

New York State  
COURT OF APPEALS

GOLDEN GATE YACHT CLUB,

*Plaintiff- Appellant,*

*against*

SOCIÉTÉ NAUTIQUE DE GENÈVE,

*Defendant-Respondent,*

*and*

CLUB NÁUTICO ESPAÑOL DE VELA,

*Intervenor-Defendant.*

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BRIEF OF *AMICI CURIAE* ROYAL THAMES YACHT CLUB LIMITED  
AND TEAMORIGIN LLP IN SUPPORT OF RESPONDENT

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## **CORPORATE DISCLOSURE STATEMENT**

In compliance with Rule 500.1 of the Rules of Practice of the New York State Court of Appeals, *amici curiae* Royal Thames Yacht Club Limited and TEAMORIGIN LLP state that they have the following parents, subsidiaries and/or affiliates:

- Sailing Services Limited, a Guernsey company
- TEAMORIGIN, S.L., a Spanish limited company

## INTEREST OF AMICI CURIAE

*Amicus* Royal Thames Yacht Club Limited (“RTYC”) is the oldest Royal yacht club in Britain and is closely linked to the development of yacht racing. It was the Challenging Yacht Club for the first America’s Cup in 1870. It was established in 1775 when the Duke of Cumberland, brother of George III, put up a silver cup for a race on the River Thames and formed the Cumberland Fleet. This remains the alternative name of the Club today. The Royal Thames Yacht Club’s current name originated in 1830.

*Amicus* TEAMORIGIN LLP (“TEAMORIGIN”) was formed in 2007 as the representative sailing team of RTYC in the 33rd America’s Cup. RTYC and TEAMORIGIN submitted a Notice of Entry for the 33rd America’s Cup on July 24, 2007.

RTYC and TEAMORIGIN submit this brief as *amici curiae* in support of the position of Respondent Société Nautique de Genève (“SNG”) urging affirmance of the decision below and preservation of the Protocol, event regulations and competition regulations for the 33rd America’s Cup (the “Protocol”).

## ARGUMENT

Throughout the period of RTYC's and TEAMORIGIN's involvement in the 33rd America's Cup, Club Náutico Español de Vela ("CNEV"), in its capacity as the challengers' accepted challenger of record, has collaborated and engaged with RTYC, TEAMORIGIN and other challengers in the development of the Protocol in all respects in the manner we would expect from our legitimate challenger of record.

RTYC and TEAMORIGIN have invested considerable time, expertise and expense along with SNG, CNEV and the other challengers, in developing the Protocol to create what could become the most popular and most inclusive America's Cup in history. Each of RTYC and TEAMORIGIN wish to see the current collaborative processes and the improvements made thus far to the Protocol preserved.

Neither RTYC nor TEAMORIGIN wishes to see this work undone at this advanced stage nor suffer the significant costs and inconvenience of starting a negotiation process again from square one, unravelling improvements already supported by challengers nor running the risk of needing to consider a wholly different protocol or indeed being excluded from the development process entirely.

**A. The Evolution Of The 33rd America's Cup Protocol Was a Fair Process**

TEAMORIGIN and RTYC cannot stand by while Golden Gate Yacht Club ("GGYC") and proposed *amicus* New York Yacht Club ("NYYC") dispute the fairness of the Protocol or seek to influence its substance. These efforts do not have the support of the 19 teams currently prepared to compete in the 33rd America's Cup. Protocols are typically amended numerous times prior to the inception of the race and the 33rd Protocol is no exception. The teams have been working together at various meetings to amend the 33rd Protocol and two amendments have already been published. This process is ongoing and will continue in 2009. The amendments to date are satisfactory to RTYC and TEAMORIGIN and have addressed provisions which GGYC alleges were unfair. Although GGYC has been invited to attend meetings to discuss the development of the Protocol, GGYC has declined to attend. (Affirmation of T. Barry Kingham ("Kingham Aff.") ¶ 6).

Proposed *amicus* NYYC is not entered in the 33rd America's Cup and accordingly has not been involved in any meetings, discussions or negotiations among SNG, CNEV and the 33rd America's Cup challengers. (Kingham Aff. ¶ 7). Neither NYYC nor GGYC is adequately informed to comment upon CNEV's conduct as challenger or upon the fairness or otherwise of the evolution of the

Protocol. We respectfully urge this Court to reject NYYC's and GGYC's expressed views on those subjects.

**B. Previous Defenders – Including the Proposed *Amicus* San Diego Yacht Club – Have Accepted Newly-Formed Clubs As Challengers**

In its proposed recently filed *amicus* brief, San Diego Yacht Club (“SDYC”) states that a challenging yacht club must have a “tradition, vessels, and a physical facility.” (SDYC Proposed Amicus Br. at 6). However, as demonstrated in Respondent’s brief, the Deed of Gift contains no such requirements. Furthermore, SDYC, when it served as trustee, accepted challenges from yacht clubs with less indicia of organization than CNEV.

For example, the Southern Cross Yacht Club was accepted by SDYC as a challenger for the 29th America’s Cup. It was incorporated only *after* its challenge was accepted by SDYC. (R. at 572). The Nippon Yacht Club was created solely to challenge for the 29th America’s Cup. It was accepted by SDYC despite that it had no “tradition” and ceased to exist after participating in the 29th and 30th America’s Cups. (R. at 573). Similarly, the Sun City Yacht Club from Western Australia was incorporated the day before it challenged for the 1977 America’s Cup. (R. at 799, 639-642). It was established for the purpose of challenging for the America’s Cup and its challenge was accepted by then Defender, the New York Yacht Club. In addition, in the 27th America’s Cup, the New York Supreme Court compelled SDYC to accept the Mercury Bay Boating

Club as Challenger of Record. It was widely publicized that Mercury Bay had no physical facility and in fact operated out of a car on the beach. (R. at 572, 799-800).

As set forth in SNG's brief, CNEV is incorporated and has a physical address. Indeed, CNEV hosted a regatta in November 2008 in Valencia, Spain, in which TEAMORIGIN competed, along with three other challengers for the 33rd America's Cup. The regatta was professionally-organized and well-attended. (Kingham Aff. ¶ 8). Furthermore, CNEV's racing team, Desafio Español, is indisputably a well-established and successful America's Cup competitor. (Id.)

In sum, there is nothing in the Deed of Gift that limits challengers to only those yacht clubs with a "tradition, vessels, and a physical facility". And as SDYC is well aware from the *Mercury Bay* litigation, no additional requirements should be read into the Deed of Gift. Accordingly, RTYC and TEAMORIGIN support SNG's and CNEV's position that CNEV is the valid Challenger of Record for the 33rd America's Cup.

## CONCLUSION

For the reasons set forth above and previously, *amici* RTYC and TEAMORIGIN respectfully request that this Court affirm the Order of the Appellate Division.

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