



GOLDEN GATE YACHT CLUB
#1 Yacht Road, San Francisco, California USA 94123

BREACH OF FIDUCIARY SUIT FILED AGAINST AMERICA'S CUP TRUSTEE

New York, NY, October 26, 2009 – Reckless and repeated disregard in its stewardship of the America's Cup by the Société Nautique de Geneve (SNG) has prompted the Golden Gate Yacht Club (GGYC) to ask the New York Supreme Court to remove the Swiss yacht club from its position as Trustee in a Breach of Fiduciary Duty complaint filed today.

In its place, GGYC – the Challenger of Record the 33rd America's Cup - has requested the Court to appoint a faithful, fit and proper substitute to oversee the next Match to be sailed in 2010, starting 8 February.

A new Trustee would provide equitable terms for both competitors, something SNG has denied GGYC by its orchestration and manipulation of the rules and processes designed to ensure that the defending sailing team, Alinghi, can not lose.

GGYC, and its sailing team, BMW ORACLE Racing, remain committed to sailing the Match on the dates in February 2010 set by the Court. There is no desire by this action to change Alinghi's role as SNG's sailing team and defender.

Foremost among a catalogue of failures of SNG and listed in a Breach of Fiduciary Duty complaint are:

- Offering the America's Cup hosting rights in order to extract secret commercial deals
- Repeated attempts to seize control of the rules and officiating processes to ensure that Alinghi can not lose
- Moves to disqualify GGYC's yacht despite assurances to the New York Supreme Court that this would not happen
- Selecting Ras Al Khaimah for the 33rd Cup to further its own business interests whilst exposing GGYC to unnecessary danger

"Winning the Cup brings not just honor and pride, but responsibilities too. The honor may have gone, but the responsibilities remain," said Russell Coutts, Skipper and Chief Executive of GGYC's challenging team, BMW ORACLE Racing.

“The America’s Cup is meant to be hard to win, not impossible to lose,” added Coutts.

The complaint also states that the America’s Cup was used as a powerful bargaining chip to extract enormous commercial benefits through secret and complex side deals in selecting Valencia and Ras Al Khaimah as host venues for the 32nd and 33rd Matches.

It is clear that entities associated with Ernesto Bertarelli leveraged the America’s Cup for gain.

“SNG says it has the right to change the rules for the America’s Cup races at any time and select all the umpires. It’s like letting the Phillies change the rules for the World Series after it starts and select all the umpires,” said David Boies, chairman of Boies, Schiller & Flexner.

“Basic fairness and sportsmanship require that a contest be played with set rules and judged by umpires free of interference. The Courts have already had to stop SNG from negotiating unfair rules with a sham competitor orchestrated by SNG. We hope that SNG will now abandon its efforts to win with rule manipulations and back-room deals. Let the best boat win on the water,” added Boies.

GGYC is also contesting SNG’s choice of Ras Al Khaimah in a separate case before the New York Supreme Court because it is in direct contravention of the Deed of Gift’s clear stipulation that the Cup can only be sailed in the Northern Hemisphere between 1 May and 1 November.

Nevertheless as Trustee, and in breach of its duty, SNG did not consult GGYC at any stage in selecting Ras Al Khaimah, a location it knew did not meet the clear language of the Deed of Gift and one which exposes the American challenger to unnecessary danger.

SNG’s actions since winning the America’s Cup in 2003 and defending it 2007 has brought a clamor of complaint from the sailing community around the world.

“Ernesto Bertarelli has taken advantage of the Cup holder’s inherent competitive balance in the Deed of Gift to absurd and obscene levels. By his actions on land he has tried to make sure that he can not be beaten on the water,” commented Bill Koch, whose America³ team was the successful defender of the America’s Cup in 1992.

Italy’s Vincenzo Onorato, a three-time challenger, said of Alinghi’s proposed rules for the next Cup: “This is the most unsporting document ever done.”

The America’s Cup has prospered for 158 years, despite the American Civil War, two World Wars and several economic depressions.

The oldest international trophy in sport is now in peril because of the selfish and self-serving acts of the Swiss yacht club, its representative sailing team Alinghi, America's Cup Management (both controlled by Ernesto Bertarelli) and other affiliates.

A copy of the Breach of Fiduciary Duty complaint can be found at:
<http://www.ggyc.com/acnews.php>

Notes:

Golden Gate Yacht Club:

San Francisco's Golden Gate Yacht Club is the Challenger of Record for the 33rd America's Cup.

BMW ORACLE Racing:

Is GGYC's nominated sailing team, owned by Larry Ellison. Russell Coutts, the most successful skipper in the history of the America's Cup, is Skipper and CEO.

Société Nautique de Genève:

SNG is the trustee of the America's Cup having won it in 2003 and 2007.

Alinghi:

Is SNG's sailing team, owned by Ernesto Bertarelli.

ACM:

Is America's Cup Management, the event organizing body for the 2007 and 2010 America's Cups. It is also owned by Ernesto Bertarelli.

The America's Cup:

Named after the yacht America, which came to England from New York in 1851 and won a race around the Isle of Wight. The trophy was named in its honor. The 2010 event is the 33rd Match in the long and colorful history of the competition.

Deed of Gift:

Is the document drawn up in 1887 by the last surviving owner of the yacht America, George Schuyler. He donated the Cup for "perpetual Challenge Cup for friendly competition between foreign countries". Accordingly, the America's Cup is not a sports-property, but must be managed in accordance with trust law on behalf of its beneficiaries i.e., all those involved in the competition.

ISAF:

International Sailing Federation, the sport's world governing body. Entered into an initially secret agreement with SNG abrogating many of its powers to a competitor and limiting the rights of BMW ORACLE Racing.

Boies, Schiller & Flexner:

Based in New York City, Boies, Schiller & Flexner has grown to over 230 lawyers practicing in offices strategically located throughout the U.S. The Firm has tried more than 350 cases before juries and judges in federal and state courts and regularly serves as lead counsel on complex, high profile global matters. In addition, the Firm has a fast-growing corporate practice. For more information about BS&F, please visit www.bsfllp.com

For further information:

Jane Eagleson

+1-201-887-8184

jeagleson@bmworacleracing.com

www.ggyc.com

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