

## **FINDINGS AND REPORT OF RACE OFFICIALS COMMITTEE**

### **INTRODUCTION**

On 15 April 2010 the International Sailing Federation (ISAF) referred to the ISAF Race Officials Committee (ROC) reports from the ISAF-appointed International Jury Chairman and ISAF-appointed Principal Race Officer (PRO) for the 33<sup>rd</sup> America's Cup.

The ROC have considered the Racing Rules of Sailing and the following documents:

- A. 2010 Judges Regatta Report Form (completed by International Jury Chair David Tillett) (As these reports include assessments of race officials performance, they are normally considered confidential, with very limited distribution. This report is being attached for publication only because each of the members of the International Jury has consented).
- B. International Jury Decision in Case AC33/01 dated 2 February 2010.
- C. 2010 Race Officer Regatta Report Form (completed by Principal Race Officer Harold Bennett).
- D. Report of 33<sup>rd</sup> America's Cup submitted by Harold Bennett.
- E. Settlement Agreement and Mutual Release.
- F. Relevant portion of a Report to the Executive Committee from International Jury Chairman David Tillett (the Executive Committee and David Tillett have consented to the release of the attached).

Copies of the above are attached to these findings.

### **FACTS**

The Société Nautique de Genève (SNG) was the *Organizing Authority* for the 33<sup>rd</sup> America's Cup.

ISAF appointed Harold Bennett to serve as the Principal Race Officer (PRO). Harold Bennett is an ISAF International Race Officer (IRO).

ISAF appointed the International Jury.

ISAF did not appoint the Race Committee.

Harold Bennett's reports refer to an IRO by the name of Pascal Monet and identify his nationality as Swiss. Mr. Monet is French and was an IRO through 2009. He did not apply for renewal of his IRO status and was not, therefore, an IRO at the time of the 33<sup>rd</sup> America's Cup.

Paco Quiñonero, an International Umpire, was the skipper of the signal boat.

SNG appointed a race committee consisting of Harold Bennett, Fred Meyer, Marcel Beauvard and Nicolas Grange. Other than Harold Bennett, none is an ISAF Race Official.

Harold Bennett entered into an understanding with the *Organizing Authority* that he would have two votes (out of 5) on the race committee. This understanding was not made known to ISAF prior to the conclusion of the 33<sup>rd</sup> America's Cup.

On 14 February 2010 Harold Bennett observed that winds were in the 7 to 9 knot range and swells were no greater than 1 metre. He concluded that conditions were suitable for racing and decided to commence a starting sequence for race 2 after a long delay.

The other three members of the race committee (Fred Meyer, Marcel Beauvard and Nicolas Grange) disagreed with Harold Bennett's conclusions, and initially attempted to dissuade the PRO from commencing a starting sequence. They then went below deck and made no effort to assist the PRO in commencing a starting sequence. Harold Bennett, the GGYC observer aboard the signal boat, Harold Bennett, Pascal Monet and Paco Quiñonero then commenced the starting sequence.

At some point during race 2, Alinghi displayed a protest flag. Alinghi removed the flag after she finished, and filed no request for redress or protest.

Harold Bennett reported: "The reasons for the three members disagreeing with my decision are purely speculation as I was not aware of any other conversation taking place. I have no interest in pursuing this matter any further."

### **RELEVANT PORTIONS OF 2010 JUDGES REGATTA REPORT FORM**

"At an earlier hearing in New York, a question was posed by the New York Supreme Court to an expert panel of myself, Bryan Willis and Graham McKenzie, "Is it safe to race in Valencia in February?" The panel was advised in the hearing conducted in New York by SNG's representative that Harold Bennett would be the Principal Race Officer and would make that call and that he was experienced and was capable of making that call."

**"Issues arise in relation to the authority of the Principal Race Officer in light of RRS 90.1** which provides, "The Race Committee shall conduct the races as directed by the organizing authority as required by the rules". The normal practice (which becomes particularly relevant where ISAF appoint the Principal Race Officer) is the Principal Race Officer would be making the decision on whether or not it was safe to race – not the Race Committee (which of course

was not independent in this case). In this case the Principal Race Officer proceeded and conducted the race notwithstanding the Race Committee not supporting that decision.”

(emphasis added)

### **RELEVANT RACING RULES**

- 27.3 Before the starting signal, the **race committee** may for any reason postpone (display flag AP, AP over H, or AP over A, with two sounds) or abandon the race (display flag N over H, or N over A, with three sounds).
- 89.1 Races shall be organized by an **organizing authority** . . . .
- 89.2 (b) The **organizing authority shall appoint a race committee** and, when appropriate, appoint a protest committee and umpires. However, the race committee, an international jury and umpires may be appointed by the ISAF as provided in the ISAF regulations.
- 90.1 The **race committee shall conduct races as directed by the organizing authority** and as required by the *rules*.

(emphasis added)

### **RELEVANT INTERNATIONAL JURY DECISION**

On 2 February 2010 the International Jury issued its decision in AC33/01. In its decision relating to Request 01-4 (GGYC’s Request for Redress concerning wind and wave limits) the International Jury made the following relevant findings:

“49. The RRS contain adequate provisions for the **RC** to delay starting a race because boats are unlikely to complete the course within the time limit, or because of safety concerns. After the start the **RC** may ‘abandon the race because of foul weather’ or ‘because of insufficient wind making it unlikely that any boat will finish within the time limit’ or ‘for any other reason directly affecting the safety or fairness of the competition.’ (RRS 32.1).”

“53. The Jury recognizes that the **RC** has the obligation to comply with appropriate safety and legal obligations when making a decision to start or continue a race.”

(emphasis added)

### **RELEVANT PORTION OF SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

The yacht clubs and teams involved in the 33<sup>rd</sup> America’s Cup executed a Settlement Agreement and Mutual Release containing the following provision:

“7. Covenant Not to Sue. The GGYC Parties and the SNG Parties, in all of their respective capacities and to the fullest extent permitted by law, **each hereby covenant not to bring or continue any litigation**, fund the litigation or commencement of any litigation, or willfully assist in an effort to further any litigation against the Released Parties relating to or arising out of the 31<sup>st</sup>, 32<sup>nd</sup> or 33<sup>rd</sup> America’s Cups **before any court, arbitrator or other tribunal, including, but not limited to, the International Sailing Federation** and any sports tribunal, in any jurisdiction, whether as a claim, cross-claim or counterclaim, with the exception of any action to enforce this Agreement.”

(emphasis added)

## **DISCUSSION**

ISAF Regulation 34 permits the ROC to investigate and take action when an ISAF Race Official’s conduct or competence is called into question. An “ISAF Race Official” is defined as “a race official appointed by ISAF pursuant to Regulations 33 and 18.12.” Harold Bennett and Paco Quiñonero were the only ISAF Race Officials aboard the signal boat during race 2.

The Racing Rules of Sailing, the relevant portions of the International Jury Decision in AC33/01 relating to Request 01-4 and the relevant portion of David Tillett’s report to the ISAF Executive Committee make it clear that the decision to start, postpone or abandon a race is to be taken by the race committee. This is at odds with recent developments in race management practices and ISAF’s expectation when it appoints a PRO; that the ISAF-appointed PRO will be responsible for making all decisions relating to the conduct of racing, including the decision to start, postpone or abandon a race.

The race committee decided, on a vote of 3 to 2, that race 2 should not be started on 14 February 2010. Despite the vote of the race committee, the PRO proceeded to start race 2. In light of ISAF’s practices and expectations concerning the role of ISAF-appointed PROs and the assurances made by SNG’s representatives in New York to the panel of experts, Harold Bennett had good reason to conclude that he had the authority to start race 2.

While Harold Bennett’s actions to start race 2 may have been inconsistent with a strict reading of the Racing Rules of Sailing and the voting and decision-making system to which he had agreed with the *Organizing Authority*, his decision to start race 2 was sound, and his conduct was consistent with his obligation to conduct racing in a fair manner. The ROC applaud his conduct and independent actions, and find no reason to take action under Regulation 34.

Paco Quiñonero performed his duties as expected, and is commended for his actions. There is no reason to take action under Regulation 34.

The remaining members of the SNG-appointed race committee are not ISAF Race Officials, and are not subject to action under Regulation 34. Their conduct would not, in any event, merit

action in light of (i) Harold Bennett's agreement with respect to the race committee voting and decision-making process, (ii) Harold Bennett's conclusion that any discussion concerning their conduct would be "purely speculation," and (iii) the provisions in the Racing Rules of Sailing that require the race committee to conduct the races (including the decision to start, postpone or abandon a race).

## **RECOMMENDATIONS FOR THE FUTURE**

The ROC note that the appointment of a PRO by a class association, MNA or ISAF is becoming increasingly common. The role of the PRO is well-defined in the relevant documents published by ISAF. The PRO is responsible for making all decisions relating to the conduct of racing, including the decision to start, postpone or abandon a race. However, the Racing Rules of Sailing have not kept up with these best practices.

When ISAF appoints a Principal Race Officer and/or Race Officers to high level events (such as the America's Cup, the Olympics, Olympic Class World Championships, Sailing World Cup events and ISAF Championships), athletes, coaches, the public and ISAF have good reason to expect that the ISAF-appointed Principal Race Officer and/or Race Officers will be responsible for the conduct of racing, and will be free from interference of any kind. For events such as the Olympics and ISAF championships, ISAF is the *Organizing Authority*. The Racing Rules of Sailing adequately cover those events since the *Organizing Authority* directs the racing. For events at which ISAF is not the *Organizing Authority* (such as the 33<sup>rd</sup> America's Cup, Sailing World Cup events and Olympic Class World Championships), the conflict between the Racing Rules of Sailing – which empower the race committee - and the expectation that the ISAF-appointed Principal Race Officer and/or Race Officers is (are) solely responsible for the conduct of racing must be resolved.

The ROC recommend the following:

- a) That the ROC and Racing Rules Committee appoint a joint working party to determine whether changes to the Racing Rules of Sailing may be appropriate in light of these findings.
- b) That, when ISAF exercises its power to appoint a Principal Race Officer and/or Race Officers, it take steps to ensure that the ISAF-appointed Principal Race Officer and/or Race Officers is (are) authorized to take all decisions regarding the conduct of racing. This could be accomplished by (i) having ISAF serve as the *Organizing Authority*, (ii) having ISAF appoint the race committee, or (iii) entering into a protocol with the *Organizing Authority* clarifying that field of play decisions shall only be taken by ISAF-appointed officials.
- c) That ISAF appoint a working party to determine the most appropriate manner to implement recommendation (b), above.

- d) That ISAF appoint a working party to review the regulations, and recommend necessary changes, if any, to implement these recommendations.

25 May 2010

Charley Cook (USA), Chairman

Josje Hofland-Dominicus (NED), Vice Chairman

Patrick Bergmans (BEL)

Bernard Bonneau (FRA)

Sally Burnett (GBR)

Dimitris Dimou (GRE)

Ronnie R. McCracken (HKG)

John Parrish (NZL) (Ex officio, non-voting) (took part in the discussion, but did not vote)

Jan Stage (DEN)

Ross Wilson (AUS)

A

# INTERNATIONAL SAILING FEDERATION

## 2010 JUDGES REGATTA REPORT FORM

It is compulsory for each International Jury Chairman (or Panel/Protest Committee Chairman) to submit a completed Regatta Report. However, each Jury member is requested to submit an independent report. Reports are required for Events where an International Jury is appointed under Appendix N. Chairman's reports for other principal events are welcome.

Please use BLOCK CAPITALS and send to: Regatta Report (Confidential), International Judges Sub-Committee, ISAF, Ariadne House, Town Quay, Southampton, Hampshire, SO14 2AQ, United Kingdom or send by fax to: +44 2380635789 or email to: [judgeteports@isaf.co.uk](mailto:judgeteports@isaf.co.uk).

Name of Event: 33 <sup>rd</sup> America's Cup		Date of Event: 8-14 February 2010			
Location (Place and Country): Valencia, Spain					
Principal Race Officer: Harold Bennett			International Race Officer: Yes		
[ ] World Championship		[ ] Continental Championship			
[ ] National Championship		[ <input checked="" type="checkbox"/> ] Other International Event			
Was the Jury properly constituted under Appendix N?			Yes		
If 'No', were parties to the protest made aware of the right to appeal?			N/A		
If 'Yes' was Appendix N1.4(b) applied? No			If Yes: throughout the Event [ ] Occasionally [ ]		
How many hearings <b>did you</b> sit on ? 2 How many hours <b>did you</b> judge Rule 42 on the water? 0					
International Jury Members: (Indicate by 'IJ' who are International Judges		Judges Evaluation: . Please indicate, by drawing a circle around a rating number: 1= Good 2= Satisfactory 3= Needs improvement 4= Unacceptable			
NAME	Country	Rules Knowledge	Objectivity	Rule 42 Judging Skills (If applicable)	Potential as Jury/Panel Chairman
Chairman or Panel Chairman		1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4
David Tillett (IJ)	AUS				
John Doerr (IJ)	GBR	① 2 3 4	① 2 3 4	1 2 3 4	① 2 3 4
Josje Hofland (IJ)	NED	① 2 3 4	① 2 3 4	1 2 3 4	① 2 3 4
Graham McKenzie	NZL	1 ② 3 4	① 2 3 4	1 2 3 4	① 2 3 4
Bryan Willis (IJ)	GBR	① 2 3 4	① 2 3 4	1 2 3 4	① 2 3 4

*Graham McKenzie, knowledge re America's Cup need of gift etc excellent. Racing rules, satisfactory.*



**THIS SECTION TO BE COMPLETED BY THE CHAIRMAN ONLY**

Questions brought about the rules, interpretations thought to be new (not already included in the ISAF Interpretations Book), Rule 69 (Allegations of Gross Misconduct), interesting or unpopular Rule 62 (Redress) decisions, and any experience with experimental protest procedures, Sailing Instructions or Notice of Race.

Redress was granted prior to the Event.  
 A case will be submitted to ISAF for consideration of RRC + Council. (see preliminary attached draft)

Comments upon Race Management practices, issues and special or interesting challenges and the relationship with your Jury:

see attached mem.

Number of classes: 1	Entries: 2	
Number of Countries represented: 2	Number of Races sailed: 2	
No. of Requests for Redress: 2 (7)	Of which No. for OCS: 0	Of which No. 0 were granted.
Total number of hearings: 2	Total Jury sitting time in hours: 26	

**To be completed by the Jury Chairman, only if Appendix P was applied at the event:**

Total No. of First Protests (Appendix P2.1):	Total No. of Second Protests (Appendix P2.2):
Total No. of Third Protests (Appendix P2.3):	Total hours on the water per judge for Rule 42:
No. of Jury Boats for Rule 42:	Were the Boats: Good [ ], Satisfactory [ ], Inadequate [ ]

If a "Special Event" (ISAF regulation 20.6.), was approval received from ISAF? Yes/No

Did the Chairman check with ISAF that the fee (ISAF regulation 20.7.1) was received by ISAF before the start of the event? Yes/No

Paid by Organisers

Expenses	Fully	Partly	None
Travel Costs	(✓)	( )	( )
Accommodation	(✓)	( )	( )
Subsistence	(✓)	( )	( )

Total amount of the expenses paid by Judge in US\$ Dollars .....

Name of Event: 33rd America's Cup

Date of Event: 8-14 February 2010

**I understand that all information on this form is subject to use in accordance with ISAF Regulation 34**

Signature ..... *[Signature]*

Date ..... 1-3-2010

Print Name ..... David Tillet

**ISAF 2010  
JUDGES' REGATTA REPORT FORM  
ATTACHMENT RE RACE MANAGEMENT**

---

A separate report will be submitted to the Executive on a confidential basis.

Significant issues arise in the context of the America's Cup because the Trustee (SNG) being the Club that holds the Cup is also a competitor. In this case, SNG appoints the Organising Authority and the Race Committee. ISAF appointed the Principal Race Officer, Harold Bennett (NZ), and he was contracted with ISAF. He was also a member of the Race Committee. The Race Committee also included three other members, all from SNG who were also present on the Committee Boat and saw their role as "active".

At an earlier hearing in New York , a question was posed by the New York Supreme Court to an expert panel of myself, Bryan Willis and Graham McKenzie, "Is it safe to race in Valencia in February?" The panel was advised in the hearing conducted in New York by SNG's representative that Harold Bennett would be the Principal Race Officer and would make that call and that he was experienced and was capable of making that call.

The panel adopted that approach, found it safe to race in Valencia in February on that basis, as did the Court.

A situation arose at the start of the last race where the Principal Race Officer determined that the race was safe and suitable to sail (wind strength approximately eight knots, wave height approximately one metre) but the other three members of the Race Committee expressed the view that they did not consider it was safe to do so and endeavoured to prevent the race from proceeding.

Issues arise in relation to the authority of the Principal Race Officer in light of RRS 90.1 which provides, "The Race Committee shall conduct races as directed by the organising authority as required by the rules". The normal practice (which becomes particularly relevant where ISAF appoint the Principal Race Officer) is the Principal Race Officer would be making the decision on whether or not it was safe to race – not the Race Committee (which of course was not independent in this case). In this case the Principal Race Officer proceeded and conducted the race notwithstanding the Race Committee not supporting that decision. There were no subsequent requests for redress from either competitor.

Consideration also needs to be given to the Introduction in the Rule Book and the reference in Terminology to:

*Race Committee includes any person or committee performing a Race Committee function.*

It could be argued this therefore includes mark layers, patrol boats, etc. The reason for their inclusion is of course, redress.

DWT

## **CASE XX**

### **Rule 62.1 REDRESS**

*In some circumstances, a Jury or protest committee may consider a Request for Redress before a race, or before a boat's score has been prejudiced. Directing an Organising Authority to amend a Notice of Race, or the Race Committee to amend the Sailing Instructions, may sometimes be appropriate redress.*

### **Summary of the Facts**

USA requested redress listing five instances in which the Organising Authority (OA) and/or the Race Committee had made an improper action, which, USA claimed, may lead to the possibility that her score would be made significantly worse, through no fault of her own.

The other boat (that would be affected by the granting of redress) argued that RRS 62.1(a) did not permit a Request to be made before a boat's score had been affected.

The five instances were;

1. The OA had improperly set the order of precedence so that the Notice of Race (NoR) and the Sailing Instructions (SIs) prevailed over the ISAF Racing Rules of Sailing. USA claimed that this was an improper action, which had the possibility of USA's score being made significantly worse in that USA would be required to comply with the rules taking into account an incorrect order of precedence.
2. In amending the NoR, the OA had not provided adequate notice in prohibiting the use of wind detection equipment when it was clearly allowed in the original NoR. USA had spent time and money in obtaining and developing such detection equipment. Being unable to use such equipment would lead to the possibility of USA's score being made significantly worse in that its ability to detect the wind is removed and that it had committed time and resources to this project that may have been used in other areas of the yacht preparation.
3. The start time was set unilaterally as 1006 hrs in direct contravention of the clear and unambiguous language of the Deed of Gift governing the event. In improperly setting this start time SNG has created the possibility that USA's finishing position has been made significantly worse in that the start time SNG unilaterally set may provide for conditions that suit the defending yacht over USA.
4. The OA had imposed limits on the wind strength and the sea state for the Match in contradiction of the deed of Gift. This leads to the possibility that the finishing position of USA is made significantly worse in that conditions that may benefit the defender over USA are the only conditions that are raced in.
5. As RRS 53 did not apply, to introduce an SI at this late stage to stop USA

from using a process to reduce skin friction leads to the possibility that the finishing position of USA may be made significantly worse in that USA is unable to use a skin friction reduction process that it has developed and installed on the yacht.

DECISION The Jury determined that the words 'possibility that a boat's score' used in RRS 62.1, permit the Jury to consider a Request for Redress before a race, and before there has actually been prejudice.

The Jury then addressed in each case whether the requirements to give redress had been met and some cases gave redress in the form of directions to the OA to amend the NoR and SIs.

AMERICA'S CUP INTERNATIONAL JURY 2010

**B**



February 2010, Valencia Spain

**International Jury**

**Case AC33/01**

**Decision**

2<sup>nd</sup> February 2010 at 23:54

1. On 19<sup>th</sup> January 2010, the Jury Chairman received a Request for Redress from USA (sail number USA 17, representing Golden Gate Yacht Club), listing five instances in which USA alleged the Organising Authority (OA) (Société Nautique de Genève) and/or the Race Committee (RC) had made an improper action which USA claimed may lead to the possibility that her score be made significantly worse, through no fault of her own.

2. A hearing was held in the Hearing Room at Antiguo Edificio Varadero starting at 11:00 on 1<sup>st</sup> February.

3. Richard Slater and Russell Coutts represented USA; Hamish Ross represented the OA, the RC and Alinghi, and Brad Butterworth represented Alinghi.

#### **SUBMISSION ON VALIDITY**

4. Hamish Ross argued that the Requests were not valid, as all the requirements of the Racing Rules of Sailing (RRS) 62.1(a) had not been met. RRS 62.1(a) did not permit a Request to be made before a boat's score had been affected.

5. RRS 62.1(a) states: 'A request for redress ... shall be based on a claim or possibility that a boat's score in a race or series has, through no fault of her own, been made significantly worse by an improper action or omission of the race committee ... or organizing authority...'

#### **REASONS FOR DECISION**

6. RRS 60.1(b) states: 'A boat may ... request redress. RRS 62.2 states: 'The request shall be in writing and be delivered to the race office no later than the protest time limit or two hours after the incident, whichever is later. The protest committee shall extend the time if there is good reason to do...'

7. The Requests were in writing and delivered in time and hence comply with RRS 62.2.

#### **DECISION**

8. The Requests are valid.



#### **DECISION REGARDING ADDRESSING A REQUEST FOR REDRESS BEFORE THE RACE**

9. The Jury determines that the words 'possibility that a boat's score' used in RRS 62.1 permit the Jury to consider a Request for Redress before the race.

#### **REQUEST 01-1: INCORRECT RULES PRECEDENCE**

10. USA submitted that 'In both NoR 1.2 and SI 1.2 SNG has improperly set the order of precedence so that the Notice of Race and the Sailing Instructions prevail over the ISAF Racing Rules of Sailing. This improper action leads to the possibility of USA's score being made significantly worse in that USA is required to comply with the rules taking into account an incorrect order of precedence. What is worse is that the order of precedence that USA must follow is in conflict in NoR 1.2 in that the Jury deals with conflict over the rules in a different manner.'

11. Richard Slater submitted that setting the order of precedence as the Organising Authority (OA)/Race Committee (RC) have done in the NoR and SI, would allow the Sailing Instructions to change any rule in the RRS, even rules that the RRS themselves do not allow to be changed. There would be uncertainty regarding rules governing the event.

12. Hamish Ross submitted that USA had failed to show how through no fault of her own USA had been prejudiced. Giving redress is a post-race remedy, not a pre-race remedy. It is for the OA to set the rules and this Request is premature.

13. He further submitted that the correct order had been applied, as the NoR and SI amend the RRS and therefore should be placed prior to the RRS in order of precedence.

#### **REASONS FOR DECISION**

14. NoR 1.1 and SI 1.1 list the rules applicable to the match in the following order: (a) Deed of Gift; (b) Notice of Race; (c) Sailing Instructions; (d) RRS.

15. NoR 1.2 states: 'Subject to RRS 63.7 any conflict in the rules shall be resolved by applying the rule in the first listed document above which shall prevail over a conflicting rule in a subsequently listed document.'

16. Sailing Instruction (SI) 1.2 states: 'Any conflict in the rules shall be resolved by applying the rule in the first listed document above which shall prevail over a conflicting rule in a subsequently listed document.'

17. RRS 63.7 states: 'If there is a conflict between a rule in the notice of race and one in the sailing



instructions that must be resolved before the protest committee can decide a protest or request for redress, the committee shall apply the rule that it believes will provide the fairest result for all boats affected.'

18. The RRS is the document that empowers the publication of the NoR and SI. The RRS are clear that some of its rules may not be changed by the SI. To give precedence to the NoR and SI over the RRS may result in conflict between the rules of the event. Such a conflict may give rise to the possibility that a boat's score could be made significantly worse through no fault of her own.

#### DECISION

19. The Request is upheld. The OA/RC are directed to issue an amendment deleting NoR 1.2 and SI 1.2, and replacing them with 'The Deed of Gift shall prevail over any other conflicting rule'.

#### REQUEST 01-2: CHANGING THE RULES TO OUTLAW WIND DETECTION EQUIPMENT.

20. USA submitted that 'In amending NoR 1.5(b) SNG has not provided adequate notice to now attempt to outlaw the use of wind detection equipment. Such equipment was clearly allowed in the original Notice of Race and USA has spent time and money in obtaining and developing such detection equipment. Being unable to use such equipment leads to the possibility of USA's score being made significantly worse in that its ability to detect the wind is removed and that it had committed time and resources to this project that may have been used in other areas of the yacht preparation.'

21. Through NoR 1.5(b) the OA deleted RRS 41(c) and (d) and replaced them with a new (c): 'The RRS are changed (or applied) as follows: ... RRS 41 (c) and (d) are deleted and replaced with: "(c) communications to and from the Umpires and Race Committee to the competing boats via equipment to be provided by the Race Committee, the use of GPS devices, low power onboard communication systems, use of onboard laser, radar and other detection equipment operated solely from onboard as permitted by NOR 14.(b).(iv), and the operation of onboard event broadcast equipment, and to permit any actions authorised by the NOR and the SI''

22. Hamish Ross submitted that it was not the intention of the OA to prohibit wind detection equipment and offered to meet with Richard Slater to try to come to an agreement on an amendment to clarify the matter.

23. At the request of the parties, the Jury adjourned the hearing in relation to this issue, pending the outcome of their meeting.

24. Subsequent to the meeting, on 2<sup>nd</sup> February, the parties advised the Jury they had mutually

agreed in satisfaction of this request that NoR 14.2(d) will be deleted and replaced with: '(d) onboard lasers, radar or other detection equipment operated solely from onboard; and'.

25. Consequently, the Jury has allowed the request to be withdrawn (RRS 63.1).

### REQUEST 01-3: FAILURE TO MUTUALLY AGREE ON THE START TIME FOR RACES.

26. USA submitted that: 'When NoR 6.6, NoR 1.5(I)(ii) and SI 5.6 are read in conjunction, it is clear that the scheduled start time has been set by SNG unilaterally as 1006 hrs. This is in direct contravention of the clear and unambiguous language of the Deed of Gift that states: "*The challenged Club shall not be required to name its representative vessel until at a time agreed upon for the start,...*"

In improperly setting this start time SNG has created the possibility that USA's finishing position has been made significantly worse in that the start time SNG unilaterally set may provide for conditions that suit the defending yacht over USA.'

27. Richard Slater submitted that the Deed of Gift required the Challenger and Defender to come to an agreement as to the start time, and that to set a start time of 10:06 could prejudice USA's finishing position.

28. He submitted that a later start time would be more appropriate and there was nothing in the Deed to prevent races finishing after dark, and that some past America's Cup Matches had done so.

29. He suggested that a representative of each party should meet with the chairman of the Jury and that if the parties fail to agree, the Jury should, after receiving submissions, set a start time.

30. Hamish Ross submitted that in the absence of agreement, the OA/RC have the responsibility to set a start time.

31. Harold Bennett, the Principal Race Officer, stated that to be sailing after dark would give rise to safety concerns in relation to the racing boats, in addition to race committee and spectator boats. The conditions for sailing would not be ideal but are 'doable'. To have the whole day available gives a greater opportunity to conduct a fair race.

### REASONS FOR DECISION

32. There is a clause in the Deed: '*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.*'

33. In a decision of the New York Supreme Court dated 29<sup>th</sup> July 2009, Justice Shirley Kornreich

stated (on page 10) 'It is only after the parties have failed to agree that the Deed defaults to the defender's rules'. A footnote was added to that statement which said 'Golden Gate argued at the hearing on July 21<sup>st</sup> that the mutual consent language should also be read to control the clause requiring that the default races be sailed subject to the defender's rules. The court finds that the clauses are separate and that a consent requirement would be entirely inconsistent with the default provisions intent to create a situation where the race can still be held regardless that the parties have failed to agree.'

34. The clause in the Deed does not require the parties to agree a time for the start; rather it allows the Defender to delay naming its vessel until an agreed start time for the first race. If no start time is agreed then the OA has no alternative but to set a start time to facilitate a Match. The OA had engaged with the Challenger and attempted to agree a start time. USA had wanted an afternoon start time. No agreement was reached.

35. The New York Courts have the authority to interpret the Deed.

36. Following the Court's decision, the Jury is of the opinion that in the absence of agreement as to a first race start time, the OA has the responsibility to set appropriate start times.

37. The OA has set a scheduled start time of 10:06. The Jury is of the opinion that a scheduled start time of 10:06 is reasonable and is therefore not an improper action.

#### **DECISION**

38. The Request is denied.

#### **REQUEST 01-4: IMPOSING WIND AND WAVE LIMITS THAT DIRECTLY FAVOUR SNG'S OWN YACHT.**

39. USA submitted that 'SNG has imposed limits on the wind strength and the sea state for the Match. This limitation is neither supported by the clear and unambiguous language of the Deed nor the findings of the New York Court of Appeals in Mercury Bay Boating Club v San Diego Yacht Club 76 NY2d 256 (1990). Imposing wind and wave limits creates a design restriction that is not found in the Deed of Gift. This leads to the possibility that the finish position of USA is made significantly worse in that conditions that may benefit the defender over USA are the only conditions that are raced in.'

40. NoR 6.7 states: 'To ensure the safety of competitors, officials and spectators, and taking into account the length of the courses to be sailed and the nature of the boats, RRS 27 and RRS 32 shall apply. It is anticipated that races shall be sailed in winds having a windspeed of not more than 15 knots measured at 60 metres, and in waves of not more than 1 metre in height.'

41. Richard Slater submitted that the Deed prescribes a time limit but not a wind or wave limit. To do so directly impacts on design and therefore such limits conflict with the Deed.



42. Richard Slater submitted that 15 knots measured at 60 metres would often equate to less than 12 knots at sea level and that such a limit would be inappropriate if set only for safety reasons.

Measurement at 60 metres could only be obtained from the Defender's yacht and it was inappropriate for the Race Committee to rely on wind readings obtained in this manner.

43. Hamish Ross submitted that the upper wind limits were based on safety concerns and that there were significant legal and insurance issues to be considered.

44. Hamish Ross submitted that as the OA had not broken a rule it could not have made an improper action.

45. Hamish Ross further submitted that the OA was required by the Spanish Royal Decree of 7<sup>th</sup> February 2008 to provide 'meteorological limits set for the organization of the race' to the Port Authority. The OA had advised the Port Authority of the wind limits as stated in NoR 6.7.

46. Tom Schnackenberg was called by the OA to give evidence. He is a physicist with 30 years experience in sail making and America's Cup boat development. He stated that a wind speed of 15 knots at 60 metres height in relation to the boats in this Match was equivalent to 23 knots at 10 metres height for the preceding generation of America's Cup boats in terms of the loads imposed.

47. Russell Coutts submitted that there were other significant factors determining the loads on the boats and that it was the responsibility of the crew (who are amongst the best sailors in the world) to exercise good seamanship by using the options available to them to reduce the loads to safe levels.

#### **REASONS FOR DECISION**

48. In a decision of the New York Supreme Court dated November 17<sup>th</sup> July 2009, Justice Shirley Kornreich, in respect of an issue concerning the safety of holding races off the coast of Valencia in February 2010, endorsed (on page 4) an extract from the Opinion of the Court's Expert Panel: 'At the hearing, both parties agreed that with the proper application of the RRS, races held in Valencia can be safely managed.'

49. The RRS contain adequate provisions for a RC to delay starting a race because boats are unlikely to complete the course within the time limit, or because of safety concerns. After the start the RC may 'abandon the race because of foul weather' or 'because of insufficient wind making it unlikely that any boat will finish within the time limit' or 'for any other reason directly affecting the safety or fairness of the competition.' (RRS 32.1)

50. The Jury concurs with the view of USA that to impose wind and wave height limits, which are not provided for in the Deed, without the consent of the Challenger is an improper action that may result in a boat's score being made significantly worse through no fault of her own.

51. It is not necessary for an OA to have broken a rule for it to have made an improper action.

## DECISION

52. Redress is granted. The OA is directed to issue an amendment deleting NoR 6.7.
53. The Jury recognizes that the RC has the obligation to comply with appropriate safety and legal obligations when making a decision to start or continue a race.

## REQUEST 01-5: IMPOSING RULES REGARDING SKIN FRICTION REDUCTION.

54. USA submitted that 'The court has ruled that in the absence of mutual consent, RRS 53 does not apply. Furthermore, NoR 1.5(d) states: "*RRS 49 to RRS 54 (inclusive) are deleted. For the avoidance of doubt anything that may have been prohibited by such rules is permitted.*" SI 24 has been included into the rules with the clear intention of now stopping USA from using a process to reduce skin friction. This limitation is neither supported by the clear and unambiguous language of the Deed nor the findings of the New York Court of Appeals in Mercury Bay Boating Club v San Diego Yacht Club 76 NY2d 256 (1990) and it is a change to the rules of the regatta where adequate notice has NOT been given. The improper inclusion of this Sailing Instruction leads to the possibility that the finish position of USA may be made significantly worse in that USA is unable to use a skin friction reduction process that it has developed and installed on the yacht.'
55. Richard Slater submitted that the inclusion of SI 24 is contrary to the New York Supreme Court orders and the Deed.
56. SI 24 states: 'Boats shall not put trash in the water, or fail to fully recover anything (other than discharged water ballast) intentionally left by the boat in the water. A boat's Chase Boats shall use reasonable efforts to recover any trash or other item left in the water from the boat.'
57. Richard Slater stated that USA intends to use skin friction reduction technologies and that these technologies comply with all appropriate laws applicable in the USA and Spain.
58. No evidence was submitted that any substances that may be ejected by USA will in any way be harmful to the environment.
59. Hamish Ross submitted that SI 24 was not intended to prevent skin friction reduction technologies; rather to prevent pollution. He further submitted that if the Jury were to be satisfied that the technology and products used by USA complied with all laws and the SI, the OA's concerns would be met.
60. Richard Slater offered to provide the Jury, in camera, evidence to show that the technologies and products fully complied with all appropriate laws, and gave an assurance to that effect.

## DECISION



61. For the purpose of SI 24, 'trash' does not include substances released into the water from a boat that are not in breach of any laws or regulations.

62. SI 24 has not reinstated RRS 53 and therefore there is no improper action by the OA and the Request is therefore denied.

David Tillett, chairman.

International Jury: David Tillett (AUS), John Doerr (GBR), Josje Hofland (NED), Graham McKenzie (NZL), Bryan Willis (GBR)



C

# INTERNATIONAL SAILING FEDERATION

## 2010 RACE OFFICER REGATTA REPORT FORM

Each International Race Officer is requested to submit this report for every international or major national event in which he serves as the Principal Race Officer. They are also urged to submit this report for events at which they serve in some other capacity. These reports are used by the Race Management Subcommittee to consider applications for renewal or certification as an International Race Officer and for developing an annual report of interesting race management issues which will be sent to all International Race Officers.

Please use BLOCK CAPITALS and send to: Regatta Report, Race Management Subcommittee, ISAF, Ariadne House, Town Quay, Southampton, Hampshire, SO14 2AQ, United Kingdom or fax to: +44 23 80635789 or send by email to [iroreports@isaf.co.uk](mailto:iroreports@isaf.co.uk)

Name of Event: 33 <sup>rd</sup> AMERICAS CUP	Date of Event: 8 <sup>th</sup> , 10 <sup>th</sup> , 12 <sup>th</sup> & 14 <sup>th</sup> February 2010
Principal Race Officer: HAROLD BENNETT	Jury Chairman/Chief Umpire: DAVID TILLET / BILL EDGERTON
Location (Place and Country): VALENCIA SPAIN	<input type="checkbox"/> World Championship <input type="checkbox"/> National Championship <input type="checkbox"/> Continental Championship <input checked="" type="checkbox"/> Other International Event
Classes (please list):  1 TRIMARAN 1 CATAMARAN	Number of entries: 2 ONLY
Number of Races Sailed: TWO (2)	Types of Courses: 1 WINDWARD LEEWARD (20MILE LEGS) 1 EQUILATERAL TRIANGLE (13 MILE LEGS)
On-the-water judging?    No	On-the-water umpiring?    Yes
Number of starts in which:  - Postponement made. TWO (2) - Race abandoned shortly after start N/A - Individual boats recalled 1 BOAT RACE 1 - General recall made N/A - Rule 30.1 (I flag) invoked N/A - Rule 30.2 (Z flag) invoked N/A - Rule 30.3 (Black flag) invoked N/A	



<p>Please report any challenges, successes and failures in controlling premature starters:  Race 1 both boats in front of the line at 1min one boat returned around the pin prior to start the other recalled and eventually dipped the line to start correctly 2 mins 1 sec after start.</p>
<p>Please report any interesting or unique solutions to race management problems:  See attached</p>
<p>Types of marks and ground tackle used, average water depth and method for laying marks:  See attached</p>
<p>Please attach any unique or interesting provisions in the sailing instructions:  Nothing of note</p>
<p>Please describe any race management equipment that was particularly helpful:  Nothing out of the ordinary</p>
<p>Did you use the starting system set forth in the Sailing Instruction Guide (Appendix L)?      No  If so, please report your experience with the system:  We used an amended C3.1</p>
<p>Please summarise any requests for redress:  See attached</p>

Please attach additional sheets if necessary.

**I understand that all information on this form is subject to use in accordance with ISAF Regulation 34**

Signature: .....

Print name: HAROLD BENNETT

Date: .26 February 2010

**D**

# REPORT ON

## 33<sup>RD</sup> AMERICAS CUP

### HAROLD BENNETT (IRO)

#### Preamble:

In June 2009 I was asked by **Société Nautique de Genève** if I would accept an offer as Regatta Director to prepare gear, equipment and documentation for the 33<sup>rd</sup> Americas Cup. I was also asked if I would be the Principal Race Officer for the racing and make use of some of the active club members keen to help. At a later stage I was appointed by ISAF and contracted from the 1<sup>st</sup> January 2010 as the PRO for the event.

I began working in Valencia at the end of July preparing a budget, hiring three people and preparing boats, gear and equipment to run the event in RAK (UAE). The objective was to run a high class event at minimal cost. The shipping of 12 containers and the travel of personnel was put on hold in mid November after the New York Court hearing declared Rak ineligible to host the event. In mid December it was finally declared that Valencia would be the venue at which time I had hired two more people and we set about rebuilding the Race Operations Base that was used for the 32<sup>nd</sup> AC.

Our unit became operational during the third week of January when testing and final preparations began. By the time of the start of the first race on the 8<sup>th</sup> we were as prepared as could be expected under the circumstances of not having a lot of lead time to setup.

#### Personnel:

##### Staff (on contract)

Harold Bennett (IRO)	Regatta Director / Principal Race Officer	NZL
Niccolo Porzio	Race Operations Manager/ Course Marshal	ITA
Gaby Fernandez (IRO)	Cat Maintenance Skipper Mark 1	ARG
Mattias Dahlstrom	General Maintenance Skipper Patrol 3	SWE
David Rojas	Rib Maintenance Skipper Patrol 2	ESP
Inaki Sevillano	Inventory, Maintenance, Skipper Patrol 1	ESP
Paco Quinonero (IU)	Maintenance, Skipper Committee Boat	ESP
Eugenio Gonzales	Skipper Jury Cat	ESP
Lourdes Raga	Secretarial services	ESP
Berit Barck	Reception Secretarial services Skipper Patrol 4	FIN

### **Event Only**

#### **Committee Boat**

##### **(Part time Paid)**

Ignacio Messana      Committee Boat, Coms & Marks      ESP

##### **(SNG club volunteers)**

Nicolas Grange      Committee Boat, Timing/signals      SNG      SUI

Marcel Beauvard      Committee Boat Timing/signals      SNG      SUI

Pascal Monet (IRO)      Committee Boat Timing/signals      SNG      SUI

Fred Meyer      Committee Boat Timing/signals      SNG      SUI

The operation of the Committee Boat was simple. Ignacio Messana coordinated the placement of the marks with the Spanish Mark Boat drivers and kept the wind reading records.

Pascal Monet coordinated the signals and timing of the day.

#### **Marks (Part time Paid)**

Juan Antonio Llabres      Mark 3 (Start Line Pin end)      ESP

Tomas Catala      Mark 2 – weather boat Race 1 & 3      ESP

Tito      Port Entry Boat M4      ESP

#### **Race Management Boats:**

Committee Boat      Nyala 17m Power Cat as used for 32<sup>nd</sup> AC

Marks 1, 2, 3 & 4      8.5m Protector RIB's with an Orange Tetrahedron on the cabin top.

Patrol Boats 1,2,3 & 4      8.5m Protector RIB's

Course Marshal      8.5m Protector RIB

Umpire Boats      8.5m Protector RIB's

Jury Boat      11m Power Cat

The Guardia Civil supported the Race Management Team with a number of boats around the course area for the purpose of protecting the area from stray boats from entering the area. Unlike the 32<sup>nd</sup> AC the area being so large could not be deemed to be a fully secured area. Commercial shipping was alerted but not redirected around the area and were free to pass through. This did not become an issue at all.

#### **Umpires:**

Umpiring was in effect with an International lineup of 4 umpires very well led by Bill Edgerton (FRA). He was supported by John Standley (AUS) Roger Wood (NZL) and Gerard Bosse (FRA). They had calls in both races a Port / Starb in the first race and a penalty for a boat failing to be outside its assigned end prior to entry.

#### **Jury:**

The Jury was led by David Tillett (AUS) and supported by Bryan Willis (GBR), Josje Hofland-Dominicus (NED) Graham McKenzie (NZL) and John Doerr (GBR). The Jury was put to work upon arrival and executed their responsibilities swiftly and professionally.

**Communications:**

This was one of the biggest challenges I encountered as UHF coms was not sufficient to cover the area required for the Deed of Gift races.

The primary system was a 45w VHF system for communication over the entire course area. All the Race Management boats were fitted with base sets capable of reaching the max of 20 miles although this was at times patchy especially when the weather was a bit rough. As the Race Yachts and their primary Chase Boats were only carrying Handhelds the Course Marshal Boat and Patrol 3 carried repeaters as these two boats remained with the race yachts from the time the yachts left the bases. This was the “**Safety Radio**” used for all communications between the Race Yachts and the Race Committee and the Umpires.

Our secondary radio for close range coms was the Marine VHF channel 77 and was used for messages to public and backup to all boats when close.

The Backup for coms with the marks, Umpires and Jury was by Satellite Phones.

**Weather and Course Laying:**

When it was announced that Valencia was the venue for February we went about researching conditions for that time of the year to which we found plenty for the airport but very little for more than 5 miles from the coast. During our testing and practice, on occasions we found completely different winds off the coast as to what was inshore.

Setting the 20 mile leg windward leeward was very challenging, trying to find 20 miles of a steady direction and strength for long enough to get the boats to the windward mark without a major windshift.

Both teams were very helpful with the forecasts providing them from early morning with updates throughout the day. I also use other weather websites to ensure I was seeing the best overview possible.

Both teams also provided realtime data they were receiving that I was able to put with our own realtime data, providing the best possible course for racing the long legs. The Race management realtime data came from windgear on Mark 1, Mark 2, the Pin Mark and the Committee Boat.

**Redress:**

Before the event started BMW Oracle Racing lodged a protest with the Jury seeking redress on 5 points. A day later they lodged another seeking redress over measurement.

1) The challenger sought redress on the scheduled start time in the NOR

The Jury issued the decision that the America’s Cup organising authority (OA), Société Nautique de Genève (SNG), is correct in setting a start time for the race at 10:06. There is no Deed of Gift requirement for the start time to be agreed with the challenger.

2) The challenger sought redress over the incorrect rules procedure in the NOR & SI

The Jury ruled that the Deed of Gift shall prevail over any other conflicting rule and the Notice of Race (NOR) and Sailing Instructions (SI) were amended.

3) The challenger sought redress over the wind and wave limits as described in the NOR

The Jury ruled that SNG's race committee will be responsible for determining whether to start or continue a race and in doing so has the obligation to comply with applicable safety and legal obligations.

4) The challenger sought redress for the reintroduction of Rule 53 Skin friction

The Jury ruled that all applicable laws must apply to any substance discharge while racing.

5) The challenger sought redress for the modification of the rules regarding wind detection equipment

At the challenger's request the competing parties mutually agreed to modify the rules regarding wind detection equipment.

The following day the challenger sought redress over the method of measurement

The Jury rejected BMW Oracle's complaint regarding the position and volume of the water ballast onboard the racing yachts during measurement. It put the onus on the measurer to guarantee that the amount and location of ballast aboard for measurement is solely to enhance performance.

**Race Committee:**

Harold Bennett	IRO	ISAF	Chairman
Fred Meyer		SNG	
Marcel Beauvard		SNG	
Nicolas Grange		SNG	

It has been widely reported that an incident took place on the Committee Boat during the 2<sup>nd</sup> race of the 33<sup>rd</sup> Americas Cup. An incident did take place where three members of the Race Committee voted 3 to 2 (as I had 2 votes) not to start in 7 knots with a wave state of approx .8 – 1 m swell. I weighed up all the facts and decided to continue with the start and the race. The other IRO on the Committee Boat Pascal Monet (SNG) but not a member of the Race Committee agreed with my decision. The race was sailed in 7 – 10 knots of wind with a slight swell and took a little over 2 hours to complete the 39 mile triangular course.

The reasons for the three members disagreeing with my decision are purely speculation as I was not aware of any other conversation taking place. I have no interest in pursuing this matter any further.

**Racing:**

The race days were set at 8<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup>, 14<sup>th</sup> and whatever days required to find a winner.

**Monday 8<sup>th</sup> Feb:** The forecast for today was for a light offshore breeze that arrived in the early afternoon along the shore but failed to arrive further out than 10 miles. We had gone approx 24 miles offshore to get the 20 mile leg in and sat in a flat calm all day long until both teams agreed to call it a day before the cutoff.

**Wednesday 10<sup>th</sup> Feb:**

The forecast for today was for a stronger offshore wind up to 18 – 20 knots but due to an overnight easterly the waves were expected to be in excess of 2 metres so I kept the boats ashore and the Race Committee set off out approx 24 miles to view the conditions. Upon arriving offshore and remaining there for an hour I decided to abandon any thought of racing as the sea was a very confused easterly swell being whipped up by a 18 – 20 knot westerly and very uncomfortable.

**Friday 12<sup>th</sup> Feb:**

A southerly was predicted for today but only in the 8 – 10 knot range with the seas now fairly flat. I had postponed the intended start until midday. We all arrived in an area well north of Valencia where the wind was predicted to be at it's best. We postponed for another 2.5 hours until the wind settled down in both strength and direction to 8 – 10 knots from 180. We had a recall on BMW Oracle who was trapped over the line whilst Alinghi received a penalty for a prestart incident.

The race took approx 2.5 hours for the 40 mile windward leeward with BMW Oracle winning by a margin of 15 mins 25 secs.

**Sunday 14<sup>th</sup> Feb:**

Forecasts for today ranged from southerlies to easterlies and was looking like a real challenge. Once again I delayed the intended start time until midday the night before. Once on the water I delayed again for some 4 .5 hours until a window of opportunity arose once strength and direction settled. There was a long swell of approx .8 – 1m but nothing that looked untoward for racing. The race started into a direction of 100 degrees with approx 7 – 9 knots strength for the equilateral triangle of 13 mile legs. Alinghi received a penalty for not being outside the assigned end prior to the entry signal. After a very close 1<sup>st</sup> leg upwind BMW Oracle stretched away to win by 5 mins 29 secs.

With two wins the event was won by BMW Oracle.

**Team Observers:**

As has been the traditional practice for a Deed Of Gift Match a representative of each team was aboard the Committee Boat to simply observe the operation. BMW Oracle sent along Tom Ehman and Alinghi sent Lucien Masmajan. They were free to move around the boat and watch how my team operated.

**TV:**

TV has become an integral part of sailing events and in particular Americas Cups of the last few editions. Once again cameras were on board the yachts but not live. There were also cameras on the water with a RIB and a Catamaran who followed as best as possible and also cameras on two Helicopters all sending live pictures. Another common feature in the past has been a camera on the Committee Boat that has scenes of the Committee at work and also close up shots of the yachts during the starts.

**Summary:**

The 33<sup>rd</sup> Americas Cup was only a three race event that only required two races to find the winner. It was organized under the uncertainty of the venue until very late which had all departments of the event scrambling to reach their targets in time.

I surrounded myself with a very good group of Race Officials all of whom worked for us during the 32<sup>nd</sup> AC. It was a very small group of really hard working people who all had more than one role to play in the operation. I would have no hesitation at all in calling these people in again should I have the opportunity of working on an event in that region in the future.

We operated with a bare minimum of race management boats but very effectively and efficient. This equipment was all held over from the 32<sup>nd</sup> Cup and was what was not sold prior to the 33<sup>rd</sup> .

The offices that housed all the Race Officials was that what was used for the 32<sup>nd</sup> and was adequate for the job at hand.

I would like to take this opportunity to thank ISAF for the encouragement and support for my role in the 33<sup>rd</sup> Americas Cup. I would also thank the Jury for their expert, professional and legal interpretations of my position and role throughout the running of the event.

Harold Bennett  
Regatta Director  
Principal Race Officer  
33<sup>rd</sup> Americas Cup  
Valencia  
Spain

26<sup>th</sup> February 2010



**E**

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release (the "Agreement"), dated as of March \_\_, 2010 is entered into by and among the following parties (the "Parties"): (1) Golden Gate Yacht Club ("GGYC") and Oracle Racing Inc. ("Oracle Racing") (collectively, the "GGYC Parties") and (2) Société Nautique de Genève ("SNG"), Team Alinghi SA ("Alinghi"), and AC Management SA (collectively, the "SNG Parties").

WHEREAS, on July 20, 2007, GGYC filed a Verified Complaint against SNG in the Supreme Court of the State of New York, County of New York, entitled *Golden Gate Yacht Club v. Société Nautique de Genève*, Index No. 602446/2007 (the "July 2007 Action");

WHEREAS, on October 26, 2009, GGYC filed a Summons and Complaint against SNG in the cause of action entitled *Golden Gate Yacht Club v. Société Nautique de Genève*, seeking relief for an alleged breach of fiduciary duty by SNG (the "October 2009 Action");

WHEREAS, on February 12 and 14, 2010, the Parties competed in the 33rd America's Cup, which was won by GGYC;

WHEREAS, following the conclusion of the 33rd America's Cup, the Parties agree that it is in the best interest of the America's Cup and the sport to discontinue all litigation between them;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Transfer of the America's Cup. On February 14, SNG transferred the America's Cup to GGYC. Within 10 days of the execution of this Agreement, SNG shall transfer to GGYC the pieces of the damaged Cup that SNG recovered in 2006 from different individuals in New Zealand. GGYC shall execute the Assignment and Acceptance Agreement annexed hereto as Exhibit A.

2. Transfer of ACPI. Within 7 days of the execution of this Agreement, GGYC shall execute the Undertaking annexed hereto as Exhibit B, and SNG shall (a) cancel the certificate 6 of shares for America's Cup Properties, Inc. ("ACPI"), (b) issue and transfer a certificate 7 of shares for ACPI in the name of GGYC, (c) direct the resignation of all current directors of ACPI, and (d) direct the transfer to GGYC of the corporate records and intellectual property of ACPI, including trademarks and the domain name americacup.com.

3. The Cup Heritage Trustee Limited. Within 10 days of the execution of this Agreement, SNG shall (a) direct the resignation of Hamish Ross as director of The Cup Heritage Trustee Limited ("CHTL"), (b) direct the transfer of shares of the CHTL to the transferee designated by GGYC, and (c) direct the transfer to GGYC of the corporate records.

4. Transfer of Equipment. Within 21 days of the execution of this Agreement, SNG shall transfer to GGYC the race equipment listed in Exhibit C to this Agreement, plus any other equipment not on Schedule C that was transferred to SNG or

America's Cup Management by Challenger of Record Management following the 31st America's Cup in New Zealand, subject to normal depreciation and use of such equipment. The equipment shall be available in one or several containers, ready for shipping at the race operation center in Valencia, Spain.

5. Dismissal of Pending Litigation. Within 10 days of execution of this Agreement, GGYC and SNG shall file a Joint Stipulation of Discontinuance with the Supreme Court of the State of New York ceasing and dismissing without prejudice all pending litigation against each other, with each party bearing its own attorneys' fees and costs. The dismissal of pending litigation without prejudice, as opposed to with prejudice, shall not be deemed to limit, in any way, the scope or effect of the Mutual Release in Paragraph 6 hereto or the Covenant Not to Sue in Paragraph 7 hereto. This Agreement shall be filed as an Exhibit to the Joint Stipulation of Discontinuance.

6. Mutual Release. The GGYC Parties and the SNG Parties, in all of their respective capacities and to the fullest extent permitted by law, hereby release and discharge each other, their predecessors in interest, successors in interest, present and former affiliates, parents, shareholders, and subsidiaries, and all of their present and former agents, representatives, officers, directors, members, employees, principals, insurers, partners, shareholders, successors and assigns (collectively, the "Released Parties"), from all claims, causes of action, litigation, legal actions, or lawsuits of any kind or nature relating to or arising out of the 31st, 32nd or 33rd America's Cups that they ever had, now have or hereafter may have against each other from the beginning of the world to the date of this Agreement, including, without limitation, the July 2007 Action and the October 2009 Action.

7. Covenant Not to Sue. The GGYC Parties and the SNG Parties, in all of their respective capacities and to the fullest extent permitted by law, each hereby covenant not to bring or continue any litigation, fund the litigation or commencement of any litigation, or willfully assist in an effort to further any litigation against the Released Parties relating to or arising out of the 31st, 32nd or 33rd America's Cups before any court, arbitrator or other tribunal, including, but not limited to, the International Sailing Federation and any sports tribunal, in any jurisdiction, whether as a claim, cross-claim or counterclaim, with the exception of any action to enforce this Agreement.

8. Severability. In the event any of the provisions of this Agreement are deemed to be invalid and unenforceable, those provisions shall be severed from the remainder of this Agreement only if and to the extent agreed upon by the Parties.

9. Entire Agreement. The Parties agree and acknowledge that this Agreement constitutes the entire agreement among the Parties regarding the settlement and release of the matters specified herein and that this Agreement may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a duly executed writing by or on behalf of all of the Parties.

10. Authority. The Parties each warrant and represent that he, she or it has read this Agreement, has the necessary authority to execute the Settlement Agreement individually and on behalf of his, her or its respective principals, if any, and has duly authorized his, her or its counsel to execute the Agreement on his, her or its behalf and on behalf of his, her or its respective principals.

11. Governing Law. This Settlement Agreement, in all respects, shall be interpreted, enforced and governed by and under the laws of the State of New York, except New York's conflict of law or choice of law provisions.

12. Construction. This Agreement is not to be construed in favor of any particular party to the Agreement, but is to be construed as if drafted by all Parties to the Agreement.

13. Costs and Expenses. Each Party shall bear its own costs and expenses incurred in connection with the 33rd America's Cup, including in connection with any litigation and the negotiation, drafting, and consummation of this Agreement.

14. Execution in Counterparts. The Parties agree that this Agreement may be executed in one or more counterparts, and in both original form and one or more photocopies, each of which shall be deemed to be an original, but all of which shall be deemed to be and constitute one and the same instrument. Signatures necessary for the execution of this Settlement Agreement may be transmitted by electronic mail, telecopier or facsimile machine.

15. Notices and Communications. Any notices or communications under this Settlement Agreement shall be given to the Parties, by hand delivery or overnight mail, and also by email, as follows:

If to the GGYC Parties:

The Golden Gate Yacht Club  
#1 Yacht Road  
San Francisco, CA 94123  
USA  
Attn: Melinda Erkelens  
(merkelens@bmworacleracing.com)  
Marcus Young (commodore@ggyc.com)

with a copy to:

Boies, Schiller & Flexner LLP  
575 Lexington Avenue  
New York, New York 10022

Attn: David Boies (dboies@bsflp.com)  
Philip Bowman (pbowman@bsflp.com)

If to the SNG Parties:

To: Société Nautique de Genève  
Port Noir  
CH-1223 Cologny  
Switzerland  
Attn: Lucien Masméjan  
(lucien.masméjan@lenzstaehelin.com)  
Fred Meyer (fred.meyer@bluewin.ch)

with a copy to:

Sullivan & Cromwell LLP  
125 Broad Street  
New York, NY 10004  
Attn: Robert J. Giuffra, Jr. (giuffrar@sullerom.com)  
Sharon L. Nelles (nelles@sullerom.com)

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed on their own behalf and through their respective counsel as of the date(s) set forth below.

Date: March \_\_, 2010

By: \_\_\_\_\_  
Marcus Young  
Golden Gate Yacht Club

Date: March \_\_, 2010

By: \_\_\_\_\_  
Melinda Erkelens  
Oracle Racing Inc.

Date: March \_\_, 2010

By: \_\_\_\_\_  
Société Nautique de Genève

Date: March \_\_, 2010

By: \_\_\_\_\_

Team Alinghi SA

Attn: David Boies (dboies@bsflp.com)  
Philip Bowman (pbowman@bsflp.com)

If to the SNG Parties:

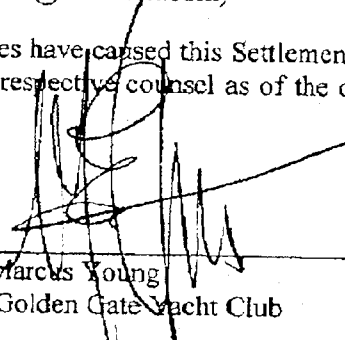
To: Société Nautique de Genève  
Port Noir  
CH-1223 Cologny  
Switzerland  
Attn: Lucien Masméjan  
(lucien.masméjan@lenzstaehelin.com)  
Fred Meyer (fred.meyer@bluewin.ch)

with a copy to:

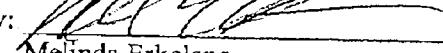
Sullivan & Cromwell LLP  
125 Broad Street  
New York, NY 10004  
Attn: Robert J. Giuffra, Jr. (giuffrar@sullcrom.com)  
Sharon L. Nelles (nelles@sullcrom.com)

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed on their own behalf and through their respective counsel as of the date(s) set forth below.

Date: March 25, 2010

By:   
Marcus Young  
Golden Gate Yacht Club

Date: March 25, 2010

By:   
Melinda Erkelens  
Oracle Racing Inc.

Date: March \_\_, 2010

By: \_\_\_\_\_  
Société Nautique de Genève

Attn: David Boies (dboies@bsflp.com)  
Philip Bowman (pbowman@bsflp.com)

If to the SNG Parties:

To: Société Nautique de Genève  
Port Noir  
CH-1223 Cologny  
Switzerland  
Attn: Lucien Masméjan  
(lucien.masméjan@lenzstaehelin.com)  
Fred Meyer (fred.meyer@bluewin.ch)

with a copy to:

Sullivan & Cromwell LLP  
125 Broad Street  
New York, NY 10004  
Attn: Robert J. Giuffra, Jr. (giuffrar@sullcrom.com)  
Sharon L. Nelles (nelles@sullcrom.com)

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed on their own behalf and through their respective counsel as of the date(s) set forth below.

Date: March \_\_, 2010

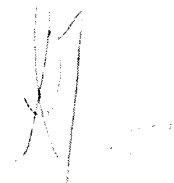
By: \_\_\_\_\_  
Marcus Young  
Golden Gate Yacht Club

Date: March \_\_, 2010

By: \_\_\_\_\_  
Melinda Erkelens  
Oracle Racing Inc.

Date: March 26, 2010

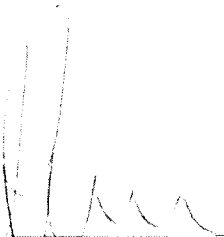
By: \_\_\_\_\_  
Pierre-Yves Firmenich      Fred Meyer  
Société Nautique de Genève






Date: March 26, 2010

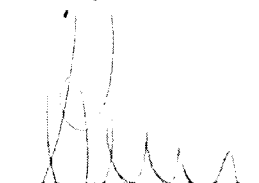
By:


  
Lucien Masmajan  
Team Alinghi SA

  
Susana Villalain

Date: March 26, 2010

By:

  
Lucien Masmajan  
AC Management SA

  
Susana Villalain

**F**

## **RACE COMMITTEE**

The Race Committee was made up of Harold Bennett (IRO), Fred Meyer, Marcel Beauvard, Nicolas Grange, the latter three being SNG appointments.

It was never really clarified as to who actually was the Chairman of the Race Committee with Harold Bennett believing he was and Fred Meyer asserting that he was, but it was accepted that Harold Bennett would have two votes. The issue was therefore not pursued since that was agreed!

I believe Harold Bennett exercised his responsibilities professionally during the event and gained significant credibility for his decisions and exercised his role independently.

The other Members of the Race Committee from SNG were also present on the Race Committee boat. I had discussions with Harold Bennett prior to the event concerning a BMW Oracle and Alinghi representative being permitted on the Race Committee boat as observers and encouraged this sensible suggestion from Harold Bennett. SNG were aware of this several days before the event.

Shortly prior to the Race Committee going on the water for Race 1, Tom Ehman attended at the Race Committee boat as the BMW Oracle representative and SNG representatives indicated that it was unacceptable to have him on the Race Committee boat. Following several telephone discussions, and with the Jury Chairman and Harold Bennett maintaining that Tom Ehman was quite acceptable being

BMW Oracle's nominee, Tom Ehman took his place on the boat along with Lucien Masmajan representing Alinghi. Such a situation should never have occurred.

## **THE "MUTINY"**

The "mutiny" in Race 2 has received extensive commentary in the press and has been reported to you in Harold Bennett's report. The issue of wind limits and wave limits was a topic the subject of a hearing before the Jury (refer request 01-4 Jury Decision where the Jury found that for SNG to impose wave limits and wind limits was in breach of the Deed of Gift and request 01-3 which dealt with the failure to mutually agree on a starting time for races which is also linked into anticipated weather conditions at the time).

As Harold will outline the circumstances being on the boat at the time, I will not repeat those other than to note the following:

1. SNG in its submissions to a question posed by the Court in New York to the Panel, asked whether or not it was "safe" to conduct racing in Valencia in February. SNG submitted to the Panel that Harold Bennett an experienced IRO appointed by ISAF was well equipped to decide such issues and that it was safe. The Panel and the Court adopted that approach. GGYC had always maintained it was "safe" to race in Valencia at that time with appropriate race management and application of the Racing Rules of Sailing.

2. RRS 90.1 provides "*the Race Committee shall conduct races as directed by the Organising Authority and as required by the Rules*".

The normal practice is, of course, for the Principal Race Officer makes these decisions on the water. In this case Harold followed the normal practice and that is the very reason he was appointed (to make such decisions) not to mention being independent. It is interesting to note that Harold reported that no real discussion took place regarding the three other members opposing conducting the race, and he is not aware as to why they disagreed with his call. SNG (although they didn't say it at the time!!) effectively rely upon RRS 90.1, and ignore their representations to the Panel.

I have referred to the Racing Rules Committee Working Party this issue and whether or not the Rules need to be changed to make this clearer. The issue is not simple as it could be argued the Race Committee and not one individual should make such decisions, unless the Race Committee has delegated that authority. It is also apparent that the Race Committee did not try to stop him conducting the race. I believe if this matter had come to the Jury there is little doubt Harold's decision would have been supported. I also believe Harold's strong approach added credibility and independently reinforced the standing of ISAF officials.

The America's Cup provides, due the benefit of persons working full-time as the Rules advisers to syndicates and the professional nature of the event, the opportunity for various issues to arise that perhaps would not have

otherwise have been considered. It is however important that it is recognised that the Racing Rules of Sailing are written for the whole of sport and not for simply the professional end of the sport.

In this particular case I support the position taken by Harold Bennett in running Race 2 as I believe that conditions were clearly appropriate. I have also been told that Fred Meyer indicated to Harold Bennett half way up the first beat of Race 2 that he was correct in proceeding to run the race. It should be noted that Alinghi flew a red protest flag close to the weather mark in Race 2. Alinghi did not proceed with a protest nor request for redress and I understand the reason for the red flag related to other issues which were not pursued. I also contacted Alinghi's rules adviser approximately 10 minutes after the race was completed to confirm that no protest or request for redress was being lodged to ensure that the "all clear" could be given. I comment on this since SNG in a recent letter to its Members, which has received substantial press coverage, have questioned whether there was truly a race or not on that day.