

*A206* PLAINTIFF'S  
NOTICE OF CROSS-MOTION  
[A206-A207]

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

-----x

GEORGE SASSOWER,

Plaintiff,

Index No.  
5774-1983

-against-

ERNEST L. SIGMORELLI, ANTHONY MASTROIANNI,  
ALAN CROCE, ANTHONY GRZYMALSKI, HARRY E.  
SEIDELL, NEW YORK NEWS, INC., JOHN P.  
FINNERTY and VIRGINIA MATHIAS,

Defendants.

-----x

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affidavit of GEORGE SASSOWER, duly sworn to on the 27th day of June, 1984 and upon all the pleadings and proceedings had heretofore had herein, the undersigned will cross-move [#4] this Court at a Special Term Part I of the Supreme Court of the State of New York, County of New York, held at the Courthouse thereof, 60 Center Street, in the Borough of Manhattan, City and State of New York, on the 29th day of June, 1984, at 9:30 o'clock in the forenoon of that day or as soon thereafter can be

A-107.

heard for an Order dismissing the renewed motion of the Suffolk County defendants and the cross-motion of the defendant, New York News, Inc., together with any other, further, and/or different relief as to this Court may seem just and proper in the premises.

Dated: June 27, 1984

Yours, etc.,

GEORGE SASSOWER, Esq.  
Attorney for plaintiff  
2125 Mill Avenue,  
Brooklyn, New York, 11234  
212-444-3403

To: Martin B. Ashare, Esq.  
Paterson, Belknapp, Webb & Tyler, Esqs.  
Robert Abrams, Esq.

A208

PLAINTIFF'S AFFIDAVIT

[ A208-A212 ]

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

-----x

GEORGE SASSOWER,

Index No.  
5774-1983

Plaintiff,

-against-

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI,  
ALAN CROCE, ANTHONY GRZYMALSKI, HARRY E.  
SEIDELL, NEW YORK NEWS, INC., JOHN P.  
FINNERTY, and VIRGINIA MATHIAS,

Defendants.

-----x

STATE OF NEW YORK                    )  
CITY OF NEW YORK                    ) ss.:  
COUNTY OF KINGS                    )

GEORGE SASSOWER, Esq., first being duly sworn,  
deposes, and says:

This affidavit is submitted in support of a  
cross-motion (#4) to dismiss the renewed motion of the  
Suffolk County defendants and the cross-motion of the  
defendant, New York News, Inc., together with any other,  
further, and/or different relief as to this Court may  
seem just and proper in the premises.

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1a. Plaintiff's letter to Hon. MARTIN B. STECHER, dated June 26th, 1984, (with copies to all other counsel) [Exhibit "A"] sets forth, many, of the still larger number of deficiencies in the defendants' papers.

It would be a herculian task to set them all forth.

b. The June 26th, 1984 letter was written without knowledge of Mr. Justice Stecher's absence due to an injury with a probable return date after the summer, and makes even more imperative either the denial of the defendants' motions or the interim relief sought by plaintiff, by another jurist.

NEW YORK NEWS, INC.:

2a. The cross-motion by defendant for summary judgment based upon deceptive papers which fail to reveal (a) a prior binding order striking its "absence of malice" and "reliable source" defense [which remain intact in its submitted answer to this Court]; (b) its "Shield Law" position, and the Order it received from the Appellate Division, Second Department regarding

same; (c) its failure to annex its answers to prior interrogatories and the essential portions of its reporter's [Penny] examination before trial; and (d) all judicial documentation and transcripts is fatal to even a consideration of its motion.

b. The failure of the News to disclose that defendant ANTHONY MASTROIANNI not only testified to the falsity of the published articles, but that he never spoke to the reporter or testified, as reported therein.

c. Another named source, Vincent G. Berger, was, by Order dated June 22, 1984, made subject to an examination before trial, which should be held shortly.

d. Permission to examine Ernest L. Signorelli is presently being requested.

Their testimony should not be speculated upon, but deponent is reasonably certain that prestigious counsel for the News will agree that if the thrust of their testimony is the same as Mastroianni, plaintiff, not the News would be entitled to summary judgment.

e. Other deficiencies in the News' affirmative papers are set forth in the annexed letter to Hon. MARTIN B. STECHER.

SUFFOLK COUNTY DEFENDANTS:

3a. The Suffolk County Attorney has renewed his motion on papers which are worse, not better, than his previous motion.

b. The Suffolk County Attorney has submitted, the exact same and precise Memorandum previously rejected by Hon. MARTIN B. STECHER. His Honor's comments regarding same were:

" ... 57 pages [which] fails to identify which causes of action in the complaint under attack should be dismissed; which causes of action in the Federal pleadings they duplicate; and which portions of the Federal judgment necessarily make final decisions with respect to the present complaints' allegations."

His Honor set forth a reasonable pre-condition for any renewed motion, which was:

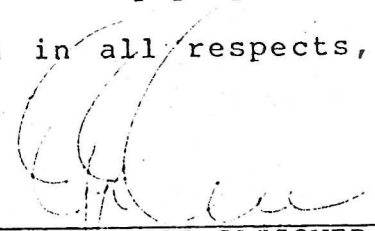
" ... I find it to be the attorney's obligation to make that analysis, first, so that the Court may be informed of the precise claims made and, second, so that the adversary may be in a position to respond." [emphasis supplied]

Instead, the Suffolk County Attorney repeatedly, ad nauseum, falsely states that the prior pleading adjudications were "on the merits", when such quotation never appears, and he knows it!

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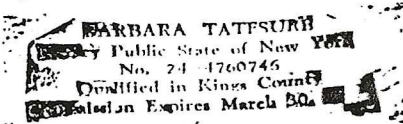
4. The Suffolk County Attorney, completely lacking in candor to this Court also fails to set forth the results of "full and fair" adjudications which resoundingly resulted in the massacre of his clients, affirmed by the Appellate Division.

WHEREFORE, it is respectfully prayed that this cross-motion [#4] be granted in all respects, with substantial costs.

  
\_\_\_\_\_  
GEORGE SASSOWER

Sworn to before me this  
27th day of June, 1984





A213  
GEORGE SASSOWER

ATTORNEY AT LAW  
2125 MILL AVENUE  
BROOKLYN, N. Y. 11234

EXHIBIT "A"- PLAINTIFF TO STECHER, J.

212-444-3400

{ A213-A224 }

June 26, 1984

Hon. Martin B. Stecher  
Justice of the Supreme Court,  
Supreme Court, New York County  
60 Center Street,  
New York, New York, 10007

Re: Sassower v. Signorelli, et al.  
Special I -- June 29, 1984

Honorable Sir:

A. I respectfully request, with adversaries present, a short conference with Your Honor or his legal secretary, in order to chart a procedural course in the above matter.

Since the Suffolk County's Attorney has requested that his renewed motion be referred to Your Honor, which no one objects to, it seems that the procedural course, be such as meets Your Honor's convenience, rather than have it imposed on His Honor by whatever Justice might be presiding at Special I.

B1. The immediate purpose of such conference will be a request for an interim Order, pursuant to CPLR 3212[f] directing "a continuance" of the Suffolk County's renewed motion for partial summary judgment and the News' cross-motion for summary judgment, dated Friday, June 22, 1984, pending pre-trial "disclosure", presently partially stonewalled, once again, because of CPLR 3214(b).

2. A secondary, but important, purpose will be to save days of judicial time and effort reading and analyzing a motion by the the Suffolk County Attorney and the cross-motion by the attorneys for the News, which (a) do not contain the essential papers and assertions, but, in fact (b) permeate with material, clearly intended to deceive His Honor.

Exhibit "A"



\* \* \*

C. The immediate relief requested involves:

1. Vacating the News' statutory stay (CPLR 3214[b]), and directing it to respond to plaintiff's interrogatories, as requested in plaintiff's cross-motion [#2], dated June 21, 1984, and directing it to submit Harry Schlegel to an examination before trial, as Ordered by Hon. Bruce McM. Wright more than one year ago, all of which has been requested in plaintiff's Order to Show Cause dated June 25, 1984.

In accordance with Your Honor's prior Order and by agreement, the Suffolk County Attorney acknowledges that it does not have such statutory stay.

2. An Order permitting the examination before trial, orally or by interrogatories, of the witness, Ernest L. Signorelli, as requested in plaintiff's Order to Show Cause of June 25, 1984.

An Order permitting the examination before trial of witnesses, Vincent G. Berger, Erick F. Larsen, and Charles W. Brown was issued on June 22, 1984.

D. Failure to compel the News to respond to plaintiff's interrogatories, will cause procedural havoc, again substantially stonewalling forward movement, expressly or sub silentio prohibited in this action by many judges, and will cause many of the Suffolk County parties and witnesses to be subject to re-examination, after the interrogatories are answered by the News.

\* \* \*

E. In order to save a great deal of judicial time and energy in reading voluminous papers, I will in summary fashion, set forth the essential papers and information which the attorneys for the Suffolk County defendant and the News should have set forth in their motion and cross-motion.

I suggest that they consider these patent deficiencies seriously, since very substantial punitive relief will be requested, if they are not rectified.

1. Plaintiff's 1978 verified complaint.

2a. The Suffolk County's recent Amended Answer, omitted by the defendants in their papers, particularly that portion which denies the Suffolk County defendants were "involved or participated in any of the matters" concerning the News' publications.

Mastroianni's examination before trial makes it eminently clear that this denial means that contrary to the statements in the published articles, he never spoke to Art Penny, the reporter for the News, concerning the Kelly estate, never made the statements attributed to him in said publications, that the statements attributed to him are factually false, and he heard no one else discuss the Kelly matter in Penny's presence.

An analysis of the News' publications reveals only that small portion which relates to Mastroianni's testimony is subject to a "true and fair report" defense, and Mastroianni denies giving such testimony!

In view of Mastroianni's sworn denial, the onus is upon the News to present the trial transcript for His Honor to compare, which it fails to do.

b. The essential portions of Penny's examination before trial are omitted from the defendants' motion and cross-motion, and the few pages which the News does annex clearly does not aid their cause.

c1. The News' Amended Answer showing that its "Third Affirmative Defense" has, by prior Order, been stricken and the News has chosen to abandon such defense.

Such prior Order of Mr. Joseph DeLuca, has been omitted from defendants papers.

Such affirmative defense which was stricken, and thereafter voluntarily abandoned, include the allegations and defense of "absence of malice" and "reliable sources".

The papers on the News' cross-motion include such defense, and deceptively do not reveal any prior judicial action striking same.

c2. The omitted prior adjudication that plaintiff is a "private person", was not engaged in "public matters", and that the News, in its pleading, does not contend the matters contained in its publications were of "legitimate" public concern.

Thus, before the News can invoke a Chapadeau defense, it must plead [which it does not], and show [which it also does not], that the publications were of "legitimate public concern".

The News was represented [Townley & Updike, Esqs.] and is now represented [Patterson, Belknap, Webb & Tyler, Esqs.] by probably the most prestigious law firms in the field of defamation law. When they, in pleading only the quintessential phrase in order to establish a Chapadeau defense, omit the word "legitimate", even after it is brought to their attention -- the omission is of operative significance!

3a. Also omitted is a prior denied motion for summary relief, by Mr. Justice Gowan, and a showing that the Suffolk County's motion contains new material, not included in that motion. The Suffolk County's motion neither annexes such Order nor makes any such showing.

b. A prior denied motion for summary relief, by Mr. Justice Stecher, with a showing that the defects therein are been corrected.

The Suffolk County present motion is more, not less, "frustrating"; more, not less, confusing; heavier, not lighter, than its prior motion. Additionally, it is based upon the "exact, precise, in haec verba" Memorandum, which His Honor described as:

"57 pages [which] fails to identify which causes of action in the complaint under attack should be dismissed; which causes of action in the Federal pleadings they duplicate; and which portions of the Federal judgment necessarily make final decisions with respect to the present complaints' allegations."

June 26, 1984

His Honor clearly spelled out the Suffolk County Attorney's obligation on any renewed motion, which must be obeyed however the Suffolk County Attorney may disagree with same. So that there be no mistake about the matter, His Honor stated:

"... I find it to be the attorney's obligation to make that analysis, first, so that the Court may be informed of the precise claims made and, second, so that the adversary may be in a position to respond." [emphasis supplied]

Furthermore, with complete confidence that His Honor is in agreement, you should completely omit any statement, particularly in quotation marks, that the prior adjudication was "on the merits".

There is no statement or quotation to that effect, although repeated ad nauseum!

The Suffolk County Attorney's new supporting affidavit, as well as his prior affidavit, and his Memorandum, proliferates with such statement in and out of quotation marks!

They are false, misleading, deceptive, and perjurious -- clearly intending to lead His Honor astray.

On the contrary, in my opinion, the Suffolk County Attorney's obligation to the Court is a candid statement that there is no such statement made! Had the Suffolk County Attorney made this and other negative operative facts clear, up front, the Court may have saved itself the time and trouble of reading several hundreds of pages.

If the Suffolk County Attorney intends, as apparently he does, to reply upon any federal opinion for your his claim of collateral estoppel, there should be some statement that such decision was rendered after a "full and fair" adjudication, and not because plaintiff did not meet federal standards of pleading.

Additionally, in granting the Suffolk County leave to renew but simultaneously denying him a stay of pre-trial disclosure, it seems that His Honor intended that such renewal, if he desired it, would take place after, not before, pre-trial disclosure. The fact that the Suffolk County Attorney disagrees with His Honor's procedures are his prerogative, but his confusing papers need not be further confused by his back-handed criticism of same (p. 7). Thus, I find myself not responding to the issues, but defending His Honor's actions, which comport with similar directives of Mr. Justice Arnold L. Fein, in the Appellate Division, and of Mr. Justice Bruce McM. Wright and Mr. Justice Ira Gammerman.

His Honor stated that the moving papers should be formulated so that I could properly respond! How does one respond to the Suffolk County's "unauthorized" biography of plaintiff who:

... is a burden that has strained the budgets of municipal attorney's offices, taxed the legal and manpower resources of defense counsel beyond reasonable limits, and has imposed a virtual 'reign of terror' upon the courts." (Suffolk County affidavit p. 4).

Is this, and many similar statements, "summation to the jury" or a motion for partial summary judgment?

I thought Shoreham, not Sassower, was the bane of Suffolk's problems -- apparently the media, Governor Cuomo, and the Legislature, are being misinformed!

The issue, as I perceive them from the Suffolk County Attorney's papers, if he intended to comply with His Honor's direction, is that they have a "garbage problem" and wish to heap it on this Court!

5. Defendant's moving papers should candidly set forth any and all prior adjudications, which after a "full and fair" hearing find contrary to defendants' position, if not actually defeat their defenses. These include:

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a. The findings of Hon. Alphonse J. Melia, confirmed by the Appellate Division, based essentially on the confessions and admissions of the culprits, and certainly after "full and fair" hearings, which directly or inferentially torpedo almost all the defenses of the Suffolk County defendants and those of the News.

Plaintiff has waived confidentiality and they are open for public inspection!

b. The holding and Order of Mr. Justice Thomas J. O'Toole, after a "full and fair" hearing that the Suffolk County Deputy Sheriffs had no police powers in Westchester County -- they were "local" officials!

c. The holding and Order of Mr. Judge Lawrence W. Pierce, that even under the stricter federal pleading standards of the federal courts, in §1983 actions, plaintiff has set forth a valid cause of action in his complaint against the Suffolk County Storm Troopers.

6a. In moving for summary judgment based upon "fair and true" report, the attorneys for the News should set forth those portions of its published articles which are subject to such defense and those portion which are not.

Clearly, many, if not most, of the statements reported in the News' publications, are out-of-court statements, not subject to a Civil Rights Law §74 defense.

b. The News has an affirmative obligation to advise this Court that Anthony Mastroianni has repeatedly testified that he never made the statements attributed to him in the published articles, that they are not true, and never even discussed the Kelly estate with Art Penny, the reporter for the News.

c. The News has an affirmative obligation to set forth the transcript of the alleged judicial testimony of Anthony Mastroianni, so that this Court could determine whether the published report of same, is actually "true and fair".

d. Particularly in view of Mastroianni's repeated and vehement sworn denials, the News has the affirmative obligation, in moving for summary judgment, to include affidavits from Ernest L. Signorelli, Vincent G. Berger, Esq., and the other identifiable persons, or an official transcript, that they made the statements attributed to them, if a "true and fair" report defense is asserted as to those statements.

e. There must be an assertion that Art Penny saw and relied on the few documents set forth in the moving papers, and explain the destruction of all notes and records by Penny and the News, even after suit was commenced. The defense of truth is based upon truth, but the defense of "true and fair report" is based, not on the truth of the matter, but whether it was truthfully and fairly reported!

The News and its attorneys know they have a better chance convincing His Honor of the existence of the "tooth fairy" than their tale about the destruction of notes, statements, and records!

f. The News' must explain away, the documentary evidence of its prior inconsistent position it took in judicial proceedings in this matter, including answers to prior interrogatories, Penny's sworn testimony at his incompleated examination before trial [which he now refuses to verify], and asserted privileges. Thus, the News cannot rely on "true and fair" report and refuse to reveal where such reports came from or who was present when they were made (see Oak Beach v. Babylon, N.Y.2d , N.Y.S.2d [5/10/84]).

g. The News' must disclose, and explain how, with the abandonment of "truth" [justification], "reliable source", and "absence of malice" defenses, they can claim a defense of "true and fair report".

7a. In moving for summary judgment based upon Chapadeau, the attorneys for the News should set forth, why its prestigious attorneys in defamation law, past and present, refuse to plead or show that the material published was "arguably within the sphere of legitimate public concern". How does the News expect summary judgment when Mr. Justice DeLuca held that he did "not perceive these [publications] to be public issues".

b. Where a "reliable source" defense is stricken, and defendant refused to replead it, nor will its sources be revealed, Chapadeau, even if applicable, which it is not at bar, it out!

c. Repeatedly, the News has been advised it should address the issue in terms of Crowley v. Pulsifer (137 Mass 392, 50 Am Rep 318 [per Holmes, J.]); Time v. Firestone (424 U.S. 448, 96 S.Ct. 958, 47 L.Ed.2d 154); Hutchinson v. Proxmire (443 U.S. 111, 99 S.Ct. 2675, 61 L.Ed.2d 411); Wolston v. Reader's Digest (443 U.S. 157, 99 S.Ct. 2701, 61 L.Ed.2d 450) Taylor v. Kavanaugh (640 F.2d 450, 453 [2d Cir.]); Martin v. Merola (532 F.2d 191, 195-196 [2d Cir.]); People v. Marino (87 Misc.2d 427, 435, 383 N.Y.S.2d 147, 153 [Sup. Monroe]), but it refuses to acknowledge same or recognize that plaintiff did not do anything voluntarily which should have catapulted him into the public arena for defamation purposes!

F1. The Order of Mr. Justice Stecher, of April 6, 1984, permitting the Suffolk County Attorney to renew his motion for partial summary judgment, but disallowing any stay of pre-trial procedures, manifested a clear intent that such renewal should be made after pre-trial procedures had taken place, not before.

2. The Suffolk County Attorney's renewed motion for partial summary judgment was made with the clear understanding and repeated agreement that it would not be submitted for judicial consideration until after disclosure proceedings had taken place.

The Suffolk County Attorney recognized such fact in his moving affidavit (p. 7) when he stated:

"... [B]ecause Justice Stecher declined, in his prior order to stay discovery pending the determination of summary judgment (as CPLR 3214[b] ordinarily provides), it has now become necessary for the Suffolk County defendants to submit to oral depositions in New York County. To that end, the Suffolk County deputy Sheriffs, ... will ... travel from eastern Suffolk County to be deposed in this action. Shortly thereafter, defendant



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Mastroianni, ... will be required to take leave from his statutory duties as a County official in Riverhead, and also travel into New York County to be deposed by Mr. Sassower, notwithstanding the probable dismissal of the claims against him ... ."

Had Honor thought there was a reasonable chance of success at this time, prior to pre-trial disclosure, clearly His Honor would have not imposed upon Suffolk County the needless expense of Sassower on top of Shoreham.

G1. The Suffolk County Attorney's motion for summary judgment has brought on a flurry of cross-motions, including my own, of June 21, 1984, requesting sanctions against defendant News, for not answering my interrogatories, followed by the cross-motion of the News of June 22, 1984 for summary judgment.

2. Despite the historical stonewalling of pre-trial disclosure by the defendants in this action and the unanimous voices from this court, and Mr. Justice Arnold L. Fein, at the Appellate Division, that it must end, the News has now triggered a statutory stay of its pre-trial disclosure obligation, pending determination of its patently meritless cross-motion.

\* \* \*

H. One further and important point!

1. An essential predicate of this entire affair was when, Surrogate Ernest L. Signorelli "ordered" "on the record" that I enter into a particular contract of sale and when the purchasers, several months later, were about ready to close and move into the house, Signorelli chose to abort the sale on the contrived reason that I had been removed as executor about one year earlier.

2. The fact that during the intervening one year period, everyone, including himself, and every court official, in scores of documents, without any exception, recognized me as the sole executor, did not matter to Judge Signorelli!

3. The fact that no one, had another buyer for this home anywhere near the favorable terms contracted for, also did not matter to Judge Signorelli!

4. I saw Judge Melia's facial expressions when he heard former Assistant District Attorney, former County Court Judge, Acting Supreme Court Justice, and Surrogate Ernest L. Signorelli testify that he could not answer whether an "accusation" was made before I was tried, convicted, and sentenced in absentia. I saw Judge Melia's expression when he heard Signorelli testify that I was not entitled to "5th Amendment rights", and heard about the gross deprivation of other basic constitutional or civilized rights.

Nevertheless, nothing seemed to shock Judge Melia and the others present, when out of idle, but understandable, curiosity the question was asked as to the ultimate disposition of this house. It is set forth in His Honor's report as follows:

"Indeed, in this period, on October 21, 1976, on the record, the Surrogate ordered the respondent [plaintiff] to sell the house. He could only do so as executor. (Ex. BP) [Emphasis supplied]

The respondent [plaintiff] prepared and entered into a contract to sell on December 2, 1976. The Surrogate then aborted the deal.

More than a year later, after paying additional taxes, and Public Administrator sold the same house to the same party for the same price. [emphasis supplied]

Everyone hearing the testimony recognized that the outrages that followed was an intended camouflage for this "insane" judicial behavior.

11. Now today, I received a hand delivered letter from the Suffolk County Attorney that he has suddenly decided to reverse his repeated statements and submit his meritless motion for consideration on June 29, 1984, although continue on pre-trial disclosure!

2. The attorneys for the News have changed their position so many times on the Shield Law, expressly or impliedly, that computer assistance is necessary.

June 26, 1984

The point is, not only judicial estoppel, but a refusal to have my life charted by a "demented" judge or "mad" attorneys, who seem to feel they are crowned with the unilateral right to whimsically change their course whenever they choose!

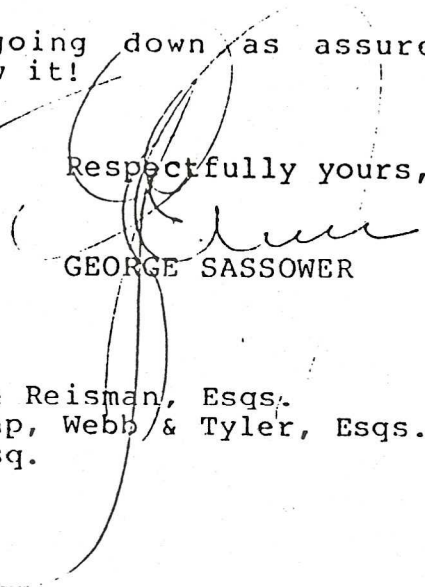
The defendants' attorneys believe that prior orders, pleadings, positions, intentions, promises, commitments, are no more valid than "bus transfers -- Good for that day only"!

J. These attorneys know that the in addition to the herculian number of deficiencies aside, the Suffolk County Storm Troopers are liable as a matter of law based upon the documents they themselves produced. They know that Penny's testimony alone establishes a prima facie case against Mastroianni, and that Mastroianni's testimony establishes a prima facie case against the News, overriding its alleged defenses.

There motions are patently meritless and brought for dilatory purposes.

They are going down as assuredly as the Titanic, and they know it!

Respectfully yours,



GEORGE SASSOWER

GS/h

cc: Reisman, Peirez & Reisman, Esqs.  
Patterson, Belknap, Webb & Tyler, Esqs.  
Robert Abrams, Esq.