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05.05.2008 CET

BMW ORACLE Racing partners with VPLP in design of AC Multihull.

The leading French multihull design firm of Van Peteghem / Lauriot Prévost (VPLP) are working with BMW ORACLE Racing's design team in developing its new multihull boat for the America's Cup Deed of Gift match, the team confirmed today.

Firm principals Vincent Lauriot Prévost and Marc Van Peteghem are integrated with the BMW ORACLE Racing core design team for the project. VPLP are the lead designers in conjunction with the BMW ORACLE Racing team, led by design coordinator Mike Drummond. BMW ORACLE Racing's Michel Kermarec heads up the performance prediction and appendage design.

"We are enjoying working with and learning from the vast experience of VPLP in multihulls," Drummond said. "The French multihull community, in general, are leaders in these yachts and we are benefiting greatly. When we first looked at a multihull in the event of a Deed of Gift challenge, we were impressed with the record of the Groupama series of racing multihulls. Franck Cammas and VPLP designed yachts have been breaking speed records and leading this field, so VPLP was the natural choice."

Vincent Lauriot Prévost affirmed, "We are delighted to have been chosen by BMW ORACLE Racing to design the new multihull for the 33rd America's Cup. To be able to integrate our expertise in high performance multihull design with the experienced BMW ORACLE Racing design team, as well as with the construction team in the United States, is exciting and inspiring for VPLP."

"We have always believed that innovation is the key to success, and working in synergy with BMW ORACLE, Franck Cammas, and the Groupama Team is exactly the type of challenge we thrive on. To see a match between these racing giants should be pure adrenalin."

VPLP at a glance

Vincent Lauriot Prévost and Marc Van Peteghem created the VPLP office in 1983. 25 years on, VPLP is the world's leading multihull design agency and the the only naval architects who specialize and design multihulls for all three sectors of the market: racing trimarans, luxury sailing catamarans and production catamarans in both power and sail.

VPLP's list of achievement is simply huge, with victories in almost all offshore multihull regattas including the Route du Rhum, Transat Jacques Vabre, OSTAR, and Jules Verne Trophy as well as speed records.

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19.01.2010

BMW ORACLE Racing takes maiden sail in Valencia.

13.01.2010

BMW EfficientDynamics at the America's Cup.

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DEED OF GIFT

This Deed of Gift, made the twenty-fourth day of October, one thousand eight hundred and eighty-seven, between George L. Schuyler as sole surviving owner of the Cup won by the yacht AMERICA at Cowes, England, on the twenty-second day of August, one thousand eight hundred and fifty-one, of the first part, and the New York Yacht Club, of the second part, as amended by orders of the Supreme Court of the State of New York dated December 17, 1956, and April 5, 1985.

WITNESSETH

That the said party of the first part, for and in consideration of the premises and of the performance of the conditions and agreements hereinafter set forth by the party of the second part, has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over, unto said party of the second part, its successors and assigns, the Cup won by the schooner yacht AMERICA, at Cowes, England, upon the twenty-second day of August, 1851. To have and to hold the same to the said party of the second part, its successors and assigns, IN TRUST, NEVERTHELESS, for the following uses and purposes:

This Cup is donated upon the conditions that it shall be preserved as a perpetual Challenge Cup for friendly competition between foreign countries.

Any 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, with a yacht or vessel propelled by sails only and constructed in the country to which the Challenging Club belongs, against any one yacht or vessel constructed in the country of the Club holding the Cup.

The competing yachts or vessels, if of one mast, shall be not less than forty-four feet nor more than ninety feet on the load water-line; if of more than one mast they shall be not less than eighty feet nor more than one hundred and fifteen feet on the load water-line.

The Challenging Club shall give ten months' notice, in writing, naming the days for the proposed races; but no race shall be sailed in the days intervening between November 1st and May 1st if the races are to be conducted in the Northern Hemisphere; and no race shall be sailed in the days intervening between May 1st and November 1st if the races are to be conducted in the Southern Hemisphere. Accompanying the ten months' notice of challenge there must be sent 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. Center-board or sliding keel vessels shall always be allowed to compete in any race for this Cup, and no restriction nor limitation whatever shall be placed upon the use of such center-board or sliding keel, nor shall the center-board or sliding keel be considered a part of the vessel for any purposes of measurement.

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, in which case also the ten months' notice may be waived.

In case the parties cannot mutually agree upon the terms of a match, then three races shall be sailed, and the winner of two of such races shall be entitled to the Cup. All such races shall be on ocean courses, free from headlands, as follows: The first race, twenty nautical miles to windward and return; the second race an equilateral triangular race of thirty-nine nautical miles, the first side of which shall be a beat to windward; the third race (if necessary) twenty nautical miles to windward and return; and one week day shall intervene between the conclusion of one race and the starting of the next race. These ocean courses shall be practicable in all parts for vessels of twenty-two feet draught of water, and shall be selected by the Club holding the Cup; and these races shall be sailed subject to its rules and sailing regulations so far as the same do not conflict with the provisions of this deed of gift, but without any times allowances whatever. The challenged Club shall not be required to name its representative vessel until at a time agreed upon for the start, but the vessel when named must compete in all the races, and each of such races must be completed within seven hours.

Should the Club holding the Cup be for any cause dissolved, the Cup shall be transferred to some Club of the same nationality, eligible to challenge under this deed of gift, in trust and subject to its provisions. In the event of the failure of such transfer within three months after such dissolution, such Cup shall revert to the preceding Club holding the same, and under the terms of this deed of gift. It is distinctly understood that the Cup is to be the property of the Club subject to the provisions of this deed, and not the property of the owner or owners of any vessel winning a match.

No vessel which has been defeated in a match for this Cup can be again selected by any Club as its representative until after a contest for it by some other vessel has intervened, or until after the expiration of two years from the time of such defeat. And 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.

AND, the said party of the second part hereby accepts the said Cup subject to the said trust, terms, and conditions, and hereby covenants and agrees to and

with said party of the first part that it will faithfully and will fully see that the foregoing conditions are fully observed and complied with by any contestant for the said Cup during the holding thereof by it; and that it will assign, transfer, and deliver the said Cup to the foreign Yacht Club whose representative yacht shall have won the same in accordance with the foregoing terms and conditions, provided the said foreign Club shall, by instrument in writing lawfully executed, enter with said part of the second part into the like covenants as are herein entered into by it, such instrument to contain a like provision for the successive assignees to enter into the same covenants with their respective assignors, and to be executed in duplicate, one to be retained by each Club, and a copy thereof to be forwarded to the said party of the second part.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal, and the said party of the second part has caused its corporate seal to be affixed to these presents and the same to be signed by its Commodore and attested by its Secretary, the day and year first above written.

GEORGE L. SCHUYLER, (L.S.) In the presence of THE NEW YORK YACHT CLUB H. D. Hamilton. by Elbridge T. Gerry, Commodore (Seal of the New York Yacht Club) John H. Bird, Secretary

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"... it is never easy, but when you do achieve the goal it does feel even better. ... it is another great success for Cariboni and you should all be very proud of what you have created here." Cariboni supplier of canting keel and deck equipment for Ericsson and Puma racing team.



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ITA 99 equipped with Cariboni hydraulic system triumph at the Louis Vuitton Trophy.... Cariboni USA is the official supplier of the hydraulic system of BMW Oracle Racing.... Marc Guillemot

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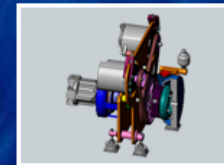
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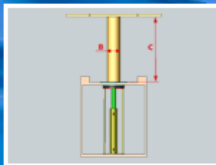
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Exhibit FF

 **[PRINT]** ESPN.com: Olympics

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Thursday, October 29, 2009

Engine debuts aboard trimaran

Associated Press

SAN DIEGO -- Among the signs that this is going to be a radical America's Cup are the cases of motor oil stacked in a shipping container at challenger BMW Oracle Racing's temporary boatyard on San Diego Bay.

The American syndicate took its monster trimaran for its first sail Thursday since a BMW diesel engine was added to run a hydraulic system that trims the boat's giant sails.

Helmsman Jimmy Spithill said it was a different experience aboard the 90-by-90-foot boat, which was recently modified to add the engine toward the stern of its main hull.

At one point out on the Pacific Ocean, Spithill said he wondered how much fuel the boat carries.

"It's not like we can just pull up to a gas station, is it?" Spithill said.

Defending champion Alinghi of Switzerland changed the rules earlier this year and built a 90-foot catamaran with an engine for running a hydraulic system to trim sails and move water ballast from one hull to the other.

America's Cup boats have traditionally used manual power to trim sails.

"The most noticeable thing was just the noise of the engine," said Spithill, who added that the only thing the crew usually hears is the wind whipping through the rigging. "When you're used to nothing, it stands out. It was a weird sensation just with the engine running all day."

A best-of-three showdown between the bitter rivals is set to begin Feb. 8.

On Tuesday, a New York State Supreme Court justice ruled that Ras al-Khaimah, United Arab Emirates, can't host the racing based on the 19th century Deed of Gift that governs the competition for the oldest trophy in international sports.

The racing will likely be held in Valencia, Spain, unless Alinghi picks a Southern Hemisphere port. The two sides have been locked in a nasty court fight for more than two years.

The legal bickering aside, the showdown could provide the most extreme, spectacular racing in the 158-year history of the America's Cup. The multihulls are capable of sailing at two to 2½ times the speed of the wind.

With just more than three months before racing begins, learning how to use the engine to trim sails has added another element to the cutting-edge boat.

"It's amazing the amount of horsepower you can have on tap," said Spithill, an Australian in his fourth America's Cup campaign. "Also, in these first few days we have to be incredibly careful because the

amount of power it can generate, it can be very easy to break something."

Spithill said the engine will be controlled by a computer. When a sail trimmer needs power, he'll press a button.

"Obviously there's been a lot of work done beforehand. Now we really need to get out there and do the real thing," he said. "We're pretty fortunate with BMW and the support they've given us to really help us out with this."

Spithill said it's hard getting used to the absence of the NFL-sized crewmen known as grinders, who turn the coffee-grinder winches that trim the sails.

"There was a lot more lunch left," Spithill said.

Eight grinders have been knocked off the boat due to the addition of the engine. They'll perform other tasks in the campaign.

While some other classes of racing boats use hydraulic power to trim sails, BMW Oracle Racing skipper Russell Coutts, a three-time America's Cup winner, isn't happy with the introduction of engines to the sport's marquee event. Spithill isn't too keen on it, either.

"I really appreciate having the guys on board grinding it out," Spithill said. "You're so used to looking over at the other guys; you're working hard, you've got your grinders, they've got theirs, and as a team you've got to physically get through a race.

"It's going to be weird not having those guys on board," Spithill said. "We've proven we can sail in a breeze. We've had the boat up to 40 knots, a lot of wind and rough seas. I'd much rather have them on board in America's Cup racing, for sure."

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Exhibit HH



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

11 July 2007

The President
Société Nautique de Genève
Port Noir, Lake Geneva
Geneva, SWITZERLAND

Dear Sir:

Notice of Challenge for the America's Cup

It is with much pleasure that the Golden Gate Yacht Club (GGYC) hereby formally challenges Société Nautique de Genève (SNG) to a match for the America's Cup.

This Notice of Challenge is given in accordance with the America's Cup Deed of Gift dated 24 October 1887 between George L Schuyler and the New York Yacht Club as amended by Orders of the Supreme Court of the State of New York dated 17 December 1956 and 5 April 1985.

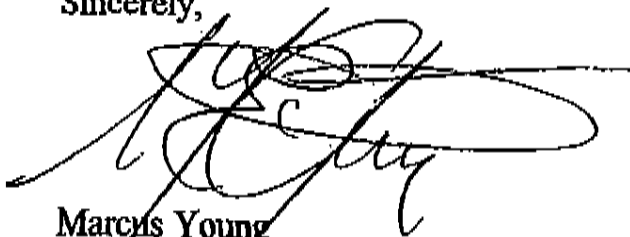
We are pleased to confirm that GGYC:

- (a) is incorporated in the United States of America, in the State of California;
- (b) maintains a membership of more than 200 members;
- (c) operates as a yacht club and has objectives consistent with the furtherance of yachting activities;
- (d) is a member of our national sailing authority, US SAILING; and
- (e) has an annual regatta, the Sea Weed Soup Perpetual Trophy that, among other GGYC regattas, is and has been held annually on an arm of the sea, namely San Francisco Bay.

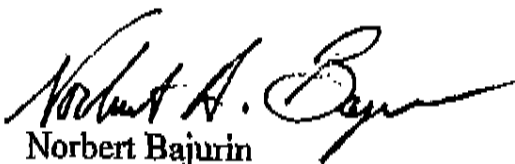
To comply with the requirements of the Deed of Gift that ten months' notice be given, and recognizing the period permitted by the Deed of Gift for a match in the Northern Hemisphere, we name 4 July 2008 as the date of the first race, 6 July 2008 and 8 July 2008 as the dates for the second and, if necessary, third races. GGYC acknowledges that the Deed of Gift contemplates negotiations between the Challenger and the Defender that may alter and supplement these terms, and nothing in this Challenge is intended to circumvent consensual negotiations in the spirit of the Deed of Gift toward a Protocol comparable in scope, and similar in terms, to that used for the 32nd America's Cup. However, should SNG be unwilling to participate in the establishment of a Protocol through a consensual process, then the match shall proceed as expressly set forth in the Deed of Gift.

Also in accordance with the requirements of the Deed of Gift, attached is the Certificate as to the name, rig and specified dimensions of the challenging vessel. The "Custom House" registry of the challenging vessel will be sent as soon as possible. It is again acknowledged that the dimensions of the challenging and defending vessel for the proposed match may be altered as a result of the consensual process contemplated in the Deed of Trust – provided that SNG is willing to engage in that process.

Sincerely,



Marcus Young
Commodore
Golden Gate Yacht Club



Norbert Bajurin
Staff Commodore
Golden Gate Yacht Club

**CERTIFICATE
OF NAME, RIG AND SPECIFIED DIMENSIONS OF
CHALLENGING VESSEL**


I, Commodore Marcus Young, certify the details set out below as to the name, rig and specified dimensions of the keel yacht to represent **Golden Gate Yacht Club** in a match for the America's Cup to be sailed in accordance with the Notice of Challenge herewith:

1. **Name:** *USA*
2. **Owner:** Oracle Racing, Inc.
3. **Rig:** Single-masted, sloop-rigged
4. **Dimensions:**
 - (a) Length on Load Waterline – 90 feet
 - (b) Beam at Load Waterline – 90 feet
 - (c) Extreme Beam – 90 feet
 - (d) Draught of water (hull draft) – 3 feet
 - (e) Draught of water (boards down) – 20 feet

For the **Golden Gate Yacht Club**,



Marcus Young, Commodore



Norbert Bajurin, Staff Commodore

Exhibit II



SOCIÉTÉ NAUTIQUE DE GENÈVE

14 April 2009

Marcus Young
Commodore
Golden Gate Yacht Club
#1 Yacht Road
San Francisco, California 94123

Dear Commodore,

We are in receipt of your letter of April 7, 2009. We are ready and happy to meet with you at the earliest convenience. We would propose a meeting on April 23, 2009 at 10.30 am (CET) at SNG's offices in Geneva, Switzerland. Please let us know if this date works for you, and, if so, let us know who will be attending this meeting.

SNG accepts GGYC's challenge for the America's Cup on the terms set forth in its Notice of Challenge including its enclosed certificate of its challenging vessel.

Finally, we have repeatedly requested and have still yet to receive the custom-house registry for GGYC's challenge vessel, which the Deed of Gift required GGYC to deliver "as soon as possible". Please provide that certificate as soon as possible.

Yours sincerely,



Fred Meyer
Vice Commodore



Exhibit JJ

Sail-World.com News

America's Cup skippers reflect and look to future at Monaco Forum

7: 31 PM Fri 11 Dec 2009 GMT



'Brad Butterworth, Skipper and Vice-President, Team Alinghi debates The America's Cup, what is the future for the Challengers at the 2009 World Yacht Racing Forum 2009 at the Grimaldi Forum in Monaco.' [onEdition ©](#)

Two long time friends Alinghi skipper and CEO Brad Butterworth (NZL) and BMW Oracle Racing CEO, Russell Coutts both addressed the America's Cup session at the World Yacht Racing Forum in Monaco.

Both gave presentations on their respective Defence and Challenge and the participated in a forum on the future, shape and options for the 34th America's Cup.

More than 500 delegates walked into the Grimaldi Forum auditorium for the event's Grand Finale, the long expected America's Cup session.

CEO of BMW ORACLE Racing, **Russell Coutts** was first on the podium, on the heels of a magnificent slide show from team photographer Gilles Martin-Raget (FRA), Coutts opened by speaking about the BOR 90, the powerful trimaran his team has designed and built to race in the Match. Featuring for a sail the biggest wing ever built, Coutts called the boat a triumph of imagination, design and engineering. He also paid tribute to Alinghi's catamaran.

Coutts spoke with enthusiasm about his trimaran's wing – 'bigger than any wing ever built including airplanes.' Coutts spoke at lengths about his passion for the America's Cup, and the characteristics that made it so dear to him.

Some of the lessons for the future lie in the past', he claimed. 'Fremantle was one of the most exciting America's Cups ever. Auckland showed the benefits of a custom built harbour, and the importance of a strong local support. Finally, Valencia illustrated the benefits of a global management for both the Challengers series and the America's Cup. All those events were very successful in their way. I have one question', he concluded: 'why change such a successful format?'

'I think in another 100 years, people might look back and see the BOR 90 and Alinghi 5 in the same way we now look at Reliance and Shamrock - as two of the most extreme Cup yachts of all time and landmarks in the Cup's rich history,' he said.

He went on to talk about the disputes that have plagued the Cup since July 2007, but paid a

personal tribute to Butterworth, his previous tactician, saying: 'Throughout these past two years, our team has tried not to personalise our differences. The fact that friendships have remained is a sign of how robust the links are between many of the people at BMW ORACLE and Alinghi. Thank you Brad, for still being Brad.'

Looking towards the future, Coutts said establishing neutral management for the event would be critical. In fact, he said, the next America's Cup must be guided by the principles of neutrality, fairness and mutual consent between the Defender and challengers.

'The simplicity of the Deed is its beauty, particularly the words 'mutual consent',' Coutts noted. 'It works.

'The first step to a healthier future has to be truly independent management of the sporting issues. I believe this as does Larry Ellison, who has made a public pledge to have professional and independent management if BMW ORACLE is successful.'

This seemed to match up with what the majority of Cup teams want, if the group panel discussion which followed was anything to go by. A point repeated time and again was that the class of boat, for example, should be something the majority of the teams support.

Coutts closed his talk by emphasising that much of what of the America's Cup community wants can be achieved under the terms of the existing Deed of Gift.

'All it takes is a commitment to Mutual Consent. The two most beautiful words in the Deed of Gift.'

Brad Butterworth, CEO and Skipper of Alinghi, followed Coutts on stage and reminded the audience about the ground rules of the event.

four-time America's Cup winner reminded the audience of the ground rules of the 33rd America's Cup: 'The founding document of the America's Cup is the Deed of Gift. The rules of engagement can be amended if the parties agree by mutual consent, the highly successful 32nd America's Cup being one example. However, in this case, there is no mutual consent and that means the rules are those of the defending yacht club and the defender chooses the venue. The challenger decides the boat and the date.'

He spoke with enthusiasm of the Alinghi 5 catamaran, highlighting some of the huge figures the crew sailing onboard is dealing with daily: the gennaker is 1,100m² – one of three largest in the world – the compression on the mast is equivalent to 50 SUVs stacked on top of each other on a foundation slightly bigger than a tennis ball... The underlying message was that these boats are at the cutting edge of technology and are fun to sail: 'In the future,' he said, 'we should seriously consider a multi-challenge America's Cup on multihulls.'

He confirmed that Alinghi will be ready to race on 8 February 2010 whether the race is in Valencia or in Ras Al Khaimah and expressed a wish: 'I would hope that whoever loses is magnanimous and stands aside to allow the new defender and the challengers to move forward unfettered by lawsuits.'

He outlined Alinghi's vision for the future to the challenger discussion panel that followed, saying: 'I think everyone realises the success of the 32nd America's Cup and it would be a great footprint to build from. If we are lucky enough to win it again, then we would love to have a multi-national, multi-challenge 34th America's Cup and we would like to discuss the type of boat with the challengers.

Nicolo Bastianini, Paul Cayard, Magnus Holmberg, Stephan Kandler, Sotiris Buseas and Marcus

Hutchinson then joined Coutts and Butterworth on stage for a debate about the future of the event after AC 33.

Talking on behalf of their respective teams, all panellists expressed clear – yet solvable - differences regarding the format, dates and type of boat to use for the next edition of the regatta. On the other hand all panellists agreed that an independent management was necessary, Brad Butterworth reminding his colleagues that its establishment would be difficult due to the complexity of the event.

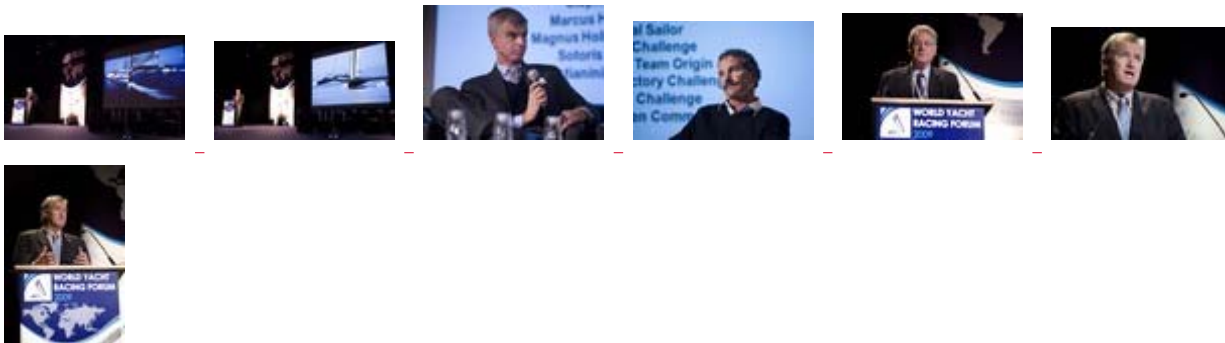
Led by Paul Cayard, the speakers then unanimously endorsed the idea to rapidly create an official group of challengers and to start working concretely, together, on a Protocol for the next America's Cup. A promising achievement in the current context and after two years of legal battles.

by Alinghi, BMW Oracle and World Yacht Racing Forum



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Exhibit KK



photo Gilles Martin-Raget / BMW

Exhibit LL

SUBSCRIPTION EDITION, WITH HISTORICAL SUPPLEMENT. See page 1853.

AN

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BY

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THOROUGHLY REVISED, AND GREATLY ENLARGED AND IMPROVED,

BY

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WITH AN APPENDIX OF USEFUL TABLES.

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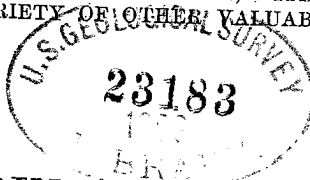
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WITH A

HISTORICAL SUPPLEMENT

CONTAINING A BRIEF HISTORY OF THE UNITED STATES AND OF EACH STATE, LIVES OF THE PRESIDENTS FROM WASHINGTON TO ARTHUR, WITH A PORTRAIT OF EACH, AND A GREAT VARIETY OF OTHER VALUABLE INFORMATION.



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PUBLISHED BY G. & C. MERRIAM, STATE STREET.

1883.

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(tis), n. [A-S. *taw*, instrument, O. Fries. *tawo*, *tow*, Ger. *taw*. See *TAW*.]
 1. Materials for any thing. [Obs.] Skinner.
 2. A rope or chain for towing a boat; a cord; a string. [Obs. or Prov. Eng.]
Tew (tū), v. t. To tow along, as a vessel. [Obs.]
Tewel (tū'el), n. [O. Fr. *tuel*, *tueil*, N. Fr. *tuyau*, Pr. & Sp. *tudel*, from Icel. *túð*, tube, Dan. *túd*, D. *tuid*, Prov. Ger. *zante*.]
 1. A pipe or funnel, as for smoke. Chaucer.
 2. An iron pipe in a forge to receive the pipe of a bellows. Moscov.
Tewtaw (tū'taw), v. t. [From *tew* and *taw*, q. v.] To beat; to break. [Obs.] See *Tew*. Mortimer.
Text, n. [Fr. *texte*, Pr. *texte*, test, Sp. & Pg. *texto*, It. *testo*, from Lat. *textus*, texture, structure, context, from *texere*, *textum*, to weave, to compose.]
 1. A discourse or composition on which a note or commentary is written; the original words of an author, in distinction from a paraphrase or commentary.
 2. A verse or passage of Scripture quoted as the subject of a discourse, or in proof of a doctrine.
 How oft, when Paul has served us with a text,
 Has Epictetus, Plato, Tully preached! Cowper.
 3. (Anc. Law) The four Gospels, by way of eminence. [Rare.]
Text, v. t. To write, as a text. [Obs.] Beau. & Ft.
Text-book, n. 1. A book with wide spaces between the lines, to give room for the observations or notes. [Obs.]
 2. A volume, as of some classical author, on which a teacher lectures or comments; hence, any manual of instruction; an educational treatise; a school-book.
Text-hand, n. A large hand in writing;—so called because it was the practice to write the text of a book in a large hand, and the notes in a smaller hand.
Textile, a. [Fr. *textile*, Lat. *textilis*, from *texere*, to weave.] Woven, or capable of being woven; formed by weaving; as, textile fabrics.
Textile, n. That which is, or may be, woven; a fabric made by weaving. [Obs.] Bacon.
Text-ist, n. A large or capital letter. [Obs.]
Text-man, n.; pl. **TEXT-MEN**. A man ready in the quotation of texts; a textualist, or textuary. [Rare.]
Textorial, a. [Lat. *textorius*, from *textor*, a weaver, from *texere*, *textum*, to weave.] Of, or pertaining to, weaving.
Text-pen, n. A kind of metallic pen used in engraving. Simmonds.
Text-rine, a. [Lat. *textrinus*, for *textorius*, from *textor*, a weaver.] Of, or pertaining to, weaving; textorial; as, the text-rine art. Derham.
Textual (tēkst'ŷŭ-al), a. [Fr. *textuel*, Sp. *textual*, It. *testuale*.]
 1. Pertaining to, or contained in, the text; as, textual criticism; a textual reading.
 2. Serving for, or depending on, texts. Bp. Hall.
Textual-ist, n. [Sp. *textualista*.] A textualist; a textuary.
Textual-ly, adv. In a textual manner; in the text or body of a work; in accordance with the text.
Textuarist, n. [Fr. *textuaire*.]
Textuary, } 1. One who is well versed in the Scriptures and can readily quote texts. Bp. Hall.
 2. One who adheres to the text. [See *supra*.]
Textuary, a. [See *supra*.]
 1. Contained in the text; textual.
 2. Serving as a text, authoritative.
Textual-ist, n. One ready in the quotation of texts; a textualist; a text-man. [Obs.] "The crabbed textualists."
Texture (tēkst'yūr, 53), n. [Fr. *texture*, O. Fr. *tisture*, Pr. *tecura*, *tecura*, It. *testura*, Sp., Pg., & Lat. *textura*, from Lat. *texere*, *textum*, to weave.]
 1. The act of weaving.
 2. That which is woven; a fabric formed by weaving; a web.
 Others, far on the grassy dale,
 Their humble texture weave. Thomson.
 3. The disposition or connection of threads, filaments, or other slender bodies interwoven; as, the texture of cloth or of a spider's web.
 4. The disposition of the several parts of any body in connection with each other, or the manner in which the constituent parts are united; as, the texture of earthy substances or fossils; the texture of a plant; the texture of paper, of a hat or skin; a loose texture; a close, compact texture.
 5. (Anat.) The particular arrangement of tissues that constitute an organ. Duglison.
Texture, v. t. [Imp. & p. p. **TEXTURED**; p. pr. & vb. n. **TEXTURING**.] To form a texture of or with; to interweave. [Rare.]
Textury, n. The art or process of weaving. [Obs.]
Thack, n. & v. t. The same as **THATCH**, q. v. [Obs. or Prov. Eng.]
Thacker, n. A Thatcher. [Obs. or Prov. Eng.]
Thalamus, n.; pl. **THALAMI**.
 1. (Anat.) One of two rounded and irregular surfaces in the two lateral ventricles of the brain, and in the third ven-

tricle, from which the optic nerves were formerly thought to proceed. Duglison.
 2. (Bot.) The same as **THALLUS**, q. v. (b.)
 The receptacle of a flower; torus.
Thaler (tā'ler) (Synop., § 130), n. [Ger. See **DOLLAR**.] A German dollar, a silver coin equivalent to about 3s. sterling, or about 73 cents.
Thalia, n. [Lat., Gr. *Θάλεια*, *Thalia*, originally, blooming, luxuriant, fr. *θάλλειν*, to be luxuriant.] (Myth.) (a) The Muse who presided over comedy and idyllic poetry. (b) One of the Graces. (c) One of the Nereids.
Thalian, a. Of, or pertaining to, Thalia, the Muse of pastoral poetry.
Thalicttrum, n. [N. Lat., fr. Gr. *θαλιτρον*.] (Bot.) A genus of plants, including meadow-rue.
Thalid-dan, n. [Fr. *thalide*, from *thalie*, N. Lat. *thalia*, a kind of mollusk, from Lat. *thalia*, a sea-nymph. See *supra*.] (Zool.) One of a group of segregate, naked, acephalous mollusks, of which the genus *Thalia* is the type. They have a small crest or vertical fin near the posterior extremity of the back.
Thalite (49), n. [Fr. *thalite*, from Gr. *θαλλός*, a young or green twig;—so called from its green color.] (Min.) A variety of epidote.
Thalium, n. [Gr. *θαλλός*, young shoot or branch, twig.] (Chem.) An alkaline metal closely resembling lead in general appearance, being of nearly the same color, density, and softness, but in its chemical relations similar to the alkali-metals potassium and sodium;—so called from the bright green line which it gives in the spectrum analysis, by means of which it was discovered by W. Crookes, of London, in 1861.
Thallogen, n. [Gr. *θαλλός*, young shoot or branch, frond, and *γεννέω*, to beget, generate.] (Bot.) One of a large class of cellular, cryptogamous plants, consisting of parenchyma alone, forming a mass or stratum, or consisting of a congeries of cells, or even of separate cells, and never exhibiting a marked distinction into root, stem, and foliage, or into axis and leaves;—called also *thallophyte*. In the plants of this class, which includes the lichens, fungi, algæ, and the like, reproduction takes place by spores. Gray.
Thallo-phyte, n. [Gr. *θαλλός*, young shoot or branch, frond, and *φύτον*, plant, from *φύω*, to grow.] (Bot.) The same as **THALLOGEN**, q. v.
Thallus, n.; pl. **THALLI**. [Gr. *θαλλός*, young shoot or branch, frond.] (Bot.) A solid mass of cells, consisting of one or more layers, usually in the form of a flat stratum or expansion, or in the form of a lobe, leaf, or frond, and forming the substance of the thallogens. Gray.
Thammuz, n. [Heb. *thammūz*.] [Written also *Tammuz*.]
 1. A deity among the Syrians, in honor of whom the Hebrew idolatresses held an annual lamentation. This deity was the same with the Phœnician Adon, or Adonis. Ezek. viii. 14.
 2. The tenth month of the Jewish civil year, containing 29 days, and answering to a part of June and a part of July.
Thamno-phyte, n. [Gr. *θάμνος*, a bush, and *φίλος*, a friend.] (Ornith.) One of a sub-family of passerine, centrostrual birds; one of the family of bush-shrikes; a sub-family of shrikes.
Tham, conj. [A-S. *thanne*, *thonne*, *thanne*, D. *dan*, O. H. Ger. *thanne*, *denmi*, M. H. Ger. *danne*, N. H. Ger. *denn*.] The Germans express this sense of the word now more commonly by *als*, as. See **THEN**.] A particle expressing comparison, used after certain adjectives and adverbs which express comparison or diversity, as *more*, *better*, *other*, *otherwise*, and the like. It is usually followed by the object compared in the nominative case. Sometimes, however, the object compared is placed in the objective case, and *tham* is then considered by some grammarians as a preposition. The object may be expressed in a sentence, sometimes, in the latter of these cases.
 A greater *tham* Solomon is here. Matt. xii. 42.
 I never met with a more unhappy concurrence of affairs *tham* in the business of that unfortunate earl. K. Charles.
 Which when Beelzebub perceived, *tham* whom Satan except, none higher sat. Milton.



Thalia (from an ancient statue).

Greater now in thy return,
 Than from the giant angels... to create,
 Is greater than, created, to destroy.

Thān'a-toiē, a. [Gr. *θάνατος*, death, and *τοίος*, form.] Death-like; resembling death. [Obs.]
Thān'a-tōl'o-gy, n. [Gr. *θάνατος*, death, and *λογία*, discourse.] A description, or the doctrine of death. Duglison.
Thān'a-tōp'sis, n. [Gr. *θάνατος* and *ὄψις*, view of, o- meditation on, death.]
Thane, n. [D. Eng. & O. Scot. *than*, A-S. *thegn*, *theng*, *then*, a minister or servant; a serf; *thegn*, a freeman, O. H. Ger. *degan*, a discipler, master, M. H. Ger. *degen*, a disciple.] A dignitary under the Anglo-Saxons and Danes, who attended the kings in their courts, held lands immediately of them, and who exercised particular jurisdiction within their limits. At the Conquest, this title was disused, and *baron* took its place.
Thāne'dōm, n. The property or jurisdiction of a thane.
Thāne'-lānd, n. Land granted to thanes.
Thāne'ship, n. The state or dignity of a thane, also, the seigniority of a thane.
Thank, v. t. [Imp. & p. p. **THANKED** (thānk't), p. pr. & vb. n. **THANKING**.] [A-S. *thancian*, O. Fr. *thancion*, O. Fries. *thonkian*, O. H. Ger. *denken*, H. Ger. & D. *denken*, Icel. *thacka*, Sw. *tacka*, D. *thalke*. See *infra*.] To express gratitude; to favor; to make acknowledgments; to be kind; bestowed; to feel grateful to.
 I thank you for your honest care.
 The world is sometimes used ironically.
 Weigh the danger with the doubtful bliss,
 And thank yourself if aught should fall amiss. Dryden.
Thank, n.; pl. **THANKS**. [Generally used in the plural.] [A-S. *thanc*, *thanc*, O. Sax. *thanc*, *thanc*, will, thanks, Goth. *thagis*, thanks, O. Fries. *thanc*, O. & N. H. Ger. & D. *danke*, Icel. *thacka*, Sw. *tack*, Dan. *tak*, allied to Goth. *thagjan*, O. H. *thunka*, *thunkia*, A-S. *thencean*, *thencan*, O. H. *denkjan*, *denkjan*, *denkion*, to think, to remember.] Expression of gratitude; an acknowledgment expressive of a sense of favor or kindness received; obligation, claim, or desert, of gratitude. "This ceremonial thanks."
 What great thank, then, if any man, reputed wise and constant, will neither do, nor permit others under his charge to do, that which he approves not, especially in matter of sin? In *thank*, with thanks or thankfulness. [Obs.]
Thankful, a. [A-S. *thankfull*.]
 1. Demanding or deserving thanks; thankful; meritorious; acceptable. [Rare.]
 Ladies, look here: this is the *thankful* glass.
 That mend the looker's eyes; this is the well.
 That washes what it shows.
 2. Impressed with a sense of kindness received and ready to acknowledge it; grateful.
 Be thankful unto him, and bless his name.
Thankful-ly, adv. In a thankful manner; gratefully.
 If you have lived, take *thankfully* the past.
Thankful-ness, n. The state of being thankful; expression of thanks.
 The celebration of these holy mysteries being ended, with all *thankfulness* of heart for having been admitted to the heavenly feast. Ep. Dives.
Thankless, a. 1. Not demanding, deserving, or gaining thanks; unacceptable. [Rare.] "To shepherds *thankless*, but by thieves that love the night allowed."
 2. Not acknowledging favors, or expressing thankfulness for them; unthankful; ungrateful.
 How sharper than a serpent's tooth it is
 To have a *thankless* child.
Thankless-ly, adv. In a thankless manner; unthankfully.
Thankless-ness, n. The state of being thankless; ingratitude.
Thank-offer-ing, n. An offering made as an expression of thanks.
Thanks-give', v. t. To celebrate or distinguish solemn rites, in token of thankfulness. [Obs.]
Thanks-giv'er, n. One who gives thanks, or acknowledges a kindness.
Thanks-giv-ing, n. 1. The act of rendering thanks, or expressing gratitude for favors or mercies.
 Every creature of God is good, and nothing to be refused if it be received with *thanksgiving*.
 2. A public celebration of divine goodness; a day set apart for religious services, specially to acknowledge the goodness of God, either in any remarkable deliverance from calamities or dangers, or in the ordinary discernment of his bounties.
Thank-wor'thi-ness (-wŭr'thi-ness), n. The state of being than-worthy.
Thank-wor'thy (-wŭr'thy), a. Deserving thanks; worthy of gratitude; meritorious.
 For this is *thank-worthy*, if a man, for conscience to ward, endure grief, suffering *worthfully*.
Thar, n. (Zool.) A species of antelope found in the East; *Capricornis bubalina*. Eng. C.


Thamno-phyte (Bush-shrike).



Thalamus (Bot.).

ā, ē, ī, ō, ū, ŷ, long; ä, é, î, ð, ö, ŷ, short; cære, fūr, lāst, fāll, whāt; thère, veil, tērm; pique, firm; dōne, fōr, dē, wōlf, fōod, fōot.

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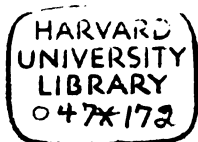
COMPREHENSIVE
DICTIONARY
OF THE
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BOSTON:
BREWER AND TILESTON.
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SACK, *n.* A bag; a pouch: — a loose robe: — the pillage of a town: — a kind of wine.
SACK, *v. a.* To put in sacks: — to pillage. [ing.]
SACK'AGE, or **SACK'ING**, *n.* The act of plundering.
SACK'BT, *n.* A kind of trumpet; trombone.
SACK'CLÓTH, *n.* Cloth of which sacks are made: — coarse cloth worn in penance.
SACK'ER, *n.* One who sacks a town.
SACK'FOL, *n.* As much as a sack will hold.
SACK'PÓ'SSET, *n.* A posset of milk, sack, &c.
SACK'RAMENT, *n.* A religious rite. — Among Protestants there are only two sacraments, *baptism* and the *Lord's supper*, called also *eucharist* and *communion*: — among Roman Catholics, seven, viz., *baptism*, *confirmation*, *eucharist*, *penance*, *orders*, *matrimony*, and *extreme unction*.
SAC'RAMENT'AL, *a.* Relating to a sacrament.
SAC'RAMENT'AL-LY, *ad.* As a sacrament.
SAC'RAMENT'AR'IAN, *n.* A Protestant. [R.]
SAC'RAMENT'ARY, *n.* A ritual of sacraments.
SAC'RED, *a.* Holy; consecrated; inviolable.
SAC'RED-LY, *ad.* Inviolably; religiously.
SAC'RED-NÉSS, *n.* The state of being sacred.
SAC'RIFIC, *a.* Used in sacrifice.
SAC'RIFIC'IA-TÓRY, *a.* Offering sacrifice.
SAC'RIFIC (sák'rif-iz, 61), (sák'ro-fiz, S. W. P. J. F. Ja. K. Sm. K. Wb.), *v. a.* To offer to Heaven; to immolate: — to destroy; to kill.
SAC'RIFIC (sák'rif-iz), *v. n.* To offer sacrifice.
SAC'RIFIC (sák'rif-iz, 66) (sák'ro-fiz, S. W. P. J. F. Ja. K. R. C. Wb.; sák'ro-fis, Sm.), *n.* An offering made to God: — destruction; any thing given up, destroyed, or lost.
SAC'RIFI-CER (-fiz), *n.* One who sacrifices.
SAC'RIFI-CIAL (sák'ro-fish'pl), *a.* Relating to sacrifices; performing sacrifice.
SAC'RILEGE, *n.* A violation of things sacred.
SAC'RILE'GIOUS (sák'ro-lé'jus), *a.* Relating to sacrilege; violating things sacred.
SAC'RILE'GIOUS-LY, *ad.* With sacrilege.
SAC'RILE'GIOUS-NÉSS, *n.* Sacrilege.
SAC'RILE'GIST, *n.* One who commits sacrilege.
SAC'RIST, or **SAC'RIS-TÁN**, *n.* A sexton. [R.]
SAC'RIS-TY, *n.* The vestry-room of a church.
SAD, *a.* Sorrowful; afflicted; mournful; heavy; gloomy: — grave; dismal; grievous; bad.
SAD'DEN (sád'dn), *v. a.* To make sad or sorrowful; to afflict; to grieve.
SAD'DLE, *n.* A seat to put on a horse's back.
SAD'DLE, *v. a.* To cover with a saddle; to load.
SAD'DLE-BAGS, *n. pl.* Leathern bags carried on horseback, one on each side.
SAD'DLE-BÓW, *n.* The bow of a saddle.
SAD'DLER, *n.* One who makes saddles.
SAD'DLE-RY, *n.* Manufacture of saddles.
SAD'DLE-TREE, *n.* Wooden frame of a saddle.
SAD'DU-CE'AN, *a.* Relating to the Sadducees.
SAD'DU-CEE, *n.* One of a Jewish sect.
SAD'DU-CEE'ISM, *n.* Sadducism.
SAD'DU-CISM, *n.* The tenets of the Sadducees.
SAD'DEN-ON (-i-grn), *n.* An iron for smoothing cloth; a flat-iron. *Hallivell.* [Local.]
SAD'DY, *ad.* Sorrowfully; mournfully.
SAD'NESS, *n.* Sorrowfulness; mournfulness.
SAFE, *a.* Free from danger, hurt, or injury; well protected; secure: — trusty; trustworthy.
SAFE, *n.* A place of safety: — a battery.
SAFE-CÓN'DUCT, *n.* Convoy; a safeguard; guard: — a warrant to pass; a passport.
SAFE'GUÁRD (sáf'gárd), *a.* A defence: — a pass.
SAFE'KEEP'ING, *n.* Act of keeping safe.
SAFE'LY, *ad.* In a safe manner; without hurt.
SAFE'NESS, *n.* Exemption from danger; safety.

SAFE'TY, *n.* Freedom from danger; security.
Syn. — Complete *safety*; well-grounded or false *security*. *Safety* implies the absence of danger, *security*, of all apprehension of danger.
SAFE'TY-LAMP, *n.* A lamp used for protection against the effect of fire-damp in coal-mines.
SAFE'TY-VALVE, *n.* A valve in a steam-engine, opening outwards from the boiler.
SÁF'FRON (sáf'frn or sáf'frn) (sáf'frn, W. P. J. F.; sáf'frn, S. Ja. K. Sm.), *n.* A plant.
SÁF'FRON, *a.* Yellow; like saffron.
SÁG, *v. n.* To sink or hang down; to settle.
SÁ-GÁ'CIÓUS (sá-gá'shus), *a.* Having sagacity; discerning; acute; sage; wise; judicious.
SÁ-GÁ'CIÓUS-LY, *ad.* With sagacity; wisely.
SÁ-GÁ'CIÓUS-NÉSS, *n.* Sagacity.
SÁ-GÁ'CI'ITY, *n.* Quality of being sagacious; quick *discernment*; acuteness; penetration.
Syn. — Natural *sagacity*; *sagacity* of animals; *acuteness* of intellect; *discernment* to distinguish; *penetration* to understand difficulties. — A *sagacious* dog; *acute* disputant; *wise* or *judicious* course; *sage* or *prudent* matron. See **WISDOM**.
SÁG'A-MÓRE, *n.* The chief of an Indian tribe.
SÁGE, *a.* Wise; grave; prudent; sagacious.
SÁGE, *n.* A man of gravity and wisdom; a wise man: — a garden herb or plant.
SÁGE'LY, *ad.* Wisely; prudently; sagaciously.
SÁGE'NESS, *n.* Gravity; prudence.
SÁG'IT-TÁL (sáf'jé-tpl, W. P. Ja. Sm. Wb.; sáf'jít'pl, S. E.), *a.* Belonging to an arrow.
SÁG-IT-TÁ'RI-ÓUS, *n.* [L.] (*Astro.*) The Sagittary or Archer; the ninth sign of the zodiac.
SÁG'IT-TÁ-RY, *n.* A centaur; a fabled animal.
SÁG'IT-TÁ-RY, *a.* Belonging to an arrow.
SÁG'IT-TÁTE, *a.* Formed like an arrow.
SÁ'GÓ, *n.* A nutritious starch or fecula, obtained from an East Indian palm-tree.
SÁ-GÓIN', *n.* A species of monkey.
SÁ'GY, *a.* Full of sage; seasoned with sage.
SÁ'IC, *n.* A Turkish merchant-vessel.
SAID (sáid), *i. & p.* from *say*. Mentioned.
SÁIL, *n.* An expanded sheet by means of which a vessel is propelled by the wind: — act of sailing: — a ship, or ships collectively.
SÁIL, *v. a.* To pass by sails; to fly through.
SÁIL, *v. n.* To move with sails; to go by sea.
SÁIL'A-BLE, *a.* Navigable; passable by ships.
SÁIL'-CLÓTH, *n.* Cloth used for sails.
SÁIL'ÉR, *n.* A ship or vessel that sails.
SÁIL'ING, *n.* Act of one who sails; a moving by the use of sails; navigation.
SÁIL'-LÓFT, *n.* A place where sails are made.
SÁIL'-MÁK-ÉR, *n.* One who makes sails.
SÁIL'OR, *n.* A common seaman; a mariner.
Syn. — *Sailors*, a term commonly applied to those who, in the sea-phrases, are before the mast; *seamen*, to the superior class, as the officers and pilots; *mariners*, to such as gain their living by sea, but are their own masters. [tended.]
SÁIL-YÁRD, *n.* A pole on which a sail is ex-sáim, *n.* Lard: — goose-grease. [Local, Eng.]
SÁIN'FOIN or **SÁIN'FOIN** (sán'fóin, W. J. F.; sán'fóin, S. E.; sán'fóin, K. Sm. C. Wb.), *n.* Trefoil; a plant cultivated for fodder.
SÁINT, *n.* A person eminent for piety.
SÁINT, *v. a.* To number among the saints; to canonize. [R.] *SentA.*
SÁINT'ED, *a.* Holy; pious; virtuous; sacred.
SÁINT'-LIKE, *a.* Like a saint; becoming a saint.
SÁINT'LY, *a.* saint; pious; religious.
SÁINT'SHIP, *n.* The character of a saint.
SÁKE, *n.* Final cause; end; account; regard.

SHEEP'S-EYE (shēps'ī), *n.* A loving, sly look.
SHEEP'S-HEAD, *n.* A kind of fish:— a dunce.
SHEEP-SHEAR-ER, *n.* One who shears sheep.
SHEEP-SHEAR-ING, *n.* The shearing of sheep.
SHEEP-SKIN, *n.* The skin of a sheep.
SHEEP-STEAL-ER, *n.* One who steals sheep.
SHEEP-WALK (-wā'k), *n.* A sheep pasture.
SHEER, *n.* (*Naut.*) The longitudinal curve of a ship's deck or sides.
SHEER, *a.* Pure; clear; mere; unmingled.
SHEER, *ad.* Clean; quick; at once.
SHEER, *v. n.* To deviate; to steal away.
SHEET, *n.* A piece of linen or cotton cloth for a bed:— any thing expanded:— a piece of paper.
SHEET, *v. a.* To cover, as with a sheet.
SHEET-ANCHOR, *n.* The largest anchor in a ship:— chief support.
SHEET-ING, *n.* Cloth for making sheets.
SHĪK, *n.* One who has the care of a Mohammedan mosque:— a chief of a tribe of Arabs.
SHEK'EL (shēk'el) [shēk'el, *W. E. K. Sm. Wb.*; shē'el, *S. J. F. Jo.*], *n.* An ancient Jewish silver coin, value about 2s. 7d. sterling:— a weight equal to about half an ounce avoirdupois.
SHEL'DRĀKE, *n.* A kind of wild duck.
SHELF, *n.*; *pl.* SHELVES. A board fixed against a supporter:— a bank or a rock in the sea.
SHELF, *v. a.* To lay on the shelf; to shelve.
SHELFY, *a.* Full of shelves or banks; shelvy.
SHELL, *n.* The hard covering of any thing, as of a nut or an animal; a crust:— a bomb.
SHELL, *v. a. & n.* To strip off or cast the shell.
SHELL-LAC, *n.* Melted lac in plates, a substance formed by the puncture of an insect on leaves, used in making sealing-wax, &c.
SHELL-FISH, *n.* A fish invested with shell.
SHELL-WORK, *n.* Work made of shells.
SHELLY, *a.* Abounding with or having shells.
SHELT-ER, *n.* A protection; *asylum*; harbor.
SHELT-ER, *v. a.* To cover; to defend; to protect.
SHELT-ER, *v. n.* To take or give shelter.
SHELT-ER-LESS, *a.* Destitute of shelter.
SHELT-IE (shēl'tē), *n.* A small Shetland horse.
SHELV-ER, *v. a.* To place on a shelf; to shelve.
SHELV-ER, *v. n.* To overhang, as a shelf.
SHELV-ING, *a.* Sloping; having declivity.
SHELVY, *a.* Shallow; full of banks; shelvy.
SHĒ-MĪT'IC, *a.* Relating to Shem; Semitic.
SHĒ-PĀR'DI-A, *n.* A shrub; the buffalo-berry.
SHĒP'HERD, (-ērd), *n.* One who tends sheep.
SHĒP'HERD-ESS (-ērd-), *n.* A female shepherd.
SHĒR-BĒT or **SHĒR-BĒT'** [shēr-bēt', *S. W. P. J. E. F. Jo.*; shēr'bēt, *K. Sm. R. C. Wb. Ash.*], *n.* An Oriental drink, composed of water, lemon juice, sugar, rose-water, &c.
SHĒRD, *n.* A fragment of earthen-ware; shard.
SHĒR'IFF, *n.* The chief executive officer of a county; a peace-officer.
SHĒR'IFF-AL-TY, *n.* The office of a sheriff.
SHĒR'RY, *n.* A kind of Spanish wine.
SHĒW (shō), *v. a.* [i. SHĒWED; *pp.* SHĒWING, SHĒWN.] To exhibit; to prove. See **SHOW**.
SHĒW'ER (shō'ēr), *n.* One who shews.
SHĒWN (shōn), *p.* from **shew**. See **SHOWN**.
SHĒW-BO-LĒTH, *n.* Criterion or test of a party.
SHĒLD (shēld), *n.* A buckler; protection.
SHĒLD, *v. a.* To defend; to protect; to secure.
SHĒFT, *v. a.* To change; to find means.
SHĒFT, *v. n.* To change; to alter; to transfer.
SHĒFT, *n.* An expedient; mean refuge; last resource:— fraud; artifice; *stratagem*:— a woman's under linen or garment; chemise.
SHĒFT'ER, *n.* One who shifts or changes.

SHĒFT'LESS, *a.* Wanting means; inefficient.
SHĒL-LA'LAH, *n.* An oak sapling; a cudgel or club:— written also *shillelagh*. [*Ireland.*]
SHĒL'LING, *n.* A silver coin; twelve pence.
SHĒL'LY, *ad.* Not familiarly. See **SHĒLLY**.
SHĒN, *n.* The fure part of the leg, above the ankle.
SHĒNE, *v. n.* [i. SHĒNE or SHINED; *pp.* SHĒNING, SHĒNE or SHINED.] To glisten; to be bright, glossy, gay, splendid, or conspicuous.
Syn.— The sun *shines*; diamonds *glisten*, *glitter*, or *glitter*; lightning *glares*; fire *sparkles*; light *radiates*.
SHĒNE, *n.* Fair weather; brightness; lustre.
SHĒN'ER, *n.* One that shines:— a small fish.
SHĒN'ESS, *n.* See **SHĒYNES**.
SHĒN'GLE (shĒng'gl), *n.* A thin board to cover houses.— *pl.* A disease; a kind of tetter.
SHĒN'GLE, *v. a.* To cover with shingles.
SHĒN'ING, *a.* Bright; splendid; conspicuous.
SHĒN'Y, *a.* Bright; splendid; luminous.
SHĒP, *n.* A termination from the Saxon, noting of-
 fice, quality, or condition; as, lord-*ship*.
SHĒP, *n.* A large sea-vessel with three masts:— a term for all large vessels. See **VESSEL**.
SHĒP, *v. a.* To put into a ship; to transport.
SHĒP-BOARD, *n.* A plank of a ship.
SHĒP-BUILD-ER, *n.* A ship-carpenter.
SHĒP-CĀR-PĒN-TĒR, *n.* A builder of ships.
SHĒP-CHĀND-LĒR, *n.* One who deals in the furniture and provisions of a ship.
SHĒP-MĀS-TĒR, *n.* The commander of a ship.
SHĒP-MĀTE, *n.* One serving in the same ship.
SHĒP-MĒNT, *n.* Act of shipping; transportation:— the quantity of goods shipped.
SHĒP-MŌN-EY, *n.* A tax imposed by Charles I. of England for fitting out ships.
SHĒP'ING, *n.* Vessels of navigation; a fleet.
SHĒP-WĒCK (-rĕk), *n.* The loss of a ship at sea.
SHĒP-WĒCK (shĒp'rĕk), *v. a.* To sink or destroy by dashing on rocks or shallows.
SHĒP-WĒIGHT (shĒp'rīt), *n.* A builder of ships.
SHĒRE or **SHĒRE** [shĒr, *W. P. J. E. F. Jo.*; shĒr, *S. E. Jo. K. C. Wb.*], *n.* A territorial division; a county.— *Shire town*, the chief town of a county.
SHĒRK, *n.* A sharper; a shark.
SHĒRK, *v. n.* To practise mean tricks; to shark.
SHĒRK, *v. a.* To procure by mean tricks; to shark.
SHĒRK'ING, *n.* The practice of mean tricks.
SHĒRT, *n.* The under garment of a man.
SHĒRT, *v. a.* To cover; to clothe, as in a shirt.
SHĒRT, *n.* A mineral. See **SHĒIST**.
SHĒVE [shĒv, *S. W. P. J. E. F. Jo. K. Sm. C.*; shĒv, *Wb.*], *n.* A splinter or lamina.
SHĒV'ER, *v. a. & n.* To break into many parts.
SHĒV'ER, *v. n.* To quake; to tremble; to shudder.
SHĒV'ER, *n.* A little piece:— a shaking fit.
SHĒV'ER-ING, *n.* Act of trembling; division.
SHĒV'ER-Y, *a.* Loose of coherence; incompact.
SHŌAD, *n.* (*Miner.*) A train of metallic stones; a stone containing metal mixed with rubbish.
SHŌAL, *n.* A crowd; a multitude, as of fish:— a shallow; a sand-bank. [*grow shallow.*]
SHŌAL, *v. n.* To crowd; to throng:— to be or
SHŌAL, *a.* Shallow; obstructed by banks.
SHŌAL'Y, *n.* State of being shoaly.
SHŌAL'Y, *a.* Full of shoals or shallows; shoal.
SHŌCK, *n.* A violent shake; concussion; a blow; an assault:— offence; impression of disgust or astonishment:— a pile of sheaves of corn; a stook:— a shaggy dog; a shough.
SHŌCK, *v. a.* To shake:— to offend; to disgust.
SHŌCK'ING, *a.* That shocks; dreadful; frightful.
SHŌCK'ING-LY, *ad.* So as to disgust or shock.

Exhibit NN



**INTERNATIONAL AMERICA'S CUP
CLASS RULE**

Version 2.0

March 10, 1993

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for
AMERICA'S CUP XXIX**

SECTION F - SAILS**33. SAILS - GENERAL**

- 33.1 The yacht shall be sloop rigged with one mast only.
- 33.2 Except as otherwise prescribed in the class rule, sails shall be made and measured in accordance with the IYRU Sail Measurement Instructions.
- 33.3 Non-woven and multi-ply sails are permitted.
- 33.4 Reinforcement of a sail may be of any size provided it is flexible and capable of being folded without damaging the sail or reinforcement.
- 33.5 Specifically prohibited are:
- (a) artificially thickened sails, e.g., foamed sails; and
 - (b) multiple-surface sails, whether inflated by the action of the wind or otherwise.
- 33.6 A headsail (genoa, jib, staysail or spinnaker) shall not have a club-foot or foot-yard, nor have more than one sheet or any other contrivance for extending the sail to other than triangular shape.
- 33.7 For single-round events (e.g., World Championships), the maximum number of sails permitted to be measured and used in that regatta shall be 15.
- 33.8 For multiple-round events (e.g., the America's Cup Trials and Match), the maximum number of sails permitted to be measured and used in the first round robin shall be 15, the second round 20, and the third round 25, etc. Once a sail is measured it shall remain part of the measured inventory for the duration of the event.
- 33.9 Sail damage shall not be grounds for replacement of measured sails.

Exhibit OO



**INTERNATIONAL AMERICA'S CUP
CLASS RULE**

Version 3.0

July 1, 1997

**This Rule is adopted by the Challenger of Record and the
Defender for America's Cup XXX**

[Signature] *Commodore R.N.S.* on behalf of the Defender

[Signature] on behalf of the Challenger of Record

[Signature] *July 1, 1997* IACC Technical Director

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SECTION F - SAILS**33. SAILS - GENERAL**

- 33.1 The yacht shall be sloop rigged with one mast only.
- 33.2 Except as otherwise prescribed in the **class rule**, sails shall be made and measured in accordance with the **ISAF Guide to Sail Measurement 1997-2000**.
- 33.3 Non-woven and multi-ply sails are permitted.
- 33.4 Reinforcement of a sail may be of any size and any number of layers provided it is flexible and capable of being folded without damaging the sail or reinforcement. "Damage" being defined as, apart from clearly visible structural failure, failure of the sail to return to near flat after being folded. Local reinforcement and/or padding at spreader patches and similar chafing areas individually not exceeding 1.0 sq metre may be any material and shall not be limited by **class rule 33.5(a)**.
- 33.5 Specifically prohibited are:
- (a) artificially thickened sails, e.g., foamed sails; and
 - (b) multiple-surface sails, whether inflated by the action of the wind or otherwise.
- 33.6 A headsail (genoa, jib, staysail or spinnaker) shall not have a club-foot or foot-yard, nor have more than one sheet or any other contrivance for extending the sail to other than triangular shape.
- 33.7 For single-round events (e.g., World Championships), unless otherwise specified in the Notice of Race, the maximum number of sails permitted to be measured and used in that regatta shall be 15.
- 33.8 For multiple-round events (e.g., the America's Cup Trials and Match with the America's Cup Match being the final round of multiple round event), the maximum number of sails permitted to be measured shall be 60. Furthermore only 30 of the possible 60 sails shall be able to be registered to be used in the America's Cup Match. Once a sail is measured it shall remain part of the measured inventory for the duration of the event.
- 33.9 Sail damage or loss shall not be grounds for replacement of measured sails. In the case of a natural catastrophe beyond the reasonable control of a yacht, the measurement committee, in consultation with the jury and the event organisers, may allow additional sails to be measured and used. Natural catastrophe in this sense does not include wear and tear, damage or loss which results from the sailing activities of the yacht.
- 33.10 Sail repairs and alterations to sails measured for an event as defined in **class rules 33.7 and 33.8** are permitted with specific approval of the regatta measurement committee and in accordance with the following limitations:
- (a) no more than 10% of the original projected area of fabric of any mainsail, genoa, jib or staysail may be replaced,
 - (b) no more than 20% of the original surface area of fabric of any spinnaker may be replaced
 - (c) No measured dimension, excluding CO and E1 on mainsails, of any sail may be altered by more than 10% from its original measurement. Alterations to CO and E1 on mainsails is not limited.

For the purpose of this rule "original" means the area or dimension(s) of a sail when first measured.

Exhibit PP



AMERICA'S CUP CLASS RULE

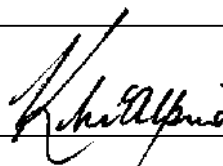
Version 4.0

October 19, 2000

This Rule is adopted by the Challenger of Record and the
Defender for America's Cup XXXI

_____ on behalf of the Defender

_____ on behalf of the Challenger of Record

 _____ October 19, 2000 ACC Technical Director

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SECTION F - SAILS

33. SAILS - GENERAL

33.1 The yacht shall be sloop rigged with one mast only.

33.2 Except as otherwise prescribed in the **class rule**, sails shall be made and measured in accordance with the **ISAF** Guide to Sail Measurement 1997-2000.

33.3 Non-woven and multi-ply sails are permitted.

33.4 Reinforcement of a sail may be of any size and any number of layers provided it is flexible and capable of being folded without damaging the sail or reinforcement. "Damage" being defined as, apart from clearly visible structural failure, failure of the sail to return to near flat after being folded. Local reinforcement and/or padding at spreader patches and similar chafing areas individually not exceeding 1.0 sq metre may be any material provided it is flexible and capable of being folded without damaging the sail or reinforcement and shall not be limited by **class rule** 33.5(a).

33.5 Specifically prohibited are:

(a) artificially thickened sails, eg. foamed sails; and

(b) multiple-surface sails, whether inflated by the action of the wind or otherwise.

33.6 A headsail (genoa, jib, or any other contrivance for extending the sail to other than staysail or spinnaker) shall not have a club-foot or foot-yard, nor have more than one sheet triangular shape.

33.7 For single-round events (eg., World Championships), unless otherwise specified in the Notice of Race, the maximum number of sails permitted to be measured and used in that regatta shall be 15.

33.8 For multiple-round events (eg. the America's Cup Trials and Match with the America's Cup Match being the final round of multiple round event), the maximum number of sails permitted to be measured shall be 60. Furthermore only 30 of the possible 60 sails shall be able to be registered to be used in the America's Cup Match. Once a sail is measured it shall remain part of the measured inventory for the duration of the event.

33.9 Sail damage or loss shall not be grounds for replacement of measured sails. In the case of a natural catastrophe beyond the reasonable control of a yacht, the measurement committee, in consultation with the jury and the event organisers, may allow additional sails to be measured and used. Natural catastrophe in this sense does not include wear and tear, damage or loss which results from the sailing activities of the yacht.

33.10 Sail repairs and alterations to sails measured for an event as defined in **class rules** 33.7 and 33.8 are permitted with specific approval of the regatta measurement committee and in accordance with the following limitations:

(a) no more than 10% of the original projected area of fabric of any mainsail, genoa, jib or staysail may be replaced,

(b) no more than 20% of the original surface area of fabric of any spinnaker may be replaced

(c) No measured dimension, excluding CO and E1 on mainsails, of any sail may be altered by more than 10% from its original measurement. Alterations to CO and E1 on mainsails is not limited.

For the purpose of this rule "original" means the area or dimension(s) of a sail when first measured.

34. MEASURED SAIL AREA (see also **class rule** 8)

Exhibit QQ



AMERICA'S CUP[©] CLASS RULE

Version 5.0

15 December, 2003

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- (ii) the intersection of a line parallel to an imaginary stay with the forward side of the mast to the forward end of J through any contrivance which supports a spinnaker halyard forward of the face of the mast.

Vertical rollers which are offset from the centreline and are parallel to the centreline of the mast and each side of the spinnaker halyard sheave do not constitute a contrivance which supports the halyard forward of the mast provided they are of a size and offset forward of the mast commensurate with their function of only providing a fair lead for the halyard onto the halyard sheave.

30. SAILS - GENERAL

30.1 Sails shall be measured in accordance with Appendix G.

30.2 Subject to **ACC Rule** 33.3, non-woven and multi-ply sails are permitted.

30.3 (a) Within 700 mm of the head point, clew point, or tack point, reinforcement can be any number of layers of fabric, webbing, or similar materials. Any rigid materials used in these areas shall comply with the sail hardware dimensional constraints of **ACC Rule** 30.4.

(b) Beyond 700 mm from the head point, clew point, or tack point, a sail shall be flexible and capable of being folded without damaging the sail or reinforcement.

(c) Spreader patches and similar chafing areas may have a single protective ply of fabric of any size of up to 300 grams/m² placed on each side of the sail. Any additional plies of fabric or padding in the spreader impact zone beyond two layers of 300 grams/m² material shall be limited in area to 1.0 sq metre on each side of the sail. This reinforcement shall be flexible and capable of being folded without being damaged or damaging the sail.

For the purposes of **ACC Rule** 30.3, damage is defined as, apart from clearly visible structural failure, failure of the sail to return to near flat after being folded.

30.4 The dimension of any sail hardware, in any direction, shall not exceed 250 mm.

30.5 Specifically prohibited are:

(a) artificially thickened sails, eg. foamed sails or rigid sails; and

(b) multiple-surface sails, whether inflated by the action of the wind or otherwise, except battens and batten pockets as provided in **ACC Rule** 34.

30.6 The head of any sail, when normally set, shall be in close proximity to the mast.

30.7 Sail repairs and alterations to sails measured for an event are permitted with specific approval of a regatta measurement committee and in accordance with the following limitations:

(a) no more than 10% of the original projected area of fabric of any mainsail, genoa, jib or staysail may be replaced;

(b) no more than 20% of the original surface area of fabric of any spinnaker may be replaced;

(c) no measured dimension, excluding CO and E1 on mainsails, of any sail may be altered by more than 10% from its original measurement. Alterations to CO and E1 on mainsails is not limited;

(d) for the purpose of this rule "original" means the area or dimension(s) of a sail when first measured.

Exhibit RR



ON THE WATER | SPOTLIGHT ON BOATING

America's Cup might end up a shell of former self

By [Bill Center](#), UNION-TRIBUNE STAFF WRITER

Monday, December 7, 2009 at 12:25 a.m.

For more than three decades, as a member of a winning crew and later as a respected television commentator, Gary Jobson has been a part of the America's Cup.

Now the president of US Sailing, the sport's governing body in the United States, Jobson is concerned that the prolonged legal battle between billionaires Ernesto Bertarelli and Larry Ellison has done long-term damage to the event.

"I am very disappointed in the events that have taken place since the last America's Cup in Valencia," said Jobson.

"Bertarelli has been wrong every step of the way. Ellison has been right. But I wish he had done more to find a compromise. It's going to be hard in the present environment for the America's Cup to soon rebound."

Like most everyone in the sailing game, Jobson is looking forward to the actual match between the BMW Oracle trimaran, which has concluded its training off San Diego, and the massive catamaran that will sail for Bertarelli's Alinghi defenders.

But he worries about what is beyond next February's showdown (probably off Valencia, Spain).

"It's been all wrong and the public is turned off as a result," said Jobson. "The guys who wrote the Deed of Gift were clear that the America's Cup was meant to be a friendly competition between countries."

Now the event is controlled by billionaires. Smaller teams have been driven out. And the "national" part of the equation has been scuttled.

"For the America's Cup to be viable to the general public, we have to see national crews competing. The American boat should be sailed by Americans just like the New Zealand boat by New Zealanders.

"And the costs must come down to reasonable amounts that people can relate to, not \$125 million for a campaign. Dennis Conner did it in Australia 20 years ago for \$15 million, which is probably \$25 million in today's dollars. But you get the idea.

"Right now, it's not an event that people can relate to. I hear that wherever I go to speak, and usually I'm talking to sailing people."

Jobson is right.

As incredible a development as the BMW Oracle trimaran is — 90-foot waterline with a 90-foot beam and a solid wing soaring 190 feet above the hulls — it is not sustainable as an America's Cup.

Still, it is an incredible boat. As the team closed its San Diego base last week and prepared to head for its showdown with Alinghi (the site still hasn't been finalized), I had the chance to take one last look at the wing that is BMW Oracle's sail.

Replacing sails with hard wings on multihulls is not new technology. Long before Dennis Conner's winged catamaran sailed to victory in the 1988 America's Cup mismatch off Point Loma, fixed wings had been used on C Class catamarans, ice boats and land yachts.

But the BMW Oracle wing unveiled last month pushes the envelope.

"We're exploring new dimensions," BMW Oracle skipper Russell Coutts said recently as he nervously watched two cranes maneuvering the massive wing in the America's Cup team's training compound.

The trimaran's solid wing is longer in length than any single wing ever employed on an aircraft. Why has BMW gone to a fixed wing over a traditional mast and sail?

"Essentially, the wing gives us the same force as the sail we were using," said Coutts. "But it is much smaller than the sail and much more efficient."

The wing has greatly reduced the amount of time and distance it takes to tack the trimaran.

"You can complete a tack much faster with the wing than the sail," said Coutts. "That eliminates both a loss in time that it takes you to tack and adjusts the distance you need to sail to complete a tack."

The wing is not the only major change made to the BOR trimaran during its 16 months in San Diego.

One of the few decisions going in favor of the Alinghi defenders during the prolonged — and contentious — court battle has allowed the rivals to add engines to assist in everything but propelling the adversaries in next year's one-on-one America's Cup match.

The BOR trimaran is now outfitted with a BMW diesel that powers the winches used to trim the boat's winches as well as all the electronics and hydraulics.

Of course, the diesel has eliminated the need of eight crewmen — all grinders — traditionally needed to power the winches.

"One of the toughest days we've had was when we had to tell the eight grinders they were coming off the boat because of the court ruling that allowed the engines," said Coutts. "It's not really the way you want to sail an America's Cup."

"I mean, the America's Cup is about the team and the crew. Hopefully, when this (America's Cup) is behind us, the engines on the boat will be gone and we'll be back to what it should be about."

Turkey champions

San Diego County skippers won three in three featured classes during Alamitos Bay Yacht Club's annual Turkey Day regatta.

Evan Hoffman of Mission Bay YC won the single-handed Laser division. Nevin Snow of San Diego YC won the shorter-rig Laser Radial division. And the Coronado YC tandem of skipper Sterling and crew Hans Henken won the 49er title.

In the junior classes, Cole Baker of MBYC won the Sabot B title and Grace Yakutis of CYC won the Sabot C-2 title.

Picking up seconds were Philip Lozier, CYC (Laser) and Olin Paine, MBYC (Laser Radial).

Find this article at:

<http://www.signonsandiego.com/news/2009/dec/07/cup-might-end-shell-its-former-self>

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08.11.2009 CET

Secret weapon revealed by BMW ORACLE Racing.

The latest development by the BMW ORACLE Racing team was unveiled today when an enormous wing was prepared to be wheeled out of the tent at the team base in San Diego.

The wing will be tested as an option to increase performance compared with a traditional soft sail rig as previously sea-trialed on the BOR 90, the 90-foot trimaran the team has built for the 33rd America's Cup.

The construction of the wing took place at Core Builders, the team's boatbuilding facility in Anacortes, Washington, with finishing work completed at the team base in San Diego.

"This was a massive undertaking," said Tim Smyth (NZL), who, along with Mark Turner (NZL), has been overseeing the wing construction team in Anacortes and in San Diego.

"Building a wing of this size was something new for all of us, and we're proud our guys were able to rise to the challenge."

A wing of this scale has never been built for a race boat. In terms of size, the wing on BOR 90 dwarfs those on modern aircraft. Towering nearly 190 ft (57 m) above the deck, it is 80 percent bigger than a wing on a 747 airplane (102 ft / 31 m).

The primary advantage of the wing over a soft sail is that it is easier to control and does not distort. This makes it easier for the trimmers on board to maintain an optimum aerofoil shape in a wide range of

conditions.

Full-scale, on-the-water testing of the wing will begin later this week as the team resumes sea trials in preparation for the 33rd America's Cup Match in February.

Related Box

More News.

19.01.2010

BMW ORACLE Racing takes maiden sail in Valencia.

13.01.2010

BMW EfficientDynamics at the America's Cup.

Exhibit TT

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GOLDEN GATE YACHT CLUB,

Plaintiff,

- against -

Index No. 602446/07

SOCIÉTÉ NAUTIQUE DE GENÈVE,

Defendant,

CLUB NÁUTICO ESPAÑOL DE VELA,

Intervenor-Defendant.

----- X

HERMAN CAHN, J.:

Motion sequence numbers 005 and 006 are consolidated for disposition.

In motion number 005, Société Nautique de Genève (SNG) moves for reargument and renewal of this court's decision, dated November 27, 2007 (Prior Decision), which, in a single decision, consolidated four separate motions (collectively, Prior Motion).

In motion number 006, SNG moves for an order declaring the "Notice of Challenge," dated July 11, 2007, and the "Certificate," annexed thereto, by Plaintiff Golden Gate Yacht Club (GGYC), to be in non-compliance with, and invalid under, the Deed of Gift, dated October 24, 1887 (Deed).

As discussed in the Prior Decision, the America's Cup is a trophy awarded to the winner of a world-renowned yacht race that has been held 32 times since the first America's Cup race held in 1851. The Deed governs how challenges are made for the Cup, who may be a qualified "Challenger of Record," and the manner in which matches for the Cup are to proceed. When the

“Defending Club” and the “Challenger of Record” agree upon the match terms pursuant to a mutual consent process, they issue a Protocol setting forth the terms. SNG, through Team Alinghi, is the current Defending Club and trustee, having won the 31st Cup race on March 2, 2003, and having successfully defended its title in the 32nd Cup race on July 3, 2007. GGYC was the Challenger of Record for the 32nd America’s Cup.

On July 3, 2007, SNG accepted a challenge, dated June 29, 2007, from intervenor-defendant Club Náutico Español de Vela (CNEV) for the 33rd America’s Cup race, and thereby purported to make CNEV the Challenger of Record. On July 11, 2007, GGYC issued its own Notice of Challenge for the 33rd America’s Cup race, contending that it, and not CNEV, was the valid Challenger of Record, in that it, but not CNEV, met the requirements set forth in the Deed.

In commencing this action, GGYC contended that CNEV was not qualified to be designated as the Challenger of Record in the forthcoming America’s Cup competition and that, therefore, the court should vacate SNG’s acceptance of CNEV’s challenge. GGYC sought: (1) a declaration that CNEV’s purported challenge and the Protocol issued pursuant thereto are void; (2) a declaration that GGYC’s challenge is valid; (3) judgment in favor of GGYC and against SNG (i) enjoining SNG from promulgating rules and regulations pursuant to the Protocol, and (ii) directing SNG to reject CNEV’s challenge; and (4) judgment in favor of GGYC, and against SNG, directing SNG to (i) accept GGYC’s Notice of Challenge and (ii) to implement the terms of the Deed by participating with GGYC in the establishment of a Protocol through a consensual process and, failing that, to proceed with the match under the rules expressly set forth in the Deed.

Motion 005

In the Prior Decision, this court: (1) determined that the challenge by CNEV was invalid; (2) determined that GGYC is Challenger of Record pursuant to the Deed; and (3) dismissed GGYC's breach of fiduciary duty claim against SNG.

SNG seeks reargument of two aspects of the Prior Decision. First, it contends that, in adjudicating the validity of GGYC's challenge, the court failed to consider, or overlooked, certain inconsistencies or flaws in that challenge. SNG contends that GGYC's motion papers did not raise, or attempt to establish, the validity of GGYC's Notice of Challenge and Certificate. Thus, neither SNG nor CNEV had any reason to address that issue on the Prior Motion. SNG argues further that GGYC's challenge is deficient on its face.

Second, SNG argues that one of the facts upon which the court based its decision to declare CNEV's challenge invalid – that CNEV had yet to hold an annual regatta – is no longer true. CNEV held its first annual regatta on November 24 and 25, 2007, after the parties briefed and argued the Prior Motion, but two days prior to the issuance of the Prior Decision.

The motion is denied. Notwithstanding these assertions, SNG has not demonstrated that the court overlooked any relevant fact, misapprehended the law or otherwise mistakenly arrived at its determination (*Spinale v 10 W. 66th St. Corp.*, 193 AD2d 431 [1st Dept 1993]; *Pro Brokerage v Home Ins. Co.*, 99 AD2d 971 [1st Dept 1984]).

As stated above, SNG argues that GGYC's motion papers did not raise or attempt to establish the validity of its own Notice of Challenge and Certificate and, therefore, neither SNG nor CNEV had any reason to address the issue. This assertion is unpersuasive. The verified complaint contains a section entitled "GGYC Issued a Valid Notice of Challenge," in which it set

forth the requirements contained in the Deed for a valid challenge, as well as the assertion that it has complied with those requirements (*see* Compl, ¶¶ 39-41).

As set forth in the Prior Decision, GGYC sought, among other things, judgment in favor of GGYC and against SNG enjoining SNG (i) from accepting GGYC's Notice of Challenge and (ii) to implement the terms of the Deed by participating with GGYC in agreeing on a Protocol and, failing that, to proceed with the match under the rules expressly set forth in the Deed.

In addition, SNG's own papers submitted on the Prior Motion contained a copy of the Notice of Challenge and Certificate (Ross Aff, Exh Q). Moreover, SNG asserted "GGYC also has made clear that, should it prevail in this lawsuit, if SNG does not accept GGYC's demands in negotiations for a protocol, GGYC will race a two-hulled catamaran of the maximum size allowed under the Deed-virtually guaranteed to defeat a single-hulled vessel" (Mot Br at 2). In response, GGYC stated that "SNG erroneously asserts that GGYC sought some individual advantage by designating as its representative vessel, in its notice of challenge, a 'catamaran' (a multihull that under most conditions is substantially faster than a monohull)" (Cross-Mot Br at 22).

Thus, the contention that the court should not have addressed the validity of GGYC's challenge, because it was not at issue, is belied by evidence contained in the record on the Prior Motion. Evidently, SNG decided to focus on asserting an unclean hands defense; the court need not speculate as to why the position it adopts now was not adopted then, and does not suggest that it should have been. In short, the court offers no opinion as to the merits of any of the parties' litigation strategies.

In now arguing for renewal, SNG contends that the court should revisit the Prior Decision

because “one of the facts upon which the Court based its decision to declare CNEV’s challenge invalid – that CNEV had yet to hold an annual regatta – is no longer true. CNEV held its first annual regatta on November 24 and November 25, 2007, after the motions for summary judgment were fully briefed and argued before this Court and just two days prior to this Court’s Decision” (Mot Br at 3). In essence, SNG seeks reargument of this determination, not renewal, because SNG has not submitted any new or additional facts (*Fontanez v St. Barnabas Hosp.*, 24 AD3d 218 [1st Dept 2005]). That CNEV held its first annual regatta on November 24 and 25, 2007 does not actually constitute new facts because the Prior Decision acknowledged the scheduling of the November 2007 regatta.

That CNEV may have held its first annual regatta two days prior to November 27, 2007, the date of the Prior Decision, is inconsequential. As stated in the Prior Decision:

Although SNG and CNEV contend that CNEV complies with the annual regatta requirement, they do not contend that CNEV had held an actual regatta at the time of its Notice of Challenge, dated June 29, 2007, or by GGYC’s subsequent challenge on July 11, 2007. According to Bonet, CNEV is planning to hold its first annual regatta called the ‘Club Náutico Español de Vela Primera Regatta, Trofeo Desafío Español’ on open water off Valencia, Spain in November 2007. . . .

Thus, that CNEV may someday comply with the conditions of the Deed has no bearing on GGYC’s valid challenge that it issued after the date of CNEV’s invalid challenge, but prior to such time as CNEV may fulfill the conditions of the Deed.

Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided (*William P. Pahl Equipment Corp. v Kassis*, 182 AD2d 22 [1st Dept], *lv dismissed in part, denied in part* 80 NY2d 1005 [1992], *rearg denied* 81 NY2d 782 [1993]).

Motion 006

In this motion, SNG seeks an order declaring GGYC's Notice of Challenge and Certificate to be in non-compliance with, and invalid under, the Deed. SNG argues that the Certificate is invalid because it states that GGYC intends to compete with a "keel yacht," which, arguably, is a mono-hull vessel, yet the dimensions set forth in the Certificate describe a multi-hull vessel. Therefore, SNG contends, the ambiguity renders the Certificate facially defective. In making this argument, SNG essentially restates many of the claims raised in motion number 005 for reargument. To the extent that the motion raises issues that were not specifically raised or addressed in detail, however, the court will consider them. In effect, the result remains the same.

Regarding this issue, the Deed provides:

The Challenging Club shall give ten months' notice, in writing, naming the days for the proposed races Accompanying the ten months' notice of challenge *there must be sent 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. Centre-board or sliding keel vessels shall always be allowed to compete in any race for the Cup, and no restriction nor limitation whatever shall be placed upon the use of such centre-board or sliding keel, nor shall the centre-board or sliding keel be considered a part of the vessel for any purposes of measurement.

(emphasis added).

Thus, the documentation supporting the challenge must include "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" 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). Instead, it argues that the use of the word “keel” in the introductory section of the Certificate renders it invalid. The introduction reads:

I, Commodore Marcus Young, certify the details set out below as to the name, rig and specified dimensions of the keel yacht to represent Golden Gate Yacht Club in a match for the America’s Cup to be sailed in accordance with the Notice of Challenge herewith:

SNG argues that, by use of the word “keel” in the Certificate, the Certificate contains “an inherent and irreconcilable internal consistency, rendering its Certificate and accompanying Notice of Challenge deficient and invalid.” SNG contends that the vessel specifications of a length of 90 feet and a beam of 90 feet are unusual for a keel yacht, and would be more ordinarily consistent with the dimensions of a multi-hulled vessel (Mot Br at 6-7).

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 *submitted by SNG* indicating its belief that there was no ambiguity in GGYC’s Certificate. According to the affidavit of Hamish Ross, Esq., General Counsel of Alinghi, SNG’s representative racing team, the Certificate could only be for a “multi-hulled vessel - presumably, catamaran” (Ross Aff). Moreover, that the designated racing vessel may be “unusual” hardly justifies characterizing the Certificate as containing an “inherent and irreconcilable internal consistency.”

As stated above, in its Memorandum of Law in Support on the Prior Motion, SNG asserted that “GGYC also has made clear that, should it prevail in this lawsuit, if SNG does not accept GGYC’s demands in negotiations for a protocol, GGYC will race a two-hulled catamaran

of the maximum size allowed under the Deed - virtually guaranteed to defeat a single-hulled vessel." Hence, SNG has not established that the "keel yacht" cannot describe a multi-hull vessel.

More importantly, even if the description of a "keel yacht" were inconsistent with the dimensions set forth in the Certificate, it is the dimensions that control, not the introduction to that portion of the Certificate. The Certificate "certifies the details set forth below," and it is those "details" that matter, because the Certificate has provided them in accordance with the express requirements of the Deed. That this is so is revealed by the introduction to each "detail" category which corresponds exactly to the relevant Deed provision, quoted above, namely: (1) Name; (2) Owner; (3) Rig; and (4) Dimensions. The Deed, which is a clear and complete document, is to be enforced according to its terms (*W.W.W. Assoc. v Giancontieri*, 77 NY2d 157 [1990]; *Dafnos v Hayes*, 264 AD2d 305 [1st Dept 1999]). Thus, there is no need for a hearing to determine the effect of the use of the word "keel."

SNG also argues that the Certificate violates the Deed, because the Deed "requires the challenger to provide an accurate certificate describing the Challenging Vessel so that the defender will have adequate opportunity to prepare its defense" (Mot Br at 7). SNG does not provide any reference to the Deed that contains this alleged "requirement." In fact, the Deed "broadly defines the vessels eligible to compete in the match" and the "deed permits the competitors to both construct and race the fastest vessels possible so long as they fall within the broad criteria of the deed" (*Mercury Bay Boating Club v San Diego Yacht Club* (76 NY2d 256, 266, 269 [1990]) (*Mercury Bay*) [emphasis added]). The "donors, who chose to be specific about other aspects of the match, including the load water-line lengths of the competing vessels, could

have easily included an express requirement that the vessels be evenly matched but did not do so" (*id.* at 269).

Moreover, for the reasons discussed above, I am not persuaded that SNG will be unable to prepare an adequate defense. Furthermore, to the extent that the challenge raises "sporting" issues, the sole province of the court is to resolve the legal issues presented (*Mercury Bay*, 76 NY2d at 266). As stated in the Prior Decision, and equally relevant here, in *Mercury Bay*, the Court of Appeals held that the Deed's unambiguous language, permitting the defender to defend the Cup in "any one yacht or vessel" within the specified range of load water-line length, did not require the defender to race a vessel of the same type or evenly-matched to that of the challenger, and did not preclude the defender's use of a catamaran (*id.* at 269). The Court in *Mercury Bay* expressly declined to consider whether the San Diego club's conduct was "unsportsmanlike" and "unfair," finding that the Deed appropriately left such issues to yachting experts and limited itself to strictly applying the terms of the Deed (*id.* at 271).

SNG next argues that the Notice of Challenge is invalid for the additional reason that it failed to provide 10 months' notice to SNG as required by the Deed. However, the July 11, 2007 Notice of Challenge designated July 4, 2008 as the date of the first race, and July 6, 2008 and July 8, 2008 as the respective dates for the second and third races, if necessary, thereby satisfying the 10-month advance notice requirement. Contrary to SNG's assertion, that the parties wound up entangled in legal proceedings, which "interrupted" the 10-month period, does not invalidate the Notice of Challenge.

As a third ground for the assertion that the Certificate is facially deficient, SNG contends that the proposed race dates violate the Deed, because the Certificate does not designate at least

one "week day" between each race. The absence of a week day separating the first race of July 4, 2008, which is a Friday, and the second proposed race date of July 6, 2008, which is a Sunday, does not invalidate the Certificate. Although the Deed provides that "one week day shall intervene between the conclusion of one race and the starting of the next race," it does not make this a requirement of the validity of Notice of Challenge. Further, dictionaries published contemporaneously with the Deed, define "weekday" or "week day" as any day except Sunday (*see* Petrocelli Aff, Exhs B, C at 275, 631). If the parties wish to have a "business" day separate each race, they could simply adjust of the race dates to, by way of example, July 3, 2008 (Thursday), July 6, 2008 (Sunday), and July 8, 2008 (Tuesday), which would amount to an adjustment of one day.

Apparently SNG has waived this requirement, because it contends that CNEV's challenge is valid, even though CNEV's own certificate designated race dates of July 1, July 3, and July 5, 2009. July 3, 2009 is a Friday and July 5, 2009 is a Sunday. Hence, the record indicates that a "week day" separates each race.

Finally, at oral argument, SNG urged the court to either conduct an evidentiary hearing or refer the issue of the type of yacht that GGYC intends to challenge to the "International Sailing Federation." For the reasons stated above, such hearing or referral is unnecessary to resolve the legal issues presented – the Certificate's description of the racing vessel complies with the Deed requirements. If, however, the parties cannot resolve issues pertaining to the 10-month notice period, in view of any delayed entailed by this litigation or otherwise, and any lingering dispute as to the "week day" issue, the parties may raise the issue with the court at a further hearing, or mutually agree to refer those disputes to a neutral associated with the yachting community (*see*

Mercury Bay, 76 NY2d at 265-66).


Accordingly, it is

ORDERED that the motion (005) by Société Nautique de Genève for reargument and renewal of this court's decision, dated November 27, 2007, is denied; and it is further

ORDERED that the motion (006) by Société Nautique de Genève for an order declaring the Notice of Challenge and Certificate by Golden Gate Yacht Club to be in non-compliance with and invalid under the Deed of Gift, dated October 24, 1887, is denied.

Dated: March 17, 2008

ENTER:



J.S.C.

Exhibit UU

1 SUPREME COURT OF THE STATE OF NEW YORK
2 NEW YORK COUNTY : CIVIL TERM : PART 54

3 -----

4 GOLDEN GATE YACHT CLUB,
5 Plaintiff,

6 -against-

Index No.
602446/07

7 SOCIETE NAUTIQUE De GENEVE,
8 Defendant,

Hearing

9 CLUB NAUTICO ESPANOL DeVELA,
10 Intervenor/Defendant

11 -----

12 August 10, 2009

13 60 Centre Street
14 New York, New York 10007

15 B E F O R E:

16 HON. SHIRLEY WERNER KORNREICH, Justice

17 A P P E A R A N C E S:

18 LATHAM & WATKINS LLP
19 Attorneys for Golden Gate Yacht Club
20 885 Third Avenue
21 New York, New York 10022
22 BY: JAMES V. KEARNEY, ESQ.
23 AARON SIRI, ESQ.

24 SIMPSON THACHER & BARTLETT LLP
25 Attorneys for the Societe Nautique De Geneve
425 Lexington Avenue
New York, New York 10017
BY: JONATHAN K. YOUNGWOOD, ESQ.
THOMS J. WELLING, JR., ESQ.

P R E S E N T: LUCIEN MASMEJAN

Anne Marie Scribano, R.P.R.
Senior Court Reporter

25

Proceedings

1 MR. YOUNGWOOD: That's why I asked the
2 witness those questions.

3 The measurement itself of their boat will
4 take place at the venue, close -- reasonably close to
5 the date of the race. However, that's the normal way
6 it's done, and we don't know that we can compel them
7 to submit to those measurements earlier.

8 But I will make this offer, your Honor.
9 If they want to eliminate doubt and speculation and
10 risk of showing up with a boat that doesn't match,
11 we'll measure it early and work with them.

12 We don't want to disqualify them, but we
13 do want them to match what they promised us two years
14 ago.

15 THE COURT: Let me hear from the other
16 side.

17 MR. KEARNEY: Right at the outset, your
18 Honor, I want to bring us back to the hearing, the
19 last time we were here on July 21st, when I think the
20 transcript will show, I've been able to get it, that
21 the both the Court and Mr. Ostrager agreed that, at
22 the time of challenge, the challenger's boat does not
23 have to be in existence. I believe your Honor
24 recognized that in the transcript, where, referring
25 to Mercury Bay's decision, it says that the

Proceedings

1 challenging boat can be built after the challenge,
2 your Honor.

3 MR. YOUNGWOOD: Yes --

4 THE COURT: I'm not so clear.

5 And it does seem to me, in reading it and
6 in reading the deed of trust, that that may not be
7 the case, but, certainly, that there is an advantage
8 to the defender and the defender has the ability to
9 designate its boat on the day of the race. And I
10 believe, by inference, that's not the case with the
11 challenger.

12 MR. KEARNEY: That's correct. "The
13 challenger must," as a quote from the Court of
14 Appeals decision said, "The challenger must set forth
15 specifics of its challenging vessel," as it did in
16 the certificate that was put in, which then gives the
17 defender the opportunity to, for 10 months, to build
18 their boat. And they don't have to show their boat
19 until the day of the race.

20 Now, let me just say --

21 THE COURT: But Mercury Bay goes further
22 than that. It states that it gives the advantage to
23 the defender, to some degree, because the challenger
24 had had years to build its boat. It gives the
25 defender the 10 months to build its boat, once it

Proceedings

1 knows what it -- what the challenger's boat is.

2 But that hasn't happened in this case.

3 MR. KEARNEY: You're right to this extent,
4 your Honor.

5 This is what Mercury Bay indeed says, that
6 the defender has the advantage, once it knows what?
7 Once it knows the dimensions that are set forth in
8 the certificate. They've got the advantage then that
9 they can come up with any boat, like they did --
10 Mercury Bay, they came up with a boat that the
11 challenger didn't conceive of.

12 Let me just say -- stick with this --
13 stick with the deed just a minute.

14 THE COURT: Mercury Bay dealt with -- the
15 second piece of Mercury Bay dealt with a catamaran.
16 It wasn't the -- it did mention it was the type of
17 boat, the design --

18 MR. KEARNEY: The whole point of the "as
19 soon as possible" language -- remember, it was an
20 amendment to the deed. The whole point of that was
21 to prevent what's happening right now.

22 And I'm going to explain that in a moment.

23 The whole point of saying that you must
24 first give the certificate, but you do not have to
25 give the CHR, that's what the amendment was. It had

Exhibit VV

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

9

PRESENT: _____

PART 54

JUSTICE SHIRLEY WERNER KORNREICH

GOLDEN GATE YACHT CLUB

INDEX NO. 602446/07

- v -

SOCIÉTÉ NAUTIQUE

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that ~~this motion~~ the August 10, 2009

hearing held in this court is decided in accordance with the annexed decision and order.

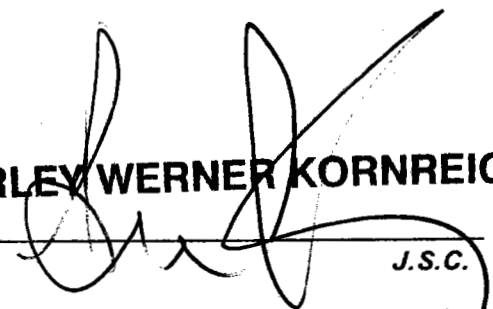
FILED

SEP 21 2009

NEW YORK COUNTY CLERKS OFFICE

Dated: 9/10/09

JUSTICE SHIRLEY WERNER KORNREICH



J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X

GOLDEN GATE YACHT CLUB

Index No.:602446/2007

Plaintiff,

-against-

**DECISION and
ORDER**

SOCIÉTÉ NAUTIQUE DE GENÈVE,

Defendant,

CLUB NÁUTICO ESPAÑOL DE VELA,

Intervenor/Defendant.

-----X

KORNREICH, SHIRLEY WERNER, J.:

Société Nautique de Genève (SNG) is the defending holder and plaintiff Golden Gate Yacht Club (Golden Gate) is the challenger for the 33rd America's Cup (Race). By Decision and Order dated July 29, 2009, the court ordered the parties to appear for an evidentiary hearing on August 10, 2009, to present evidence regarding the phrase "as soon as possible" as used in the Deed of Gift governing the America's Cup. The phrase speaks to when the challenger must provide the defending holder of the Cup with a Custom House Registry (CHR) specific to the vessel the challenger will use in the Race. Thus, the CHR would identify the vessel which is to be raced. Familiarity with the court's July 29, 2009 Decision is presumed.

At the hearing, plaintiff Golden Gate presented a single witness. Defendant SNG presented no witnesses.

The Hearing Evidence

Golden Gate's witness, Thomas L. Willis, the Director of the Coast Guard's National Vessel Documentation Center (NVDC) from 1994 to 2008, testified as follows. The Coast Guard

issues Certificates of Documentation (CODs) at the NVDC. The COD now substitutes for a CHR and is virtually identical in content. During his tenure, Willis was the final arbiter of the issuance of CODs. He, previously, had served as the chief of the Merchant Documentation and Tonnage Survey branch of the Merchant Vessel and Documentation Division of the Coast Guard, among other positions. He has lectured and testified regarding the issuance of CODs.

Willis explained that the primary purpose of a COD is to evidence nationality and that it cannot be issued until construction on a vessel and sea trials are completed. Willis defined “completed” as meaning completed for its intended use, and “sea trials” as the period during which a vessel is tested to see if it is going to meet the requirements for which it was built. The regulations do not require the vessel owner to apply for a COD before the sea trials are done, as long as the vessel is not engaged in coastwise trade or fisheries. Any vessel over five tons and owned by an American is eligible for documentation.

In Willis’ opinion, construction would not be considered completed where: an engine is being installed; the vessel’s manual power system for trimming the sails is being removed; movable water ballast systems are being installed; skin friction reduction technology is being installed; and sea trials have revealed structural features which require re-engineering or changing the volume of the hulls. An application for issuance of a COD, however, can be filed before the vessel is completed,. The COD would not issue, however, until the NVDC has received all of the necessary supporting documentation, including a Builder’s Certificate and a Tonnage Certificate.

A Builder’s Certificate describes the particulars of the build and the identity of the vessel’s owner. It is issued and title is transferred when the vessel is completed. It is not issued until the owner and builder are in agreement that the vessel is completed and delivery has been

made. A Tonnage Certificate is required for vessels over 79 feet that are going to undertake a foreign voyage. It can be issued prior to completion if the tonnage surveyor can assess the accuracy of the drawings. Nothing can be out of place that affects tonnage. If the weight changes, a new Tonnage Certificate will be required.

For recreational vessels, it now takes about one month to issue a COD after all of the documents have been received. A COD can be issued within one or two days for commercial vessels. Moreover, the COD can be expedited where the vessel will have to go through Customs.

Willis viewed a video and pictures of Golden Gate's boat and opined that it is a "vessel" for which a COD could be filed. He described changes that could permissibly be made to a vessel after the COD has been issued as including new sails or new masts, but not structural work. He admitted that changes can be made in bulkheads and the volume of the hull that would not change the 90 foot length on load waterline. If changes are to tonnage, however, a new Tonnage Certificate would be necessary.

A Notice of Challenge in the Race and a COD both contain the name of the vessel, and entries for the length, breadth and depth of the vessel. Although the breadth measurement on the COD is the same as the extreme beam measurement on the Notice of Challenge, the length and depth measurements are different measurements. On a COD the length measurement is closer to the overall length of the vessel, and the depth measurement is the depth of the hull, not just the portion in the water as required on the Notice of Challenge. Also, the COD has the gross and net tonnage, information not on the Notice of Challenge.

In addition to documents already filed in the litigation, the parties submitted the following documents: The Equipment Rules of sailing for 2009-2012 issued by the International Sailing Federation; SNG's measurement procedures for the 33rd America's Cup, posted August 6, 2009;

a picture of Golden Gate's vessel, the BOR 90; an on-line release by BMW Oracle about an August 11th "special event" to celebrate its team; a representative COD application; a blank Builder's Certification; a representative COD; and an additional copy of Golden Gate's Notice of Challenge.

Argument by Counsel

SNG's counsel argued that when Golden Gate issued the Notice of Challenge they had to have a specific boat in mind with specific dimensions, and that the vessel Golden Gate ultimately races must match what they originally notice. SNG offered to measure Golden Gate's vessel early and not wait until the date of the match. SNG posted its measuring rules early to dispel any notion that they were going to try to disqualify Golden Gate. SNG does not want Golden Gate to be disqualified, just that they meet the 90 by 90 dimensions they included in the Notice of Challenge. Counsel emphasized that SNG wants the COD immediately because they are entitled to it under the Deed and because they want to see whether the boat Golden Gate intends to race matches the measurements provided in the Notice of Challenge. Counsel argued that the challenger's boat may not be smaller than the originally provided dimensions.

Golden Gate's counsel argued that the vessel did not have to be in existence at the time of the challenge. Counsel acknowledged that the vessel must not exceed the original dimensions provided in the challenge. Although SNG had said it would not use measurement rules to disqualify the challenger, under SNG's posted rules the ballast in the boat when it is measured must remain in the same place during the race, which would necessarily exclude movable ballast. Also, the rules of the International Sailing Federation (ISF) and SNG's measurement rules differ regarding the method for measurement; the ISF measures the waterline from the front of the hull

to the end, but under 's SNG rules, which refer to the "yacht" as opposed to the "hull," the rudder would be included in the measurement.

Golden Gate's Counsel also argued that CODs are used to establish nationality and not to help the defender develop its boat. In the America's Cup race held immediately after the Deed of Gift was amended to add the "as soon as possible" language regarding provision of a CHR, the CHR was provided seven weeks before the race. In subsequent races the CHR was provided six weeks before the race, then two weeks, then three months. Counsel represented that Golden Gate would try to get the COD by November, that the boat on its website – BOR 90 -- is the boat it will race and that the owner will be Oracle Racing.. The boat is not yet completed as Golden Gate is still making changes to be competitive with SNG's boat. They are adding power for raising, lowering and trimming the sails, as well as movable ballast.

Counsel for the parties agreed to communicate regarding the measurement rules and whether clarification would be necessary. The court offered to intercede at the parties' request. To date no such request has been made.

Discussion

The vessel of an America's Cup challenger is by nature a yacht undergoing intense technical development. Obtaining a COD¹, it can be argued, would freeze many of the significant development options for the challenging yacht at the time that measurement is performed. The Deed of Gift requires the challenger to provide the vessel's critical dimensions in the Notice of Challenge. It does not appear that the COD information is intended to provide the defender with

¹The court will use the term "Certificate of Documentation," or "COD" as it is the current name of the required certificate, as opposed to the name "Custom House Registry" originally used in the Deed of Gift.

additional significant information, but rather to help confirm that the as-built measurements of the challenging vessel correspond to those in the Notice of Challenge.

The court credits the testimony of Golden Gate's witness Thomas Willis and finds that: a COD will not be issued until submission of a Builder's Certificate and a Tonnage Certificate to the NVDC; that a Builder's Certificate is issued after a vessel and sea trials are completed; that "completed" means completed for intended use; and that construction is not "completed" where a vessel is undergoing structural change, such as adding a movable ballast system or an engine to mechanically trim the sails. Counsel for Golden Gate represented that the vessel undergoing sea trials and identified as BOR 90 is the America's Cup vessel it intends to race, and that the owner is Oracle, but that a COD is premature because the vessel is undergoing structural changes to add movable ballast and mechanized rigging systems. Under these circumstances the court agrees that the vessel is not completed for purposes of a COD.

Although the Deed of Gift, as recognized by the Court of Appeals in *Mercury Bay Boating Club, Inc. v. San Diego Yacht Club*, 76 NY2d 256 (1990), gives the defender ten months' notice of the challenger's critical measurements, it does not preclude the challenger from making structural changes to the vessel that do not increase the dimensions stated in the Notice of Challenge. Willis testified that changes can be made in bulkheads and the volume of the hull that would not change the 90 foot length on load waterline. If Golden Gate does make changes that increase the dimensions from those originally noticed, then the vessel will be disqualified. Until the vessel is completed, however, a COD cannot be obtained.

The court is bound by the Deed of Gift, a document dating back to the 19th Century and one the court must strictly construe. *Mercury Bay, Id.* The Deed provides, in relevant part, that

The Challenging Club shall give ten months' notice, in writing, naming the days for the proposed races * * * Accompanying the ten months' notice of challenge

there must be sent 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.....

There is no additional language from which the court can attribute the proscription against exceeding the measurements.

On the other hand, the Deed of Gift provides that should the challenging and defending clubs not “mutually consent” to the details of the Race, the race “shall be sailed subject to the rules and sailing regulations [of the defending club] so far as the same do not conflict with the provisions” of the Deed of Gift. Nowhere in the Deed of Gift is mention made of the ISAF rules. As Willis testified, measurement of length of the vessel on the COD is different from the measurement on the Notice of Challenge, since the means for taking the measurement differs. Similarly, measurement under the ISAF rules may differ from the measurement rules for the 33rd America’s Cup pursuant to the Deed of Gift.

Allowing the challenger to continue construction after it issues the Notice of Challenge, and to reduce the size of the vessel below the noticed measurements, does appear to be inconsistent with the distinct advantage afforded the defender by the Deed’s requirement of ten months’ notice, but the court is mindful of the simpler state of technology that existed when the deed was drafted. There was only so much the challenger could do to its vessel once it learned the details of the defender’s vessel, which under the Deed do not have to be revealed until the date of the match.

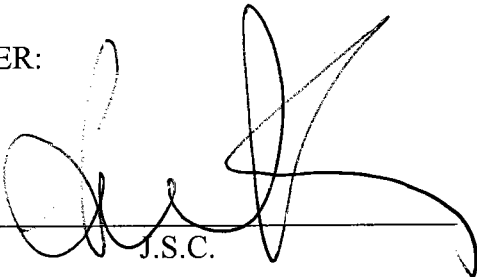
It is not only advances in technology, but the unsportsmanlike behavior of Golden Gate that has resulted in substantially reducing SNG’s advantage as originally contemplated by the Deed. Nonetheless, Golden Gate’s actions are not contrary to law or sanctionable in this limited forum. Because Golden Gate’s vessel is still being constructed and the Deed permits the

challenger to continue construction after the Notice of Challenge has been issued, the court will not compel Golden Gate to obtain a COD within a specific period of time. To do so would be contrary to the Deed and counterproductive. Willis explained that even if Golden Gate had the necessary supporting paperwork for issuance of a COD and one was issued, subsequent structural changes to the vessel would require issuance of an amended COD. Therefore, issuance of the COD does not freeze the vessel in time. The court does find that Golden Gate must complete its vessel sufficiently in advance of the challenge date to allow for the approximate one month delay in obtaining a COD from the NVDC, and Golden Gate must provide SNG with the actual, final COD at least two weeks prior to the challenge date. Accordingly, it is

ORDERED that SNG's Order to Show Cause why Golden Gate should not be disqualified for failure to provide SNG with a CHR (COD) is denied.

Date: September 18, 2009
New York, N. Y.

ENTER:



J.S.C.

FILED
SEP 21 2009
NEW YORK
COUNTY CLERK'S OFFICE

Exhibit WW

**THE
EQUIPMENT RULES
OF
SAILING**

for 2009–2012

International Sailing Federation

Section F – Rig Definitions

F.1 GENERAL RIG TERMS

F.1.1 Rig

The **spars, spreaders, rigging**, fittings and any **corrector weights**.

F.1.2 Rig Types

(a) UNA RIG

A single-masted **rig** with a **mainsail** only.

(b) SLOOP RIG

A single-masted **rig** with a **mainsail** and one staysail **headsail**.

(c) CUTTER RIG

A single-masted **rig** with more than one staysail **headsail**.

(d) KETCH RIG

A two-masted **rig** with the fore mast – the **mainmast** – taller than the aft mast – the **mizzenmast** – set forward of the rudder stock.

(e) YAWL RIG

A two-masted **rig** with the fore mast – the **mainmast** – taller than the aft mast – the **mizzenmast** – set aft of the rudder stock.

(f) SCHOONER RIG

A two-masted **rig** with the fore mast – the **foremast** – shorter than, or the same height as, the aft mast – the **mainmast**.

F.1.3 Spar

The main structural part(s) of the **rig**, to, or from which **sails** are attached and/or supported.

F.1.4 Spar Types

(a) MAST

A **spar** on which the **head** or **throat** of a **sail**, or a **yard**, is set. Includes its **rigging, spreaders**, fittings and any **corrector weights**, but not fittings that are not essential to the function of the mast as part of the **rig**.

Mast Types:

(i) MAINMAST

(a) The only **mast** in a **una rig, sloop rig** or **cutter rig**.

(b) The fore **mast** in a **ketch rig** or **yawl rig**.

(c) The aft **mast** in a **schooner rig**.

(ii) FOREMAST

The fore **mast** in a **schooner rig**.

(iii) MIZZENMAST

The aft **mast** in a **ketch rig** or **yawl rig**.

Exhibit XX



33rd America's Cup Match
(“Match”)

From 1st February 2010 to 25th February 2010*

Société Nautique de Genève
(“Organising Authority”)

Valencia, Spain

NOTICE OF RACE
(“NOR”)

Incorporating Amendment No.1 from 19 January 2010

1. RULES

- 1.1 In accordance with the terms of the Deed of Gift which requires in the absence of mutual consent the Match be governed by SNG's *“rules and sailing regulations so far as they do not conflict with the provisions of this Deed of gift”*, the Match will be governed by the following:
- (a) the Deed of Gift dated 24th October 1887 as amended by the orders of the Supreme Court of the State of New York dated 17th December 1956, 20th September 1984, and 5th April 1985;
 - (b) this Notice of Race published by the Organising Authority pursuant to RRS 89;
 - (c) the Sailing Instructions to be published by the Race Committee pursuant to RRS 90.2; and
 - (d) the Racing Rules of Sailing for 2009-2012 with Appendix C (“RRS”) as amended by the documents precedent and by this NOR.

10. THE COURSES

The courses to be sailed will be as follows:

- (a) **The first race:** twenty (20) nautical miles to windward and return;
- (b) **The second race:** an equilateral triangular race of thirty nine (39) nautical miles, the first side of which shall be a beat to windward; and
- (c) **The third race:** (if required) twenty (20) nautical miles to windward and return.

The races shall be sailed in the above sequence. If a race is re-sailed, the course shall not alter.

11. SCORING

The winner of the 33rd America's Cup Match shall be the first boat to win two (2) races.

12. SUPPORT BOATS

Support boats of the competitors shall be clearly marked with the name of the respective competitor. There will be restrictions on the number, positioning, and movement of competitors support boats in the Sailing Instructions.

13. BERTHING

Boats shall be kept in their assigned places in the Darsena or in the outer harbour of the Darsena as notified in the Sailing Instructions.

14. RADIO COMMUNICATION

14.1 Except as expressly permitted by this NOR, the Sailing Instructions, or by the Race Committee, a boat shall not carry on board while racing any equipment capable of:

- (a) receiving communications or signals originating outside the boat, including without limitation pagers, internet, mobile telephones and/or flying devices either attached or linked or not to the boat;