

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

| | | |
|--------------------------------------|---|---------------------------------|
| UNITED STATES OF AMERICA |) | Criminal No.: 2003 CR 388 (HGM) |
| |) | |
| v. |) | Filed: September 25, 2003 |
| |) | |
| EMPIRE STATE NEWS CORPORATION, INC., |) | Violation: 15 U.S.C. § 1 |
| |) | |
| Defendant. |) | |

PLEA AGREEMENT

The United States of America and Empire State News Corporation, Inc. ("ESNC"), a corporation organized and existing under the laws of the State of New York, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF ESNC

1. ESNC understands its rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against it;
 - (d) to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for it to be found guilty;

(e) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;

(f) to appeal its conviction if it is found guilty at trial; and

(g) to appeal the imposition of sentence against it.

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. ESNC waives the rights set out in Paragraph 1(b)-(f) above, including all jurisdictional defenses to the prosecution of this case, including any defense based on a lack of venue in this District, and agrees voluntarily to consent to the jurisdiction of the United States to prosecute this case against it in the United States District Court for the Northern District of New York. ESNC also waives the right to appeal the imposition of sentence against it, so long as the sentence imposed is consistent with the recommendation in Paragraph 8 of this Plea Agreement. Nothing in this paragraph, however, shall act as a bar to ESNC perfecting any legal remedies ESNC may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), ESNC will waive indictment and plead guilty at arraignment to a two-count Information to be filed in the United States District Court for the Northern District of New York. The Information will charge ESNC with (1) participating in a conspiracy to suppress and eliminate competition by dividing the market for the wholesale distribution of magazines, other periodicals, and books in Western New York State, from at least January 1999 to summer 2000, and (2) participating in a conspiracy to suppress and eliminate competition by agreeing to refrain from the wholesale distribution of magazines, other periodicals, and books at the Pittsburgh International Airport in Western Pennsylvania, both counts in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. ESNC, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charges described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence to prove the following facts:

(a) For purposes of this Plea Agreement, the “relevant period” is that period from at least January 1999 to summer 2000. During the relevant period, the defendant was a corporation organized and existing under the laws of New York. The defendant has its principal place of business in Cheektowaga, New York. During the relevant period, the defendant was a wholesale distributor of magazines, other periodicals, and books in Western New York State, Northeast Ohio, and Western Pennsylvania. Wholesale distributors receive magazines, other periodicals, and books directly from publishers and national distributors, and then distribute them to retailers for sale to the general public.

(b) During the relevant period, the defendant, through a director, officer, and its employees, participated in a conspiracy with another wholesale distributor, the primary purpose of which was to eliminate competition by dividing up the market for the wholesale distribution of magazines, other periodicals, and books in Western New York State (“the Western New York conspiracy”). In furtherance of the Western New York conspiracy, the defendant, through a director, officer, and its employees, engaged in discussions with that wholesale distributor. During these communications, they agreed to divide up, and did divide up, the market for the wholesale distribution of magazines, other periodicals, and books to be sold by their companies in Western New York State.

(c) Also during the relevant period, beginning on or about March 2, 1999, and continuing until summer 2000, the defendant, through a director, officer, and its employees, participated in a conspiracy with a wholesale distributor, the primary purpose of which was to eliminate competition by the defendant refraining from the wholesale distribution of magazines, other periodicals, and books at the Pittsburgh International Airport in Western Pennsylvania in exchange for that wholesale distributor not carrying out the terms of its threat to expand its market share in the defendant’s home territory of Buffalo, New York (“the Pittsburgh Airport conspiracy”). On or about March 2, 1999, the defendant, through an officer and its employees, met in Texas with a competing wholesaler who urged the defendant to refrain from the wholesale distribution of magazines, other periodicals, and books to a customer at the Pittsburgh International Airport and threatened to expand its market share in Buffalo if the defendant did not so refrain. The defendant agreed to refrain, and in furtherance of the Pittsburgh Airport conspiracy, did refrain from the wholesale distribution of magazines, other periodicals, and books at the Pittsburgh International Airport and the other wholesale distributor, in turn, did not carry out the terms of its threat to expand its market share in Buffalo, New York.

(d) During the relevant period, magazines, other periodicals, and books distributed by one or more of the conspirator firms, and equipment and supplies necessary for such

distribution, as well as payments for the items, traveled in interstate commerce. The business activities of the defendant and its co-conspirators in connection with the wholesale distribution of magazines, other periodicals, and books that were the object of these conspiracies were within the flow of, and substantially affected, interstate commerce.

(e) Acts in furtherance of the Western New York conspiracy were carried out within the Northern District of New York. A conspirator headquartered in the Northern District of New York performed various acts within the Northern District of New York in furtherance of the Western New York conspiracy, including processing the billing of customers subject to the allocation, giving directions about delivery in the area subject to the allocation, and communicating with retailers of magazines, other periodicals, and books in the area subject to allocation. In addition, in furtherance of the Western New York conspiracy, ESNC communicated with a conspirator located in the Northern District of New York.

POSSIBLE MAXIMUM SENTENCE

5. ESNC understands that the maximum penalty which may be imposed against it upon conviction for each count of a violation of Section One of the Sherman Antitrust Act is a fine in an amount equal to the greatest of:

- (a) \$10 million (15 U.S.C. § 1);
- (b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or
- (c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

6. In addition, ESNC understands that:

- (a) pursuant to § 8B1.1 of the United States Sentencing Guidelines ("U.S.S.G."), the Court may order it to pay restitution to the victims of the offense;
- (b) pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, the Court is required to order ESNC to pay a \$400 special assessment for each count upon conviction for the charged crime; and
- (c) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years.

SENTENCING GUIDELINES

7. Sentencing for the offense to be charged will be conducted pursuant to the U.S.S.G. Manual in effect on the day of sentencing. Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that ESNC provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to ESNC or in determining ESNC's applicable sentencing guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).

SENTENCING AGREEMENT

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and ESNC agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring ESNC to pay to the United States a criminal fine of \$200,000, payable in installments as set forth below with interest accruing under 18 U.S.C. § 3612(f)(1)-(2), with no term of probation ("the recommended sentence").

(a) The United States and ESNC agree to recommend, in the interest of justice pursuant to 18 U.S.C. § 3572(d)(1) and U.S.S.G. § 8C3.2(b), that the fine be paid in the following installments: within thirty (30) days of imposition of sentence -- \$40,000 (plus any accrued interest); at the one-year anniversary of imposition of sentence ("anniversary") -- \$40,000 (plus any accrued interest); at the two-year anniversary -- \$40,000 (plus any accrued interest); at the three-year anniversary -- \$40,000 (plus any accrued interest); and at the four-year anniversary -- \$40,000 (plus any accrued interest); provided, however, that the defendant shall have the option at any time before the four-year anniversary of prepaying the remaining balance (plus any accrued interest) then owing on the fine. The willingness of the United States to enter into this Plea Agreement is, in part, due to the agreement of Doris Scheur, majority shareholder of defendant Empire State News Corporation, Inc., to personally guarantee the payment by defendant

of a fine in an amount and manner consistent with this paragraph. That guarantee is evidenced by a letter from Doris Scheur, attached hereto as Exhibit A.

(b) ESNC understands that the Court will order it to pay a \$400 special assessment for each count, pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, in addition to any fine imposed.

(c) The United States and ESNC jointly submit that this Plea Agreement, together with the record that will be created by the United States and ESNC at the plea and sentencing hearings, and the further disclosure described in Paragraph 10, will provide sufficient information concerning ESNC, the crime charged in this case, and ESNC's role in the crime to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States agrees not to oppose ESNC's request that the Court accept ESNC's guilty plea and impose sentence on an expedited schedule as early as the date of arraignment, based upon the record provided by ESNC and the United States, under the provisions of Fed. R. Crim. P. 32(c)(1)(A)(ii) and U.S.S.G. § 6A1.1. The Court's denial of the request to impose sentence on an expedited schedule will not void this Plea Agreement.

9. The United States and ESNC agree that the applicable sentencing guidelines fine range exceeds the fine contained in the recommended sentence set out in Paragraph 8 above. The United States and ESNC further agree that the recommended fine is appropriate, due to the inability of ESNC to pay a fine greater than that recommended without substantially jeopardizing its continued viability, pursuant to U.S.S.G. § 8C3.3(b).

10. Subject to the ongoing, full, and truthful cooperation of ESNC described in Paragraph 13 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court of the fact, manner, and extent of ESNC's cooperation and its commitment to prospective cooperation with the United States' investigations and prosecutions, all material facts relating to ESNC's involvement in the charged offense, and all other relevant conduct.

11. The United States and ESNC understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea Agreement.

(a) If the Court does not accept the recommended sentence, the United States and ESNC agree that this Plea Agreement, except for Paragraph 11(b) below, shall be rendered void.

(b) If the Court does not accept the recommended sentence, ESNC will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If ESNC withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against ESNC in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, ESNC agrees that, if it withdraws its guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any offense referred to in Paragraph 15 of this Plea Agreement will be tolled for the period between the date of the signing of the Plea Agreement and the date ESNC withdrew its guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

12. Civil causes of action are available, which potentially provide for a recovery of a multiple of actual damages. Moreover, determining complex issues of fact related to the cause and amount of any losses incurred by victims would complicate and prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process. Therefore, the United States agrees that it will not seek a restitution order for the offenses charged in the Information.

ESNC'S COOPERATION

13. ESNC will cooperate fully and truthfully with the United States in the prosecution of this case, which charges the Western New York conspiracy and the Pittsburgh Airport conspiracy, and any litigation or other proceedings arising or resulting therefrom to which the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of ESNC shall include, but not be limited to:

(a) producing to the United States all documents, information, and other materials, wherever located (except documents qualified as privileged under the laws of the United States or protected under the work product doctrine), in the possession, custody, or control of ESNC, requested by the United States in connection with any Federal Proceeding;

(b) securing the ongoing, full, and truthful cooperation, as defined in Paragraph 14 of this Plea Agreement, of Lawrence Scheur and David Goeckel, including making such persons available, at ESNC's expense, for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding; and

(c) using its best efforts to secure the ongoing, full, and truthful cooperation, as defined in Paragraph 14 of this Plea Agreement, of the current and former directors, officers, and employees of ESNC, in addition to those specified in subparagraph (b) above, as may be requested by the United States, including making these persons available, at ESNC's expense, for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.

14. The ongoing, full, and truthful cooperation of each person described in either Paragraph 13(b) or 13(c) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

(a) producing all documents, including claimed personal documents, and other materials, not privileged under United States law, wherever located, requested by attorneys and agents of the United States;

(b) making himself or herself available for interviews, not at the expense of the United States, upon the request of attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

(d) otherwise voluntarily providing the United States with any non-privileged material or information not requested in (a) - (c) of this paragraph that he or she may have that is related to any Federal Proceeding;

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the United States fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503); and

(f) agreeing that, if the agreement not to prosecute him or her in this Plea Agreement is rendered void under Paragraph 16(c), the statute of limitations period for any Relevant Offense as defined in Paragraph 16(a) will be tolled as to him or her for the period between the date of the signing of this Plea Agreement and six (6) months after the date that the United States gave notice of its intent to void its obligations to that person under the Plea Agreement.

GOVERNMENT'S AGREEMENT

15. Upon acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, and subject to the cooperation requirements of Paragraph 13 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against ESNC for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of the antitrust conspiracy involving the wholesale distribution of magazines, other periodicals, and books in Western New York State or in furtherance of the antitrust conspiracy involving ESNC refraining from the wholesale distribution of magazines, other periodicals, and books at the Pittsburgh International Airport in Western Pennsylvania in exchange for a coconspirator not carrying out the terms of its threat to expand its market share in Buffalo, New York. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

16. The United States agrees to the following:

(a) Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence and subject to the exceptions noted in Paragraph 16(c), the United States will not bring criminal charges against any current or former director, officer, or employee of ESNC for any act or offense committed before the date of this Plea Agreement and while that person was acting as a director, officer, or employee of the defendant that was undertaken in furtherance of the antitrust conspiracy involving the wholesale distribution of magazines, other periodicals, and books in Western New York State or in furtherance of the antitrust conspiracy involving ESNC refraining from the wholesale distribution of magazines, other periodicals, and books at the Pittsburgh International Airport in Western Pennsylvania in exchange for a coconspirator not carrying out the terms of its threat to expand its market share in Buffalo, New York ("Relevant Offense");

(b) Should the United States determine that any current or former director, officer, or employee of ESNC may have information relevant to any Federal Proceeding, the United States may request that person's cooperation under the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for ESNC) or, if the individual is not known by the United States to be represented, to the undersigned counsel for ESNC;

(c) If any person requested to provide cooperation under Paragraph 16(b) fails to comply with his or her obligations under Paragraph 14, then the terms of this Plea Agreement as they pertain to that person, and the agreement not to prosecute that person granted in this Plea Agreement, shall be rendered void;

(d) Except as provided in Paragraph 16(e), information provided by a person described in Paragraph 16(b) to the United States under the terms of this Plea Agreement pertaining to any Relevant Offense, or any information directly or indirectly derived from that information, may not be used against that person in a criminal case, except in a prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. § 1503);

(e) If any person who provides information to the United States under this Plea Agreement fails to comply fully with his or her obligations under Paragraph 14 of this Plea Agreement, the agreement in Paragraph 16(d) not to use that information or any information directly or indirectly derived from it against that person in a criminal case shall be rendered void;

(f) The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence; and

(g) Documents provided under Paragraphs 13(a) and 14(a) shall be deemed responsive to outstanding grand jury subpoenas issued to ESNC.

17. ESNC understands that it may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of ESNC as a matter for that agency to consider before determining what administrative action, if any, to take.

REPRESENTATION BY COUNSEL

18. ESNC has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. ESNC has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences.

VOLUNTARY PLEA

19. ESNC's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to ESNC as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

20. ESNC agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that ESNC has failed to provide full and truthful cooperation, as described in Paragraph 13 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for ESNC in writing by personal or overnight delivery or facsimile transmission of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and ESNC shall be subject to prosecution for any federal crime of which the United States has knowledge

including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. ESNC agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against ESNC for any offense referred to in Paragraph 15 of this Plea Agreement, the statute of limitations period for such offense will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

21. ESNC understands and agrees that in any further prosecution of it resulting from the release of the United States from its obligations under this Plea Agreement, because of ESNC's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by it or current or former directors, officers, or employees of it to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against it in any such further prosecution. In addition, ESNC unconditionally waives its right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

ENTIRETY OF AGREEMENT

22. This Plea Agreement and the Letter of Guarantee by Doris Scheur, attached as Exhibit 1, constitute the entire agreement between the United States and ESNC concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and ESNC.

23. The undersigned is authorized to enter this Plea Agreement on behalf of ESNC as evidenced by the Resolution of the Board of Directors of ESNC attached to, and incorporated by reference in, this Plea Agreement.

24. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

DATED: __22 September 2003__

Respectfully submitted,

BY: _____/s/_____
LAWRENCE M. SCHEUR
President
Empire State News Corporation, Inc.

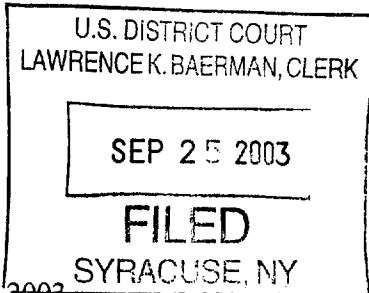
BY: _____/s/_____
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MICHAEL J. KEANE
(203489--DC)
JON R. SMIBERT
(653645--GA)
THERESA M. MAJKRZAK
(0017318--OH)
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Attorneys

BY: _____/s/_____
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Antitrust Division
Plaza Nine Building
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Jon R. Smibert
Trial Attorney
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Great Lakes Office
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55 Erieview Plaza, Suite 700
Cleveland, Ohio 44114-1836

September 16, 2003



Re: United States v. Empire State News Corporation, Inc.

Dear Mr. Smibert:

This letter confirms the agreement of Doris Scheur that she will guarantee payment of up to \$200,000, plus interest, of the fine levied against Empire State News Corporation, Inc. ("ESNC"), of 2800 Walden Avenue, Cheektowaga, New York 14225-4772, in the criminal case to be filed against ESNC in the Northern District of New York, in consideration for the Plea Agreement with the United States in that case. Doris Scheur hereby agrees that she will guarantee the financial support necessary to ESNC to make the periodic payments required by the United States District Court in accordance with the Plea Agreement filed in this case.

In the event of bankruptcy or dissolution of ESNC, or any other event that would prevent payment of the fine imposed by the United States District Court for the Northern District of New York, or upon failure of payment, Doris Scheur agrees that she will pay up to \$200,000, plus interest, of the fine to be paid by ESNC in accordance with the sentence imposed by the District Court pursuant to the attached Plea Agreement.

In the event that Doris Scheur should die before full payment of ESNC's debt, a lien equal to the remaining balance of the guaranteed amount shall be placed on her estate until such time as Empire's debt is paid in full.

By execution of this letter I hereby confirm that this guarantee of payment is binding upon Doris Scheur.

A handwritten signature in cursive script, appearing to read "Doris Scheur".

Doris Scheur, Officer
Empire State News Corporation, Inc.

Sworn to and subscribed before me this Sixteenth day of September, 2003.

A handwritten signature in cursive script, appearing to read "Richard J. Day".

Notary Public

RICHARD J. DAY, ESQ.
Notary Public State of New York
Qualified in Erie County
My Commission Expires Aug. 31, 20 04

**SECRETARY'S CERTIFICATE
OF
EMPIRE STATE NEWS CORPORATION**

I, Donald S. Day, the duly elected Secretary of Empire State News Corporation ("ESN"), a New York corporation, hereby certifies that pursuant to a written Consent in Lieu of a Meeting of the Board of Directors of the Corporation, duly executed by all of the Directors of the Corporation, the following resolutions were duly adopted in accordance with the requirements of the New York Business Corporation Law, and that said resolutions have not been modified or rescinded, and are still in full force and effect on the date hereof:

"RESOLVED: that the Board of Directors of the Corporation, hereby approves the Plea Agreement in United States of America v. Empire State News Corporation, Inc., United States District Court, Northern District of New York, between the United States and the Corporation; and be it further

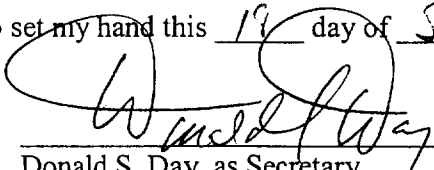
RESOLVED: that Lawrence M. Scheur, as President of the Corporation, and each of Gary Mucci, Esq., Richard J. Day, Esq., or Donald S. Day, Esq., of Hiscock & Barclay, LLP, as counsel for the Corporation, is hereby authorized to execute and deliver the Plea Agreement on behalf of the Corporation; and be it further

RESOLVED: that Lawrence M. Scheur, and each of the other officers of the Corporation, is hereby authorized and directed to pay the fine and the special assessment on behalf of the Corporation in accordance with the terms of the Plea Agreement; and be it further

RESOLVED: that each of Gary Mucci, Esq., Richard J. Day, Esq., and Donald S. Day Esq., is authorized to appear on behalf of the Corporation and to enter a plea of guilty on behalf of the Corporation for a violation of Section 1 of the Sherman Act, 15 U.S.C. §1, as provided in the Information attached to the Plea Agreement, and to appear on behalf of the Corporation at the sentencing; and be it further

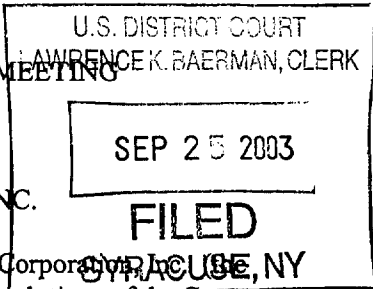
RESOLVED: that Lawrence M. Scheur and each of the other officers of the Corporation, is hereby authorized and directed to take such further actions as may be necessary to assure the Corporation's compliance with the terms and conditions of the Plea Agreement."

IN WITNESS WHEREOF, I have hereunto set my hand this 19 day of Sept.,
2003.



Donald S. Day, as Secretary
Empire State News Corporation

ACTION BY CONSENT IN LIEU OF A SPECIAL MEETING
OF
THE BOARD OF DIRECTORS
OF
EMPIRE STATE NEWS CORPORATION, INC.



The undersigned, being all of the Directors of Empire State News Corporation, do hereby adopt the following resolutions as and for the resolutions of the Corporation, and the same shall be deemed adopted as if at a duly held special meeting of the Board of Directors of the Corporation on this date:

RESOLVED: that the Board of Directors of the Corporation, hereby approves the Plea Agreement in United States of America v. Empire State News Corporation, Inc., United States District Court, Northern District of New York, between the United States and the Corporation; and be it further

RESOLVED: that Lawrence M. Scheur, as President of the Corporation, and each of Gary Mucci, Esq., Richard J. Day, Esq., or Donald S. Day, Esq., of Hiscock & Barclay, LLP, as counsel for the Corporation, is hereby authorized to execute and deliver the Plea Agreement on behalf of the Corporation; and be it further

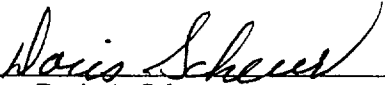
RESOLVED: that Lawrence M. Scheur, and each of the other officers of the Corporation, is hereby authorized and directed to pay the fine and the special assessment on behalf of the Corporation in accordance with the terms of the Plea Agreement; and be it further

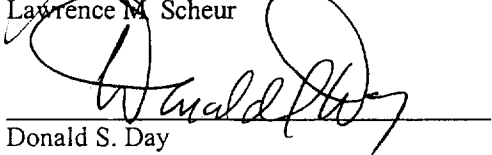
RESOLVED: that each of Gary Mucci, Esq., Richard J. Day, Esq., and Donald S. Day Esq., is authorized to appear on behalf of the Corporation and to enter a plea of guilty on behalf of the Corporation for a violation of Section 1 of the Sherman Act, 15 U.S.C. §1, as provided in the Information attached to the Plea Agreement, and to appear on behalf of the Corporation at the sentencing; and be it further

RESOLVED: that Lawrence M. Scheur and each of the other officers of the Corporation, is hereby authorized and directed to take such further actions as may be necessary to assure the Corporation's compliance with the terms and conditions of the Plea Agreement.

Dated: September 18, 2003


Lawrence M. Scheur


Doris A. Scheur


Donald S. Day