90, and unveils cost-curbing measures to control expenditure associated with introducing the new class and to aid new and smaller teams. (Click [here](#) to read the press release).

July 11: Seven days after the Protocol is introduced GGYC issues a hostile challenge for the Cup in a bid to leapfrog the Challenger Selection Series and gain immediate entry to the Match. It claims that CNEV did not hold its annual regatta prior to challenging. (Click [here](#) to read the challenge).

July 18: South Africa's Team Shosholoza, representing the Royal Cape Yacht Club, becomes the first challenger for 33rd America's Cup along the lines of the 33rd Protocol presented by Alinghi and CNEV. (Click [here](#) to read the press release).

July 20: Britain's TeamOrigin, representing Royal Thames Yacht Club, challenges for the 33rd America's Cup, becoming the second entrant. This marks a return to the America's Cup for the United Kingdom which last challenged in 2002/03 in Auckland. (Click [here](#) to read the press release).

GGYC begins their legal action in the New York State Supreme Court where the Cup's Deed of Gift is registered.

July 23: GGYC's hostile challenge is widely reported in the press. Fred Meyer, SNG's Vice

JULY

The Alinghi summary does not mention the widespread alarm among challengers and other long term supporters of the event at what they described as a hopelessly one-sided protocol in a letter to the defender.

On July 16 six syndicates from the previous event (Luna Rossa, Mascalzone Latino, Areva Challenge, United Internet Team Germany, Emirates Team New Zealand and BMW ORACLE Racing) wrote to CNEV insisting that they stand down as the Challenger of Record, and stating that the protocol put the very survival of the America's Cup at risk. They described it as the "worst text in the history of the America's Cup." (See letter [here](#).)

On July 13, Louis Vuitton, a major partner in the Cup for 25 years, withdrew from the event. This is not mentioned in Alinghi's backgrounder. The company's long-time America's Cup manager, Bruno Troublé, later publicly confirmed his opposition to the new protocol and support for the GGYC court action.

On July 25, a seventh syndicate, Victory Challenge, signed the July 16 letter against the protocol.

AUGUST

During this time the GGYC made repeated efforts to convene meetings with the defender.

On August 3 Vincenzo Onorato of Mascalzone Latino put up a compromise proposal for a revised protocol which Alinghi rejected without discussion. The GGYC said it would have accepted this proposal.

The suggestion that Alinghi could not have withdrawn the protocol is incorrect. The Deed makes ample provision for agreeing any compromise suitable to all parties by mutual consent.

SEPTEMBER

Far from declining to negotiate during this period, on September 15, GGYC wrote to Alinghi offering the names of ten potential mediators, and invited Alinghi to name a mediator of its choice.

Commodore comments: *“It is disappointing that the GGYC appears to be devoting its energies to disrupting and damaging the America’s Cup by attempting to secure an exclusive match for the trophy having failed to obtain the right to challenge through normal competition on two successive attempts, first in the 31st and then the 32nd America’s Cup. The GGYC is attempting to hold the event hostage to its demands and the SNG will not negotiate with GGYC under these circumstances and, as trustee of the Cup, will strongly defend all attempts by the GGYC to disrupt and damage the America’s Cup.”*

July 25: AC Management announces Valencia as Host City for the 33rd America’s Cup in 2009.

AC Management announces that the Class Rule and the Competition Regulations will be published on October 31st, two months earlier than previously scheduled.

Emirates Team New Zealand, representing the Royal New Zealand Yacht Squadron, challenges for the 33rd America’s Cup becoming the third entrant.

Rita Barberá, Mayoress of Valencia, says: *“As the President of the Consortium that has worked with AC Management to make the 32nd America’s Cup the best ever, I would like to invite Larry Ellison and his team to withdraw their legal action and come back to Valencia and join us. We would welcome him with open arms to join all the other challengers in the 33rd America’s Cup.”* (Click [here](#) to read the press release).

July 30: The first Competitors Commission takes place with the attendance of entered challengers: Desafío Español, Team Shosholoza, TeamOrigin and Team New Zealand, Alinghi and chaired by AC Management.

July 31: Three prestigious lawyers are nominated to the Arbitration Panel: Professor Henry Peter, Graham McKenzie, and Luis María Cazorla Prieto. Both Mr. McKenzie and Professor Peter served on the Jury of the 32nd America’s Cup. Prof. Henry Peter was also a member of the 31st America’s Cup Arbitration Panel. (Click [here](#) to read the press release).

On September 16 ETNZ offered to provide a mediator. GGYC accepted this offer, but Alinghi did not respond. Its backgrounder fails to mention these offers of mediation.

It should also be noted that:

- CNEV’s own officers have since acknowledged the yacht club was a legal construct rather than a legitimate club.
- ETNZ has since stated that the defender: “abused their competitive power to stifle other teams.” (Read this [here](#).)
- In responding to the amendments to the protocol Alinghi proposed, the GGYC made the point that, although some improvements were apparent, in most respects the changes were cosmetic. The defender remained in control of the event. The Club noted that the protocol was unchanged in the important respects of:
 - ACM and SNG were not under any obligation to act in a manner that complied with fair dealing, good sportsmanship or fair play
 - SNG could still disqualify any competitor that disputed the binding effect of the protocol
 - ACM had not issued its commercial regulations or the competitor’s regulations
 - There was no mutual consent to the appointment of the officials
 - SNG and CNEV could still change the protocol at any time, at their own discretion.
- The account given in the Alinghi backgrounder of a short phone call to Larry Ellison is inaccurate. In this call the defender was again told of GGYC’s willingness to quickly settle all issues so long as the defender gave challengers a fair chance.
- The GGYC has always taken the view that the arbitration panel was not a genuinely independent body. Justice Cahn held that the arbitration was not binding on GGYC or the Court, and also held that it was “understandable” under the circumstances that GGYC would decide not to participate.

AUGUST

August 8: GGYC asks SNG to rescind the existing 33rd Protocol and replace it with a new one based on the 32nd, they also demand a complete withdrawal of the project relating to the new boats and bemoan the cost of their hostile challenge. (Click [here](#) to read the correspondence).

August 10: United Internet Team Germany, representing Deutscher Challenge Yacht Club, challenges for the 33rd America's Cup, submitting the fourth official entry.

Michael Scheeren, managing director of UITG, says: *"Despite the uncertainties around the event, we strongly believe in the path developed by AC Management and the Defender Alinghi. We intend to join the battle on the water, the only place the battle should be."*

August 16: SNG responds to the August 8 letter from GGYC that demands the Defender rescind the Protocol and the new Class Rule:

SNG explains it cannot unilaterally rescind the Protocol that was negotiated and mutually agreed with the Challenger of Record, CNEV, and by a large and growing number of challengers.

In addition, the new Class Rule is a fundamental element on which the other competitors relied when entering the current Protocol. Consequently, the GGYC demands are denied.

SNG confirms that there are no draft class rules in existence.

SNG includes in this response a proposal to meet at a time and place convenient to GGYC to discuss any specific concerns that are not otherwise addressed in the Protocol. (Click to read [SNG](#) and [GGYC](#) correspondence).

August 22: GGYC clearly indicates its reluctance to negotiate and commences ex-parte injunction proceedings in the New York Supreme Court. Notwithstanding its provocative actions, the SNG remains willing to meet and discuss GGYC's issues. (Click [here](#) to read the correspondence).

OCTOBER – NOVEMBER

Both teams knew the court date was pending. GGYC was amenable to a compromise. Offers and counter-offers culminated in a letter from GGYC, sent on October 17 to Brad Butterworth, offering compromises on nine key points in the protocol that the club and other syndicates believed needed addressing to return the Cup to a genuine competitive event. (Read this letter [here](#).)

The following day the challengers wrote to Alinghi saying they believed the offer meant they were "incredibly close" to achieving a resolution.

Continuing in constant dialogue with the challengers, on October 19 GGYC agreed in a letter that all outstanding points were readily resolvable if it could be shown that Alinghi had not retained an unfair advantage in developing the new boat.

Alinghi did not respond to this offer, and the case came before Justice Herman Cahn on October 22.

The Alinghi backgrounder quotes only part of a press release from GGYC confirming the club's willingness to compromise on all points so long as it could see the design rule and ensure it was fair. The release said: "The American team has told challengers it is ready to agree to wide ranging new proposals discussed over the last 24 hours if it can confirm for itself that the design rule developed by Alinghi is fair for all competitors." (Read this [here](#).)

When other challengers confirmed that the rule was acceptable GGYC entered into due diligence to resolve the other issues, which it believed would be relatively minor.

By November 8 GGYC believed all issues were in fact close to being resolved. The club was surprised that Alinghi then said it was issuing the Competition Regulations at the same time. GGYC did not understand the need to do this in the middle of negotiations, but accepted that these would also be discussed as part of reaching a resolution. Via this new document Alinghi produced several new points relating to the new regulations and specifically invited additional response to them from GGYC.

The following day, on Friday, November 9, Alinghi's Senior Counsel, Lucien Masméjan, told GGYC that the proposed protocol amendment language "looked good". He again asked GGYC to send any further comments regarding the new Competition

SEPTEMBER

September 4: SNG again proposes a meeting with GGYC in Geneva on September 8. (Click to read [SNG](#) and [GGYC](#) correspondence).

September 5: SNG files a Memorandum of Law in opposition to GGYC's motion for preliminary injunction and expedited trial and discovery.

Alinghi and AC Management announce a six week design consultation period that will result in the definition of the AC90 Class Rule. The intention is to have a "tight design box" in order to facilitate close racing.

Brad Butterworth, Alinghi team skipper, continues to have numerous conversations with BMW Oracle to convince them to abandon their legal action and join the 33rd America's Cup along with the other challengers: *"This is a legal ambush by one party; the fact is we have six competitors, including Alinghi, lined up for the 33rd America's Cup. It is a distraction for the America's Cup and is totally self serving on their behalf. It is most damaging for teams that haven't yet entered given that this climate of uncertainty created by the GGYC prevents them from gaining sponsorship and building their teams. The 32nd America's Cup saw the best action on the water and that is what we want for the 33rd America's Cup."* (Click [here](#) to read the press release).

September 7: AC Management names Tom Schnackenberg as the Class Rule and Competition Regulations consultant. He is to ensure that the views of all entered challengers are represented.

Mike Sanderson, Team Director of TeamOrigin, says: *"The choice of Tom Schnackenberg to lead this process is fantastic. Having someone of Tom's calibre available and willing to take on this important task is very fortunate for the whole America's Cup community."* (Click [here](#) to read the press release).

September 8: The Arbitration Panel confirms Club Náutico Español de Vela, CNEV, as Challenger of Record for the 33rd America's Cup. (Click [here](#) to read the press release).

September 10: The New York State Supreme Court grants an early hearing date on the 22

Regulations, and suggested a meeting in Geneva the following Tuesday. Over the subsequent days, however, he did not return calls to GGYC as expected. It was only in response to repeated calls from GGYC that on November 13 Masmajan returned a call and at that time confirmed that the defender had decided to break off discussions.

The claim in the Alinghi backgrounder to GGYC raising additional "demands" relates to the club's response to Masmajan's specific request for a list of any new issues relating to the Competition Regulations. A claim that complying with this request from Alinghi represented a breach of faith or a surprise is entirely misplaced.

On November 15 a majority of challengers including Origin, ETNZ and Shosholoza formally joined with GGYC to urge Alinghi to accept a joint proposal covering all outstanding points so that the event could go ahead in 2009. GGYC committed to putting a signed dismissal document in escrow so that the court case would be dropped immediately if Alinghi accepted the proposal.

On November 16 Alinghi rejected the proposal. Two days later ACM announced the postponement of the Cup.

In their backgrounder Alinghi explain their decision to reject this joint compromise proposal saying, "The Protocol, competition regulations and event regulations were developed by mutual consent in consultation with ALL entered challengers, therefore this proposal for further changes from a splinter group can not be considered."

This "splinter group" represented a majority of all the challengers. The backgrounder does not explain why other challengers were not also consulted for their views.

DECEMBER – MARCH

Alinghi's backgrounder ignores numerous efforts by GGYC to negotiate a mutual consent regatta involving all teams leading up to its decision that a Deed of Gift race was inevitable.

On December 4 GGYC offered a new formal proposal that was supported by a majority of challengers. Alinghi did not respond to this offer.

The Alinghi backgrounder fails to note that, on December 10, Ernesto Bertarelli confirmed publicly that he was committing "200%" to a two-boat Deed

October.

September 15: This day marks the start of a consultation process with all entered teams to define the class rule, the competition and event regulations, chaired by Tom Schnackenberg, Class Rule and Competition Regulations consultant.

Shosholoza's Nicola Sironi; Desafío's John Cutler, Phil Kaiko, Patrick Shaughnessy, Team New Zealand's Grant Dalton, Nick Holroyd, Marcelino Botín, Adolfo Carran; Team Germany's Michael Scheeren, Marc Wintermantel, Eberhard Magg; TeamOrigin's Mike Sanderson, Andrew Cloughton, Juan Kouyoumdjian and Alinghi's Grant Simmer, Rolf Vrolijk and Michael Richelsen attend.

Grant Dalton of Emirates Team New Zealand says: *"This is a good start to the next Cup and we at TNZ are really excited about the new class. There is no time to lose with such a short Cup cycle and we're pleased that we're getting underway."* (Click [here](#) to read the press release).

AC Management announces to participating teams a distribution of 90% of the EUR 66.5 million net surplus generated by the event. This is an unprecedented amount that will help teams prepare for the 33rd America's Cup. (Click [here](#) to read the press release).

GGYC writes to SNG. (Click [here](#) and [here](#) to read the correspondence).

September 20: Alinghi and SNG announce amendments to the Protocol agreed with all entered challengers that also address the majority of BMW Oracle's concerns. SNG makes a public appeal to the GGYC to drop their legal action and join the competition as a challenger. (Click [here](#) to read the press release, click [here](#) to read the correspondence and the [amendments](#)).

September 21: Unsatisfied with the amendments, the GGYC responds to the appeal in a letter saying: *"(...) the real issue is the unfair Protocol. That is why the law suit was filed in the first place (...)"* and it makes further requests for changes to the Protocol. (Click [here](#) to read the correspondence).

SNG files a Notice of Motion.

of Gift multihull challenge. This was two weeks before GGYC accepted that a Deed of Gift race was inevitable.

Alinghi presents lengthy arguments about keel boats. As noted above none of these arguments have been accepted by the courts. (Read Justice Cahn's decision [here](#).)

Ends

September 24: SNG files a Memorandum of Law in support of its motion to dismiss and for summary judgment

September 27: Ernesto Bertarelli speaks directly to Larry Ellison regarding the Protocol amendments of the 20th. Larry advises him that the Protocol amendments are sufficient to remove any blockage in resolving the litigation however he remains concerned that Alinghi has already designed the AC90 yacht. Ernesto assures him that this is untrue.

OCTOBER:

October 3: Due to the uncertainty and the delays arising from the GGYC's law suit in New York, AC Management announces that it will assess the feasibility of organising a 2009 America's Cup in Valencia. (Click [here](#) to read the press release).

October 6: SNG responds to GGYC's further demands of the 21st September explaining that their Protocol changes have already been addressed via discussions with the 33rd America's Cup competitors. Based on this and other issues, discussed and resolved, it is clear that SNG has heard and met the GGYC's concerns and that this has been without the involvement of a third-party (Click [here](#) to read the correspondence).

October 9: SNG sends a letter to the Challenger of Record, CNEV, suggesting the entered challengers select the displacement of the new AC90 class to prove to the GGYC that Alinghi has no design advantage. The entered challengers support this gesture. (Click [here](#) to read the correspondence).

This move was in response to a request made by Russell Coutts, BMW Oracle CEO, seeking reassurance that Alinghi did not have a head start in designing their AC90 and relates to Larry Ellison's concern mentioned to Ernesto Bertarelli on September 27th. Coutts told at least two challengers that the team would settle if Alinghi could prove it did not have a design advantage.

October 10: The entered challengers set the displacement, a fundamental parametre of the new AC90 class, and are satisfied this will negate any potential design advantage.

Contrary to its prior assertion, this does not satisfy BMW Oracle and it demands to analyse the displacement parametre in light of the full rule, not trusting the entered challenger's designers, who confirm the parametre to be crucial enough to provide the guarantee. (Click [here](#) to read the correspondence).

October 15: Design consultation meeting among the designers from entered challengers to discuss the 1st draft of the new AC90 class rule.

October 17: Despite the Protocol amendments, despite proving no design advantage by allowing the challengers to decide the displacement of the AC90, the GGYC, through a letter to Alinghi and the challengers, demands nine additional changes to the Protocol. (Click [here](#) to read the correspondence from BMW Oracle).

October 20: SNG writes to the GGYC and the entered challengers outlining the current status and the damage caused by the GGYC's ongoing litigation. The defending yacht club reiterates that despite the steps made to resolve the GGYC's issues both with the Protocol and the AC90 class, the GGYC keeps on returning with more demands. (Click [here](#) to read the letter to GGYC). (Click [here](#) to read the letter to the challengers).

October 21: Grant Simmer, Alinghi design team coordinator, once again publicly invites BMW Oracle to join discussions with entered challengers to develop the new AC90 Class Rule: *"If BMW Oracle chooses to enter they will be welcomed into this process."* The GGYC refuses.

October 22: Following a hearing at the New York Supreme Court, Justice Herman Cahn reserves his decision, and indicates that he will promptly issue a written decision about the validity of CNEV as Challenger of Record.

October 23: Representatives of Alinghi and GGYC meet at the New York Yacht Club to explore possible settlement options.

Emirates Team New Zealand's, Jim Farmer, on behalf of the entered challengers, sends a letter to the GGYC asking them to reconsider the nine points and to enter.

Despite the on-going litigation, an Italian team, that requests confidentiality, becomes the fifth challenger for the 33rd America's Cup under the disputed Protocol.

October 25: Despite seven of its nine additional demands being resolved, the GGYC continues to pursue its law suit and issues a press release saying it will agree *“to comprehensive new compromises to get the America's Cup back on track for Valencia in 2009 if the Defender will disclose its rule for the boats' design.”*

October 31: As scheduled, AC Management issues the AC90 class rule and makes it public. Designers from entered challengers applaud the consultation process, which BMW Oracle refused to join.

Juan Kouyoumdjian, principal designer for TeamOrigin, says: *“This has been an efficient and productive process and the boat itself will be spectacular: challenging to design, to sail and to race.”* (Click [here](#) for the press release).

NOVEMBER

November 1: GGYC again move the negotiation goalposts and request to *“compare yesterday's document with what they (Alinghi) started out with and we continue to ask Alinghi to provide this.”* The opinion of expert designers from five entered challengers is not taken into account.

November 2: A further entry is received for the 33rd America's Cup.

November 5: Another entry is received for the 33rd America's Cup.

November 8: AC Management issues the 33rd America's Cup Competition Regulations approved by the Defender, the Challenger of Record and all entered challengers. (Click [here](#) for press release). The group presents them at a press conference in Barcelona. (Click [here](#) for the press release).

November 12: During settlement discussions, BMW Oracle unexpectedly announces five new demands that directly affect fundamental arrangements that were recently agreed by all entered competitors in the 33rd America's Cup.

The message came through Melinda Erkelens, attorney for BMW Oracle, who, after discussions with Russell Coutts, called Lucien Masmajan to say: "(...) *he now has five additional points which were not on the list.*"

Alinghi loses confidence in BMW Oracle having any intention of negotiating a settlement in good faith. (See interview with Lucien Masmajan [here](#))

November 13: AC Management publishes the 33rd America's Cup Event Regulations, a result of joint work and consultation with the Defender and entered challengers.

All the elements for an America's Cup in 2009 are in place and have the support of all the existing competitors; however the feasibility of a race in 2009 is still impaired due to the GGYC law suit.

SNG sends a letter to the GGYC asking them to clarify their position regarding their participation in the 33rd America's Cup by November 16 at 17:00 New York time. (Click [here](#) to read the correspondence).

GGYC responds rejecting this demand. (Click [here](#) to read the correspondence).

November 15: Russell Coutts issues an ultimatum for SNG to accept their proposal by November 16 at 18:00 CET. This includes the same nine points, seven of which had already been resolved, plus several new issues, one being their unacceptable demand to impose an event format on the Defender. (Click [here](#) to read the correspondence).

November 16: In an attempt to rescue the multi-challenge event, Emirates Team New Zealand, Team Origin and Team Shosholoza sign a letter sent by GGYC to SNG making the same demands. The Protocol, competition regulations and event regulations were developed by mutual consent in consultation with ALL entered challengers, therefore this proposal for further changes from a splinter group can not be considered. (Click [here](#) to read the correspondence).

November 17: Mascalzone Latino's entry is received.

November 19: Ayre, representing Real Club

Náutico de Dénia, challenges for the 33rd America's Cup, and it is the second Spanish team to enter. (Click [here](#) for the press release).

November 22: The uncertainty created by BMW Oracle's law suit forces AC Management to delay the 33rd America's Cup. The organisation has repeatedly warned the GGYC that their litigation was jeopardising a 2009 event and the American team has consistently shown its disregard for the already entered teams. (Click [here](#) for the press release).

November 24-25: Club Náutico Español de Vela holds its annual regatta 'I Trofeo Desafío Español' in Valencia.

November 27: The New York State Supreme Court rejects the GGYC's contention that SNG breached its fiduciary duty in any respect. Justice Cahn rules CNEV invalid and imposes GGYC as the Challenger of Record. However, this decision does not become effective until the issuance of an order settling the decision. (Click [here](#) to read the Court papers).

DECEMBER

December 3: GGYC hosts a challengers meeting. According to those who attended, the meeting *'harked back to the old challenger commission meetings where nothing was ever decided'*. And *'made us appreciate the efficiency of the AC Management competitors meetings'*.

GGYC issues a proposed settlement order to the New York Supreme Court. (Click [here](#) to read the proposed settlement order).

December 4: Russell Coutts sends a letter with 12 further proposed Protocol and competition regulation amendments, including changes to the race schedule and reinstating two boat testing. (Click [here](#) to read the correspondence)

December 6: SNG issues a counter settlement order to Justice Cahn. (Click [here](#) to read the counter settlement order).

December 7: Ernesto Bertarelli writes an open letter after discussions with the NYYC and Larry Ellison in October regarding the benefits of revising the Deed of Gift to make the event

more relevant to today's sporting landscape. *"With a view towards the future and having studied the rules of the Cup I observed that the Deed does not actively promote parity for the teams and a long term future of the event."* (Click [here](#) to see the Open Letter).

December 11: Representatives of the Defender and GGYC meet in New York. Alinghi presents the framework of a new long-term "vision" for the event requiring amendments to the Deed of Gift. At the end of the meeting both parties agree on a statement, but GGYC publicly states a different opinion and calls-off the discussions on the subject.

GGYC issues a further proposed settlement order to Justice Cahn. (Click [here](#) to read the further proposed settlement order).

December 12: SNG's attorneys write to Justice Cahn declaring GGYC's boat certificate to be ambiguous and deficient and state that it has failed to give the 10 month notice period of the race dates as required by the Deed of Gift. (Click [here](#) to read the correspondence).

SNG considers the declaration of GGYC as Challenger of Record to be contrary to legal precedent in the Mercury Bay case. (Click [here](#) to read the case).

December 14: French Spirit, representing the Yacht Club of Saint Tropez, submits an entry for the 33rd America's Cup.

A further entry is received for the 33rd America's Cup.

December 15: Deadline for teams to enter the 33rd America's Cup. AC Management has received a total of 12 entries, seven of which are so far accepted.

December 27: SNG's legal team files a "motion to renew and re-argue" the case in front of the New York State Supreme Court.

SNG asks for the GGYC's challenge to be declared invalid due to its defective boat certificate that presents its boat as a "keel yacht", something that GGYC has subsequently contradicted in its public statements confirming its intention to compete with a multi-hull, which cannot fairly be categorised as a "keel yacht". (Click [here](#) for

the press release).

December 29: Russell Coutts announces that BMW Oracle is committed to a Deed of Gift challenge.

JANUARY 2008

January 9: CNEV issues a proposed counter court order to Justice Cahn (Click [here](#) to read the proposed counter court order)

January 14: Justice Cahn hears both parties and decides to delay issuing a settlement order until after he has examined the arguments raised by SNG with regard to the validity of the GGYC challenge. Justice Cahn decides it is proper to hold a hearing to resolve the validity of the GGYC challenge and schedules it for the 23 January. (Click [here](#) for the press release).

January 15: Justice Cahn issues an Order to Show Cause, requiring that GGYC show cause at the January 23 hearing as to: *“Why an order should not be entered declaring GGYC’s notice of challenge and certificate to be in non-compliance with and valid under the Deed of Gift.”*

January 18: SNG lawyers write to Justice Cahn stating that *“the New York Court of Appeals has given clear and specific instruction that disputes over the eligibility of vessels and sufficiency of boat certificates are to be determined not by the court, but rather in accordance with the rules and regulations of the Cup holder”*. (Click [here](#) to read the correspondence).

January 22: SNG presents a letter from the International Sailing Federation (ISAF) stating the contradiction and differences between the descriptive terms multi-hull and “keel yacht”. Jerome Pels, ISAF Secretary General concludes that: *“(...) a “multihull” yacht would not be classified as a “keel” yacht.”* (Click [here](#) to read the letter from ISAF and other correspondence [here](#) and [here](#)).

TeamOrigin, representing the Royal Thames Yacht Club, announces a Deed of Gift challenge calling for a Match in 2011 in Valencia to be sailed in AC90 yachts. The team outlines its willingness to consider a mutual consent match with a Protocol along the same lines as the 33rd.

January 23: Justice Cahn hears arguments over whether the GGYC has put forth a valid Deed of Gift challenge for the 33rd America's Cup.

GGYC seeks to present new evidence at the hearing about what a "keel yacht" is. Justice Cahn invites SNG to present additional submissions on Monday on these issues, including on the definition of a "keel yacht" versus a multi-hull.

January 28: SNG submits further evidence to Justice Cahn in support of a court order declaring the GGYC challenge invalid. This submission demonstrates through expert testimony – from among others; Nigel Irens, *designer and fellow of the Royal Institute of Naval Architects*, Göran Marström, *founder of Marström, the company that builds the ISAF Tornado Class catamaran*, Nicolas Grange, *president of the Swiss Multi-hull Association* and Jochen Schuemann, *three-time Olympic Gold medalist and twice America's Cup winner* – that a "keel yacht" cannot be categorised as a multi-hull, as implied in the ambiguous and contradictory GGYC challenge certificate. (Click [here](#) for the press release).

January 29: In a last minute letter to Justice Cahn, the GGYC concedes that it does not intend to race with a "keel yacht" as stated in its boat certificate. The GGYC abandons its arguments of January 23 that a multi-hull vessel could be a "keel yacht" in an attempt to salvage its defective certificate and shifts to insisting that it has supplied all the details required by the Deed of Gift for a challenge.

This demonstrates an acknowledgement that their boat certificate is ambiguous and contradictory. (Click [here](#) to read the correspondence).

January 30: SNG replies to Justice Cahn highlighting that since the GGYC has finally confirmed that they would not race a "keel yacht" but a multi-hull, it should be deemed that they have withdrawn their challenge, which in any case is invalid. (Click [here](#) to read the correspondence).

MARCH 2008

March 18: Justice Cahn issues court order dated 17 March 2008 denying both of SNG's motions and ruling the GGYC certificate valid but proposing that SNG and GGYC agree dates for the Deed of Gift Match. (Click [here](#) to read the court order and [here](#) to read the press release).

March 19: SNG writes to GGYC to invite the club to meet and agree dates for the Deed of Gift Match as contemplated by Justice Cahn in his Order dated March 17 2008. SNG states that "We believe that the earliest date that GGYC could propose for us to meet on the water is May 1 2009 as described below:

- GGYC issued its challenge on July 11 2007.

- The 10-month notice period was then interrupted by GGYC's filing of this lawsuit nine days later, on July 20 2007.

- The notice period then resumed with Justice Cahn's issuance of a final order dated March 17 2008.

- The notice period is now running again and will expire on or about January 7 2009.

- GGYC's challenge specifies a race in the Northern Hemisphere.

- The Deed of Gift permits races in the Northern Hemisphere only between May 1 and November 1.

- Thus, the earliest possible first race date compliant with the Deed of Gift is May 1 2009."

(Click [here](#) to read SNG's letter to GGYC).

March 20, 21, 23: GGYC agrees to meet at the SNG in Geneva, Switzerland at 11.00am on March 26 2008. (Click [here](#) and [here](#) and [here](#) to read the letter exchange between SNG and GGYC).

March 26: SNG representatives, Lucien Masmajan, lead counsel for the club, and Fred Meyer, Vice-Commodore, meet with GGYC representatives, Russell Coutts and Tom Ehman, at the SNG on Lake Geneva to try and agree the dates for the Deed of Gift Match. The GGYC approach is disappointing and the two refuse to negotiate. (Click [here](#) to read the press release).

SNG lawyers write to Justice Cahn to request that, as contemplated in his Order dated 17 March, they return to Court for him to set the dates for the Deed of Gift Match. (Click [here](#) to

read SNG letter to Justice Cahn and [here](#) to read the press release).

GGYC lawyers write to Justice Cahn requesting that an Order is issued to reflect the summary judgement granted on November 27 2007. (Click [here](#) to read GGYC letter to Justice Cahn).

March 27: Justice Cahn agrees to a hearing and sets the date for April 2 2008.

GGYC serves SNG with notice of Justice Cahn's Orders dated March 17 2008.

APRIL 2008

April 2: Justice Cahn hears arguments from both parties and indicates that he would issue a new court order setting the dates for the Deed of Gift Match between SNG and GGYC. (Click [here](#) to read the press release and [here](#) to read the court transcript).

April 14: SNG files notice of appeal and pre-argument statement with the Appellate Division of the New York Supreme Court. (Click [here](#) to read the notice of appeal, [here](#) to read the pre-argument statement and [here](#) to read the press release).

April 15: SNG files motion for stay pending appeal and a motion for an order expediting appeal and for expedited relief.

Justice Andrias, of the Appellate Division, grants SNG an expedited appeal. All briefing on the appeal are to be completed by May 15 2008 and oral arguments are to be heard before the end of the June term. Justice Andrias also decides that SNG's request for a stay should be referred for consideration to a five-judge panel of the Appellate Division. Briefing on the stay motion will be completed by 25 April 2008. (Click [here](#) to read the summary statement from Justice Andrias and [here](#) to read the press release).

SNG lawyers write to Justice Cahn advising him of the pendency of the appeal and re-emphasising the importance of entering an order containing the May 1 2009 race dates. (Click [here](#) to read the correspondence).

GGYC lawyers write to Justice Cahn in response to SNG's letter. (Click [here](#) to read

the correspondence).

April 21: SNG files appellate brief with the Appellate Division of the New York Supreme Court. (Click [here](#) to read the brief).

April 22: GGYC files notice of cross motion to dismiss the SNG appeal filed on April 14 2008 with a memorandum of law in support of the cross motion and an affirmation of Gina Petrocelli. (Click [here](#) to read the cross motion, [here](#) to read the memorandum of law in support of the cross motion and [here](#) to read the affirmation).

April 25: SNG files a memorandum of law in further support of the motion for stay pending appeal and in opposition to GGYC's cross motion for an order dismissing SNG's appeal filed on 14 April 2008. (Click [here](#) to read the reply brief and [here](#) to read the correspondence with the appellate division).

April 28: Hearing date for the oral arguments for the appeal is set for June 5 2008 by the Appellate Division of the New York Supreme Court. (Click [here](#) to read the court schedule for June 5 2008).

MAY 2008

May 8: Four-judge panel of the Appellate Division of New York Supreme Court issues an order dated May 8 2008 dismissing GGYC's cross motion to dismiss SNG's appeal of April 14 2008 and denying SNG's motion to stay the case. (Click [here](#) to read the court order).

May 9: GGYC file opposition brief. (Click [here](#) to read GGYC brief).

May 12: Justice Cahn issues court order granting the America's Cup defending yacht club, SNG, the full 10-month notice period, to begin from the date of service of his order, as he did not deem any of the motions brought by SNG to be frivolous and considered that it would be inequitable to deprive SNG of the full 10-month notice period. (Click [here](#) to read the court order, [here](#) to read the decision and [here](#) to read the press release).

May 13: SNG files an appeal against Justice Cahn's court order of 12 May 2008 as some of the language it contains appears to be contradictory, contemplating a match in

Valencia in March 2009 when the Deed of Gift prohibits racing in the Northern Hemisphere between 1 November and 30 April.

The Appellate Division of the New York Supreme Court grants SNG's motion to consolidate appeals, setting a timeline through to the oral arguments scheduled for June 5 2008 as follows:

- **May 15 2008:** Reply brief to be submitted by SNG will constitute the opening brief on the consolidated appeal

- **May 22 2008:** GGYC's answering brief to be submitted

- **May 23 2008:** SNG's reply in the consolidated appeal to be filed

- **June 5 2008:** Oral arguments to be heard before the Appellate Division of the New York Supreme Court. (Click [here](#) to read the notice of appeal, [here](#) to read the memo of law, [here](#) to read the affirmation of Laura Murphy, [here](#) to read the notice of entry, [here](#) to read the summary statement and [here](#) to read the press release).

May 15: SNG files reply brief which will also constitute the opening brief for the consolidated appeal. (Click [here](#) to read the SNG brief)

May 22: GGYC to submit its answering brief to the Appellate Division of the New York Supreme Court. (Click [here](#) to read the GGYC brief)

May 23: SNG to submit its [reply brief](#) for the consolidated appeal.

May 30: [SNG letter](#) to GGYC commodore

JUNE 2008

June 5: Oral arguments to be heard before a five-Judge panel from the Appellate Division of the New York Supreme Court.