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July 27, 2007

VIA ELECTRONIC MAIL AND U.S. MAIL

Professor Henry Peter, Chairman
America's Cup Arbitration Panel 33
Bd du Pont d'Arve 40
Geneva 1211
Switzerland

Dear Professor Peter:

The Golden Gate Yacht Club ("GGYC") has received notice that Societe Nautique de Geneve ("SNG") and Club Nautico Espanol de Vela ("CNEV") plan to submit to arbitration the validity of the challenge of CNEV.¹

The format and process set up for this arbitration in The Protocol Governing the Thirty Third America's Cup ("Protocol") violate the most basic principles of justice and independence common to all legitimate adjudicatory bodies and are an affront to the most basic sensibilities common to all law abiding people. A dispute resolution proceeding in which the parties to the proceeding are in agreement (in this case CNEV and SNG), and in which the judges may be removed, and the rules of procedure may be changed, at any time and for any reason by the parties to the arbitration, will be viewed by the public and the sailing community as nothing more than a kangaroo court.

The arbitration process will further damage the sport of yachting as it will be viewed with no more validity, and no less frivolity, than CNEV's attempt to meet the annual regatta requirement for the Challenger of Record by holding a sailing school.² Its continuation

¹ Unsigned letter from Henry Peter, Chairman of the arbitration panel, captioned "ACAP 33 / 01: Application filed by SNG on July 20, 2007, in respect of the validity of the challenge of Club Nautico Espanol de Vela (CNEV) for the 33rd Americas Cup," dated July 23, 2007.

² The Deed of Gift requires that a bona fide yacht club challenge for the Cup. Pursuant to the Deed of Gift, "[a]ny organized Yacht Club of a foreign country, incorporated, patented, or licensed by the legislature, admiralty, or other executive department, having for its annual regatta an ocean water course on the sea, or on an arm of the sea, or one which combines both, shall always be entitled to the right of sailing a match of this Cup...." Demonstrating its failure to comply with the terms of the Deed of Gift regarding an annual regatta, CNEV sought to hold a sham regatta after its purported challenge for the America's Cup which was announced by the Spanish Sailing Federation on July 13, 2007, the very same day that the regatta was supposed to take place. Reports have indicated that the sham regatta was actually a sailing training session.

day to day will provide compelling on-going proof that SNG's Protocol for the 33rd America's Cup was designed by SNG to put the fox in charge of the henhouse.

The question presented to the arbitration panel by SNG is whether it violated the terms of the Deed of Gift and its legal duty to comply with and enforce those terms under New York law by accepting CNEV's challenge. In a transparent attempt to lend legitimacy to the arbitration panel, SNG in its letter to the arbitration panel dated July 23, 2007, ironically refers to a New York Court of Appeals decision captioned *Mercury Bay Boating Club v. San Diego Yacht Club* and argues that it "is appropriate that sporting issues are resolved by the dispute resolution bodies established by the sport rather than in the courts."

In fact, as the arbitration panel must be aware, the *Mercury Bay* opinion held that the New York courts have the authority to interpret the trust instrument, the Deed of Gift, and determine whether a successor trustee, in this case SNG, has complied with its terms. Indeed, the *Mercury Bay* opinion refers to amicus briefs submitted jointly on behalf of "renowned yachtsmen from the United States, Great Britain and Australia and yacht clubs of undisputed standing" for the proposition that the court has jurisdiction over the administration of the Deed of Gift. *Mercury Bay Boating Club, Inc. v. San Diego Yacht Club*, 76 N.Y.2d 256, 278 (N.Y. 1990).

GGYC is disappointed that Henry Peter, appointed chairman of the arbitration panel, would even consider SNG's application to arbitrate knowing the panel lacks jurisdiction over this issue. Mr. Peter, in his book entitled, "Arbitration in The America's Cup," concedes that "the New York State Supreme Court . . . has jurisdiction over the Deed of Gift" to decide upon the "interpretation of the deed of gift" and whether a "challenge was valid." Henry Peter, *Arbitration in the America's Cup*, (2003), p.4.

Indeed, the panel's willingness to engage in this arbitration in the face of this legal precedent suggests its members are beholden to the parties who appointed them in a secret document and who retain the power to remove them. The Protocol, published only two days after SNG won the 32nd America's Cup, states that SNG and CNEV "have agreed in a separate document on the names of the Arbitration Panel members." See Protocol ¶ 24.2. The letter has never been publicly disclosed, to our knowledge, nor has the identity of the arbitrators; and until we received notification from Mr. Peter, we did not even know he was the panel's chairman. Nor have we yet been advised of the names of the other members.

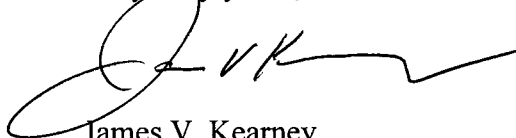
Not only does this arbitration panel lack jurisdiction, the clubs opposed to SNG and CNEV on the issue presented are frozen out from the adjudication since they will not and cannot have standing before the arbitration panel. Under the Protocol only a yacht club accepted as a Challenger has standing before the panel; but to become a Challenger, a yacht club must submit to the terms of the Protocol which includes granting SNG the power to disqualify any Challenger who disputes the binding effect of the Protocol. An adjudicatory proceeding over the validity of the Protocol in which a yacht club must accept the Protocol before they can challenge its validity, while SNG retains the right to terminate their standing if they challenge any provision of the Protocol, is a fatally flawed proceeding.

It offends basic notions of justice that one side to a dispute, SNG and CNEV collectively, would retain hegemonic control over an adjudicatory panel and its proceedings while the other side remains powerless.³ Moreover, any real adversary can be disqualified from the competition just for disputing a provision of the Protocol. *See* Protocol ¶ 2.7(d).

Moreover, SNG and CNEV retain the sole power to modify anything they desire regarding the arbitration, including but not limited to the powers of the arbitration panel, the jurisdiction of the arbitration panel, procedures of the arbitration panel, and even the official language of the arbitration panel. *See* Protocol ¶ 36.1. The issue of whether CNEV is a legitimate challenger is not contested by CNEV or SNG and their masquerading as adversaries while the real adversaries are rendered impotent is not a legitimate legal proceeding but rather a mockery of justice. Civilized countries have long done away with such tribunals and no legitimate arbitration panel would agree to operate under these conditions. This may explain the striking omission from the 33rd Protocol of the requirement in the 32nd Protocol that arbitration panel members be “fair minded and possess good judgment.”

It is subterfuge to have SNG and CNEV’s hand picked arbitrators, replaceable at their whim, sitting in a forum and under rules wholly controlled by SNG and CNEV, and judging an issue that the parties to the arbitration do not dispute. The disgrace and shame brought upon the America’s Cup by this charade threatens to inflict a crippling blow to the sport. This arbitration, if it chooses to proceed, will not and cannot have any involvement from GGYC, and will be viewed with the same disdain by the public and sailing community as CNEV’s sham regatta.

Very truly yours,



James V. Kearney
of LATHAM & WATKINS LLP

Counsel to Golden Gate Yacht Club

³ SNG’s letter to the Panel of July 20, 2007 expects that CNEV would make an application to the Panel on July 23, 2007 but did not disclose how SNG knew this information.