

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

CASE NO. 97-3924-CIV-SIMONTON

JERRY GREENBERG, individually,
and IDAZ GREENBERG, individually,

Plaintiffs,

vs.

NATIONAL GEOGRAPHIC
SOCIETY, a District of Columbia
corporation, NATIONAL GEOGRAPHIC
ENTERPRISES, INC., a corporation,
and MINDSCAPE, INC., a
California corporation,

Defendants.

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS'
MOTION IN LIMINE TO EXCLUDE EVIDENCE AS TO OTHER
LAW SUITS FILED AGAINST DEFENDANTS**

Plaintiffs, JERRY GREENBERG and IDAZ GREENBERG (together "Greenberg"), submit this memorandum in opposition to Defendants' Motion in Limine for an Order Precluding Plaintiffs from Presenting Any Evidence Concerning Other Lawsuits Filed Against Defendants Concerning Any Version of "The Complete National Geographic" Product.

The defendants identified seven other lawsuits now underway against the National Geographic Society and various other defendants. They contend that evidence of the existence of those cases is not relevant. "The only issue to be tried in this action," say the defendants, "is the extent of statutory damages to which Jerry Greenberg is entitled" Mem. at 2. That

omits the crucial issue of whether the defendants infringed willfully, which could substantially affect the potential for damages.

The Society is accused in the other actions of having infringed on other copyrights or having breached contracts with other contributors whose work is included in the Complete National Geographic ("CNG") product. That reveals nothing, argues the Society, about the Society's state of mind with respect to Greenberg's images. Mem. at 3. To the contrary, it reveals much of the Society's state of mind when a significant number of other contributors feel sufficiently aggrieved about an abuse of their rights -- involving the same CNG product -- to undertake the burden and expense of litigation in an attempt to vindicate those rights. The jury could decide that the multiple lawsuits support a conclusion of reckless disregard for the rights of creative artists in the preparation of the CNG product. The multiple lawsuits also could dispel any perception of Jerry Greenberg as a lone maverick on a mission.

The defendants' reliance on Arthur Kaplan Co. v. Panaria International, Inc., 1998 WL 603225 (S.D.N.Y. 1998) is misplaced because the court relied on the "actual knowledge" standard. The standard at trial in this case will involve both actual knowledge and reckless disregard. Because the other lawsuits are probative of the Society's state of mind in the sense of reckless disregard, those actions are relevant.

The motion should be denied.

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Certificate of Service

I hereby certify that a copy of the foregoing memorandum was served by mail on Edward Soto, Esq., Weil, Gotshal & Manges LLP, 701 Brickell Avenue, Suite 2100, Miami, FL 33131; and Stephen N. Zack, Boies, Schiller & Flexner LLP, 2800 Bank of America Tower, 100 Southeast Second Street, Miami, FL 33131; and by facsimile and mail on Robert G. Sugarman, Esq., Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York NY 10153 this 10th day of January, 2003.


Norman Davis