



AMERICA'S CUP 32

AMERICA'S CUP JURY JURY NOTICE JN021 9th June 2005



+39 Applications ACJ005 & ACJ006

To: Challengers and Defender, ACM, Regatta Director, Chief Measurer.
Copy: AC Media

1. On 25th May, the Jury issued Jury Notice JN017 giving further directions and a timetable.
2. On 7th June, +39 submitted an Application to the Jury asserting that El Reto had not complied with Jury Notice JN017 in that El Reto submitted the witness statement of only one of the four witnesses El Reto had advised would be attending the hearing. +39 submitted and requested that the three other witnesses in question should not be accepted by the Jury.
3. On 7th June, El Reto submitted that they had complied with Jury Notice JN017 in that such witness statements had already been previously filed with the Jury by way of two letters signed by Mr Jáuregui and Mr Jablonski and by way of the legal opinion which had been provided by a member of the same legal firm.

Decision

4. El Reto had previously provided witness statements from Mr Jablonski and Mr Jáuregui in the form of letters signed by them dated 5th April and thereby complied with point 4 of JN017. The unchanged legal opinion being presented by a person from the same legal firm complies with the requirements of JN017.
5. In point 2 of El Reto's Response of 3rd June, they made it clear that in advising of their four proposed witnesses, they considered that only one of those witnesses had not previously filed a witness statement, and that statement was included. The Jury does not consider that +39 has been prejudiced with this approach, or that El Reto is introducing new evidence.
6. The Jury considers that El Reto has complied with the requirements of Jury Notice JN017 and +39's Application of 7th June is dismissed.

Hearing and procedures

7. Pursuant to Article 9.2 of the RoP, the Jury orders that a hearing be held in the presence of the representatives of +39 and El Reto (hereinafter "the Parties") on 14th June 2005 at 10h00 UT in the Jury Hearing Room at the Darsena Interior, Valencia.
8. The Jury will consist of four members. Professor Gabrielle Kaufmann-Kohler will not be present. The Jury considers there is an urgent need to resolve the issues in terms of Article 21.1(c)(i) of the Protocol. The Jury will consider that all parties consent to such reduced number of Jury members, unless written advice to the contrary is received by the Jury Chairman by 11th June.
9. Each Competitor, the Race Committee, the Measurement Committee and the Event

Authority (ACM) may appoint two observers (Article 9.1 RoP). These parties if they wish to do so, may present a closing statement in accordance with the time allocation to be set by the Jury. If the parties wish to be heard beyond a closing statement, they shall submit such request to the Jury on or before 10th June, indicating the reasons for such a request and the scope and time required. An observer authorised by the Jury representing the America's Cup Press office will also be permitted to be present to report on the proceedings.

10. The Jury may order that parts of the hearing be held in private and the Jury may enforce conditions (Article 9.2 RoP). Orders of confidentiality of some evidence being limited to the parties have already been granted by the Jury (Article 8.1 RoP).

11. The scope of the evidentiary hearing will be limited to the +39 claims of breaches of sportsmanship and fair play by El Reto.

12. The witnesses shall be limited to those persons who have already submitted witness statements as identified in the +39 and El Reto Responses of 3rd June. Witnesses shall not be required to appear where the other party has waived cross-examination and where the Jury does not direct such witness to appear.

13. On or before 11th June the Parties shall indicate the approximate time they will need to examine, and respectively cross-examine, each witness, bearing in mind that direct examination will be limited as specified in no 18 below.

14. Each party will have time allocated by the Jury to it. Each party shall be responsible for organizing and managing the time allocated to it, being as specified by the Jury who will retain control over the hearing. The Jury will monitor the use of the allocated time.

15. On the morning of 13th June, the Chairman of the Jury, by delegation of all members of the Jury, will hold a telephone conference or if convenient, a conference in person in Valencia with the representatives of the parties to discuss any outstanding matters with respect to the organization of the hearing, including the time allocation.

16. Each of the Parties shall be responsible for summoning its own witnesses to appear, except where the other party has waived cross-examination of a witness and the Jury does not direct such witness to appear.

17. Each party shall advance the costs of appearance of its own witnesses. The Jury may decide upon the appropriate allocation of such costs in the decision.

18. The examination of each witness shall proceed as follows:

(a) the party summoning the witness may briefly examine the witness, if it is considered necessary to complete the witness statement or to explain previous statements made by a witness;

(b) the adverse party may then cross-examine the witness;

(c) the party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination; and

(d) the Jury may examine the witness at any time, either before, during or after examination by one of the Parties.

19. Following the witness examination, the Parties may present a closing statement.
20. The Jury may, at any time, give such further directions as it deems best to facilitate the hearing (Article 12 RoP) and shall, at all times, have complete control over the procedure. The Jury, as a matter of discretion, may:
- (a) refuse to hear a witness if the Jury considers that the facts with respect to which the witness shall testify are either proven by other evidence or are irrelevant;
 - (b) limit or refuse the right of a party to examine a witness if the Jury considers that a question has been addressed by other evidence or is irrelevant;
 - (c) direct that a witness be recalled for further examination at any time; and/or
 - (d) adapt the Parties' time allocation.
21. It shall not be improper for counsel, with or without party representatives, to meet with witnesses and potential witnesses for the purpose of establishing the facts relevant to the hearing, preparing witness statements and preparing for hearings.
22. Each of the Parties shall arrange for their own witnesses' interpretation of testimony that is not provided in English. They shall each advance their own costs thereof.

A handwritten signature in black ink that reads "Bryan Willis". The signature is written in a cursive, flowing style with a large initial 'B'.

Bryan Willis

America's Cup Jury:
Gabrielle Kaufmann-Kohler, Graham McKenzie, Henry Menin, David Tillett, Bryan Willis (chairman)