# JERRY GREENBERG GREENBERG V NATIONAL GEOGRAPHIC MAY 28,1998

#### **PEGGY ANN COOK & ASSOCIATES**

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#### CONDENSED TRANSCRIPT AND CONCORDANCE PREPARED BY:

PEGGY ANN COOK & ASSOCIATES, INC. 150 S.E. Second Avenue Suite 1011 Miami, FL 33131 Phone: 305-371-1884 FAX: 305-536-2510

	JERRY GREENBERG GREENBERG			XMAX(1
	Page 1	1	Page 3	
1)	UNITED STATES DISTRICT COURT	(1)	-	
	SOUTHERN DISTRICT OF FLORIDA	(2)	JERRY GREENBERG	
2) 3)	CASE NO. 97-3924	(3)	was called as a witness and having been first duly	
4)		(4)	sworn, was examined and testified on his oath as	
	JERRY GREENBERG, individually, and IDAZ GREENBERG, individually,	(5)	follows:	
6)	Plaintiffs,	(6)	DIRECT EXAMINATION	
7) 9) 1	vs. NATIONAL GEOGRAPHIC SOCIETY, a	(7)	BY MR. SUGARMAN:	
	district of Columbia corporation,	(8)	Q. Mr. Greenberg, have you ever had your	
	NATIONAL GEOGRAPHIC ENTERPRISES. INC., a corporation, and MINDSCAPE,	(9)	deposition taken before?	
10)	INC., a California corporation.	(10)	A. Yes.	
n	Defendants.	(1)	Q. On how many occasions, roughly?	
. 12)	X	(12)	A. Two or three.	
13)	and the second se	(13)	Q. I am, as you undoubtedly know, going to ask you	
	701 Brickell Avenue Miami. Florida	(14)	some questions. If you don't understand the	
14)	Thursday, 9:30 a.m.	(15)	questions, let me know and I will try to rephrase	
15)	May 28th. 1998	(16)	them.	
16) 17)	DEPOSITION OF JERRY GREENBERG	(17)	A. Yes.	
18)		(18)	Q. Let me finish the question before you answer so	
19) 20)	Taken on behalf of the Defendant before	(19)	the reporter can try to separate the question from the	
21) I	LOIS E. GUFFEY. RDR, Certified Realtime Reporter and	(20)	answer and, if you can verbalize your answers, that	
	Notary Public in and for the State of Florida at Large, pursuant to a Notice of Taking Deposition filed	(21)	would be good. Okay?	
	in the above cause.	(22)	A. Yes. Of course.	
25)		(23)	Q. You said you had been deposed two or three	
		(24)	times before. Were those depositions in cases in	
		(25)	which you or your company was a party?	
	Page 2	_	Page 4	
15 /	APPEARANCES :	(I)		
2)	STEEL, HECTOR & DAVIS LLP	(2)	Q. Would you describe just generally what those	
3)	By: Norman Davis, Esq., and Naomi Gray, Esq.	(3)	cases were about.	
- 1	Appearing on behalf of the Plaintiffs.	(4)	A. Copyright infringement actions.	
	reposition of the contraction			
4)		(5)	Q. Were you or your company plaintiffs in those	
	WEIL, GOTSHAL & MANGES LLP By: Robert G. Sugarman, Esq., of counsel	(5) (6)	actions?	
5)	WEIL, GOTSHAL & MANGES LLP		actions? A. Yes, we were.	
5) 6)	WEIL, GOTSHAL & MANGES LLP By: Robert G. Sugarman, Esq., of counsel	(6)	actions?	
5) 6) 7)	WEIL, GOTSHAL & MANGES LLP By: Robert G. Sugarman, Esq., of counsel	(6) (7)	actions? A. Yes, we were.	
5) 6) 7) 8)	WEIL. GOTSHAL & MANGES LLP By: Robert G. Sugarman. Esq., of counsel appearing on behalf of the Defendants.	(6) (7) (8)	actions? A. Yes, we were. Q. And who were the defendants in the various	
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			DERG VINAL	IONAL GEOGRAPHIC MAY 28,1998	XMAX(18/
(1)	<b>US.</b>	Page 5	L (I)	Page 7 Q. Are you still, today, active in taking	
(2)		And what -	(2)	underwater photographs?	
(3)	-	No. Yes. That's right. Yes.	(3)	A. Yes, all the time, whenever weather permits.	
(4)		What images were involved in that lawsuit?	(4)	Q. Do you have - Withdrawn. How is it that	
(5)		To the best of my knowledge, my wife's artwork	(5)	you - Withdrawn. Do you get assignments from	
(6)		ut of our Guide to Corals and Fishes book.	(6)	publications to actually take photographs?	
(7)	-	And what was the outcome of the litigation with	(7)	A. Now or –	
(8)	-	r and the Bahamanian Ministry of Tourism?	(8)	Q. Now.	
(9)		They settled up with us.	(9)	A. No, sir. Occasionally something may come	
10)		And what images were involved in that case?	(10)	through where they want to buy some series of	
11)		My wife's artwork and my photograph.	(D)	photographs or a photograph for lease for one-time use	
12)		When you say your photograph, was it one	(12)	or specific use, and if the terms are right and it's a	
13)	photogra		(13)	worthwhile client, we do it.	
14)	•	Yes, sir.	(14)	Q. Do you, today, take photographs which you then	
(5)	Q. (	Of what?	(15)	submit to publications?	
16)	-	The queen angelfish.	(16)	A. No. The photographs that I take - all the work	
17)		in what way was that photograph used by	(17)	that I am active in is only funneled through our own	
18)		r and the Bahamian Ministry of Tourism?	(18)	Seahawk Press, Seahawk Products. We are	
19)		Well, it was the photograph or the artwork. We	(19)	self-publishers.	
20)		get the precise information, if my memory is	(20)	Q. Now when you say you are self-publishers, what	
21)		clieve it was my wife's artwork that they	(21)	do you self-publish?	
22)		eir - handing out a poster. But I also had a	(22)	A. Seahawk Press publishes books. We have six	
23)		ph of the very same image she made her artwork	(23)	current titles, in color. We produce plastic field	
24)		was used in a billboard.	(24)	guides, submersible field guides. We were the	
25)		What was the amount of the settlement?	(25)	innovators of that product back in 1979. We had a	
	<u> </u>	Page 6		Page 8	
(1)		don't remember on that one. I am sorry.	(1)	line of posters. We did postcards. We do T-shirts	
(2)		Have you or your company ever been involved in	(2)	through licensing arrangement. And did I mention a	
(3)		tion with Sports Illustrated?	(3)	coloring book that we have. It's books and	
(4)		No, sir.	(4)		
(5)	Q. 1			submersible field guides. That's the mainstay of the	
		How long have you been working as a	(5)	business.	
	photograp	pher?	(5) (6)	business. Q. When you say field guides, what is a field	
(7)	photograj A. S	pher? Since 1950 I had my first major piece	(5) (6) (7)	business. Q. When you say field guides, what is a field guide?	
(7) (8)	photograj A. S published	pher? Since 1950 I had my first major piece I.	(5) (6) (7) (8)	<ul><li>business.</li><li>Q. When you say field guides, what is a field guide?</li><li>A. A submersible field guide is a six by nine</li></ul>	
(7) (8) (9)	photograp A. S published Q. A	pher? Since 1950 I had my first major piece I. And what –	(5) (6) (7) (8) (9)	<ul> <li>business.</li> <li>Q. When you say field guides, what is a field guide?</li> <li>A. A submersible field guide is a six by nine card, or half that size, that is printed on the same</li> </ul>	
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(7) (8) (9) 10) 11)	photograp A. S published Q. A A. Q. N	pher? Since 1950 I had my first major piece L And what – 52, '52. What major piece was that?	(5) (6) (7) (8) (9) (10) (11)	<ul> <li>business.</li> <li>Q. When you say field guides, what is a field guide?</li> <li>A. A submersible field guide is a six by nine card, or half that size, that is printed on the same material that credit cards are done, and they all feature my wife's artwork on both sides of it. As I</li> </ul>	
(7) (8) (9) (0) (1) 12)	photograp A. S published Q. A A. C Q. N A. T	pher? Since 1950 I had my first major piece L And what – 52, '52. What major piece was that? Fhat was a piece in Underwater Photography, in	(5) (6) (7) (8) (9) (10) (11) (12)	<ul> <li>business.</li> <li>Q. When you say field guides, what is a field guide?</li> <li>A. A submersible field guide is a six by nine card, or half that size, that is printed on the same material that credit cards are done, and they all feature my wife's artwork on both sides of it. As I mentioned, we were the innovators and creators of that</li> </ul>	
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(7) (8) (9) (1) (2) (3) (4) (5) (6) (7) (8) (9) (1) (2) (2) (2) (2) (2) (2) (2) (2) (2) (2	photograp A. S published Q. A. A. Q. M A. T like a may Q. I field? A. I field? A. I Mr. Suga Q. M A. T Q. I	pher? Since 1950 I had my first major piece A. And what – 52, '52. What major piece was that? That was a piece in Underwater Photography, in gazine. Do you have a specialty in the photography Yes. It's underwater photography. Do you do your business through a corporate don't understand what a corporate entity is, rman. Well, do you have a business name? Yes. It's Seahawk Products, Seahawk Press. s that a corporation or a partnership? t is not a corporation. I am not	<ul> <li>(5)</li> <li>(6)</li> <li>(7)</li> <li>(8)</li> <li>(9)</li> <li>(10)</li> <li>(11)</li> <li>(12)</li> <li>(13)</li> <li>(14)</li> <li>(15)</li> <li>(16)</li> <li>(17)</li> <li>(18)</li> <li>(19)</li> <li>(20)</li> <li>(21)</li> <li>(22)</li> </ul>	<ul> <li>Q. When you say field guides, what is a field guide?</li> <li>A. A submersible field guide is a six by nine card, or half that size, that is printed on the same material that credit cards are done, and they all feature my wife's artwork on both sides of it. As I mentioned, we were the innovators and creators of that product.</li> <li>Q. And what are they used for?</li> <li>A. Fish identification under water, for beachcombing, looking for shells, for gamefish identification, just close to a - 900, thousand pieces of art on all the cards. There are 12 different cards.</li> <li>Q. Now you say there were pieces of art. Are photographs also on those cards or is it just artwork?</li> <li>A. Artwork that came from my photographs or my</li> </ul>	

		Page 9	1	Page 11
(1)	Α.	Yes. That is correct.	(1)	Generally things came after the fact in
(2)	Q.	Is your son also?	(2)	Q. When you say things came at
(3)	Α.	Loosely. He supplies work to us when we need	(3)	does that mean?
(4)	it.		(4)	A. Payment and the rights and p
(5)	Q.	In addition to the finished products that you	(5)	after the fact that they used it.
(6)	have d	escribed, the books, the field guides, the	(6)	Q. So in other words, they woul
(7)	T-shirt	is	(7)	after the use, would contact you or yo
(8)	Α.	Սհ-հահ.	(8)	them?
(9)	Q.	- does Seahawk Products or do you personally	(9)	A. No. The bulk of it, they wou
(10)	license	photographs for use in publications published	(10)	They would contact me and tell me wi
(11)	by othe	ers?	- : - (II)	to pay.
(12)	Α.	Yes, yes. In publications or other uses for	(12)	Q. Would that have been before
(13)	adverti	ising use.	(13)	the use?
(14)	Q.	So do you distinguish in your own mind	(14)	A. After the use.
(15)	adverti	ising uses from other uses?	(15)	Q. Can you recall any instance is
(16)	Α.	Licensing is licensing. It's just another way	(16)	National Geographic used any of your
(17)	to, you	know, derive revenue from what you create.	(17)	advertisements?
(18)	It's a li	icense either to use it for an advertisement	(18)	A. Only for in-house use, specif
(19)	or lice	nse for one-time use in a magazine.	(19)	the outside. What I mean, in-house, e
(20)	Q.	Is there a difference in the revenue that you	(20)	appear as a brochure for a product, an
(21)	receive	e when an image is licensed for an advertising	(21)	It was only used in the context and un
(22)	use, as	opposed to a nonadvertising use?	. (22)	of the National Geographic Society, n
(23)	А.	Considerably more, yes.	(23)	ads. In fact, I was approached once for
00	0	Considerably more for the advertising use?	00	use for a shark illustration for a TV sa

- (24) Considerably more for the advertising use? 0.
- (25) A. Yes.

BSA

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JERRY GREENBERG

- And why is that? (1) Q.
- (2) A. Well, if an agency is going to spend \$500,000
- or \$750,000 for ad space, they're inclined to pay more (3)
- for the illustration than a magazine would for inside (4)
- (5) editorial use. Inside editorial use is the lower of
- the two, the least amount of money, least amount of (6)
- (7) money brought in.
- (8) Q. When you say inside editorial use, what kinds
- of uses Withdrawn. Have you, over the years, (9)
- licensed photographs for use by the National (10)
- Geographic? (11)
- A. I receive an assignment from them. The last (12)
- job I did for them was 19 the assignment was 1989 (13)
- and the article appeared in the 1990 July issue. (14)
- Has the National Geographic ever published (15) 0.
- images that you have taken, photographs that you have (16)
- taken, where there wasn't an assignment, but they were (17)
- aware of a photograph, they wanted to use it and (18)
- (19) contacted you and you permitted them to use it?
- (20) Occasionally that would happen. Α.
- And when that happened, would you consider that (21)Q.
- (22) an editorial use, an advertising use? Which?
- (23) If they specify editorial use when they would Α.
- contact me, it would be for editorial use. If they (24)
- had other uses for it, they would specify that. (25)

Dage 11

MAY 28,1998

in many cases.

**GREENBERG V NATIONAL GEOGRAPHIC** 

- after the fact, what
- permissions came
- uld use it and, then,
- ou would contact
  - uld I am sorry.
- what they were going
- e the use or after
- in which the
- ur images in
- ifically, never on
- either it would
- an announcement -
- nder the umbrella
- never for outside
- for an outside ad
- (24) use for a shark illustration for a TV series. I think
- (25) it was Texaco was sponsoring it. But I said, no,
  - Page 12
- they didn't want to pay enough for it. **(I)**
- (2) **Q**. Do you recall what they offered to pay for it?
- I don't recall a precise fee. It did not sit (3) Α.
- well with me. It didn't feel right, so I declined. (4)
- (5) 0. Have you ever licensed the use of photographs,
- that you have taken, to be used as the basis for (6)
- illustrations or drawings done by -(7)
- (8) Α. Outside?
- (9) Q. - people for magazines? Outsiders.
- (10)Never. Never. Α.
- Have you or Seahawk ever licensed the use of (11)0.
- drawings made by Mrs. Greenberg based on photographs (12)
- that you have taken? And again, to outsiders. (13)
- (14) The only situation that comes to my mind is Α.
- (15) when a publishing firm that did hotel-type of books in
- Hawaii came to us and utilized the artwork in a (16)
- (17) publication for one-time use.
- (18) Q. Aside from the publications that are at issue
- in this litigation, which are the Geo Pack and the (19)
- Jason project -(20)
- A. Yes. (21)
- (22) Q. - are you aware of any instance in which a
- (23) publication used a photograph, that you took, as the
- (24) basis for a drawing or an illustration that that
- publication used in one of its magazines or books or (25)

XMAX(20/4)

<u>ØSA</u>	JERRY GREENBERG GREENBER Page 13	KG V NAT	IONAL GEOGRAPHIC MAY 28, 1998 XMAX Page 15
(1)	rage 15 whatever?	(1)	the posting.
(1)	A. At the present moment I can't - nothing comes	(1)	Q. When you say, I do all the posting, what does
(3)	to my mind right now.	(3)	that mean?
(4)	Q. You mentioned two general categories of use,	(4)	A. In the journal.
(5)	advertising use and editorial use. In what category -	(5)	Q. Would you generally describe the process of
(6)	which of those categories would you put the use that	(6)	billing and collection that you engage in on behalf of
(7)	was made in the Jason project?	(7)	Seahawk.
(8)	A. I can't put - it wasn't used outside – Well, I	(8)	A. I am sorry. I didn't – Will you repeat that?
(9)	don't know where that went, whether it was an $ad - 1$	(9)	Q. Yes. Just describe the process of how you bill
(10)	believe it was, to the best of my knowledge now, on	(10)	your clients, collect the money, post it.
(11)	the Jason project it was used in-house. I don't think	(11)	A. Sure. Very simple system. I sell mainly to
(12)	it was used outside Society.	(12)	distributors. A distributor makes the order. They
(13)	Q. And what about the Geo Pack, would that be an	· (13) ·	pick it up or I ship it to them. I send them the
(14)	advertising use, an editorial use, what?	(14)	invoice. And at the end of the first quarter, I log
(15)	A. That's a product use. It's not editorial. I	(15)	in all of the invoices into my journal.
(16)	don't consider that product to be editorial.	(16)	Q. Do you prepare or does anyone else prepare, for
(17)	Q. What do you consider it to be?	(17)	Seahawk Products, any yearly summaries of financial
(18)	A. A product like our books, our plastic cards.	(18)	results?
(19)	It's something for sale over the counter in stores.	(19)	A. Yes, sir.
(20)	Q. Well, okay. Within the product, itself, is the	(20)	Q. Who prepares those?
(21)	image, or images, used for advertising?	(21)	A. My CPA.
(22)	A. If they put it in a catalog and you see the	(22)	Q. What, as best you recall, was the level of
(23)	image in the catalog, it's advertisement. But the	(23)	sales for 1997?
(24)	product, itself, is an item for sale, for retail sale,	(24)	A. I don't have that in my head but it was
(25)	Q. Yeah. I understand that. I mean a magazine	(25)	reflected in the invoices that we provided to you.
		·	Page 16
(I)	Page 14 would be a product for sale, correct?	()	
(1)	Page 14	(1)	Page 16
(l) (2)	Page 14 would be a product for sale, correct? A. Yes.		Page 16 Q. Do you have a sense of how much of the income
(1)	Page 14 would be a product for sale, correct? A. Yes.	(2)	Page 16 Q. Do you have a sense of how much of the income of Seahawk Products was attributable to sales of
(l) (2) (3)	Page 14 would be a product for sale, correct? A. Yes. Q. And within the magazine there are editorial	(2) (3)	Page 16 Q. Do you have a sense of how much of the income of Seahawk Products was attributable to sales of finished products on the one hand and licenses for use
(l) (2) (3) (4)	Page 14 would be a product for sale, correct? A. Yes. Q. And within the magazine there are editorial uses and advertising uses, right?	(2) (3) (4)	Page 16 Q. Do you have a sense of how much of the income of Seahawk Products was attributable to sales of finished products on the one hand and licenses for use of images or drawings on the other?
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BSA	JERRY GREENBERG GREENBERG V	/ NAT	TONAL GEOGRAPHIC MAY 28,1998
	Page 17	1	Page 19
(1)	of my photographs doesn't come up very much. The bulk	(1)	A. J. Walter Thompson Agency.
(2)	of my livelihood and activity and my focus of my	(2)	MR. SUGARMAN: I am going to ask the reported
(3)	entire existence is with Seahawk Press, selling our	(3)	to mark as Jerry Greenberg Exhibit 1 a document that
(4)	products as a product or the licensing of the specific	(4)	is Bates stamped JG 2955, headed January 1995.
(5)	product to certain customers. For editorial use, I	(5)	MR. SUGARMAN: Mr. Greenberg, why don't y
(6)	don't solicit much business. It comes to me. But the	(6)	look at the other one that's been marked. The other
(7)	most recent licensing arrangement I made for a	(7)	is a copy for your counsel.
(8)	one-time use magazine was with Audubon magazine, and	(8)	(JG Exhibit 1 is marked)
(9)	that is one that I solicited them to see whether they	(9)	Q. (BY MR. SUGARMAN) Can you identify Jer
(10)	would be interested in our mangrove trees in the sea	(10)	Greenberg Exhibit 1?
(11)	project.	(ii)	A. Yes, It's a photocopy of a page from the
(12)	Q. And I take it that they were interested?	(12)	journal, January of 1995.
(13)	A. At first they gave me no answer. Then I told	(13)	Q. Whose handwriting is that?
(14)	them to send the material back to me. And once they	(14)	A. That's mine.
(15)	found out it had never been used before, obviously,	(15)	Q. And is that one of the journal pages that you
(16)	they liked what they saw, they got very excited about	(16)	have prepared as you described earlier today?
(17)	it.	(17)	A. Yes.
(18)	Q. Did you then arrive at an arrangement for them	(18)	Q. Would you just take us through the columns a
(19)	to use the images?	(19)	tell us what the entries in each column represent.
(20)	A. Yes, sir, we did, uh-huh.	(20)	A. Certainly. Do you want me to start with the
(21)	Q. And in that particular instance, how did you,	(21)	top?
(22)	in your own mind, go about deciding what the price for	(22)	Q. Yes.
(23)	the use would be?	(23)	A. Miss Cocoa, Incorporated (phonetic). It's a
(24)	A. I have been selling or leasing photographs	(24)	local distributor.

(25) since the mid fifties, early sixties. At one time I

#### Page 18

- (1) had my own photo agency for my own work, my own
- (2) underwater photographs, underwater stock photo agency.
- (3) So I had a pretty fair idea what I could get for my
- work. I always was on the high side. In this (4)
- instance, I felt what I would want as a fair price, (5)
- and I asked for it, and I told them what the terms (6)
- were and what the other aspects of the transaction (7)
- (8) would be, and they agreed to it.
- (9) Q. And what was the price and what were the terms?
- The price for that specific use for six to (10) Α.
- eight photographs, inside editorial use for Audubon, (11)
- one-time use only in the magazine with the appropriate (12)
- (13) copyright photo credit line was \$3500. They would pay
- it in advance. They also would pay for the duplicate (14)
- transparencies they would be using for the separations (15)
- and return them because they were my property. (16)
- Can you think of any other instances in the (17) Q.
- last three years where you have made a similar (18)
- (19) arrangement with a publication for one-time use of the
- (20) images that you have taken?
- Editorial, no. I am not really active in the (21) Α.
- (22) leasing of my photos in the editorial area. There was
- an advertising use of one of my images in '93, I (23)
- believe. I am certain it was '93. (24)
- (25) 0. And to whom did you license that?

- o ask the reporter
- document that
- агу 1995.
- rg, why don't you
- d. The other
- you identify Jerry
- e from the
- pages that you
- today?
- h the columns and
- start with the
- onetic). It's a
- (24) local distributor.
- No. I actually just wanted you to describe (25) 0.

#### Page 20

what the entries are in the first column, one, two, **(I)** three, four, ten, and then what is in the next column. (2) In other words, what is reflected there? (3) (4) Α. In the first column is the dates. (5) Q. The date of what? Of the transaction and of the invoice. (6) Α. Okay. The second column is the --(7) Ο. (8) Α. Customer.

- All right. The third column? (9) Q.
- (10) Α. Products or services or whatever we provided to

(H) them.

- All right. The next which says PD is, (12) Q.
- (13) obviously, if it's paid.
- (14) Α. Hopefully, yes.
- (15) Q. Looks like you have a pretty good record on
- (16) that. And the last column?
- (17) The amounts that came in, sir. Α.
- On the right-hand margin there are four (18) Q.
- asterisks. What do those represent? (19)
- (20)Those - the asterisks? Α.
- (21) О. Yes.
- (22) I don't know. Α.
- Are they in your handwriting? (23) Q.
- That's not my asterisk. (24)Α.
- (25) Q. Okay. I notice that between the entry for

XMAX(21/5)

BSA	JERRY GREENBERG GREENBERG	V NAT	TONAL GEOGRAPHIC MAY 28,1998 XMAX(
	Page 21	1	Page 23
(1)	January 10 and the entry for January 11, there is a	(1)	Q. And what was the - what was that transaction?
(2)	space.	(2)	A. I would have to see the invoice to give you
(3)	A. Yes, sir.	(3)	precise information on that. If you have it, I can
(4)	Q. Can you explain why there is a space.	.(4)	explain it.
(5)	A. Yes. My wife went through all of the journals	(5)	Q. Then there is an entry on the 17th, American
(6)	there, and whatever in there was - that had - that	(6)	Teaching, for license.
(7)	was - had nothing to do about revenues from products	(7)	A. Yes, sir.
(8)	and revenues from licensing was removed.	(8)	Q. What was that?
(9)	Q. At the bottom of the page on the right-hand	(9)	A. A license to utilize our - renditions of our
10)	side there is the word "total," and there is no number	(10)	images on a product.
1)	there. Was there a number on the original of this	(1)	Q. When you say our renditions of our images, what
12)	document?	(12)	was actually -
3)	A. Yes, sir, there was.	(13)	A. No. Their rendition of our images.
4)	Q. And why is that not there?	(14)	Q. So that was a case - okay. When you say "our
5)	A. Because the total would reflect items in there	(15)	images," do you mean a photograph or a drawing?
6)	that had nothing to do with your request. Request for	(16)	A. I would have to see the product again and
17)	documents, that is.	(17)	
8)	Q. Now looking at the third column, which is the	(18)	Q. Do you know what the product was that American
9)	column which identifies the product -	(19)	Teaching used the images for?
20)	A. The one under 1995?	(20)	A. Yes. One was a poster and one was a jigsaw
21)	Q. The one under '95.	(21)	puzzle.
22)	A. Yes.	(22)	Q. Then there is an entry on the 20th for Sheldon
23)	Q. The first entry is for books.	(23)	Kaplan Associates. It says, "transfers." What does
24)	A. Yes.	(24)	that mean?
25)	Q. Would you generally describe what it means when	(25)	A. Yes, sir. We provided our - a match print to
,	2. Would for Benericity reported what it means when	(10)	
	Page 22		Page 24
(1)	you see an entry, "books"?	(1)	Sheldon Kaplan where he would make heat transfers off
(2)	A. Yes. It would be strictly a transaction for	(2)	a match print that could be imprinted on a T-shirt,
(3)	our books, the books that we produce, not the plastic	(3)	and he paid us so much a shirt. He paid for his own
(4)	cards.	(4)	transfers. He paid so much a shirt royalty.
(5)	Q. And then, the next one down is cards?	(5)	Q. How often do you, as a normal practice, make
(6)	A. Yes. That would be strictly a transaction for	(6)	entries in the journal pages which is copied as JG 1?
(7) (1)	plastic cards.	(7)	
(8) (0)	Q. Then the entry for the 10th says, "license"?	. (8)	usually is done at the end of the month. I get up
(9)	A. Yes, sir.	(9)	early and do it.
0)	Q. Would you describe what that was.	(10)	Q. So it's - to the extent that you can, you try
11)	A. It was a license to use an artwork rendition of	(11)	to do it on a monthly basis?
12)	my photograph in a T-shirt.	(12)	A. Yes, sir.
13)	Q. What kind of a company is Habitat, if you know?	(13)	Q. And to the best of your knowledge, the entries
		1	

(14) Α. It's - the company's name will be on the

invoice for that date. It's a T-shirt manufacturing (15) company. (16)

Q. Do you recall the image that they used as the (17) (18) basis for the drawing?

(19) Α. Image or images, no, not off the top of my head

but it was a licensing arrangement we made with them. (20)

Was it one or more than one image? (21) Q.

I would have to look at the shirt. I am sorry. (22) A,

(23) Q. There is an entry on the 12th that says,

(24) "T-shirts."

(25) Α. Yes, sir.

MR. SUGARMAN: I ask the reporter to mark as (18) (19) Jerry Greenberg Exhibit 2 an invoice that is Bates

stamped JG 0358, dated March 26, 1997. (20)

(14) that are on these journals are an accurate reflection

(21) (Exhibit 2 is marked)

(15) of the activity of that month?

(17) only have one set of books.

A.

(22) 0. (BY MR. SUGARMAN) Can you identify what has

Yes. That's all reflected in the invoices. I

(23) been marked as Jerry Greenberg Exhibit 2.

(24) Yes, sir. A.

(25) What is it? Q.

(16)

<u>BSA</u>	JERRY GREENBERG GREENBE Page 25	RG V NATIONAL GEOGRAPHIC MAY 28,1998 XMAX(23)
(1)	A. It's an invoice for a shipment of books that	(1) from it?
(2)	went to Turks and Caicos.	(2) A. Possibly, yes. I would hope so. Gives them a
(3)	Q. And are these books that are published by	(3) better understanding.
(4)	Seahawk?	(4) MR. SUGARMAN: I ask the reporter mark Jerry
(5)	A. Yes, sir.	(5) Greenberg Exhibit 3, a document stamped Bates number
(6)	Q. There is an entry in the middle of the invoice	(6) JG 0562 (indicating).
(7)	that says, educational material?	(7) (Exhibit 3 is marked)
(8)	A. Yes.	(8) MR. SUGARMAN: Why don't you give me back the
(9)	Q. What does that mean?	(9) ones we have marked already so I can keep track of
(10)	A. I utilize that any time I ship to foreign	(10) them.
(1)	countries. It makes it easier in some cases to get	(11) MR. DAVIS: (Indicating).
(12)	through customs for us if they are educational	(12) MR. SUGARMAN: Thanks.
(13)	material. Books generally are not taxed by duty in	(13) Q. (BY MR. SUGARMAN) Can you identify Jerry
(14)	most countries. When you get down to the French	(14) Greenberg Exhibit 3?
(15)	islands or islands that were dominated by the French	(15) A. Yes, sir.
(16)	presence there, there is a problem with plastic cards.	(16) Q. What is it?
(17)	So we tried to make it easier for the material to go	(17) A. It's a payment of royalties for the use of
(18)	through customs. And let's put it this way. I will	(18) artwork that were made from our photographs for both
(19)	make it - give you the easier thing to understand.	(19) versions of the alphabet book for the year 1993.
(20)	Anything that I export, whether it goes to	(20) Q. What is the Underwater Alphabet Book?
(21)	Turks and Caicos, Mexico - if we ship it to Israel,	(21) A. It's a book with alphabet numbers - alphabet
(22)	ship to Australia, the Maldives, Seychelles, it all	(22) letters in it that had a corresponding artwork
(23)	has that. And from that I take a copy and put the	(23) illustration next to it.
(24)	Seahawk seal on the bottom, press it with our imprint,	(24) Q. And is the Underwater Alphabet Book a book
(25)	and that goes out as the commercial invoice with my	(25) published by the Charles Bridge Publishing Company?
•		
	Page 26	Page 28
(1)	name on it and the gold seal imprint of a seahawk on	(1) A. Yes, sir.
(2)	it. I don't usually use that original invoice,	(2) Q. Now when you say in the invoice, for the use of

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

(11)

(12)

(13)

(14)

(15)

(16)

(17)

(18)

(19)

(20)

(21)

(22)

(23)

(24)

(25)

the artwork?

Their artists did.

of the artwork that they did?

I don't believe so.

A.

Q.

Α.

Q.

A.

Q.

A.

photographs?

along the lines.

that be produced.

MR. DAVIS:

possession?

A.

(3) educational material, on domestic shipments, only on(4) exports.

(5) Q. I take it, then, that you consider the books

(6) that are listed on JG Exhibit - Jerry Greenberg

(7) Exhibit 2 to be educational materials.

(8) MR. DAVIS: Object to the form of the

(9) question.

(10) THE WITNESS: They could be. It depends on

(11) what hands they fall in. A lot of times it goes - for

(12) the most part, it goes in the tourist shops. Tourisms

(13) use them, occasional art books will use them for

(14) teaching in classes. But the bulk of the stuff is for

(15) tourist-oriented use. Did I -

(16) Q. (BY MR. SUGARMAN) The – But are they used for

(17) the education of tourists?

(18) A. I-

(19) MR. DAVIS: Object to the form.

(20) THE WITNESS: - don't know. I am sorry.

(21) MR. DAVIS: Go ahead.

(22) THE WITNESS: I don't know what the tourists do

- (23) with it when they get them. I hope they will enjoy
- (24) it.

(25) Q. (BY MR. SUGARMAN) And maybe learn something

A.

artwork from Jerry Greenberg's photographs, who did

How many photographs were involved?

Did you ever get a copy of the Underwater

I certainly had the book in my hands somewhere

Do you know - Withdrawn. What was the nature

I don't remember, Mr. Sugarman.

I don't remember that. I am sorry,

Alphabet Book in which there was artwork from your

Q. Do you presently have that book in your

MR. SUGARMAN: If it is in the possession of

the Greenbergs or Seahawk, Mr. Davis, I would ask that

We will consider it.

that the price that was charged and paid was \$2,000?

For the license for that year, yes, sir.

Q. (BY MR. SUGARMAN) How - Withdrawn. I take it

Page 25 to Page 28

	· · · · · · · · · · · · · · · · · · ·	KG V NAT	IONAL GEOGRAPHIC MAY 28,1998 XMAX(24/8)
(1)	Page 29 Q. For that year?	(D)	Page 31 MR. SUGARMAN: I ask that records sufficient
(2)	A. Uh-huh.	(2)	to indicate the amounts of that payment be produced.
(3)	Q. How did you arrive at the \$2,000 number?	(3)	We will ask Mrs. Greenberg if she has a recollection.
(4)	A. It was an arrangement we made with them on an	(4)	That will be fine.
(5)	overall settlement for licensing.	(5)	Q. (BY MR. SUGARMAN) Do you have any information
(6)	Q. When you say overall settlement, what does that	(6)	as to how many copies of the Underwater Alphabet Book
(7)	mean?	(7)	were printed by Charles Bridge Publishing in 1993?
(8)	A. They had these illustrations in this book, and	(8)	A. No, sir.
(9)	there was no question in my mind that they derived	(9)	Q. Or in any other year?
(10)	from our work, copies of our work. So they paid us a	(10)	A. No. We don't have that, no.
(11)	settlement fee for busting into our copyrights, and	(11)	Q. Do you know whether there are any records that
(12)	they also took the option to continue using it under a	(12)	you or your counsel have that might reflect that?
(13)	licensing arrangement.	(13)	A. I don't believe so. No, sir.
(14)	Q. So this was an instance in which the use by	(14)	Q. Do you have an understanding as to whether the
(15)	Charles Bridge's publishing preceded any arrangement	(15)	Underwater Alphabet Book is a product that is sold in
(16)	that you made with them; is that right?	(16)	book stores or elsewhere by Charles Bridge publishing?
(17)	A. I don't understand the -	(17)	A. Yes, sir. I assume that they're selling it.
(18)	Q. Well, in other words, they used the images	(18)	(Short break)
(19)	first and then, after their use, you made this	(19)	Q. (BY MR. SUGARMAN) Can you recall any
(20)	arrangement with them?	(20)	instances, other than Charles Bridge's publishing of
(21)	A. Yes.	(21)	the Underwater Alphabet Book and the matters at issue
(22)	Q. How was it that you discovered the use of the	(22)	in this litigation, other than those, where you
(23)	photographs in the artwork in the Underwater Alphabet	(23)	discovered the use by a publisher, of images that you
(24) (25)	Book? A. Found the book in the book store, looked at it.	(24)	took, either the images, themselves, or artwork from those images?
•			
	Page 30		Page 32
(1)	Boy, those fish look familiar. I know my artwork.	(1)	A. Repeat that question again. I sort of lost it.
(2)	Boy, those fish look familiar. I know my artwork. Q. Once you discovered that and contacted Charles	(i) (2)	A. Repeat that question again. I sort of lost it. (The requested portion of the record is read as above
(2) (3)	<ul><li>Boy, those fish look familiar. I know my artwork.</li><li>Q. Once you discovered that and contacted Charles</li><li>Bridge, how was it that you arrived at the \$2,000 for</li></ul>	(2)	<ul> <li>A. Repeat that question again. I sort of lost it.</li> <li>(The requested portion of the record is read as above recorded)</li> </ul>
(2) (3) (4)	Boy, those fish look familiar. I know my artwork. Q. Once you discovered that and contacted Charles Bridge, how was it that you arrived at the \$2,000 for the use in the 1993 books?	(2) (3) (4)	<ul> <li>A. Repeat that question again. I sort of lost it.</li> <li>(The requested portion of the record is read as above recorded)</li> <li>Q. (BY MR. SUGARMAN) Let me rephrase the</li> </ul>
(2) (3) (4) (5)	<ul> <li>Boy, those fish look familiar. I know my artwork.</li> <li>Q. Once you discovered that and contacted Charles</li> <li>Bridge, how was it that you arrived at the \$2,000 for</li> <li>the use in the 1993 books?</li> <li>A. I didn't contact Charles Bridge. My attorney</li> </ul>	(2) (3) (4) (5)	<ul> <li>A. Repeat that question again. I sort of lost it.</li> <li>(The requested portion of the record is read as above recorded)</li> <li>Q. (BY MR. SUGARMAN) Let me rephrase the question. You already talked about the instance where</li> </ul>
(2) (3) (4) (5) (6)	<ul> <li>Boy, those fish look familiar. I know my artwork.</li> <li>Q. Once you discovered that and contacted Charles</li> <li>Bridge, how was it that you arrived at the \$2,000 for the use in the 1993 books?</li> <li>A. I didn't contact Charles Bridge. My attorney did.</li> </ul>	(2) (3) (4) (5) (6)	<ul> <li>A. Repeat that question again. I sort of lost it.</li> <li>(The requested portion of the record is read as above recorded)</li> <li>Q. (BY MR. SUGARMAN) Let me rephrase the question. You already talked about the instance where you discovered the use of your photographs and artwork</li> </ul>
<ul> <li>(2)</li> <li>(3)</li> <li>(4)</li> <li>(5)</li> <li>(6)</li> <li>(7)</li> </ul>	<ul> <li>Boy, those fish look familiar. I know my artwork.</li> <li>Q. Once you discovered that and contacted Charles</li> <li>Bridge, how was it that you arrived at the \$2,000 for the use in the 1993 books?</li> <li>A. I didn't contact Charles Bridge. My attorney did.</li> <li>Q. Do you know how it was that the \$2,000 number</li> </ul>	(2) (3) (4) (5) (6) (7)	<ul> <li>A. Repeat that question again. I sort of lost it.</li> <li>(The requested portion of the record is read as above recorded)</li> <li>Q. (BY MR. SUGARMAN) Let me rephrase the question. You already talked about the instance where you discovered the use of your photographs and artwork in the Underwater Alphabet Book.</li> </ul>
<ul> <li>(2)</li> <li>(3)</li> <li>(4)</li> <li>(5)</li> <li>(6)</li> <li>(7)</li> <li>(8)</li> </ul>	<ul> <li>Boy, those fish look familiar. I know my artwork.</li> <li>Q. Once you discovered that and contacted Charles</li> <li>Bridge, how was it that you arrived at the \$2,000 for</li> <li>the use in the 1993 books?</li> <li>A. I didn't contact Charles Bridge. My attorney</li> <li>did.</li> <li>Q. Do you know how it was that the \$2,000 number</li> <li>was arrived at?</li> </ul>	(2) (3) (4) (5) (6) (7) (8)	<ul> <li>A. Repeat that question again. I sort of lost it. (The requested portion of the record is read as above recorded)</li> <li>Q. (BY MR. SUGARMAN) Let me rephrase the question. You already talked about the instance where you discovered the use of your photographs and artwork in the Underwater Alphabet Book.</li> <li>A. Yes.</li> </ul>
<ul> <li>(2)</li> <li>(3)</li> <li>(4)</li> <li>(5)</li> <li>(6)</li> <li>(7)</li> <li>(8)</li> <li>(9)</li> </ul>	<ul> <li>Boy, those fish look familiar. I know my artwork.</li> <li>Q. Once you discovered that and contacted Charles</li> <li>Bridge, how was it that you arrived at the \$2,000 for the use in the 1993 books?</li> <li>A. I didn't contact Charles Bridge. My attorney did.</li> <li>Q. Do you know how it was that the \$2,000 number was arrived at?</li> <li>A. We gave them a base settlement figure for</li> </ul>	(2) (3) (4) (5) (6) (7) (8) (9)	<ul> <li>A. Repeat that question again. I sort of lost it. (The requested portion of the record is read as above recorded)</li> <li>Q. (BY MR. SUGARMAN) Let me rephrase the question. You already talked about the instance where you discovered the use of your photographs and artwork in the Underwater Alphabet Book.</li> <li>A. Yes.</li> <li>Q. And this lawsuit is about the use of your</li> </ul>
<ul> <li>(2)</li> <li>(3)</li> <li>(4)</li> <li>(5)</li> <li>(6)</li> <li>(7)</li> <li>(8)</li> <li>(9)</li> <li>(10)</li> </ul>	<ul> <li>Boy, those fish look familiar. I know my artwork.</li> <li>Q. Once you discovered that and contacted Charles</li> <li>Bridge, how was it that you arrived at the \$2,000 for the use in the 1993 books?</li> <li>A. I didn't contact Charles Bridge. My attorney did.</li> <li>Q. Do you know how it was that the \$2,000 number was arrived at?</li> <li>A. We gave them a base settlement figure for busting into our copyrights, first. Then we gave them</li> </ul>	(2) (3) (4) (5) (6) (7) (8) (9) (10)	<ul> <li>A. Repeat that question again. I sort of lost it. (The requested portion of the record is read as above recorded)</li> <li>Q. (BY MR. SUGARMAN) Let me rephrase the question. You already talked about the instance where you discovered the use of your photographs and artwork in the Underwater Alphabet Book.</li> <li>A. Yes.</li> <li>Q. And this lawsuit is about the use of your artwork in the Geo Pack and Jason project. At least</li> </ul>
<ul> <li>(2)</li> <li>(3)</li> <li>(4)</li> <li>(5)</li> <li>(6)</li> <li>(7)</li> <li>(8)</li> <li>(9)</li> <li>(10)</li> <li>(11)</li> </ul>	<ul> <li>Boy, those fish look familiar. I know my artwork.</li> <li>Q. Once you discovered that and contacted Charles</li> <li>Bridge, how was it that you arrived at the \$2,000 for the use in the 1993 books?</li> <li>A. I didn't contact Charles Bridge. My attorney did.</li> <li>Q. Do you know how it was that the \$2,000 number was arrived at?</li> <li>A. We gave them a base settlement figure for busting into our copyrights, first. Then we gave them a choice to either stop doing it, getting rid of the</li> </ul>	(2) (3) (4) (5) (6) (7) (8) (9) (10) (11)	<ul> <li>A. Repeat that question again. I sort of lost it. (The requested portion of the record is read as above recorded)</li> <li>Q. (BY MR. SUGARMAN) Let me rephrase the question. You already talked about the instance where you discovered the use of your photographs and artwork in the Underwater Alphabet Book.</li> <li>A. Yes.</li> <li>Q. And this lawsuit is about the use of your artwork in the Geo Pack and Jason project. At least that's what we are talking about today.</li> </ul>
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BSA	JERRY GREENBERG GREENBERG V	<u>' NA'I</u>		MAX(25/9
	Page 33	1	Page 35	
(1)	Geographic has it, everyone seems to have this	(1)	Q. Was the – Withdrawn, Do you consider a poster	
(2)	problem. Every publisher has it. It's a fact of	(2)	for a cruise line to be an advertising use?	
(3)	life, really.	(3)	A. I can't answer that. I am not sophisticated	
(4)	Q. Can you recall any instances in which you or	(4)	enough in the uses of photos. It wasn't a pic for a	
(5)	your counsel contacted any of the publishers or	(5)	paid advertising, so I don't know what category it	
(6)	T-shirt manufacturers or entities that used your	(6)	would be under.	
(7)	images as, obviously, someone did with respect to	(7)	Q. Would you consider it an editorial use?	
(8)	Charles Bridge?	(8)	A. It's just betwixt and between.	
(9)	A. I can't give you a name-by-name count but there	(9)	Q. Do you have, in your files, a copy of the	
(10)	were a considerable amount of problems that we and	(10)	poster that contains the image that was licensed and	
(11)	other people face.	(II)	paid for as evidenced by Jerry Greenberg, Exhibit 4?	
(12)	Q. Can you recall any instances where, as a result	(12)	A. I have no idea.	
(13)	of those contacts, payments were made to Seahawk Press	(13)	MR. SUGARMAN: To the extent that it exists, we	
14)	or to you for the uses that were made of your images?	(14)	would ask that it be produced.	
15)	A. Virtually all the times that we contacted	(15)	MR. DAVIS: So I don't clutter up the record,	
16)	people, my attorney (indicating), a settlement was	(16)	any time you ask for one of these, we will consider	
(17)	reached and they had the option to continue with the	(17)	it.	
18)	license or stop doing it.	(18)	MR. SUGARMAN: I understand.	
(19)	Q. Can you recall any names of any of those	(19)	Would you mark as Jerry Greenberg Exhibit 5 a	
(20)	companies where a settlement was reached and they	(20)	document Bates stamped JG 0256 (indicating).	
(21)	continued to use the images pursuant to a license?	(21)	(Exhibit 5 is marked)	
(22)	A. Not off the top of my head right now.	(22)	Q. (BY MR. SUGARMAN) Can you identify Jerry	
(23)	MR. SUGARMAN: I request any documents that	(23)	Greenberg Exhibit 5?	
(24)	would indicate whether there were such settlements and	(24)	A. Yes. That's an invoice indicating that we	
(25)	license arrangements.	(25)	charged someone after the fact, \$500, for a small dive	
		1		
	Page 34		Page 36	
(1)	MR. DAVIS: Settlements and license	0	shop that was using a very small ad for one time in a	
(2)	arrangements?	(2)	magazine. More than likely - I forget what the	
(3)	MR. SUGARMAN: Or either.	(3)	illustration was, but it was used - they picked up one	
(4)	Would you mark as Jerry Greenberg Exhibit 4 a	(4)	of the images from our book and used it in a very	
(5)	document Bates stamped JG 0461 (indicating).	(5)	small ad in a diving magazine which was given away	

free.

Q.

Α.

Q.

Α.

Q. 1

Α.

publication.

at the fee of \$500?

The words under description, quote, art reference fee, close quote, what does that mean?

it wasn't a plastic card, but it was a fee we charged

after the fact - always, it seems - for the use of the

an actual photograph that they reproduced?

item, against a small dive shop.

It was my way of indicating it wasn't a book,

Was this, to your recollection, for the use of

I believe it was a piece of artwork from our

One more question on this. How did you arrive

It was a small dive shop that lived from hand

to mouth. What are you going to ask, two or \$3,000?

according to what they are and what they do, and, in

many cases, we find people that get into our stuff,

(25) and it costs me money to make them stop, and we don't

It's not our intent to beat people to death. I feel

they should pay for busting into our copyrights

(6)

(7)

(8)

(9)

(10)

(11)

(12)

(13)

(14)

(15)

(16)

(17)

(18)

(19)

(20)

(21)

(22)

(23)

(24)

- (Exhibit 4 is marked) (6)
- (7) Q. (BY MR. SUGARMAN) Can you identify Jerry
- Greenberg Exhibit 4? (8)

(9) Α. Yes, sir.

What is it? (10) Q.

One-time art charge, logged in that way, for (11)٨.

the use of my photograph that was put on a poster. (12)

Was this an instance where the agreement to use (13) **Q**.

- the image was made prior to the publication of the (14)
- (15)poster or subsequent?

(16) I don't recall. There may have been a second Α.

invoice on that for other use. I am not sure. (17)

(18) Q. What was the nature of the poster on which the

image was used? (19)

- (20) Α. For a premier cruise line. They had a family
- cruises they tried to get off the ground and they did (21)
- a poster. I believe it was a poster. I am trying to (22)
- think. That's 1993. I forget what the exact product (23)
- was. Small use, but I believe there was a second (24)

**PEGGY ANN COOK & ASSOCIATES** 

(25) transaction. I am not sure, though.

305-371-1884

BSA	JERRY GREENBERG GREENBERG	V NATIONAL GEOGRAPHIC MAY 28,1998 XMAX(26/10)
	Page 37	Page 39
(1)	try to take money out of people who can't afford it	(1) Greenberg Exhibit 7?
(2)	who are really innocent. MR. SUGARMAN: Would you mark as Jerry	(2) A. Yes, sir. It's a photocopy of my journal, July (3) 1996.
(3)	MR. SUGARMAN: Would you mark as Jerry Greenberg Exhibit 6, a copy of the document Bates	
(4) (5)	stamped JG 0064 (indicating).	<ul> <li>(4) Q. Looking back at Jerry Greenberg Exhibit 6,</li> <li>(5) which is dated July 11, 1996, it does not appear that</li> </ul>
(6)	(Exhibit 6 is marked)	(6) there is an entry for the Nautilus Sub Sea Adventures
(7)	Q. (BY MR. SUGARMAN) Can you identify Jerry	(7) transaction on the July 1996 summary, which is JG
(8)	Greenberg Exhibit 6?	(8) Exhibit 7. And my question is, can you explain why
(9)	A. Yes.	(9) that is.
(10)	Q. What is it?	(10) A. Yes, sir. The journal - it was taken out
(11)	A. It's an invoice there on an overall settlement	(11) because of a settlement arrangement, and apparently,
(12)	and license to use it for a certain length of time for	(12) I - it got left in on the invoices that you have
(13)	picking up our artwork from our cards for a car, for a	(13) received.
(14)	car, utilizing the submarine service they have there.	(14) Q. So is my understanding that some of the
(15)	I put it down as artwork, reference, for lack of a	(15) redactions that are made in the journals were for
(16)	better word, but it was - we allowed them to continue	(16) settlements that were arrived at for use of your
(17)	using it, and we took a flat payment to allow them to	(17) images?
(18)	continue to use it until the end of a certain length	(18) A. Yes, sir. But also – Redactions? Excuse me.
(19)	of time.	<ul><li>(19) What is a redaction?</li><li>(20) Q. Redaction is a whiteout or a maskout or an</li></ul>
(20) (21)	Q. All right. This, again, was an after-the-fact settlement for the use of the images?	(20) Q. Redaction is a whiteout or a maskout or an (21) elimination.
(22)	A. Yes, sir.	(22) A. Some cases there were settlements. Some cases
(23)	Q. Describe, as best you recall, the use to which	(23) it was a refund, income tax. Some cases it was Social
(24)	Nautilus Sub Sea Adventures put the images. In other	(24) Security. Some cases are refunds on Medicare part A
(25)	words, what product did Nautilus Sub Sca Adventures	(25) or part B. They didn't pertain.
	Page 38	Page 40
(1)	have that utilized your images?	(1) MR. DAVIS: Just answer yes.
(2)	have that utilized your images? A. It was a card that they utilized to identify	<ol> <li>MR. DAVIS: Just answer yes.</li> <li>THE WITNESS: Sorry.</li> </ol>
(2) (3)	have that utilized your images? A. It was a card that they utilized to identify the fishes, in their submarine, people would see in	<ol> <li>MR. DAVIS: Just answer yes.</li> <li>THE WITNESS: Sorry.</li> <li>MR. SUGARMAN: I would ask that any of the</li> </ol>
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BSA	JERRY GREENBERG GREENBER	G V NATIONAL GEOGRAPHIC MAY 28,1998 XMAX(27/1)
	Page 41	Page 43
(1)	They put it on the mask strap of their product and as	(1) paid for it.
(2)	per their customer's request and delivered to them.	(2) Q. And that is pursuant to a contract, dated
(3)	Q. I take it, then, that this was another	(3) January 21, '97?
(4)	after-the-fact payment for that use?	(4) A. Yes, sir. Uh-huh.
(5)	A. Yes, but they didn't do it themselves. They	(5) MR. SUGARMAN: I ask for a copy of that
(6)	were given the material, and they took care of it.	(6) contract and for a copy of the book, West of Key West,
(7)	MR. SUGARMAN: Would you mark as Jerry	(7) to the extent it is in the possession of the
(8)	Greenberg Exhibit 9 a document Bates stamped JG 0277	(8) Greenbergs.
(9)	(indicating).	(9) (Mrs. Greenberg leaves the deposition)
(10)	(Exhibit 9 it is marked)	(10) MR. SUGARMAN: Would you mark, as Jerry
(11)	Q. (BY MR. SUGARMAN) Can you identify Jerry	(11) Greenberg Exhibit 10, a series of documents, all of
(12)	Greenberg Exhibit 9.	(12) them invoices to Habitat, Bates stamped JG 0744, 0266,
(13)	A. Yes. It's the Stack Pole (phonetic) books, and	(13) 0136 and 0384 (indicating).
(14)	it's a license fee to utilize an artwork rendition of	(14) MR. DAVIS: This is a Composite Exhibit?
(15)	our copyrighted material in a book for that year,	(15) MR. SUGARMAN: Yes.
(16)	1998. It's a license fee.	(16) (Exhibit 10 is marked)
(17)	Q. Was this a license fee that was agreed on	(17) Q. (BY MR. SUGARMAN) Can you identify the
(18)	before publication or after the fact?	(18) documents that have been marked as Jerry Greenberg
(19)	A. After the fact,	(19) Exhibit 10?
(20)	Q. How did you discover the use by Stack Pole	(20) A. Yes, sir.
(21)	books of the image?	(21) Q. What are they?
(22)	A. Found the book in Borders book shop.	(22) A. It's a license arrangement with Habitat for the
(23)	Q. In?	(23) continued use of the images involved for the year
(24)	A. Borders book shop.	(24) 1994.
(25)	Q. And what - Withdrawn. How many images were	(25) Q. And then the succeeding pages are for the years

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100	e e		
(1)	used?	(1) '95, '96 and '97, correct?	
(2)	A. I don't remember.	(2) A. Yes, sir.	
(3)	Q. What was the nature of the use?	(3) Q. What is the nature of the use to which Habitat	
(4)	A. They used them for side bar illustrations.	(4) is putting the images?	
(5)	Q. I think you said before that they were drawings	(5) A. On a T-shirt.	
(6)	of –	(6) Q. How many images?	
(7)	A. Our copyrighted material.	(7) A. I don't remember. I am sorry.	
(8)	Q. How did you arrive at the amount of a thousand	(8) Q. How did you – Withdrawn. Was this another	
(9)	dollars?	(9) after-the-fact discovery of use?	
(10)	A. That was a licensing fee. That's the minimum	(10) A. Yes. This is a licensing procedure they	
(11)	we generally charge for continued yearly use. I never	(11) decided to utilize after they settled up with us.	
(12)	let it go anything above that.	(12) Q. But they used it initially without your	
(13)	Q. And this is for use during the year 1998; is	(13) permission and then -	
(14)	that right?	(14) A. Yes, sir.	
(15)	A. Yes, sir.	(15) Q. – settled up with you?	
(16)	Q. Do you have any understanding as to whether	(16) A. Yes. Very quick. Yes, sir.	
(17)	Stack Pole will continue to use the image in future	(17) Q. How did you discover the use by Habitat of the	
(18)	years?	(18) images?	
(19)	A. Well, when I get the check in December of 1998,	(19) A. Found the T-shirt in the Florida Keys.	
(20)	I guess they're going to seek another year's usage of	(20) Q. I take it that the arrangement is documented in	
(21)	it, yes, sir.	(21) an agreement, dated September 23, 1993?	
(22)	Q. Is it your understanding that you are going to	(22) A. Yes, sir.	
(23)	receive a thousand dollars a year for every year that	(23) MR. SUGARMAN: I ask for a copy of that	
(24)	they use the images?	(24) agreement.	
(25)	A. As long as they continue to use it, we will be	(25) Q. (BY MR. SUGARMAN) Do you have in your	

BSA	JEKKY GREENBERG GREENBERG V	NAI	IUNAL GEUGKAPHIC MAI 20,1990	XMAX(28/12)
<b>(1)</b>	Page 45		Page 47 told me they wanted to pay \$2,000 for the use of it.	
(1)	possession any of the T-shirts that utilize the images		I told them I was marching to a different drummer,	
(2)	that we were just talking about, the Habitat T-shirt? A. I am not sure if I do, sir.	(2)	that's not enough money for me. And – Well, we have	
(3) (4)	Q. If there is a T-shirt, we ask for the ability	(3)	other images we are considering. And I said, well, by	
(4) (5)	to inspect it.	(4)	all means, use the other images. It ended up – Well,	
(5) (6)	MR. SUGARMAN: Would you mark, as Jerry	(5)	they said, what do you want? And I sat down with my	
(0)	Greenberg Exhibit 11, a document Bates stamped JG 0682	(7)	wife and gave them a figure for a specific use. They	
(8)	(indicating).	(7)	wanted - provided my copyright credit line would be on	
(9)	(Exhibit 11 is marked)	(9)	the illustration - the use of the photo, and they	
(10)	Q. (BY MR. SUGARMAN) Can you identify the Jerry	(10)	would send me tear sheets. And that was that	
(11)	Greenberg Exhibit 11?		transaction right there. That's for a Geographic	
(12)	A. Yes, sir.	(11)	photograph that I own the copyrights to.	
(13)	Q. What is it?	(12)	Q. And was the number you gave them the \$9800 that	
(14)	A. It's a one-time payment to utilize our images	(13)	was agreed on?	
(15)	on a ruler. I found this product in Sharm el Sheik in	(15)	A. That's what I told them I wanted and said, use	
(16)	1994 when I went there. I went to Israel and Jordan.	(16)	it or don't use it.	
(17)	I went down to Sharm el Sheik and back into Isreal	(17)	Q. And they agreed that they would pay that and	
(18)	again, and I found this product in there and	(18)	use it?	
(19)	confronted them. \$300. I wanted them to stop using	(10)	A. Well, I got the check and got the tear sheets	
(20)	it, pay me and stop using it. That's all it was	(20)	(indicating).	
(21)	there. He didn't have a continuation use of it. I	(21)	Q. What photograph was used? Was it – First of	
(22)	said, it will take care of it for the year. I said,	(22)	all, was it one photograph?	
(23)	don't do it anymore and, please, stay out of our	(23)	A. One photograph, yes.	
(24)	copyrights.	(24)	Q. And which photograph was it?	
(25)	Q. And he agreed?	(25)	A. That was a photograph in the lead of the 1990	
• •				
<del></del>	Page 46	<u> </u>	Page 48	
(1)	A. He may still be using it, Mr. Sugarman.	(1)	National Geographic July piece I did for them,	
(2)	MR. SUGARMAN: Would you mark, as Jerry	(2)	entitled, Florida's Coral Reefs are Imperiled. It's a	
(3)	Greenberg Exhibit 12, a document Bates stamped JG	(3)	lead shot of a bunch of divers over Christ's statue.	
(4)	0046.	(4)	Q. Do you have in your possession any of the tear	
(5)	(JG Exhibit 12 is marked)	(5)	sheets that they sent to you?	
(6)	Q. (BY MR. SUGARMAN) I believe earlier today you	(6)	A. Possibly have, yes, sir.	
(7)	mentioned an arrangement with J. Walter Thompson. And	(7)	MR. SUGARMAN: I ask that they be produced.	
(8)	is Jerry Greenberg Exhibit 12 the invoice that	(8)	Q. (BY MR. SUGARMAN) And when it says on the	
(9)	reflects that arrangement?	(9)	invoice, unlimited worldwide, then, business trade	
(10)	A. Yes, sir.	(10)	publications, what does that mean?	
(11)	Q. All right. Was this a before-the-fact or	(11)	A. It didn't mean for use in Life magazine. It	
(12)	after-the-fact transaction?	(12)	meant for business trade, Wall Street Journal, Banking	
(13)	A. This is an arm's length transaction.	(13)	News, whatever, but it wouldn't be for any national,	
(14)	Q. Before the use?	(14)	top-of-the-line magazines.	
(15)	A. Yes, sir.	(15)	Q. So it was a license to use this photograph in	
(16)	Q. And how did that transaction come about?	(16)	business trade publications for a year; is that right?	
(17)	A. They called me. They wanted to use one of my	(17)	A. Yes. And then it would stop.	
(18)	photographs that appeared in the 1990 issue of - July	(18)	MR. SUGARMAN: Would you mark as Jerry	•
(19)	issue of National Geographic for an ad campaign for	(19)	Greenberg Exhibit 12 a copy of invoice stamped JG	
(20)	Cities Banks.	(20)	0692.	
(21)	Q. Go ahead. Why don't you describe what then	(21)	THE REPORTER: It's 13.	
(22)	happened.	(22)	MR. SUGARMAN: Okay.	
(23)	A. They sent me a copy of the layout and they	(23)	(Exhibit 13 is marked)	
(24)	wanted to use it for a year's time in business	(24)	Q. (BY MR. SUGARMAN) Can you identify Jerry	
(25)	publications, wherever they wanted to use it. They	(25)	Greenberg Exhibit 13?	
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GREENBERG V NATIONAL GEOGRAPHIC

JERRY GREENBERG

BSA

MAY 28,1998

XMAX(28/12)

	JERRY GREENBERG G	REENBERG V NATIONAL GEOGRAPHIC MAY 28,1998 >
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(1)	A. Yes.	(1) Q. When you say they didn't comply with the letter
(2)	Q. What is it?	(2) that you sent them, is that the March 11, 1994 letter?
(3)	A. It's a settlement payment for the unauthorized	(3) A. I believe so.
(4)	use of my photograph in Travel magazine.	(4) Q. And the reason they didn't comply is what?
(5)	Q. Would you describe the events that led up to	(5) A. I received another letter from Allen Royce
(6)	the settlement which -	(6) saying that these items – You would have to look at
(7)	A. Yes.	(7) the letter. I don't have the letter in front of me,
(8)	Q resulted in the payment of \$750?	(8) but it's on file there, very unsatisfactory reply to
(9)	A. Yes. In 1984 I received an assignment from	(9) what the problems were.
(10)	National Geographic's director of photography to do a	(10) MR. SUGARMAN: I ask for the production of a
(11)	photo essay on Florida's marine wilderness for Travel	(11) copy of the March 11th, 1994 letter that is referred
(12)	magazine. I took the assignment with the	(12) to in Jerry Greenberg Exhibit 13.
(13)	understanding that, what they would use, their -	(13) MR. SUGARMAN: Would you mark as Jerry
(14)	whether - either if it was from my own personal	(14) Greenberg Exhibit 14 a document Bates stamped JG 1662
(15)	collection or material that I shot for them on	(15) (indicating).
(16)	assignment, they would have one-time use. I would	(16) (Exhibit 14 is marked)
(17)	pull my own copyright, federal copyright, on it. They	(17) Q. (BY MR. SUGARMAN) Can you identify Jerry
(18)	were to put the copyright credit in, witnessed on the	(18) Greenberg Exhibit 14?
(19)	piece. They would return their originals which I gave	(19) A. Yes.
(20)	them for use in the magazine. I got paid back, in	(20) Q. What is it?
(21)	1985, X amount of dollars. '85. That was 10 years	(21) A. It's a letter to me and my wife from Norman
(22)	before the incident in '94.	(22) Davis's secretary giving me a check for \$5,000 from
(23)	I go into a book store, look in the magazines,	(23) Sherry Manufacturing.
<i>(</i> 11)	and there is Traveler magazine, in 1994, and I see the	(24) Q. Describe what led up to the payment by Sherry
(24)	same photograph used again. And I was surprised,	(25) Manufacturing of \$5,000.

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(1) because they didn't keep their agreement with me back

with the '84 transaction for one-time use only. They (2)

used it again, and without my permission, this time. (3)

(4) I sent a letter on to Geographic. It went to

(5) the editor of Traveler, if remembrance recalls. They

(6) called me, and I didn't understand how it got in there

if they returned my chromes to me. And he offered to n

pay me \$75 after the fact, and I told him that was not (8)

acceptable and I want ten times that amount. And I (9)

also wanted - it seems if they had - if this was done (10)with a duplicate transarency that I didn't even know (11)

existed, I ask that they return that. And, at the (12)

same time, I have to go back to that letter dated (13)

March 11th, 19--- whatever the letter is involved (14)

with. But he told me, well, if you charge us this we (15)

won't be able to use your stock photos again, and I (16)

(17) told him I didn't care. I told him there shouldn't be

an infringement on my copyright like this. So they (18)

paid it, reluctantly, but they paid it. They returned (19)

(20) the 4 by 5 repro dupes they had, that I knew nothing

about, and they didn't comply with the rest of the (21)

(22) agreement that I put in the letter to them. There was

a lot of my material in a file there that shouldn't be (23)

in there. It keeps - this shouldn't have been in (24)

(25) their file,

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(1) Α. They got into our copyrighted images and put

them on the shirt - put them on a shirt. Norman Davis (2)

took care of the transaction. They paid a settlement (3)

figure there and that was the end of it. They stopped (4) doing it. (5)

Do you have any information as to how many (6) Q.

(7) shirts were produced with your images on them?

No, we didn't base it on how many shirts they (8) Α.

sold. Strictly on what we felt a proper payment would (9)

(10)be. We don't like to delay people's books.

What image or images of yours were used on the (11) Q.

T-shirt put out by Sherry Manufacturing? (12)

(13) Α. I forget that one.

Do you have a sample of the T-shirt in your (14) Q.

(15) possession?

(16) Α, I don't think so.

(17) MR. SUGARMAN: If there is one, we ask to be

able to look at it. (18)

(19) Would you mark as Jerry Greenberg Exhibit 15 a

(20) copy of a document Bates stamped JG 0673 (indicating).

(21) (Exhibit 15 is marked)

(22) 0. (BY MR. SUGARMAN) Can you identify Jerry

(23) Greenberg Exhibit 15?

(24) A. Yes, sir.

(25) Q. What is it?

BSA	JERRY GREENBERG GREENBERG V	NAT	IONAL GEOGRAPHIC MAY 28,1998 XMAX(30/14)
	Page 53	ł	Page 55
(1)	A. It's an invoice logging in the partial payment	(1)	A. I don't remember what it is - what it was.
(2)	and settlement of a copyright infringement suit	(2)	MR. SUGARMAN: I ask for the production of
(3)	against Stanley Michael's, Incorporated in Hialeah.	(3)	documents sufficient to indicate that amount.
(4)	Q. What was the - what were the events that led up	(4)	Q. (BY MR. SUGARMAN) Do you or does Seahawk
(5)	to the copyright infringement suit against Stanley	(5)	Products have any claim that you know of for any
(6)	Michael's, Inc?	(6)	unauthorized use of any images in the motion picture
(7)	A. We found some T-shirt stores in the market out	(7)	Jaws?
(8)	there, one - one shirt that had our images on it. I	(8)	A. No, sir.
(9)	am trying to reconstruct it, but it actually happened	(9)	MR. SUGARMAN: Would you mark as Jerry
(10)	years before that. The bottom line is that it went	(10)	Greenberg Exhibit 16 a book entitled, The Coral Reef,
(11)	into litigation in federal court. There were other	(11)	and as Jerry Greenberg Exhibit 17 a book entitled, The
(12)	shirts that - we found some images on them, and they	(12)	Living Reef (indicating).
(13)	ended up paying a total payment, including legal - I	(13)	(Exhibits 16 and 17 are marked)
(14)	forget what the total payment was, but the payment to	(14)	Q. (BY MR. SUGARMAN) Can you identify what I have
(15)	us was \$108,000.	(15)	marked as Jerry Greenberg Exhibits 16 and 17
(16)	Q. Was that a case that was brought in the	(16)	(indicating)?
(17)	Southern District of Florida?	(17)	A. The Seahawk Press publications, Coral Reef, and
(18)	A. Yes, sir.	(18)	the new edition of The Living Reef.
(19)	Q. The invoice marked as Jerry Greenberg Exhibit	(19)	Q. When you say the new edition of the Living
(20)	15 indicates there is a balance of \$103,038 still due.	(20)	Reef, what do you mean?
(21)	Has that amount been received?	(21)	A. First edition came out with less pages and no
(22)	A. Yes, it has. It's all been paid up.	(22)	artwork and illustrations in back.
(23)	Q. Do you have any reason to believe that any of	(23)	Q. And that's been added in the new edition?
(24)	your images or artwork was used in the motion picture	(24)	A. This is the new edition.
(25)	Jaws?	(25)	Q. The new edition has more pages, plus the
	Page 54		Page 56
(D	A. Yes.	0)	artwork in the back?
(2)	Q. And what is the basis of your belief, and what	(2)	A. No. The new edition has artwork in the back
(3)	images do you believe were used?	(3)	that comes up to 126 pages.
(4)	A. Before Jaws was released as a motion picture -	(4)	Q. Are the photographs that appear in Coral Reef
(5)	I am trying to reconstruct this. MCA Universal	(5)	and The Living Reef all photographs that you took?
(6)	contacted me and they wanted to get permission to use	(6)	A. Yes. Every one of them.
(7)	a geographic photograph in a sequence in their movie.	(7)	Q. And are the individual images in The Living
(8)	It's when Sheriff Brody was turning the pages of a	(8)	Reef and The Coral Reef individually registered for
(9)	book and there it pops out, you know, Geographic	(9)	copyright?
(10)	images, one of which was mine. He wanted to use it	(10)	A. There is one copyright for the first edition of
(11)	and I didn't give him permission. And he came back	(11)	Living Reef. There is another copyright for the
(12)	with counteroffers, and this and that, and I didn't -	(12)	Living Reef that covers the text and the artwork
(13)	I don't believe I owned the copyright to it at that	(13)	supplement. And there is a different copyright for
(14)	time, but he wanted permission to do it properly, and	(14)	the Coral Reef (indicating), and I believe that
(15)	I turned it over to an agent, at the time, in New	(15)	another copyright may cover the crab on the back of
		1	

(16) York, the photo researchers, and they negotiated for

(17) us its use for the movie, and subsequent use for pay

- (18) TV, and subsequent use for general TV. It was only on(19) the screen for a short length of time.
- (20) Q. And what was the amount that So I take it
- (21) that eventually you permitted the use; is that
- (22) correct?
- (23) A. Yes. I agreed to it, yes.
- (24) Q. And what was the amount of the fee for the uses
- (25) that you describe?

- (17) Q. This, being The Coral Reef?
- (18) A. Coral Reef, yes.

(16) this.

- (19) MR. SUGARMAN: Would you mark as Jerry
- (20) Greenberg Exhibit 18 a photocopy of a document called
- (21) Geo Safari Reefs and Oceans which bears production
  - (22) numbers NGS 1 through 20.
  - (23) (Exhibit 18 is marked)
  - (24) Q. (BY MR. SUGARMAN) Can you identify I only
  - (25) have one copy of this but we will make more document

BSA	······································	G V NAT	IONAL GEOGRAPHIC MAY 28,1998
	Page 57	1	Page 59
(1)	I have marked Jerry Greenberg Exhibit 18?	(1)	other words, in what publication did those photographs
(2)	MR. DAVIS: This is a composite exhibit?	(2)	originally appear?
(3)	MR. SUGARMAN: Yes. It's an exhibit that	(3)	A. Living Reef, Coral Reef, Corals of the Tropical
(4)	includes all of the pages.	(4)	Atlantic poster.
(5)	THE WITNESS: I want to look through all of the	(5)	Q. Now would you take a look at the Living Reef
(6)	pages.	(6)	book that I have marked as - I believe it's under
(7)	MR. DAVIS: Yes. Look through every page.	(7)	there.
(8)	THE WITNESS: It's two-sided.	(8)	MS. GRAY: It's 17.
(9)	MS. GRAY: Some of the pages are two-sided.	(9)	Q. (BY MR. SUGARMAN) - (continuing) Exhibit 17
(10)	(Mrs. Greenberg leaves the room)	(10)	and identify for me in that book the page on which the
(11)	MR. SUGARMAN: Reread the question.	(11)	red-band parrot fish, on which your claim is based,
[2)	(The requested portion of the record is read as above	(12)	appears.
(13)	recorded)	(13)	A. It appears on the cover of The Living Reef and
[4)	THE WITNESS: Yes.	(14)	it appears on page 49 of The Living Reef.
15)	Q. (BY MR. SUGARMAN) What is it?	(15)	Q. Now is there an individual copyright
16)	A. It's a black-and-white photocopy, sometimes	(16)	registration for the image, itself, as opposed to a
(17)	one-sided, other times two-sided, of the oceans and -	(17)	copyright registration for the whole book?
(18)	reefs and oceans; educational, inside product.	(18)	A. The entire book covers everything that's in it
(19)	Q. Is that one of the publications on which this	(19)	for the -
(20)	lawsuit is based?	(20)	Q. Okay. I am sorry –
(21)	(Mrs. Greenberg enters the room)	(21)	A for the first edition and the new editions.
(22)	A. I don't know whether it's a publication, but	(22)	Q. Identify on which page the stoplight parrot
(23)	it's a product, yes, sir.	(23)	fish appears.
(24)	Q. (BY MR, SUGARMAN) Okay. A product. And would	(24)	A. Page 50.
	you identify, in Exhibit 18, the images that are the	(25)	Q. And on which page does the moray eel appear?

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(1)	basis for the claim of copyright infringement in this	(1)	A. Page 83 to 84.
(2)	case?	(2)	Q. And identify the page or pages on which the two
(3)	A. Red-band parrot fish.	(3)	divers appear.
(4)	Q. On what Bates-numbered page is that?	(4)	A. 17, 74.
(5)	A. NGS 00017.	(5)	Q. Are there any copyright registrations for the
(6)	Q. Okay.	(6)	individual images of the parrot fish, the moray eel or
(7)	A. What they call parrot fish. It's a stoplight	(7)	the two divers, as opposed to the registration for the
(8)	parrot fish, number 8, on NGS 00017. Moray eel,	(8)	whole book?
(9)	number 6 on the same page, 00017. The two divers on	(9)	MR. DAVIS: Let me object to the extent that
(10)	NGS 00020. Don't you want to get some copies made of	(10)	calls for a legal conclusion. You can answer.
(11)	this?	(1)	THE WITNESS: Not that I am aware of.
(12)	MR. DAVIS: No. Just -	(12)	Q. (BY MR. SUGARMAN) How was it that the images
(13)	MR. SUGARMAN: We will get copies made but I	(13)	that appear in the document that I have marked as -
(14)	don't want to waste the time at the moment.	(14)	MS. GRAY: 18.
(15)	Q. (BY MR. SUGARMAN) Would you - Withdrawn. I	(15)	Q. (BY MR. SUGARMAN) - Jerry Greenberg Exhibit
(16)	take it that the images that you have just identified,	(16)	18 first came to your attention?
(17)	the red-band parrot fish, the stoplight parrot fish,	(17)	A. May I see it?
(18)	moray eel and the two divers are images that are	(18)	In March 1996 I went into a shop, called Get
(19)	either photographs that you took or drawings that Mrs.	(19)	Smart, looking for some jigsaw puzzles. I walked by
(20)	Greenberg made; is that right?	(20)	this Educational Insights rack that had a number of
(21)	A. Those are from photographs. Those are from	(21)	products on it. I saw the outside of the package of
(22)	photographs.	(22)	that - creatures of the ocean reef product, saw my
(23)	Q. They're all from photographs?	(23)	images on the literature in the front. I opened it up
(24)	A. Yes, sir.	(24)	and looked inside to go to the transition piece, and

(25) Q. And where did those photographs appear? In

(24) and looked inside to go to the transition piece, and(25) they were my images there. Recognized them right

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(1)	away.	(1)	Q. When you say all pure Seahawk, what do you
(2)	Q. And then what?	(2)	mean?
(3)	A. Well, I was very upset. I had no arrangement	(3)	A. Well, we have licensing arrangements with
(4)	with them to do this, especially for an outside	(4)	cruise lines to produce a product for them that is
(5)	company. Brought it home, showed it to my wife, put	(5)	pure Seahawk images. I wouldn't want our stuff used
(6)	it in the hands of Norman Davis, made it an exhibit.	(6)	on a piece like this (indicating) where we wouldn't
(7)	Q. Did you ever have any discussions with any	(7)	have control over the quality of it and the royalties
(8)	person at Educational Insights?	(8)	of it. It's not how I - that's not how I run the
(9)	A. No, sir. No, I didn't.	(9)	business.
(10)	Q. Did Mrs. Greenberg, to your knowledge?	(10)	MR. SUGARMAN: Would you mark, as Greenberg
(11)	A. No, we didn't do it that way.	(11)	Exhibit 19, a document which is headed Adapting to a
(12)	Q. Had you been approached by Educational Insights	(12)	Changing Sea, a copy of which was produced in
(13)	for the use of the images that were used in Exhibit 18	(13)	discovery.
(14)	was there any reason why you would not have consented	(14)	(Exhibit 19 is marked)
(15)	to that use, if appropriate compensation would have	(15)	Q. (BY MR. SUGARMAN) I have marked on the back of
(16)	been arranged?	(16)	the document, as Exhibit 19, a copy of a document
(17)	MR. DAVIS: Objection. It's hypothetical,	(17)	headed, Adapting to a Changing Sea. Could you
(18)	speculative.	(18)	identify that document, Mr. Greenberg (indicating).
(19)	THE WITNESS: You would have to put the deal on	(19)	A. It appears to be a printed piece they did for
(20)	the table and the - know what it is, and I would look	(20)	the Jason project.
(21)	at it and either say yes or no. Never happened.	(21)	Q. And when you say they did, who is they?
(22)	Q. (BY MR. SUGARMAN) Okay.	(22)	A. National Geographic Society.
(23)	A. It's speculation.	(23)	Q. What, as you understand it, is or was the Jason
(24)	Q. What factors would go into your decision as to	(24)	project?
(25)	whether you would say yes or no?	(25)	A. I don't know, Mr. Sugarman.

۰.	Page 62		Page 64
(I)	MR. DAVIS: Same objection.	(1)	Q. What image of yours is claimed to be infringed
(2)	THE WITNESS: We wouldn't allow piecemeal use	(2)	on that poster?
(3)	of our material on a product like this. Either it's a	(3)	A. The sea fan image on top, upper right.
(4)	full Seahawk Press package that had all our images on	(4)	Q. Upper right?
(5)	it or - I have a huge library - would have a huge,	(5)	A. Yes, sir.
(6)	large collection of our material on it, but I wouldn't	(6)	Q. And in which of your publications does that
(7)	want our stuff used piecemeal like this, if someone	(7)	photograph appear, The Living Reef, The Coral Reef,
(8)	came to me.	(8)	all –
(9)	Q. (BY MR. SUGARMAN) Has anyone ever come to you	(9)	A. It doesn't –
(10)	for the use of one image from The Living Reef in a	(10)	Q. – other –
(11)	publication or product, another company or person?	(11)	A. It doesn't appear in the publications. I hold
(12)	A. From that - from Educational Insights?	(12)	the copyright to it after it was published in the 1990
(13)	Q. No, another instance. Has any other person or	(13)	issue of National Geographic, the July issue.
(14)	entity ever come to you to ask for permission to use	(14)	Q. So that was one of the images that was
(15)	an image from The Living Reef?	(15)	published in the National Geographic based on the
(16)	A. No. Our business is not set up in small,	(16)	assignment that you have described earlier?
(17)	single images like that.	(17)	A. Yes, sir.
(18)	Q. What is the reason why you would not allow a	(18)	Q. Is the image that appears on Jerry Greenberg
(19)	publication to use individual images that you have	(19)	Exhibit 19 a photograph or a - a copy of a photograph
(20)	taken, as opposed to the whole series?	(20)	or a copy of a drawing, if you know?
(21)	A. We're not in that business of utilizing	(21)	A. It's a reproduction of my photograph, but
(22)	piecemeal portions of our material. I am mainly	(22)	
(23)	interested in an overall package of full illustrated	(23)	Q. Excuse me?
(24)	pieces of our material. If someone wants to do it, it	(24)	A. It's reversed.
(25)	would have to be all pure Seahawk.	(25)	Q. I see. Is that a reproduction of your entire
		1	

**PEGGY ANN COOK & ASSOCIATES** 

XMAX(32/16)

BSA	JERRY GREENBERG GREENBERG V	NAT	IONAL GEOGRAPHIC MAY 28,1998 XMAX(33/17)
	Page 65	1	Page 67
(1)	photograph or a part of it?	(1)	Q. Did you have any discussion about that offer
(2)	A. I don't have the 1990 issue of National	(2)	with anyone?
(3)	Geographic to compare it to.	(3)	A. At the Geographic or –
(4)	Q. And you can't tell from looking at it?	(4)	Q. No. I understand you said before that you
(5)	A. Not unless I see the 1990 issue or exhibit.	(5)	didn't respond, and I take it that means that you
(6)	Q. How did the reproduction of your photograph in	(6)	didn't have any discussion with anybody at the
(7)	Exhibit 19 come to your attention?	(7)	Geographic. My question is, did you have any
(8)	A. They contacted me after they used it.	(8)	discussions with anyone else about the \$500 offer?
(9)	Q. Who is they?	(9)	Just answer yes or no for the moment.
(10)	A. Rockwell Wheeler.	(10)	A. Yes.
(11)	Q. What position did Rockwell Wheeler have and	(1)	Q. With whom?
(12)	with whom was he affiliated?	(12)	A. (Indicating).
(13)	A. I don't have the document in front of me. He's	(13)	Q. Pointing to Mrs. Greenberg?
(14)	with the Society, apparently involved with this -	(14)	A. My wife, yes.
(15)	doing this piece (indicating).	(15)	Q. What did you say to her and what did she say to
(16)	Q. And when you say he contacted you, was that	(16)	you?
(17)	orally or in writing?	(17)	A. I don't recall the exact words but the essence
(18)	A. In writing.	(18)	of it –
(19)	Q. And what did you do, if anything, when you	(19)	Q. Substance.
(20)	received the writing from Mr. Wheeler?	(20)	A. This is an outrageous situation that is
(21)	A. I was very upset that this is a continuation of	(21)	continuing and don't even answer them.
(22)	what they were doing with the Traveler piece, and now	(22)	Q. So you collectively made the decision that you
(23)	it's this. And the head of it came to me when this	(23)	were not going to answer them; is that right?
(24)	Insight piece came out. I was very, very mad. In	(24)	A. Yes. That's correct.
(25)	fact, I was furious.	(25)	Q. After you saw the Educational Insights piece,
		1	
	Page 66		Page 68
(1)	Q. What – Are you saying the Insight piece came	m	which is Jerry Greenberg Exhibit 18, did you have any

		rage oo
(1)	Q.	What – Are you saying the Insight piece came
(2)	out bef	ore the Jason project came to your attention?
(3)	Α.	No, sir. This is 1995 (indicating).
(4)	Q.	I see.
(5)	Α.	Jason came out in 1996.
(6)	Q.	Insight, you mean -
(7)	Α.	I am sorry. The Educational Insights piece.
(8)	Q.	But going back to the Jason project, I
(9)	unders	tand you got a letter from Mr. Wheeler. And my
(10)	questio	n is, after you got that letter, what did you
(11)	do?	
(12)	Α.	I did not respond.
(13)	Q.	And when is the next time that you had any
(14)	discuss	ion or took any action with respect to the
(15)	Jason J	project piece?
(16)	A.	When Norman Davis sent them a letter in regard
(17)	to Edu	cational Insights that included the Jason
(18)	produc	t and mentioned other problems that I had with
(19)	them p	reviously.
(20)	Q.	In the communication from Mr. Wheeler was there
(21)	an amo	ount of money offered to you for the use in the -
(22)	of you	r image in the Jason project?
(23)	A.	Yes, sir.
(24)	Q.	What was that?
(25)	Α.	\$500.

which is Jerry Greenberg Exhibit 18, did you have any **(I)** 

(2) discussions about that with Mrs. Greenberg?

- Yes. (3) Α.
- What did you say to her and what did she say to Q. (4) (5) you about that?
- A. I think it's about time that we approach them (6)
- (7) and try to get these problems straightened out once
- and for all and make them stop infringing on our (8)
- (9) copyrights.
- Q. Is that what you said or she said or that was (10)
- the substance of it? (11)

(12)Α. The general theme. We are very protective of our copyrights. (13)

(14) Q. And as a result of that discussion, what

- (15) action, if any, did you take?
- (16) Α. It was put in the hands of Norman Davis.
- (17) Have you, personally, at any time since you Q.
- (18) became aware of the Jason project piece, which is
- (19) Exhibit 19, had any discussions with anybody at the
- (20) National Geographic about the use in the Jason project
- (21) or the use that you allege in the Educational
- (22) Insights?
- (23) Α. No, sir.
- With whom, at the National Geographic, did you (24) Q.
- (25) speak when you arranged to do the assignment that you

BSA	JERRY GREENBERG GREENBERG V	NAT	IONAL GEOGRAPHIC MAY 28,1998	XMÁX(34/18)
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(1)	did back in 1990?	(1)	used in the outside before, when it was a different	
(2)	A. The assignment was in 1989, and my friend, Fred	(2)	Society, in the umbrella framework of that. I said	
(3)	Ward, approached them that both of us do a followup	(3)	no, and I sent her a letter and said, I do not want	
(4)	story on the Pennecamp Park, almost 30 years later.	(4)	you folks to utilize it. And whatever I sent to her,	
(5)	We do it as a team. He would write it and photograph	(5)	we have a copy of it.	
(6)	it, and I would photograph it, also.	(6)	Q. Did you ever - Did you, thereafter, have any	
(7)	We got the okay from Bill Garrett, the editor	(7)	direct contract with the pharmaceutical company that	
(8)	at that time. He sent me the contract. It was not	(8)	wanted to use the image?	
(9)	acceptable to me. Since Fred Ward was handling all of	(9)	A. No, sir.	
(10)	the negotiations for the overall project, I told Fred,	(10)	Q. I take it, to the best of your knowledge, the	
(1)	I won't take this assignment unless it's on a parallel	(11)	image was not used?	
(12)	situation, that if - for Traveler, back in 1984, when	(12)	A. I hope not.	
(13)	it appeared in 1985; that is, I will provide whatever	(13)	MR, SUGARMAN: Why don't we take a two-minute	
(14)	they need from my vast collection of photographs on	(14)	break. I think I am finished. Maybe there will be a	
(15)	Pennecamp Park. Whatever I shoot for them, plus, my	(15)	few more questions.	
(16)	stock would be used. They would return all originals.	(16)	(Short break taken)	
(17)	They would put my copyright on the inside there. And	(17)	Q. (BY MR. SUGARMAN) Have you ever, before the	
(18)	I would pull my own VA form for my participation in	(18)	fact, licensed the reproduction, of a photograph that	
(19)	that project.	(19)	you have taken, to another entity?	
(20)	Q. You say VA form. What does that mean?	(20)	A. Starting from what time in my life?	
(21)	A. Visual arts copyright form.	(21)	Q. As far back as you can recall.	
(22)	Q. Now these were the conditionis that you set down	(22)	A. Well, when I had my own photo agency I did	
(23)	in your discussion with Mr. Ward	(23)	quite a bit of that, yes.	
(24)	A. Yes.	(24)	Q. Put that aside. Take the time period after you	
(25)	Q. – and he then relayed them to the National	(25)	stopped having your own photo agency. Let's say in	
()		()		
		•		
·	Page 70		Page 72	
(1)	Geographic people?	(1)	the last 10 years.	
(2)	A. Yes.	(2)	A. Whatever photo licensing that I had in the last	
(3)	Q. So I take it that you didn't have any direct	(3)	five years is reflected –	
(4)	discussions with anybody at National Geographic?	(4)	MR. DAVIS: Just listen to his question.	
(5)	A. No, sir.	(5)	Q. (BY MR. SUGARMAN) The question is, in the last	
(6)	Q. When is the last time you did have any	(6)	10 years can you recall licensing another person or	
(7)	discussions with anyone at the National Geographic, if	. (7)	entity to reproduce one of your photos?	
(8)	you ever had such a discussion?	(8)	A. I can't recall right now.	
(9)	A. Recently, they asked permission to utilize that	(9)	Q. Would you look again at Jerry Greenberg Exhibit	
(10)	same photograph they ripped off in Traveler. They	(10)	3 (indicating), which is the invoice for the use of	
(11)	called me again to get permission to use it in the	-	attwork from photographs in the Underwater Alphabet	
(11)	Turkish edition of Traveler, done by Leonard, 1	(II) (II)	· · · ·	
(12)	the total the the territory does by LEOHald, I	(12)	Book. And I think you testified before that this was	

believe. I said, no, I am not interested. They (13)

(14) responded back. It won't be used.

When is the last time, before that, that you Q. (15)

(16) had any communication with anybody at?

Someone in the image collection contacted me to (17) Α,

utilize one of the images from that 1990 take, if you (18)

(19) want to call it a take, for a pharmaceutical

- yearbook annual report, and I wrote back to her and (20)
- told her, no, it wasn't an in-house it wasn't an (21)

(22) in-house piece. And I said, no, I do not want

- National Geographic to act as my agent for use of my -(23)
- selling my photos. This is with the image collection (24)
- and it's They never would allow photographs to be (25)

Is there a reason to distinguish the fact that (15) Q.

an after-the-fact arrangement, correct?

Yes, sir.

- you agreed to an after-the-fact arrangement with (16)
- (17) Charles Bridge Publishing for the Underwater Alphabet
- (18) Book but you did not respond to the letter from the
- (19) Geographic suggesting an after-the-fact arrangement
- (20) for the use of your image in the Jason project, which
- (21) is Exhibit 19?

Α.

(13)

(14)

- (22) A. This Charles Bridge (indicating) transaction,
- (23) licensing, came afterwards, when they made a proper
- (24) payment to us as a settlement and took the option to
- continue using it under a civilized relationship to (25)

	Page 73			Page 75
l) pa	y a yearly fee. The other situation, I had nothing		(1)	
l) lik	e that in my head. It became an ongoing problem			EXCEPT FOR THE CORRECTIONS
) wi	th the Society.		(2)	MADE HEREIN BY ME, I
)	Q. Going back to the question I asked before about			CERTIFY THIS IS A TRUE AND
) lic	ensing of any individual image for reproduction of		(3)	ACCURATE TRANSCRIPT.
) ap	photograph, let me ask that question again and let			· FURTHER DEPONENT SAYETH
) me	e ask you, before answering, to just flip through the		(4)	NOT.
	ges of The Living Reef and The Coral Reef to see		(5)	
	hether looking at any of those images refreshes your		(6)	
	collection as to whether you licensed, any time			DEPONENT
	thin the last 10 years, the use of an individual		(7)	
	age, and that will be the last question.			STATE OF FLORIDA )
	MR. DAVIS: Take time to look at every page.		(8)	) SS
	you recall the question?		(-/	COUNTY OF BROWARD )
	THE WITNESS: Yes. Repeat it to me again. I		(9)	· · · · · · · · · · · · · · · · · · ·
	Il take the question again, please.			Sworn and subscribed to before me thisday
	(The requested portion of the record is read as above		(10)	of , 1998.
	corded)		(1)	PERSONALLY KNOWN OR I.D.
	THE WITNESS: An arm's length licensing		(12)	
) ) ar:	rangement, no.			Notary Public in and for
)	Q. (BY MR. SUGARMAN) And you distinguish between		(13)	the State of Florida at
	arm's length and an after the fact?	1997 - 1997 -		Large
)	A. Yes, sir.		(14)	
r I	Q. And what about after-the-fact licensing	÷	(15)	
	rangements?		(16)	· · · · ·
			(17)	1
			(18)	
			(19)	
			(20)	
	Page 74		(21)	Page 76
、			(22)	CERTIFICATE OF OATH
)				
	lieve appeared on the arrangements that I made with		(22)	STATE OF FLORIDA )
	abitat. To the best of my knowledge that I can think		(24)	) SS
	right now sitting here, I don't recall anything.		(23)	COUNTY OF BROWARD )
)	MR. SUGARMAN: Okay. I don't have any further		(4)	
•	estions. Thank you for your time.	•		for the State of Florida at Large, do hereby certify
)	THE WITNESS: Thank you for your courtesy to		(5)	that the witness, JERRY GREENBERG, personally appeared
) us				before me and was duly sworn
	MR. SUGARMAN: Why don't we break and - 2:00		(6)	Witness by hand and official seat this 7th of
	clock?			June, 1998, in the City of Hollywood, County of
)	MR. DAVIS: Sure.		(7)	Broward, State of Florida.
	e will read.		(8)	
	(Thereupon, the taking of the deposition was concluded			Lois E. Guffey, RDR, Notary
	12:25 p.m.)		(9)	Public, State of Florida
		÷	(10)	
ι.			(11)	REPORTER'S DEPOSITION CERTIFICATE
)			(12)	STATE OF FLORIDA )
				) SS
			(13)	COUNTY OF BROWARD )
			(14)	I, Lois E. Guffey, RDR, do hereby certify that I
				was authorized to and did stenographically report the
ł		•	(15)	deposition of JERRY GREENBERG, the witness herein;
•				that a review of the transcript was requested; that
•			(16)	the foregoing pages, number from 1 through 76,
}			Í	inclusive, is a true and complete record of my
			(17)	
				and that this computer-assisted transcript was
			(18)	
			,	I FURTHER CERTIFY that I am not a relative,
			1	A A CANTALIAN CLINIAN A MIALI ANI INI A ICIAIIVE,

305-371-1884 nor am I a relative or employee of any of the **Fage** 73 to **Page 76** 

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GREENBERG V NATIONAL GEOGRAPHIC MAY 28,1998

Look-See(32)

JERRY GREENBERG

**BSA** 

## JERRY GREENBERG GREENBERG V NATIONAL GEOGRAPHIC MAY 28,1998

### **PEGGY ANN COOK & ASSOCIATES**

Page 1 to Page 76

### CONDENSED TRANSCRIPT AND CONCORDANCE PREPARED BY:

PEGGY ANN COOK & ASSOCIATES, INC. 150 S.E. Second Avenue Suite 1011 Miami, FL 33131 Phone: 305-371-1884 FAX: 305-536-2510

BSA	JERRY GREENBERG	REENBERG V NATIONAL GEOGRAPHIC MAY 28,1998 XMAX(17/1)
	Page 1	Page 3
1.	UNITED STATES DISTRICT COURT	(1) Thereupon:
1)	SOUTHERN DISTRICT OF FLORIDA	(2) JERRY GREENBERG
2)		(3) was called as a witness and having been first duly
3) (4)	CASE NO. 97-3924	(4) sworn, was examined and testified on his oath as
47	JERRY GREENBERG, individually.	(5) follows:
5)	and IDAZ GREENBERG, individually,	(6) DIRECT EXAMINATION
. '6) ■Z)	<pre>% Plaintiffs. % vs.</pre>	(7) BY MR. SUGARMAN:
8)	NATIONAL GEOGRAPHIC SOCIETY, a	(8) Q. Mr. Greenberg, have you ever had your
	district of Columbia corporation, NATIONAL GEOGRAPHIC ENTERPRISES.	(9) deposition taken before?
31	INC., a corporation, and MINDSCAPE,	
(10)	INC., a California corporation,	(10) A. Yes.
11)	Defendants.	(11) Q. On how many occasions, roughly?
12)	·····	(12) A. Two or three.
13)	•	(13) Q. I am, as you undoubtedly know, going to ask you
141	701 Brickell Avenue Miami, Florida	(14) some questions. If you don't understand the
14)	Thursday, 9:30 a.m.	(15) questions, let me know and I will try to rephrase
15)	May 28th, 1998	(16) them.
16) 17)	DEPOSITION OF JERRY GREENBERG	(17) A. Yes.
18)		(18) Q. Let me finish the question before you answer so
19)	Taken on behalf of the Defendant befor	(19) the reporter can try to separate the question from the
20)	LOIS E. GUFFEY, RDR, Certified Realtime Reporter	
22)	Notary Public in and for the State of Florida at	
23) 24)	Large. pursuant to a Notice of Taking Deposition in the above cause.	
(25)	In the above cause.	(22) A. Yes. Of course.
		(23) Q. You said you had been deposed two or three
		(24) times before. Were those depositions in cases in
		(25) which you or your company was a party?
	Page 2	Page 4
		(1) A. That is correct, yes.
(1) (2)	APPEARANCES: STEEL, HECTOR & DAVIS LLP	(2) Q. Would you describe just generally what those
,	By: Norman Davis, Esq.	(3) cases were about.
3)	and Naomi Gray. Esq.	(4) A. Copyright infringement actions.
4)	Appearing on behalf of the Plaintiffs.	
.,	WEIL, GOTSHAL & MANGES LLP	(5) Q. Were you or your company plaintiffs in those $(2)$ and $(3)$
5)	By: Robert G. Sugarman, Esq., of counsel	(6) actions?
6)	appearing on behalf of the Defendants.	(7) A. Yes, we were.
7)		(8) Q. And who were the defendants in the various
	444 J N D C V 444	

	4		
(8)			
(9)			
	WITNESS	EXAMINATION BY	PAGE
(10)	JERRY GREENBERG	Direct Mr. Sugarman	3
(11)		-	
(12)			
(13)	J.G. EXHIBITS FOR	IDENTIFICATION	
		1	19
(14)		2	24
		. 3	27
(15)		4	34
		5	35
(16)		6	37
		7	38
(17)		2 3 4 5 6 7 8 9	40
		9	41
(18)		10	43
		11	45
(19)		12	46
		13	48
(20)		14	51
		15	52
(21)		16-17	55
		18	56
(22)		19	63
(23)			
(24)			
(25)			

\*\*\* I N D E X

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Q. Did either of those lawsuits go to trial? Α. Yes, sir. Which? Q.

The Mendez Screen Printing. (16) Α.

> Q. And where was that tried?

The Seventh District of Florida. Α.

(19) Q. When, approximately? (20)

third one right now.

actions?

(9)

(10)

(12)

(13)

(14)

(15)

(17)

(18)

The date escapes me. I am sorry. Α. (21)

Q. Was it in the nineties?

I can't nail it down. I am sorry. (22) Α.

(23) Q. What was the outcome?

(24) Α. We received a partial summary judgment against

A. Mendez Screen Printing, N.W. Air and the (11) Bahamanian Ministry of Tourism. I can't remember the

(25) them, and then they decided to make a settlement with

BSA		BERG V NAT	······································	XMAX(18/2
0	Page 5		Page 7	
(1)		(1)	Q. Are you still, today, active in taking	
(2)	Q. And what –	(2)	underwater photographs?	
(3)	A. No. Yes. That's right. Yes.	(3)	A. Yes, all the time, whenever weather permits.	
(4)	Q. What images were involved in that lawsuit?	(4)	Q. Do you have – Withdrawn. How is it that	
(5)	A. To the best of my knowledge, my wife's artwork	(5)	you – Withdrawn. Do you get assignments from	
(6)	images out of our Guide to Corals and Fishes book.	(6)	publications to actually take photographs?	
(7)	-	(7)	A. Now or –	
(8)	N.W. Air and the Bahamanian Ministry of Tourism?	(8)	Q. Now.	
<b>(9)</b>	A. They settled up with us.	. (9)	A. No, sir. Occasionally something may come	
10)	Q. And what images were involved in that case?	(10)	through where they want to buy some series of	
II)	A. My wife's artwork and my photograph.	(11)	photographs or a photograph for lease for one-time use	
12)	Q. When you say your photograph, was it one	(12)	or specific use, and if the terms are right and it's a	
13)	photograph?	(13)	worthwhile client, we do it.	
14)	A. Yes, sir.	(14)	Q. Do you, today, take photographs which you then	
15)	Q. Of what?	(15)	submit to publications?	
6)	A. The queen angelfish.	(16)	A. No. The photographs that I take - all the work	
17)	Q. In what way was that photograph used by	(17)	that I am active in is only funneled through our own	
18)	N.W. Air and the Bahamian Ministry of Tourism?	(18)	Seahawk Press, Seahawk Products. We are	
19)	A. Well, it was the photograph or the artwork. We	(19)	self-publishers.	
20)	couldn't get the precise information, if my memory is	(20)	Q. Now when you say you are self-publishers, what	
21)	clear. I believe it was my wife's artwork that they	(21)	do you self-publish?	
22)	had in their - handing out a poster. But I also had a	(22)	A. Seahawk Press publishes books. We have six	
3)	photograph of the very same image she made her artwork	(23)	current titles, in color. We produce plastic field	
24)	from. It was used in a billboard.	(24)	guides, submersible field guides. We were the	
(24) (25)	from. It was used in a billboard. Q. What was the amount of the settlement?	(24) (25)	guides, submersible field guides. We were the innovators of that product back in 1979. We had a	
(25)	Q. What was the amount of the settlement? Page 6	(25)	innovators of that product back in 1979. We had a Page 8	
(1)	<ul> <li>Q. What was the amount of the settlement?</li> <li>Page 6</li> <li>A. I don't remember on that one. I am sorry.</li> </ul>	(25)	innovators of that product back in 1979. We had a Page 8 line of posters. We did postcards. We do T-shirts	
(1)	<ul> <li>Q. What was the amount of the settlement?</li> <li>Page 6</li> <li>A. I don't remember on that one. I am sorry.</li> <li>Q. Have you or your company ever been involved in</li> </ul>	(25)	Page 8 line of posters. We did postcards. We do T-shirts through licensing arrangement. And did I mention a	
(1) (2) (3)	<ul> <li>Q. What was the amount of the settlement?</li> <li>Page 6</li> <li>A. I don't remember on that one. I am sorry.</li> <li>Q. Have you or your company ever been involved in any litigation with Sports Illustrated?</li> </ul>	(1) (2) (3)	Page 8 line of posters. We did postcards. We do T-shirts through licensing arrangement. And did I mention a coloring book that we have. It's books and	
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(1) (2) (3) (4) (5) (6) (7) (8) (9) (1) (2) (3) (4) (5) (6) (7) (8) (9) (1) (2) (3) (4) (5) (6) (7) (8) (9) (1) (2) (3) (4) (5) (6) (7) (8) (9) (1) (2) (3) (4) (5) (6) (7) (8) (9) (1) (2) (2) (1) (2	<ul> <li>Q. What was the amount of the settlement?</li> <li>Page 6 <ul> <li>A. I don't remember on that one. I am sorry.</li> <li>Q. Have you or your company ever been involved in any litigation with Sports Illustrated?</li> <li>A. No, sir.</li> <li>Q. How long have you been working as a photographer?</li> <li>A. Since 1950 I had my first major piece published.</li> <li>Q. And what –</li> <li>A. '52, '52.</li> <li>Q. What major piece was that?</li> <li>A. That was a piece in Underwater Photography, in like a magazine.</li> <li>Q. Do you have a specialty in the photography field?</li> <li>A. Yes. It's underwater photography.</li> <li>Q. Do you do your business through a corporate entity?</li> <li>A. I don't understand what a corporate entity is, Mr. Sugarman.</li> <li>Q. Well, do you have a business name?</li> <li>A. Yes. It's Seahawk Products, Seahawk Press.</li> </ul> </li> </ul>	(25) (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) (21) (22)	Page 8 line of posters. We did postcards. We do T-shirts through licensing arrangement. And did I mention a coloring book that we have. It's books and submersible field guides. That's the mainstay of the business. Q. When you say field guides, what is a field guide? A. A submersible field guide is a six by nine card, or half that size, that is printed on the same material that credit cards are done, and they all feature my wife's artwork on both sides of it. As I mentioned, we were the innovators and creators of that product. Q. And what are they used for? A. Fish identification under water, for beachcombing, looking for shells, for gamefish identification, just close to a - 900, thousand pieces of art on all the cards. There are 12 different cards. Q. Now you say there were pieces of art. Are photographs also on those cards or is it just artwork?	

	BSA		JERRY GREENBERG GREENBERG V		TIONAL GEOGRAPHIC MAY 28,1998
-		••••	Page 9	1	Page 11
	(1)	A.	Yes. That is correct.	(1)	Generally things came after the fact in many cases.
	(2)	Q.	Is your son also?	(2)	Q. When you say things came after the fact, what
	(3)	Α.	Loosely. He supplies work to us when we need	(3)	does that mean?
	(4)	it.		(4)	A. Payment and the rights and permissions came
	(5)	Q.	In addition to the finished products that you	(5)	after the fact that they used it.
	(6)	have de	escribed, the books, the field guides, the	(6)	Q. So in other words, they would use it and, then,
	(7)	T-shirt	<b>S</b> –	(7)	after the use, would contact you or you would contact
	(8)	Α.	Uh-huh.	(8)	them?
	(9)	Q.	- does Seahawk Products or do you personally	(9)	A. No. The bulk of it, they would – I am sorry.
(	(10)	license	photographs for use in publications published	(10)	They would contact me and tell me what they were going
(	(11)	by othe	ors?	(11)	to pay.
(	(12)	Α.	Yes, yes. In publications or other uses for	(12)	Q. Would that have been before the use or after
(	(13)	adverti	sing use.	(13)	the use?
(	(14)	Q.	So do you distinguish in your own mind	(14)	A. After the use.
· (	(15)	advertis	sing uses from other uses?	(15)	Q. Can you recall any instance in which the
(	(16)	Α.	Licensing is licensing. It's just another way	(16)	National Geographic used any of your images in
(	(17)	to, you	know, derive revenue from what you create.	(17)	advertisements?
(	(18)	It's a li	cense either to use it for an advertisement	(18)	A. Only for in-house use, specifically, never on
(	(19)	or licen	se for one-time use in a magazine.	(19)	the outside. What I mean, in-house, either it would
(	(20)	Q.	Is there a difference in the revenue that you	(20)	appear as a brochure for a product, an announcement -
(	(21)	receive	when an image is licensed for an advertising	(21)	It was only used in the context and under the umbrella
(	(22)	use, as	opposed to a nonadvertising use?	(22)	of the National Geographic Society, never for outside
(	(23)	Α.	Considerably more, yes.	(23)	ads. In fact, I was approached once for an outside ad
(	(24)	Q.	Considerably more for the advertising use?	(24)	use for a shark illustration for a TV series. I think

- (25) Yes. Α.
- Page 10

#### (1)Q. And why is that?

- (2) Α. Well, if an agency is going to spend \$500,000
- or \$750,000 for ad space, they're inclined to pay more (3)
- for the illustration than a magazine would for inside (4)
- (5) editorial use. Inside editorial use is the lower of
- (6) the two, the least amount of money, least amount of
- money brought in. (7)
- (8) Q. When you say inside editorial use, what kinds
- (9) of uses - Withdrawn. Have you, over the years,
- licensed photographs for use by the National (10)(11)Geographic?
- (12)A. I receive an assignment from them. The last
- (13)job I did for them was 19 - the assignment was 1989
- (14) and the article appeared in the 1990 July issue.
- (15) Q. Has the National Geographic ever published
- images that you have taken, photographs that you have (16)
- taken, where there wasn't an assignment, but they were (17)
- (18)aware of a photograph, they wanted to use it and
- (19) contacted you and you permitted them to use it?
- (20)Α. Occasionally that would happen.
- And when that happened, would you consider that (21)Q.
- an editorial use, an advertising use? Which? (22)
- (23) Α. If they specify editorial use when they would
- (24) contact me, it would be for editorial use. If they
- had other uses for it, they would specify that. (25)

- (25) it was Texaco was sponsoring it. But I said, no,
  - Page 12
- (1)they didn't want to pay enough for it.
- (2) 0. Do you recall what they offered to pay for it?
- I don't recall a precise fee. It did not sit Α. (3)
- well with me. It didn't feel right, so I declined. (4)
- Have you ever licensed the use of photographs, (5) Q.
- that you have taken, to be used as the basis for (6)
- illustrations or drawings done by - $(\mathcal{T})$
- (8) Ontside? Α.
- (9) Q. - people for magazines? Outsiders.
- (10) Never. Never. Α.
- Have you or Seahawk ever licensed the use of (11) Q.
- (12) drawings made by Mrs. Greenberg based on photographs
- (13)that you have taken? And again, to outsiders.
- The only situation that comes to my mind is (14) Α.
- when a publishing firm that did hotel-type of books in (15)
- (16)Hawaii came to us and utilized the artwork in a
- publication for one-time use. (17)
- (18) Aside from the publications that are at issue 0.
- (19) in this litigation, which are the Geo Pack and the
- (20) Jason project ---
- (21) Α. Yes.
- (22) Q. - are you aware of any instance in which a
- (23)publication used a photograph, that you took, as the
- (24)basis for a drawing or an illustration that that
- publication used in one of its magazines or books or (25)

1. scansing

XMAX(19/3)
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**GREENBERG V NATIONAL GEOGRAPHIC** JERRY GREENBERG MAY 28,1998 XMAX(20/4) Page 15 Page 13 whatever? (1)the posting. m When you say, I do all the posting, what does (2) Q. Α. At the present moment I can't - nothing comes (2) to my mind right now. (3) that mean? (3) (4) Α. In the journal. (4) Q. You mentioned two general categories of use, Would you generally describe the process of 0. advertising use and editorial use. In what category -(5) (5)billing and collection that you engage in on behalf of which of those categories would you put the use that (6) (6) Seahawk. (7) was made in the Jason project? (7) I am sorry. I didn't - Will you repeat that? A. I can't put - it wasn't used outside - Well, I (8) Α. (8)Yes. Just describe the process of how you bill don't know where that went, whether it was an ad - I (9) 0. (9)believe it was, to the best of my knowledge now, on your clients, collect the money, post it. (10) (10)Sure. Very simple system. I sell mainly to (11) the Jason project it was used in-house. I don't think (11)Α. it was used outside Society. (12)distributors. A distributor makes the order. They (12)pick it up or I ship it to them. I send them the And what about the Geo Pack, would that be an (13) (13)0. invoice. And at the end of the first quarter, I log advertising use, an editorial use, what? (14)(14)in all of the invoices into my journal. (15)Α. That's a product use. It's not editorial. I (15)don't consider that product to be editorial. (16) Do you prepare or does anyone else prepare, for (16)0. Seahawk Products, any yearly summaries of financial What do you consider it to be? (17) Q. (17)Α. A product like our books, our plastic cards, (18) results? (18)It's something for sale over the counter in stores. (19) A. Yes, sir. (19)Well, okay. Within the product, itself, is the (20) Q. Who prepares those? (20)Q. image, or images, used for advertising? (21) Α. My CPA. (21)(22) If they put it in a catalog and you see the Α. (22)Q. What, as best you recall, was the level of image in the catalog, it's advertisement. But the sales for 1997? (23)(23)product, itself, is an item for sale, for retail sale. I don't have that in my head but it was (24)(24)Α. Yeah. I understand that. I mean a magazine (25)0. (25) reflected in the invoices that we provided to you. Page 16 Page 14 would be a product for sale, correct? (1) Do you have a sense of how much of the income (1) 0. (2) Α. Yes. (2) of Seahawk Products was attributable to sales of And within the magazine there are editorial (3) Q. finished products on the one hand and licenses for use (3) uses and advertising uses, right? of images or drawings on the other? (4) (4) Yes, sir. (5) Α. (5)Α. Repeat that one more time because I got a (6) Q. So take the Geo Pack, which is a product for little lost. (6) sale. Is the use within the Geo Pack, in your view, (7)MR. SUGARMAN: Why don't you read it back. (7)(8) an advertising use or an editorial use? (The requested portion of the record is read as above (8) Α. I can't cut it one way or the other. It's a (9) (9) recorded) (10) product use. THE WITNESS: Each year would be different and (10)Q. (11)And it's a product use because what? each year would be reflected in the invoices we (11)(12) Α. It's an educational product use and it's - in (12)provided to you. Off the top of my head, the answer (13) itself, it's a product - it doesn't have other (13) is, I can't give you a demarcation. If I have the (14)articles in it, doesn't have any advertising in it, (14)invoices in front of me, then I can give you a better per se, except when the image is used in the catalog (15)(15)idea. and you can see it. I don't consider that editorial (16)(16)0. (BY MR. SUGARMAN) Let's focus for a second on use, from my point of view of my experience. Because (17)(17) the instances in which Sea Hawk Products licenses (18)there are many ways that things can be used and other publications for use of - one-time use of images (18)licensed, and editorial and advertising is two; (19) that you have photographed. (19)product use is another, three. I am sure there are (20)(20)Α. **Publications?** (21)other things out there that will fall into another (21) Publications. Q. (22) category, (22)Α. Only. Yes. (23) Q.-Who is responsible for keeping the financial (23)Q. How do you go about determining the price or (24)records of Seahawk Products? (24) the fee that is charged to such a publication? (25)I take care of all the invoices and I do all of Α. (25) A. The bulk of my activity now - for editorial use

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	Page 17	I	Page 19
· (1)	of my photographs doesn't come up very much. The bulk	(1) A. J. Walter Thompson	Agency.
(2)	of my livelihood and activity and my focus of my	(2) MR. SUGARMAN: I an	n going to ask the re
(3)	entire existence is with Seahawk Press, selling our	(3) to mark as Jerry Greenberg Ex	chibit 1 a document
(4)	products as a product or the licensing of the specific	(4) is Bates stamped JG 2955, hea	ided January 1995.
(5)	product to certain customers. For editorial use, I	(5) MR. SUGARMAN: Mr.	Greenberg, why do
(6)	don't solicit much business. It comes to me. But the	(6) look at the other one that's be	en marked. The othe
(7)	most recent licensing arrangement I made for a	(7) is a copy for your counsel.	
(8)	one-time use magazine was with Audubon magazine, and	(8) (JG Exhibit 1 is marked)	
(9)	that is one that I solicited them to see whether they	(9) Q. (BY MR. SUGARMA	AN) Can you identif
(10)	would be interested in our mangrove trees in the sea	(10) Greenberg Exhibit 1?	
(11)	project.	(11) A. Yes. It's a photocopy	of a page from the
(12)	Q. And I take it that they were interested?	(12) journal, January of 1995.	
(13)	A. At first they gave me no answer. Then I told	(13) Q. Whose handwriting is	that?
(14)	them to send the material back to me. And once they	(14) A. That's mine.	
(15)	found out it had never been used before, obviously,	(15) Q. And is that one of the	journal pages that y
(16)	they liked what they saw, they got very excited about	(16) have prepared as you describe	d earlier today?
(17)	it.	(17) A. Yes.	
(18)	Q. Did you then arrive at an arrangement for them	(18) Q. Would you just take u	is through the colum
(19)	to use the images?	(19) tell us what the entries in each	column represent.
(20)	A. Yes, sir, we did, uh-huh.	(20) A. Certainly. Do you wa	nt me to start with t
(21)	Q. And in that particular instance, how did you,	(21) top?	
(22)	in your own mind, go about deciding what the price for	(22) Q. Yes.	
(23)	the use would be?	(23) A. Miss Cocoa, Incorpor	rated (phonetic). It's
(24)	A. I have been selling or leasing photographs	(24) local distributor.	
-	and the second		

- since the mid fifties, early sixties. At one time I (25)

(1) had my own photo agency for my own work, my own

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JERRY GREENBERG

(2) underwater photographs, underwater stock photo agency.

(3) So I had a pretty fair idea what I could get for my

- (4) work. I always was on the high side. In this
- (5) instance, I felt what I would want as a fair price,
- and I asked for it, and I told them what the terms (6)
- (7) were and what the other aspects of the transaction
- (8) would be, and they agreed to it.
- And what was the price and what were the terms? (9) Q.

The price for that specific use for six to Α. (10)

eight photographs, inside editorial use for Audubon, (11)

one-time use only in the magazine with the appropriate (12)

copyright photo credit line was \$3500. They would pay (13)

it in advance. They also would pay for the duplicate (14)

transparencies they would be using for the separations (15)

and return them because they were my property. (16)

Can you think of any other instances in the (17) Q.

(18) last three years where you have made a similar

arrangement with a publication for one-time use of the (19)

images that you have taken? (20)

Editorial, no. I am not really active in the (21) Α.

- (22) leasing of my photos in the editorial area. There was
- an advertising use of one of my images in '93, I (23)

believe. I am certain it was '93. (24)

And to whom did you license that? (25)0.

MAY 28,1998

- :у.
- g to ask the reporter
- 1 a document that
- anuary 1995.
- nberg, why don't you
- rked. The other
- an you identify Jerry
- age from the
- al pages that you
- ier today?
- ugh the columns and
- to start with the
- phonetic). It's a

(25) No. I actually just wanted you to describe О.

#### Page 20

- (1) what the entries are in the first column, one, two,
- three, four, ten, and then what is in the next column. (2)
- In other words, what is reflected there? (3)
- (4) Α. In the first column is the dates.
- Q. (5) The date of what?
- Α. Of the transaction and of the invoice. (6)
- (7) Q. Okay. The second column is the -
- Customer. (8) Α.
- (9) 0. All right. The third column?
- (10)Α. Products or services or whatever we provided to
- (11)them.
- (12) Q. All right. The next - which says PD is,
- obviously, if it's paid. (13)
- (14)Α. Hopefully, yes.
- (15) Q. Looks like you have a pretty good record on
- that. And the last column? (16)
- (17)Α. The amounts that came in, sir,
- (18) Q. On the right-hand margin there are four
- (19) asterisks. What do those represent?
- (20)Α. Those - the asterisks?
- (21) Q. Yes.
- (22) Α. I don't know.
- (23) Q. Are they in your handwriting?
- (24) Α. That's not my asterisk.
- (25)0. Okay. I notice that between the entry for

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GREENBERG V NATIONAL GEOGRAPHIC

	Page 21		Page 23
(1)	January 10 and the entry for January 11, there is a	(1)	Q. And what was the - what was that transaction?
(2)	space.	(2)	A. I would have to see the invoice to give you
(3)	A. Yes, sir.	(3)	precise information on that. If you have it, I can
(4)	Q. Can you explain why there is a space.	(4)	explain it.
(5)	A. Yes. My wife went through all of the journals	(5)	Q. Then there is an entry on the 17th, American
(6)	there, and whatever in there was - that had - that	(6)	Teaching, for license.
(7)	was - had nothing to do about revenues from products	(7)	A. Yes, sir.
(8)	and revenues from licensing was removed.	(8)	Q. What was that?
(9)	Q. At the bottom of the page on the right-hand	(9)	A. A license to utilize our - renditions of our
(10)	side there is the word "total," and there is no number	(10)	images on a product.
(11)	there. Was there a number on the original of this	(11)	Q. When you say our renditions of our images, what
(12)	document?	(12)	was actually –
(13)	A. Yes, sir, there was.	(13)	A. No. Their rendition of our images.
(14)	Q. And why is that not there?	(14)	Q. So that was a case - okay. When you say "our
(15)	A. Because the total would reflect items in there	(15)	images," do you mean a photograph or a drawing?
(16)	that had nothing to do with your request. Request for	(16)	A. I would have to see the product again and
(17)	documents, that is.	(17)	double check it. That escapes me right now.
(18)	Q. Now looking at the third column, which is the	(18)	Q. Do you know what the product was that American
(19)	column which identifies the product -	(19)	Teaching used the images for?
(20)	A. The one under 1995?	(20)	A. Yes. One was a poster and one was a jigsaw
(21)	Q. The one under '95.	(21)	puzzle.
(22)	A. Yes.	(22)	Q. Then there is an entry on the 20th for Sheldon
(23)	Q. The first entry is for books.	(23)	Kaplan Associates. It says, "transfers." What does
(24)	A. Yes.	(24)	that mean?
(25)	Q. Would you generally describe what it means when	(25)	A. Yes, sir. We provided our - a match print to
	Page 22		Page 24
(1)	you see an entry, "books"?	(1)	Sheldon Kaplan where he would make heat transfers off
(2)	A. Yes. It would be strictly a transaction for	(2)	a match print that could be imprinted on a T-shirt,
(3)	our books, the books that we produce, not the plastic	(3)	and he paid us so much a shirt. He paid for his own
(4)	cards.	(4)	transfers. He paid so much a shirt royalty.
(5)	Q. And then, the next one down is cards?	(5)	Q. How often do you, as a normal practice, make
(6)	A. Yes. That would be strictly a transaction for	(6)	entries in the journal pages which is copied as JG 1?
(7)	plastic cards.	(7)	A. I should do it at the end of the month. It
(8)	Q. Then the entry for the 10th says, "license"?	(8)	usually is done at the end of the month. I get up
(9)	A. Yes, sir.	(9)	early and do it.
(10)	Q. Would you describe what that was.	(10)	Q. So it's - to the extent that you can, you try
(11)	A. It was a license to use an artwork rendition of	(11)	to do it on a monthly basis?
(12)	my photograph in a T-shirt.	(12)	A. Yes, sir.
(13)	Q. What kind of a company is Habitat, if you know?	(13)	Q. And to the best of your knowledge, the entries
(14)	A. It's - the company's name will be on the invoice for that date. It's a T-shirt manufacturing	(14)	that are on these journals are an accurate reflection
(15) (16)		(15)	of the activity of that month?
(17)	Q. Do you recall the image that they used as the	(16)	A. Yes. That's all reflected in the invoices. I
(18)	basis for the drawing?	(17)	only have one set of books.
(19)		(18)	MR. SUGARMAN: I ask the reporter to mark as
(20)	A. Image or images, no, not off the top of my head but it was a licensing arrangement we made with them.	(19)	Jerry Greenberg Exhibit 2 an invoice that is Bates
(21)	Q. Was it one or more than one image?	(20)	stamped JG 0358, dated March 26, 1997.
(21)	A. I would have to look at the shirt. I am sorry.	(21)	(Exhibit 2 is marked)
(22)	<ul> <li>Q. There is an entry on the 12th that says,</li> </ul>	(22)	Q. (BY MR. SUGARMAN) Can you identify what has
(23)	V. There is an entry on the 12th that says, "T-shirts."	(23)	been marked as Jerry Greenberg Exhibit 2.
(25)	A. Yes, sir.	(24)	A. Yes, sir.
(20)		(25)	Q. What is it?
	Am Teaching (Simon + Chyster		
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GREENBERG V NATIONAL GEOGRAPHIC MAY 28,1998

XMAX(22/6)

JERRY GREENBERG

BSA

JERRY GREENBERG GREENBERG	V NAT	IONAL GEOGRAPHIC
Page 25	1	Pa
A. It's an invoice for a shipment of books that	(1)	from it?
went to Turks and Caicos.	(2)	A. Possibly, yes. I would
Q. And are these books that are published by	(3)	better understanding.
Seahawk?	. (4)	MR. SUGARMAN: I ask
A. Yes, sir.	(5)	Greenberg Exhibit 3, a docume
Q. There is an entry in the middle of the invoice	(6)	JG 0562 (indicating).
that says, educational material?	(7)	(Exhibit 3 is marked)
A. Yes.	(8)	MR. SUGARMAN: Why
Q. What does that mean?	(9)	ones we have marked already s
A. I utilize that any time I ship to foreign	(10)	them.
countries. It makes it easier in some cases to get	(11)	MR. DAVIS: (Indicating)
through customs for us if they are educational	(12)	MR. SUGARMAN: Than
material. Books generally are not taxed by duty in	(13)	Q. (BY MR. SUGARMA)
most countries. When you get down to the French	(14)	Greenberg Exhibit 3?
islands or islands that were dominated by the French	(15)	A. Yes, sir.
presence there, there is a problem with plastic cards.	(16)	Q. What is it?
So we tried to make it easier for the material to go	(17)	A. It's a payment of royal
through customs. And let's put it this way. I will	(18)	artwork that were made from or
make it - give you the easier thing to understand.	(19)	versions of the alphabet book for
Anything that I export, whether it goes to	(20)	Q. What is the Underwate
Turks and Caicos, Mexico - if we ship it to Israel,	(21)	A. It's a book with alphab
ship to Australia, the Maldives, Seychelles, it all	(22)	letters in it that had a correspon
has that. And from that I take a copy and put the	(23)	illustration next to it.
Seahawk seal on the bottom, press it with our imprint,	(24)	Q. And is the Underwater
and that goes out as the commercial invoice with my	(25)	published by the Charles Bridge
	<ul> <li>Page 25</li> <li>A. It's an invoice for a shipment of books that went to Turks and Caicos.</li> <li>Q. And are these books that are published by Seahawk?</li> <li>A. Yes, sir.</li> <li>Q. There is an entry in the middle of the invoice that says, educational material?</li> <li>A. Yes.</li> <li>Q. What does that mean?</li> <li>A. I utilize that any time I ship to foreign countries. It makes it easier in some cases to get through customs for us if they are educational material. Books generally are not taxed by duty in most countries. When you get down to the French islands or islands that were dominated by the French presence there, there is a problem with plastic cards.</li> <li>So we tried to make it easier for the material to go through customs. And let's put it this way. I will make it - give you the easier thing to understand.</li> <li>Anything that I export, whether it goes to Turks and Caicos, Mexico - if we ship it to Israel, ship to Australia, the Maldives, Seychelles, it all has that. And from that I take a copy and put the Seahawk seal on the bottom, press it with our imprint,</li> </ul>	Page 25A.It's an invoice for a shipment of books thatwent to Turks and Caicos.Q.And are these books that are published bySeahawk?A.Yes, sir.Q.There is an entry in the middle of the invoicethat says, educational material?A.Yes.Q.What does that mean?A.I utilize that any time I ship to foreign(10)countries. It makes it easier in some cases to get(11)through customs for us if they are educationalmost countries. When you get down to the French(14)islands or islands that were dominated by the French(15)presence there, there is a problem with plastic cards.So we tried to make it easier for the material to go(17)through customs. And let's put it this way. I willmake it - give you the easier thing to understand.(19)Anything that I export, whether it goes toTurks and Caicos, Mexico - if we ship it to Israel,(21)ship to Australia, the Maldives, Seychelles, it all(22)has that. And from that I take a copy and put the(23)Seahawk seal on the bottom, press it with our imprint,(24)

- Possibly, yes. I would hope so. Gives them a
- nderstanding.
- SUGARMAN: I ask the reporter mark Jerry
- erg Exhibit 3, a document stamped Bates number
- 2 (indicating).
- ibit 3 is marked)
- SUGARMAN: Why don't you give me back the
- e have marked already so I can keep track of
- DAVIS: (Indicating).
- SUGARMAN: Thanks.
- (BY MR. SUGARMAN) Can you identify Jerry
- erg Exhibit 3?
- Yes, sir.
- What is it?
- It's a payment of royalties for the use of
- that were made from our photographs for both
- s of the alphabet book for the year 1993.
- What is the Underwater Alphabet Book?
- It's a book with alphabet numbers alphabet
- n it that had a corresponding artwork
- ion next to it.
- And is the Underwater Alphabet Book a book
- ed by the Charles Bridge Publishing Company?

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- (1) name on it and the gold seal imprint of a seahawk on
- it. I don't usually use that original invoice, (2)
- (3) educational material, on domestic shipments, only on (4) exports.
- Q. I take it, then, that you consider the books (5)
- that are listed on JG Exhibit Jerry Greenberg (6)
- (7)Exhibit 2 to be educational materials.
- MR. DAVIS: Object to the form of the (8)
- (9) anestion.
- (10)THE WITNESS: They could be. It depends on
- (11) what hands they fall in. A lot of times it goes - for
- the most part, it goes in the tourist shops. Tourisms (12)
- (13)use them, occasional art books will use them for
- (14) teaching in classes. But the bulk of the stuff is for
- (15) tourist-oriented use, Did I -
- (BY MR. SUGARMAN) The But are they used for (16) Q.
- (17) the education of tourists?
- (18)A. 1-
- (19)MR. DAVIS: Object to the form.
- (20) THE WITNESS: - don't know. I am sorry.
- (21)MR. DAVIS; Go ahead.
- (22) THE WITNESS: I don't know what the tourists do
- with it when they get them. I hope they will enjoy (23)
- (24) it.
- (25) 0. (BY MR. SUGARMAN) And maybe learn something

- Yes. sir.
- (2)Now when you say in the invoice, for the use of Q.

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- artwork from Jerry Greenberg's photographs, who did (3)
- (4) the artwork?
- Their artists did. (5)Α.
- How many photographs were involved? (6) 0.
- (7) A. I don't remember, Mr. Sugarman.
- Do you know Withdrawn. What was the nature (8) Q.
- (9) of the artwork that they did?
- (10)Á. I don't remember that. I am sorry.
- Did you ever get a copy of the Underwater (1D)Q.
- Alphabet Book in which there was artwork from your (12)
- (13)photographs?

(14) Α. I certainly had the book in my hands somewhere (15) along the lines.

- (16) Q. Do you presently have that book in your
- (17) possession?
- (18) Α. I don't believe so.
- (19) MR. SUGARMAN: If it is in the possession of
- the Greenbergs or Seahawk, Mr. Davis, I would ask that (20)
- (21) that be produced.
- (22) MR. DAVIS: We will consider it.
- (BY MR. SUGARMAN) How Withdrawn. I take it (23)0.
- (24) that the price that was charged and paid was \$2,000?
- For the license for that year, yes, sir. (25) Α.

A) phabet BK

(1) Α.

ient ed. on. y information et Book 3? rds that
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(23) Q. Would there be records that you have that

(25) A. I believe so, yes, sir.

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# **PEGGY ANN COOK & ASSOCIATES**

(23) they printed product, a poster. Many, many times it's

(24) the problem that you have when you publish books.

(25) People will get into your images. We have it,

BSA	JERRY GREENBERG GREENB Page 33	ERG V NATIONAL GEOGRAPHIC MAY 28,1998 XMAX(25/) Page 35
(1)	Geographic has it, everyone seems to have this	(i) Q. Was the – Withdrawn. Do you consider a poster
(2)	problem. Every publisher has it. It's a fact of	(1) Q. what the "Handadan Do you consider a poster" (2) for a cruise line to be an advertising use?
(3)	life, really.	(3) A. I can't answer that. I am not sophisticated
(4)	Q. Can you recall any instances in which you or	(4) enough in the uses of photos. It wasn't a pic for a
(5)	your counsel contacted any of the publishers or	(5) paid advertising, so I don't know what category it
(6)	T-shirt manufacturers or entities that used your	(6) would be under.
(7)	images as, obviously, someone did with respect to	(7) Q. Would you consider it an editorial use?
(8)	Charles Bridge?	(8) A. It's just betwixt and between.
(9)	A. I can't give you a name-by-name count but there	(9) Q. Do you have, in your files, a copy of the
(0)	were a considerable amount of problems that we and	(10) poster that contains the image that was licensed and
I)	other people face,	(11) paid for as evidenced by Jerry Greenberg, Exhibit 4?
2)	Q. Can you recall any instances where, as a result	(12) A. I have no idea.
3)	of those contacts, payments were made to Seahawk Press	(13) MR. SUGARMAN: To the extent that it exists, we
14)	or to you for the uses that were made of your images?	(14) would ask that it be produced.
15)	A. Virtually all the times that we contacted	(15) MR. DAVIS: So I don't clutter up the record,
16)	people, my attorney (indicating), a settlement was	(16) any time you ask for one of these, we will consider
17)	reached and they had the option to continue with the	(17) it.
18)	license or stop doing it.	(18) MR. SUGARMAN: I understand.
19)	Q. Can you recall any names of any of those	(19) Would you mark as Jerry Greenberg Exhibit 5 a
20)	companies where a settlement was reached and they	(20) document Bates stamped JG 0256 (indicating).
21)	continued to use the images pursuant to a license?	(21) (Exhibit 5 is marked)
22)	A. Not off the top of my head right now.	(22) Q. (BY MR. SUGARMAN) Can you identify Jerry
23)	MR. SUGARMAN: I request any documents that	(23) Greenberg Exhibit 5?
24)	would indicate whether there were such settlements and	(24) A. Yes. That's an invoice indicating that we
(25)	license arrangements.	(25) charged someone after the fact, \$500, for a small dive

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shop that was using a very small ad for one time in a
 magazine. More than likely - I forget what the

(3) illustration was, but it was used - they picked up one

- (4) of the images from our book and used it in a very
- (5) small ad in a diving magazine which was given away
- (6) free.

(7) Q. The words under description, quote, art(8) reference fee, close quote, what does that mean?

- (9) A. It was my way of indicating it wasn't a book,
- (10) it wasn't a plastic card, but it was a fee we charged
- (11) after the fact always, it seems for the use of the

(12) item, against a small dive shop.

(13) Q. Was this, to your recollection, for the use of

(14) an actual photograph that they reproduced?

(15) A. I believe it was a piece of artwork from our(16) publication.

(17) Q. One more question on this. How did you arrive(18) at the fee of \$500?

- (19) A. It was a small dive shop that lived from hand
- (20) to mouth. What are you going to ask, two or \$3,000?
- (21) It's not our intent to beat people to death. I feel
- (22) they should pay for busting into our copyrights
- (23) according to what they are and what they do, and, in
- (24) many cases, we find people that get into our stuff,
- (25) and it costs me money to make them stop, and we don't

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Settlements and license

(BY MR. SUGARMAN) Can you identify Jerry

One-time art charge, logged in that way, for

Was this an instance where the agreement to use

I don't recall. There may have been a second

What was the nature of the poster on which the

For a premier cruise line. They had a family

the use of my photograph that was put on a poster.

the image was made prior to the publication of the

cruises they tried to get off the ground and they did

think. That's 1993. I forget what the exact product

a poster. I believe it was a poster. I am trying to

was. Small use, but I believe there was a second

transaction. I am not sure, though.

invoice on that for other use. I am not sure.

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

(11)

(12)

(13)

(14)

(15)

(16)

(17)

(18)

(19)

(20)

(21)

(22)

(23)

(24)

(25)

MR. DAVIS:

(Exhibit 4 is marked)

Yes, sir,

What is it?

Greenberg Exhibit 4?

poster or subsequent?

MR. SUGARMAN: Or either.

Would you mark as Jerry Greenberg Exhibit 4 a

document Bates stamped JG 0461 (indicating).

arrangements?

Q.

Α.

Q.

Α.

Q.

Α.

Q.

Α.

image was used?

BSA		G V NAT	TIONAL GEOGRAPHIC MAY 28,1998	XMAX(26/10)
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(1) (1)	try to take money out of people who can't afford it			
(2) (3)	who are really innocent. MR. SUGARMAN: Would you mark as Jerry	(2)		
(3)	Greenberg Exhibit 6, a copy of the document Bates	(4)		
(5)	stamped JG 0064 (indicating).	(5)		1. C. 1.
(6)	(Exhibit 6 is marked)	(6)		
(7)	Q. (BY MR. SUGARMAN) Can you identify Jerry	(7)		
(8)	Greenberg Exhibit 6?	(8)	Exhibit 7. And my question is, can you explain why	
(9)	A. Yes.	(9)	) that is.	
(10)	Q. What is it?	(10)	A. Yes, sir. The journal - it was taken out	
(11)	A. It's an invoice there on an overall settlement	(11)	because of a settlement arrangement, and apparently,	
(12)	and license to use it for a certain length of time for	(12)	I - it got left in on the invoices that you have	
(13)	picking up our artwork from our cards for a car, for a	(13)	received.	
(14)	car, utilizing the submarine service they have there.	(14)		
(15)	I put it down as artwork, reference, for lack of a	(15)	-	
(16)	better word, but it was - we allowed them to continue	(16)	· · · ·	
(17)	using it, and we took a flat payment to allow them to	(17)	-	
(18) (19)	continue to use it until the end of a certain length of time.	(18)		
(20)		(19)		
(20)	Q. All right. This, again, was an after-the-fact settlement for the use of the images?	(20)		
(21)	A. Yes, sir.	(21)		r
(23)	Q. Describe, as best you recall, the use to which	(22)		
(24)	Nautilus Sub Sea Adventures put the images. In other	(24)		
(25)	words, what product did Nautilus Sub Sea Adventures	(25)	•	
	Page 38		Page 40	
(1)	have that utilized your images?	(1)	-	
(2) (3)	A. It was a card that they utilized to identify the fishes, in their submarine, people would see in		•	
(3)	the submarine.	(3)	-	
(5)	Q. How many images were involved?	(4)		
(6)	A. I don't remember right now.	(5)		
(7)	Q. Do you have, in your possession, a copy of the	(7)		
(8)	card which was used by Nautilus Sub Sea Adventures?	(8)		
(9)	A. I am not sure.	(9)	· · · · · · · ·	
(10)	MR. SUGARMAN: If there is such a copy,	(10)		
(11)	Mr. Davis, we ask that it be produced.	(11)	MR. SUGARMAN: No. I am finished with my	
(12)	Q. (BY MR. SUGARMAN) How did you find out about	(12)	questions about that.	
(13)	the use by Nautilus of the images in their card?	(13)		
(14)	A. All the way from Hawaii. Someone sent me a	(14)	• •	
(15)	copy of the card. I didn't find it in a book store.	(15)	2 Protection	
(16) (17)	I forget who sent it to me. They sent me a copy of the card, and we found out that they were using it for	(16)		
(18)	the card, and we found out that they were using it for awhile, and I went –	(17)	· · · · · · · · · · · · · · · · · · ·	
(10)	Q. How did you arrive at the total fee of \$10,000?	(18)		
(20)	A. I don't remember.	(19)	Greenberg Exhibit 8? A. Yes,	
(21)	MR. SUGARMAN: Would you mark as Jerry	(20)		
(22)	Greenberg Exhibit 7 a document Bates stamped JG 2949	(21)	-	
(23)	(indicating).	(22)		
(24)	(Exhibit 7 is marked)	(23)	A. They were supplied one of our artwork	
(25)	Q. (BY MR. SUGARMAN) Can you identify Jerry	(21)		
			· · · · · · · · · · · · · · · · · · ·	

PEGGY ANN COOK & ASSOCIATES

BSA	JERRY GREENBERG GREENBERG V	NATIONAL GEOGRAPHIC MAY 28,1998 XMAX(27/11)
	Page 41	Page 43
(1)	They put it on the mask strap of their product and as	(1) paid for it.
(2)	per their customer's request and delivered to them.	(2) Q. And that is pursuant to a contract, dated
(3)	Q. I take it, then, that this was another	(3) January 21, '97?
(4)	after-the-fact payment for that use?	(4) A. Yes, sir. Uh-huh.
(5)	A. Yes, but they didn't do it themselves. They	(5) MR. SUGARMAN: I ask for a copy of that
(6)	were given the material, and they took care of it.	(6) contract and for a copy of the book, West of Key West,
(7)	MR. SUGARMAN: Would you mark as Jerry	(7) to the extent it is in the possession of the
(8)	Greenberg Exhibit 9 a document Bates stamped JG 0277	(8) Greenbergs.
(9)	(indicating).	(9) (Mrs. Greenberg leaves the deposition)
(10)	(Exhibit 9 it is marked)	(10) MR. SUGARMAN: Would you mark, as Jerry
(11)	Q. (BY MR. SUGARMAN) Can you identify Jerry	(11) Greenberg Exhibit 10, a series of documents, all of
(12)	Greenberg Exhibit 9.	(12) them invoices to Habitat, Bates stamped JG 0744, 0266,
(13)	A. Yes. It's the Stack Pole (phonetic) books, and	(13) 0136 and 0384 (indicating).
(14)	it's a license fee to utilize an artwork rendition of	(14) MR. DAVIS: This is a Composite Exhibit?
(15)	our copyrighted material in a book for that year,	(15) MR. SUGARMAN: Yes.
(16)	1998. It's a license fee.	(16) (Exhibit 10 is marked)
(17)	Q. Was this a license fee that was agreed on	(17) Q. (BY MR. SUGARMAN) Can you identify the
(18)	before publication or after the fact?	(18) documents that have been marked as Jerry Greenberg
(19)	A. After the fact.	(19) Exhibit 10?
(20)	Q. How did you discover the use by Stack Pole	(20) A. Yes, sir.
(21)	books of the image?	(21) Q. What are they?
(22)	A. Found the book in Borders book shop.	(22) A. It's a license arrangement with Habitat for the
(23)	Q. In?	(23) continued use of the images involved for the year
(24)	A. Borders book shop.	(24) 1994.
(25)	Q. And what - Withdrawn. How many images were	(25) Q. And then the succeeding pages are for the years

		. D= 42	·	
(1)	used?	Page 42		Page 44
		I don't remember.	(1)	'95, '96 and '97, correct?
(2)			(2)	A. Yes, sir.
(3)	-	What was the nature of the use?	(3)	Q. What is the nature of the use to which Habitat
(4)		They used them for side bar illustrations.	(4)	is putting the images?
(5)		I think you said before that they were drawings	(5)	A. On a T-shirt.
(6)	of –		(6)	Q. How many images?
(7)		Our copyrighted material.	(7)	A. I don't remember. I am sorry.
(8)		How did you arrive at the amount of a thousand	(8)	Q. How did you – Withdrawn. Was this another
(9)	dollars?		(9)	after-the-fact discovery of use?
(10)		That was a licensing fee. That's the minimum	(10)	A. Yes. This is a licensing procedure they
(11)	we gener	rally charge for continued yearly use. I never	(11)	decided to utilize after they settled up with us.
(12)	let it go a	anything above that.	(12)	Q. But they used it initially without your
(13)	Q	And this is for use during the year 1998; is	(13)	permission and then –
(14)	that right	?	(14)	A. Yes, sir.
(15)	Α.	Yes, sir.	(15)	Q settled up with you?
(16)	Q	Do you have any understanding as to whether	(16)	A. Yes. Very quick. Yes, sir.
(17)	Stack Po	le will continue to use the image in future	(17)	Q. How did you discover the use by Habitat of the
(18)	years?		(18)	images?
(19)	Α.	Well, when I get the check in December of 1998,	(19)	A. Found the T-shirt in the Florida Keys.
(20)	I guess th	ney're going to seek another year's usage of	(20)	Q. I take it that the arrangement is documented in
(21)	it, yes, si	ir.	(21)	an agreement, dated September 23, 1993?
(22)	Q. 3	Is it your understanding that you are going to	(22)	A. Yes, sir.
(23)	receive a	thousand dollars a year for every year that	(23)	MR. SUGARMAN: I ask for a copy of that
(24)		the images?	(24)	agreement.
(25)	A	As long as they continue to use it, we will be	(25)	Q. (BY MR. SUGARMAN) Do you have in your
			(23)	Q. (DT MR. SOCARMAN) Do you have in your

BSA	and the second	NAT	TONAL GEOGRAPHIC MAY 28,1998 XMAX(28/12
	Page 45		Page 47
(1)	possession any of the T-shirts that utilize the images	(1)	
(2)		(2)	I told them I was marching to a different drummer, that's not enough money for me. And – Well, we have
(3) (4)	<ul><li>A. I am not sure if I do, sir.</li><li>Q. If there is a T-shirt, we ask for the ability</li></ul>	(3)	other images we are considering. And I said, well, by
(4)	to inspect it.	(4)	all means, use the other images. It ended up – Well,
(6)	MR. SUGARMAN: Would you mark, as Jerry	(6)	they said, what do you want? And I sat down with my
(7)	Greenberg Exhibit 11, a document Bates stamped JG 0682		wife and gave them a figure for a specific use. They
(8)	(indicating).	(8)	wanted - provided my copyright credit line would be on
·(9)	(Exhibit 11 is marked)	(9)	the illustration - the use of the photo, and they
(10)	Q. (BY MR. SUGARMAN) Can you identify the Jerry	(10)	would send me tear sheets. And that was that
(11)	Greenberg Exhibit 11?	(1)	transaction right there. That's for a Geographic
(12)	A. Yes, sir.	(12)	photograph that I own the copyrights to.
(13)	Q. What is it?	(13)	Q. And was the number you gave them the \$9800 that
(14)	A. It's a one-time payment to utilize our images	(14)	was agreed on?
(15)	on a ruler. I found this product in Sharm el Sheik in	(15)	A. That's what I told them I wanted and said, use
(16)	1994 when I went there. I went to Israel and Jordan.	(16)	it or don't use it.
(17)	I went down to Sharm el Sheik and back into Isreal	(17)	Q. And they agreed that they would pay that and
(18)	again, and I found this product in there and	(18)	use it?
(19)	confronted them. \$300. I wanted them to stop using	(19)	A. Well, I got the check and got the tear sheets
(20)	it, pay me and stop using it. That's all it was	(20)	(indicating).
(21)	there. He didn't have a continuation use of it. I	(21)	Q. What photograph was used? Was it - First of
(22)	said, it will take care of it for the year. I said,	(22)	all, was it one photograph?
(23)	don't do it anymore and, please, stay out of our	(23)	A. One photograph, yes.
(24)	copyrights.	(24)	Q. And which photograph was it?
(25)	Q. And he agreed?	(25)	A. That was a photograph in the lead of the 1990
		1.	
205	Page 46		Page 48
(1) (2)	<ul> <li>A. He may still be using it, Mr. Sugarman.</li> <li>MR. SUGARMAN: Would you mark, as Jerry</li> </ul>	(1)	National Geographic July piece I did for them,
	Greenberg Exhibit 12, a document Bates stamped JG	(2)	entitled, Florida's Coral Reefs are Imperiled. It's a
(3) (4)	0046.		lead shot of a bunch of divers over Christ's statue.
(5)	(JG Exhibit 12 is marked)	(4)	Q. Do you have in your possession any of the tear sheets that they sent to you?
(6)	Q. (BY MR. SUGARMAN) I believe earlier today you	(5)	A. Possibly have, yes, sir.
(7)	mentioned an arrangement with J. Walter Thompson. And	(0)	MR. SUGARMAN: I ask that they be produced.
(8)	is Jerry Greenberg Exhibit 12 the invoice that	(8)	Q. (BY MR. SUGARMAN) And when it says on the
(9)	reflects that arrangement?	(9)	invoice, unlimited worldwide, then, business trade
(10)	A. Yes, sir.	(10)	publications, what does that mean?
(11)	Q. All right. Was this a before-the-fact or	(11)	A. It didn't mean for use in Life magazine. It
(12)	after-the-fact transaction?	(12)	meant for business trade, Wall Street Journal, Banking
(13)	A. This is an arm's length transaction.	(13)	News, whatever, but it wouldn't be for any national,
(14)	Q. Before the use?	(14)	top-of-the-line magazines.
(15)	A. Yes, sir.	(15)	Q. So it was a license to use this photograph in
(16)	Q. And how did that transaction come about?	(16)	business trade publications for a year; is that right?
(17)	A. They called me. They wanted to use one of my	(17)	A. Yes. And then it would stop.
(18)	photographs that appeared in the 1990 issue of - July	(18)	MR. SUGARMAN: Would you mark as Jerry
(19)	issue of National Geographic for an ad campaign for	(19)	Greenberg Exhibit 12 a copy of invoice stamped JG
(20)	Cities Banks.	(20)	0692.
(21)	Q. Go ahead. Why don't you describe what then	(21)	THE REPORTER: It's 13.
(22)	happened.	(22)	MR. SUGARMAN: Okay.
(23)	A. They sent me a copy of the layout and they	(23)	(Exhibit 13 is marked)
(24)	wanted to use it for a year's time in business	(24)	Q. (BY MR. SUGARMAN) Can you identify Jerry
(25)	publications, wherever they wanted to use it. They	(25)	Constant Public 100
			Value of a photo
			Jrendy sublished
			21 120 11 Thomason
			Value of a shoto 2) ready published J. W. Thompson Ab
Pan	e 45 to Page 48 305-3		
- "6	305-3 <sup>-3</sup>	71-1884	4 PEGGY ANN COOK & ASSOCIATES

PEGGY ANN COOK & ASSOCIATES

BSA		JERNI GREENDENG GREENDEN	IC V INAL	IONAL	GEOGRAFIIIC MAT 20,1770
		Page 49			Page 51
(1)	A.	Yes.	(1)	Q.	When you say they didn't comply with the letter
(2)	Q.	What is it?	(2)	that you	a sent them, is that the March 11, 1994 letter?
(3)	Α.	It's a settlement payment for the unauthorized	(3)	Α.	I believe so.
(4)	use of a	my photograph in Travel magazine.	(4)	Q	And the reason they didn't comply is what?
(5)	Q.	Would you describe the events that led up to	(5)	Α.	I received another letter from Allen Royce
(6)	the sett	tlement which -	(6)	saying l	that these items – You would have to look at
(7)	Α.	Yes.	(7)	the lette	er. I don't have the letter in front of me,
(8)	Q.	- resulted in the payment of \$750?	(8)	but it's	on file there, very unsatisfactory reply to
(9)	Ά.	Yes. In 1984 I received an assignment from	(9)	what th	e problems were.
(10)	Nation	al Geographic's director of photography to do a	(10)	MR.	SUGARMAN: I ask for the production of a
(11)	photo e	essay on Florida's marine wilderness for Travel	(11)	copy of	the March 11th, 1994 letter that is referred
(12)	magazi	ne. I took the assignment with the	(12)	to in Jer	rry Greenberg Exhibit 13.
(13)	underst	tanding that, what they would use, their -	(13)	MR.	SUGARMAN: Would you mark as Jerry
(14)	whethe	r - either if it was from my own personal	(14)	Greenb	erg Exhibit 14 a document Bates stamped JG 1662
(15)	collecti	on or material that I shot for them on	(15)	(indi	cating).
(16)	assignn	nent, they would have one-time use. I would	(16)	(Exh	ibit 14 is marked)
(17)	pull my	y own copyright, federal copyright, on it. They	(17)	Q.	(BY MR. SUGARMAN) Can you identify Jerry
(18)	were to	put the copyright credit in, witnessed on the	(18)	Greenb	erg Exhibit 14?
(19)	piece.	They would return their originals which I gave	(19)	A.	Yes.
(20)	them fo	or use in the magazine. I got paid back, in	(20)	Q.	What is it?
(21)	1985, 2	X amount of dollars. '85. That was 10 years	(21)	Α.	It's a letter to me and my wife from Norman
(22)	before	the incident in '94.	(22)	Davis's	secretary giving me a check for \$5,000 from
(23)	I go int	to a book store, look in the magazines,	(23)	Sherry I	Manufacturing.
(24)	and the	ere is Traveler magazine, in 1994, and I see the	(24)	Q.	Describe what led up to the payment by Sherry
(25)	same p	hotograph used again. And I was surprised,	(25)	Manufa	cturing of \$5,000.

GREENBERG V NATIONAL GEOGRAPHIC

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They got into our copyrighted images and put

Do you have any information as to how many

No, we didn't base it on how many shirts they

What image or images of yours were used on the

Do you have a sample of the T-shirt in your

MR. SUGARMAN: If there is one, we ask to be

copy of a document Bates stamped JG 0673 (indicating).

(BY MR. SUGARMAN) Can you identify Jerry

Would you mark as Jerry Greenberg Exhibit 15 a

them on the shirt - put them on a shirt. Norman Davis

took care of the transaction. They paid a settlement

figure there and that was the end of it. They stopped

shirts were produced with your images on them?

be. We don't like to delay people's books.

T-shirt put out by Sherry Manufacturing?

I forget that one.

I don't think so.

(Exhibit 15 is marked)

Greenberg Exhibit 15?

Yes, sir.

sold. Strictly on what we felt a proper payment would

XMAX(29/13)

#### Page 50

JERRY GREENBERG

RSA

(1) because they didn't keep their agreement with me back

with the '84 transaction for one-time use only. They (2)

used it again, and without my permission, this time. (3)

I sent a letter on to Geographic. It went to (4)

the editor of Traveler, if remembrance recalls. They (5)

called me, and I didn't understand how it got in there (6)

(7)if they returned my chromes to me. And he offered to

pay me \$75 after the fact, and I told him that was not (8)

acceptable and I want ten times that amount. And I (9)

also wanted - it seems if they had - if this was done (10)

(11)with a duplicate transarency that I didn't even know

existed, I ask that they return that. And, at the (12)

same time, I have to go back to that letter dated (13)

March 11th, 19--- whatever the letter is involved (14)

(15) with. But he told me, well, if you charge us this we

won't be able to use your stock photos again, and I (16)

told him I didn't care. I told him there shouldn't be (17)

(18) an infringement on my copyright like this. So they

paid it, reluctantly, but they paid it. They returned (19)

(20)the 4 by 5 repro dupes they had, that I knew nothing

about, and they didn't comply with the rest of the (21)

(22) agreement that I put in the letter to them. There was

a lot of my material in a file there that shouldn't be (23)(24)

in there. It keeps - this shouldn't have been in (25) their file.

(25) What is it?

**PEGGY ANN COOK & ASSOCIATES** 

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

(11)

(12)

(13)

(14)

(15)

(16)

(17)

(18)

(19)

(20)

(21)

(22)

(23)

(24)

Α.

doing it.

0.

Α.

0.

Α.

Q.

Α.

0.

Α.

0.

possession?

able to look at it.

Page 49 to Page 52

NGS USE WO PERM Traveler Mag

BSA	JERRY GREENBERG GRE	ENBERG V N	ATI	ONAL GEOGRAPHIC MAY 28,1998 XMAX(30/14)
	Page 53			Page 55
(1)	A. It's an invoice logging in the partial payment		(1)	A. I don't remember what it is - what it was.
(2)	and settlement of a copyright infringement suit		(2)	MR. SUGARMAN: I ask for the production of
(3)	against Stanley Michael's, Incorporated in Hialeah.		(3)	documents sufficient to indicate that amount.
(4)	Q. What was the - what were the events that led up		(4)	Q. (BY MR. SUGARMAN) Do you or does Seahawk
(5)	to the copyright infringement suit against Stanley		(5)	Products have any claim that you know of for any
(6)	Michael's, Inc?	ļ	(6)	unauthorized use of any images in the motion picture
(7)	A. We found some T-shirt stores in the market out		(7)	Jaws?
(8)	there, one - one shirt that had our images on it. I		(8)	A. No, sir.
(9)	am trying to reconstruct it, but it actually happened		(9)	MR. SUGARMAN: Would you mark as Jerry
(10)	years before that. The bottom line is that it went		(10)	Greenberg Exhibit 16 a book entitled, The Coral Reef,
(11)	into litigation in federal court. There were other		(11)	and as Jerry Greenberg Exhibit 17 a book entitled, The
(12)	shirts that - we found some images on them, and they		(12)	Living Reef (indicating).
(13)	ended up paying a total payment, including legal - I		(13)	(Exhibits 16 and 17 are marked)
(14)	forget what the total payment was, but the payment to		(14)	Q. (BY MR. SUGARMAN) Can you identify what I have
(15)	us was \$108,000.		(15)	marked as Jerry Greenberg Exhibits 16 and 17
(16)	Q. Was that a case that was brought in the		(16)	(indicating)?
(17)	Southern District of Florida?		(17)	A. The Seahawk Press publications, Coral Reef, and
(18)	A. Yes, sir.		(18)	the new edition of The Living Reef.
(19)	Q. The invoice marked as Jerry Greenberg Exhibit		(19)	Q. When you say the new edition of the Living
(20)	15 indicates there is a balance of \$103,038 still due.		(20)	Reef, what do you mean?
(21)	Has that amount been received?		(21)	A. First edition came out with less pages and no
(22)	A. Yes, it has. It's all been paid up.		(22)	artwork and illustrations in back.
(23)	Q. Do you have any reason to believe that any of	ļ	(23)	Q. And that's been added in the new edition?
(24)	your images or artwork was used in the motion picture		(24)	A. This is the new edition.
(25)	Jaws?		(25)	Q. The new edition has more pages, plus the
	Page 54			Page 56
(1)	A. Yes.		(I)	artwork in the back?
(2)	Q. And what is the basis of your belief, and what		(2)	A. No. The new edition has artwork in the back
(3)	images do you believe were used?		(3)	that comes up to 126 pages.
(4)	A. Before Jaws was released as a motion picture -		(4)	Q. Are the photographs that appear in Coral Reef
(5)	I am trying to reconstruct this. MCA Universal		(5)	and The Living Reef all photographs that you took?
(6)	contacted me and they wanted to get permission to use		(6)	A. Yes. Every one of them.
(7)	a geographic photograph in a sequence in their movie.		(7)	Q. And are the individual images in The Living
(8)	It's when Sheriff Brody was turning the pages of a		(8)	Reef and The Coral Reef individually registered for
(9)	book and there it pops out, you know, Geographic		(9)	copyright?
(10)	images, one of which was mine. He wanted to use it	· •	(10)	A. There is one copyright for the first edition of
(11)	and I didn't give him permission. And he came back	( •	(11)	Living Reef. There is another copyright for the
(12)	with counteroffers, and this and that, and I didn't -	·	(12)	Living Reef that covers the text and the artwork
(13)	I don't believe I owned the copyright to it at that		(13)	supplement. And there is a different copyright for
(14)	time, but he wanted permission to do it properly, and		(14)	the Coral Reef (indicating), and I believe that
(15)	I turned it over to an agent, at the time, in New		(15)	another copyright may cover the crab on the back of
(16)	York, the photo researchers, and they negotiated for	l i	(16)	this.
(17)	us its use for the movie, and subsequent use for pay		(17)	Q. This, being The Coral Reef?
(18)	TV, and subsequent use for general TV. It was only on		(18)	A. Coral Reef, yes.
(19)	the screen for a short length of time.		(19)	MR. SUGARMAN: Would you mark as Jerry
(20)	Q. And what was the amount that - So I take it		(20)	Greenberg Exhibit 18 a photocopy of a document called
(21)	that eventually you permitted the use; is that	Į	(21)	Geo Safari Reefs and Oceans which bears production
(22)	correct?		(22)	numbers NGS 1 through 20.
(23)	A. Yes. I agreed to it, yes.	•	(23)	(Exhibit 18 is marked)
(24)	Q. And what was the amount of the fee for the uses	1	(24)	Q. (BY MR. SUGARMAN) Can you identify - I only
(25)	that you describe?	E 4	(15)	have one court of this but we will make mean it as we at

(25) that you describe?

305-371-1884

(25) have one copy of this but we will make more - document

BSA	JERRY GREENBERG G	REENBERG V NAT	IONAL GEOGRAPHIC MAY 28,1998
	Page 57		Page 59
(1)	I have marked Jerry Greenberg Exhibit 18?	(1)	other words, in what publication did those photographs
(2)	MR. DAVIS: This is a composite exhibit?	(2)	originally appear?
(3)	MR. SUGARMAN: Yes. It's an exhibit that	(3)	A. Living Reef, Coral Reef, Corals of the Tropical
(4)	includes all of the pages.	(4)	Atlantic poster.
(5)	THE WITNESS: I want to look through all of the	2 (5)	Q. Now would you take a look at the Living Reef
(6)	pages.	(6)	book that I have marked as - I believe it's under
(7)	MR. DAVIS: Yes. Look through every page.	(7)	there.
(8)	THE WITNESS: It's two-sided.	(8)	MS. GRAY: It's 17.
(9)	MS. GRAY: Some of the pages are two-sided.	(9)	Q. (BY MR. SUGARMAN) - (continuing) Exhibit 17
(10)	(Mrs. Greenberg leaves the room)	(10)	and identify for me in that book the page on which the
(11)	MR. SUGARMAN: Reread the question.	(11)	red-band parrot fish, on which your claim is based,
(12)	(The requested portion of the record is read as above	e (12)	appears.
(13)	recorded)	(13)	A. It appears on the cover of The Living Reef and
(14)	THE WITNESS: Yes.	(14)	it appears on page 49 of The Living Reef.
(15)	Q. (BY MR. SUGARMAN) What is it?	(15)	Q. Now is there an individual copyright
(16)	A. It's a black-and-white photocopy, sometimes	(16)	registration for the image, itself, as opposed to a
(17)	one-sided, other times two-sided, of the oceans and -	(17)	copyright registration for the whole book?
(18)	reefs and oceans; educational, inside product.	(18)	A. The entire book covers everything that's in it
(19)	Q. Is that one of the publications on which this	(19)	for the –
(20)	lawsuit is based?	(20)	Q. Okay. I am sorry –
(21)	(Mrs. Greenberg enters the room)	(21)	A. – for the first edition and the new editions.
(22)	A. I don't know whether it's a publication, but	(22)	Q. Identify on which page the stoplight parrot
(23)	it's a product, yes, sir.	(23)	fish appears.
(24)	Q. (BY MR. SUGARMAN) Okay. A product. A	nd would (24)	A. Page 50.

(25) you identify, in Exhibit 18, the images that are the

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- (1) basis for the claim of copyright infringement in this
- case? (2)

- Α. Red-band parrot fish. (3)
- (4) Q. On what Bates-numbered page is that?
- NGS 00017. (5) Α.
- (6) Q. Okay.
- (7) Α. What they call parrot fish. It's a stoplight
- parrot fish, number 8, on NGS 00017. Moray eel, (8)
- (9) number 6 on the same page, 00017. The two divers on
- NGS 00020. Don't you want to get some copies made of (10)
- (11) this?
- (12) MR. DAVIS: No. Just -
- (13) MR. SUGARMAN: We will get copies made but I
- don't want to waste the time at the moment. (14)
- (15) Q. . (BY MR. SUGARMAN) Would you - Withdrawn, I
- take it that the images that you have just identified, (16)
- (17)the red-band parrot fish, the stoplight parrot fish,
- moray eel and the two divers are images that are (18)
- (19) either photographs that you took or drawings that Mrs.
- (20) Greenberg made; is that right?
- (21)Those are from photographs. Those are from Α.
- (22) photographs.
- Q. They're all from photographs? (23)
- (24) Yes, sir. Α.
- (25) Q. And where did those photographs appear? In

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And on which page does the moray eel appear?

- Α. Page 83 to 84. And identify the page or pages on which the two Q.
- (2) (3) divers appear.

0.

(25)

(1)

- (4) Α. 17, 74.
- (5) Are there any copyright registrations for the 0.
- individual images of the parrot fish, the moray eel or (6)
- the two divers, as opposed to the registration for the (7)
- whole book? (8)
- (9) MR. DAVIS: Let me object to the extent that
- (10) calls for a legal conclusion. You can answer.
- (11)THE WITNESS: Not that I am aware of.
- Q. (BY MR. SUGARMAN) How was it that the images (12)
- that appear in the document that I have marked as -(13)
- (14) MS. GRAY: 18.
- (BY MR. SUGARMAN) Jerry Greenberg Exhibit (15)**Q**.
- (16) 18 first came to your attention?
- May I see it? (17)A.
- In March 1996 I went into a shop, called Get (18)
- Smart, looking for some jigsaw puzzles. I walked by (19)
- (20)this Educational Insights rack that had a number of
- (21) products on it. I saw the outside of the package of
- (22) that - creatures of the ocean reef product, saw my
- images on the literature in the front. I opened it up (23)
- (24) and looked inside to go to the transition piece, and
- (25) they were my images there. Recognized them right

XMAX(31/15)

BSA	JERRY GREENBERG GREENBERG V Page 61	1	IONAL GEOGRAPHIC MAY 28,1998 XMAX(32/16) Page 63
(1)	away.	(1)	Q. When you say all pure Seahawk, what do you
(2)	Q. And then what?	(2)	mean?
(3)	A. Well, I was very upset. I had no arrangement	(3)	A. Well, we have licensing arrangements with
(4)	with them to do this, especially for an outside	(4)	cruise lines to produce a product for them that is
(5)	company. Brought it home, showed it to my wife, put	(5)	pure Seahawk images. I wouldn't want our stuff used
(6)	it in the hands of Norman Davis, made it an exhibit.	(6)	on a piece like this (indicating) where we wouldn't
(7)	Q. Did you ever have any discussions with any	(7)	have control over the quality of it and the royalties
(8)	person at Educational Insights?	(8)	of it. It's not how I - that's not how I run the
(9)	A. No, sir. No, I didn't.	(9)	business.
(10)	Q. Did Mrs. Greenberg, to your knowledge?	(10)	MR. SUGARMAN: Would you mark, as Greenberg
(11)	A. No, we didn't do it that way.	(11)	Exhibit 19, a document which is headed Adapting to a
(12)	Q. Had you been approached by Educational Insights	(12)	Changing Sea, a copy of which was produced in
(13)	for the use of the images that were used in Exhibit 18	(13)	discovery.
(14)	was there any reason why you would not have consented	(14)	(Exhibit 19 is marked)
(15)	to that use, if appropriate compensation would have	(15)	Q. (BY MR. SUGARMAN) I have marked on the back of
(16)	been arranged?	(16)	the document, as Exhibit 19, a copy of a document
(17)	MR. DAVIS: Objection. It's hypothetical,	(17)	headed, Adapting to a Changing Sea. Could you
(18)	speculative.	(18)	identify that document, Mr. Greenberg (indicating).
(19)	THE WITNESS: You would have to put the deal on	(19)	A. It appears to be a printed piece they did for
(20)	the table and the - know what it is, and I would look	(20)	the Jason project.
(21)	at it and either say yes or no. Never happened.	(21)	Q. And when you say they did, who is they?
(22)	Q. (BY MR. SUGARMAN) Okay.	(22)	A. National Geographic Society.
(23)	A. It's speculation.	(23)	Q. What, as you understand it, is or was the Jason
(24)	Q. What factors would go into your decision as to	(24)	project?
(25)	whether you would say yes or no?	(25)	A. I don't know, Mr. Sugarman.
×.	Page 62		Page 64
(1)	MR. DAVIS: Same objection.	(i)	Q. What image of yours is claimed to be infringed
(2)	THE WITNESS: We wouldn't allow piecemeal use	(2)	on that poster?
(3)	of our material on a product like this. Either it's a	(3)	A. The sea fan image on top, upper right.
(4)	full Seahawk Press package that had all our images on	(4)	Q. Upper right?
(5)	it or - I have a huge library - would have a huge,	(5)	A. Yes, sir.

(6)

(7)

(8) all -

(9)

(10)

(11)

(12)

(13)

(14)

 $(15)^{-1}$ 

(16)

(17)

(18)

(19)

(20)

(21)

(22)

(23)

0.

Α.

Q.

Α.

Q.

Α.

Q.

Α.

flopped.

It doesn't -

- other -

Yes, sir.

- (6) large collection of our material on it, but I wouldn't
- (7) want our stuff used piecemeal like this, if someone
- (8) came to me.
- (9) Q. (BY MR. SUGARMAN) Has anyone ever come to you
- (10) for the use of one image from The Living Reef in a
- (11) publication or product, another company or person?
- (12) A. From that from Educational Insights?
- (13) Q. No, another instance. Has any other person or
- (14) entity ever come to you to ask for permission to use
- (15) an image from The Living Reef?
- (16) A. No. Our business is not set up in small,
- (17) single images like that.
- (18) Q. What is the reason why you would not allow a
- (19) publication to use individual images that you have
- (20) taken, as opposed to the whole series?
- (21) A. We're not in that business of utilizing
- (22) piecemeal portions of our material. I am mainly
- (23) interested in an overall package of full illustrated
- (24) pieces of our material. If someone wants to do it, it
- (25) would have to be all pure Seahawk.

Q. Excuse me?

or a copy of a drawing, if you know?

- (24) A. It's reversed.
- (25) Q. I see. Is that a reproduction of your entire

And in which of your publications does that

It doesn't appear in the publications. I hold

Is the image that appears on Jerry Greenberg

the copyright to it after it was published in the 1990

published in the National Geographic based on the

Exhibit 19 a photograph or a - a copy of a photograph

It's a reproduction of my photograph, but

So that was one of the images that was

issue of National Geographic, the July issue.

assignment that you have described earlier?

photograph appear, The Living Reef, The Coral Reef,

# **PEGGY ANN COOK & ASSOCIATES**

BSA	JERRY GREENBERG GREENBERG V	NAT	TONAL GEOGRAPHIC MAY 28,1998 XMAX(33/17
	Page 65	1	Page 67
(1)	photograph or a part of it?	) (I)	Q. Did you have any discussion about that offer
(2)	A. I don't have the 1990 issue of National	(2)	with anyone?
(3)	Geographic to compare it to.	(3)	A. At the Geographic or –
(4)	Q. And you can't tell from looking at it?	(4)	Q. No. I understand you said before that you
(5)	A. Not unless I see the 1990 issue or exhibit.	(5)	didn't respond, and I take it that means that you
(6)	Q. How did the reproduction of your photograph in	(6)	didn't have any discussion with anybody at the
(7)	Exhibit 19 come to your attention?	(7)	Geographic. My question is, did you have any
(8)	A. They contacted me after they used it.	(8)	discussions with anyone else about the \$500 offer?
(9)	Q. Who is they?	(9)	Just answer yes or no for the moment.
(10)	A. Rockwell Wheeler.	(10)	A. Yes.
(11)	Q. What position did Rockwell Wheeler have and	(11)	Q. With whom?
(12)	with whom was he affiliated?	(12)	A. (Indicating).
(13)	A. I don't have the document in front of me. He's	(13)	Q. Pointing to Mrs. Greenberg?
(14)	with the Society, apparently involved with this -	(14)	A. My wife, yes.
(15)	doing this piece (indicating).	(15)	Q. What did you say to her and what did she say to
(16)	Q. And when you say he contacted you, was that	(16)	•
(17)	orally or in writing?	(17)	
(18)	A. In writing.	(18)	
(19)	Q. And what did you do, if anything, when you	(19)	
(20)	received the writing from Mr. Wheeler?	(20)	0
(21)	A. I was very upset that this is a continuation of	(21)	0
(22)	what they were doing with the Traveler piece, and now	(22)	
(23)	it's this. And the head of it came to me when this	(23)	
(24)	Insight piece came out. I was very, very mad. In	(24)	
(25)	fact, I was furious.	(25)	Q. After you saw the Educational Insights piece,
	Page 66		Page 68
(1)	Q. What – Are you saying the Insight piece came	(1)	
(2)	out before the Jason project came to your attention? (2) discussions about that with Mrs. Greenberg?		discussions about that with Mrs. Greenberg?

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

(11)

(12)

(13)

(14)

(15)

(16)

(17)

(18)

(19)

(20)

(21)

(22)

(23)

Yes.

Α.

0.

À.

copyrights.

Q.

Α.

**Q**.

Α.

Q.

Insights?

A.

the substance of it?

action, if any, did you take?

No, sir.

our copyrights.

you about that?

- (3) A. No, sir. This is 1995 (indicating).
- (4) Q. I see.
- (5) A. Jason came out in 1996.
- (6) Q. Insight, you mean -
- (7) A. I am sorry. The Educational Insights piece.
- (8) Q. But going back to the Jason project, I
- (9) understand you got a letter from Mr. Wheeler. And my
- (10) question is, after you got that letter, what did you
- (11) do?
- (12) A. I did not respond.
- (13) Q. And when is the next time that you had any
- (14) discussion or took any action with respect to the
- (15) Jason project piece?
- (16) A. When Norman Davis sent them a letter in regard
- (17) to Educational Insights that included the Jason
- (18) product and mentioned other problems that I had with
- (19) them previously.
- (20) Q. In the communication from Mr. Wheeler was there
- (21) an amount of money offered to you for the use in the -
- (22) of your image in the Jason project?
- (23) A. Yes, sir.
- (24) Q. What was that?

(25) A. \$500.

(24) Q. With whom, at the National Geographic, did you

What did you say to her and what did she say to

I think it's about time that we approach them

Is that what you said or she said or that was

The general theme. We are very protective of

And as a result of that discussion, what

It was put in the hands of Norman Davis.

Have you, personally, at any time since you

and try to get these problems straightened out once

and for all and make them stop infringing on our

(25) speak when you arranged to do the assignment that you

became aware of the Jason project piece, which is

or the use that you allege in the Educational

Exhibit 19, had any discussions with anybody at the

National Geographic about the use in the Jason project

response 12501

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(1)	did back in 1990?	(1)	used in the outside before, when it was a different
(2)	A. The assignment was in 1989, and my friend, Fred	(2)	Society, in the umbrella framework of that. I said
(3)	Ward, approached them that both of us do a followup	(3)	no, and I sent her a letter and said, I do not want
(4)	story on the Pennecamp Park, almost 30 years later.	(4)	you folks to utilize it. And whatever I sent to her,
(5)	We do it as a team. He would write it and photograph	(5)	we have a copy of it.
(6)	it, and I would photograph it, also.	(6)	Q. Did you ever - Did you, thereafter, have any
(7)	We got the okay from Bill Garrett, the editor	(7)	direct contract with the pharmaceutical company that
(8)	at that time. He sent me the contract. It was not	(8)	wanted to use the image?
(9)	acceptable to me. Since Fred Ward was handling all of	(9)	A. No, sir.
(10)	the negotiations for the overall project, I told Fred,	(10)	Q. I take it, to the best of your knowledge, the
(11)	I won't take this assignment unless it's on a parallel	(11)	image was not used?
(12)	situation, that if - for Traveler, back in 1984, when	(12)	A. I hope not.
(13)	it appeared in 1985; that is, I will provide whatever	(13)	MR. SUGARMAN: Why don't we take a two-minute
(14)	they need from my vast collection of photographs on	(14)	break. I think I am finished. Maybe there will be a
(15)	Pennecamp Park. Whatever I shoot for them, plus, my	(15)	few more questions.
(16)	stock would be used. They would return all originals.	(16)	(Short break taken)
(17)	They would put my copyright on the inside there. And	(17)	Q. (BY MR. SUGARMAN) Have you ever, before the
(18)	I would pull my own VA form for my participation in	(18)	fact, licensed the reproduction, of a photograph that
(19)	that project.	(19)	you have taken, to another entity?
(20)	Q. You say VA form. What does that mean?	(20)	A. Starting from what time in my life?
(21)	A. Visual arts copyright form.	(20)	Q. As far back as you can recall.
(22)	Q. Now these were the conditions that you set down	(21)	A. Well, when I had my own photo agency I did
(23)	in your discussion with Mr. Ward -		
(24)	A. Yes.	(23)	quite a bit of that, yes.
(25)	Q. – and he then relayed them to the National	(24)	Q. Put that aside. Take the time period after you
(23)	Q. – and ne tich telayed them to the traditional	(25)	stopped having your own photo agency. Let's say in
			•
<i>(</i> )	Page 70		Page 72
(1)	Geographic people?	(1)	the last 10 years.
(2)	A. Yes.	(2)	A. Whatever photo licensing that I had in the last
(3)	Q. So I take it that you didn't have any direct	(3)	five years is reflected –
(4)	discussions with anybody at National Geographic?	(4)	MR. DAVIS: Just listen to his question.
(5)	A. No, sir.	(5)	Q. (BY MR. SUGARMAN) The question is, in the last
(6)	Q. When is the last time you did have any	(6)	10 years can you recall licensing another person or
(7)	discussions with anyone at the National Geographic, if	(7)	entity to reproduce one of your photos?
(8)	you ever had such a discussion?	(8)	A. I can't recall right now.
(9)	A. Recently, they asked permission to utilize that	(9)	Q. Would you look again at Jerry Greenberg Exhibit
(10)	same photograph they ripped off in Traveler. They	(10)	3 (indicating), which is the invoice for the use of
(11)	called me again to get permission to use it in the	(11)	artwork from photographs in the Underwater Alphabet
(12)	Turkish edition of Traveler, done by Leonard, I	(12)	Book. And I think you testified before that this was
(13)	believe. I said, no, I am not interested. They	(13)	an after-the-fact arrangement, correct?
(14)	responded back. It won't be used.	(14)	A. Yes, sir.
(15)	O. When is the last time before that that you	(1 c)	

- When is the last time, before that, that you (15) Q.
- (16) had any communication with anybody at?
- Someone in the image collection contacted me to (17) Α.
- utilize one of the images from that 1990 take, if you (18)
- (19) want to call it a take, for a pharmaceutical
- yearbook annual report, and I wrote back to her and (20)
- told her, no, it wasn't an in-house it wasn't an (21)
- (22) in-house piece. And I said, no, I do not want
- (23) National Geographic to act as my agent for use of my -
- selling my photos. This is with the image collection (24)
- and it's They never would allow photographs to be (25)

- Q. Is there a reason to distinguish the fact that (15)
- (16) you agreed to an after-the-fact arrangement with
- Charles Bridge Publishing for the Underwater Alphabet (17)
- (18) Book but you did not respond to the letter from the (19)
- Geographic suggesting an after-the-fact arrangement
- (20) for the use of your image in the Jason project, which (21) is Exhibit 19?
- (22)
- A. This Charles Bridge (indicating) transaction,
- licensing, came afterwards, when they made a proper (23) (24)
- payment to us as a settlement and took the option to (25) continue using it under a civilized relationship to

**PEGGY ANN COOK & ASSOCIATES** 

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(1)	pay a yearly fee. The other situation, I had nothing	(1)	EXCEPT FOR THE CORRECTIONS
(2)	like that in my head. It became an ongoing problem		
(3)	with the Society.	(2)	CERTIFY THIS IS A TRUE AND
(4)	Q. Going back to the question I asked before about licensing of any individual image for reproduction of	(3)	
(5) (6)	a photograph, let me ask that question again and let		FURTHER DEPONENT SAYETH
(6) (7)	me ask you, before answering, to just flip through the	(4)	NOT.
(8)	pages of The Living Reef and The Coral Reef to see	(5)	
(9)	whether looking at any of those images refreshes your	(6)	
(10)	recollection as to whether you licensed, any time		DEPONENT
(10)	within the last 10 years, the use of an individual	(7)	
(12)	image, and that will be the last question.		STATE OF FLORIDA )
(13)	MR. DAVIS: Take time to look at every page.	(8)	
(14)	Do you recall the question?		COUNTY OF BROWARD )
(15)	THE WITNESS: Yes. Repeat it to me again. I	(9)	,
(16)	will take the question again, please.		Sworn and subscribed to before-me thisday
(17)	(The requested portion of the record is read as above	(10)	of , 1998.
(18)	recorded)	(11)	PERSONALLY KNOWN OR I.D.
(19)	THE WITNESS: An arm's length licensing	(12)	
(20)	arrangement, no.		Notary Public in and for
(21)	Q. (BY MR. SUGARMAN) And you distinguish between	(13)	the State of Florida at
(22)	an arm's length and an after the fact?		Large
(23)	A. Yes, sir.	(14)	
(24)	Q. And what about after-the-fact licensing	(15)	
(25)	arrangements?	(16)	
	·	(17)	
		(18)	
		(19)	
		(20)	
	Page 74	- (21)	Page 76
(1)	A. Some of these images, photographic images, I	(23)	CERTIFICATE OF OATH
(2)	believe appeared on the arrangements that I made with	(23)	STATE OF FLORIDA )
(3)	Habitat. To the best of my knowledge that I can think	(24)	) SS
(4)	of right now sitting here, I don't recall anything.	(25)	COUNTY OF BROWARD )
(5)	MR. SUGARMAN: Okay. I don't have any further	(4)	I, Lois E. Guffey, RDR, and Notary Public in and
(6)	questions. Thank you for your time.		for the State of Florida at Large, do hereby certify
(7)	THE WITNESS: Thank you for your courtesy to	. (5)	that the witness, JERRY GREENBERG, personally appeared
(8)	us.		before me and was duly sworn
(9)	MR. SUGARMAN: Why don't we break and – 2:00	(6)	Witness by hand and official seal this 7th of
(10)	o'clock?		June, 1998, in the City of Hollywood, County of
(11)	MR. DAVIS: Sure.	(7)	Broward, State of Florida.
(12) (13)	We will read. (Thereupon, the taking of the deposition was concluded	(8)	Lois E. Cuffor, DDB. Notime
(13)	at 12:25 p.m.)		Lois E. Guffey, RDR, Notary Public, State of Florida
(14)	at 12.2.5 p.m.)	(9)	rubic, state of rionda
(16)		(10)	<b>REPORTER'S DEPOSITION CERTIFICATE</b>
(17)		(12)	STATE OF FLORIDA )
(18)			) SS
(19)		(13)	COUNTY OF BROWARD )
(20)			I, Lois E. Guffey, RDR, do hereby certify that I
(21)			was authorized to and did stenographically report the
(22)		(15)	
(23)		,,	that a review of the transcript was requested; that
(24)		(16)	
(25)			inclusive, is a true and complete record of my
		(17)	stenographic notes of the deposition by said witness;
			and that this computer-assisted transcript was
		(18)	prepared under my supervision.
			I FURTHER CERTIFY that I am not a relative,

305-371-1884 nor am I a relative or employee of any of the Parges 73 to Page 76

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JERRY GREENBERG

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From Sugarman to WITNESS

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# IDAZ GREENBERG GREENBERG V NATIONAL GEOGRAPHIC MAY 28,1998

# **PEGGY ANN COOK & ASSOCIATES**

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# CONDENSED TRANSCRIPT AND CONCORDANCE PREPARED BY:

PEGGY ANN COOK & ASSOCIATES, INC. 150 S.E. Second Avenue Suite 1011 Miami, FL 33131 Phone: 305-371-1884 FAX: 305-536-2510

BSA	IDAZ GREENBERG GRE	ENBERG V N	ITA	ONAL GEOGRAPHIC MAY 28,1998	XMAX(1/1)
	Page 1			Page 3	
(1)	UNITED STATES DISTRICT COURT		(1)	Thereupon:	
(2)	SOUTHERN DISTRICT OF FLORIDA		(2)	IDAZ GREENBERG was called as a witness and having been first duly	
(3)	CASE NO. 97-3924		(3)	sworn, was examined and testified on his oath as	
(4)	JERRY, GREENBERG, individually,		(5)	follows:	
(5) (6)	and IDAZ GREENBERG, individually. Plaintiffs.		(6)	DIRECT EXAMINATION	
(7) (8)	vs. NATIONAL GEOGRAPHIC SOCIETY. a		(7)	BY MS. GRAY:	
•	district of Columbia corporation.		(8)	Q. Could you, please, state your full name and	
(9)	NATIONAL GEOGRAPHIC ENTERPRISES, INC., a corporation, and MINDSCAPE,		(9)	address for the record. A. Idaz, I-D-A-Z, Greenberg. My address is 6840	
(10) (11)	INC a California corporation. Defendants.		(10)	Southwest 92nd Street, Miami, Florida 33156.	
	X	-	(12)	Q. Mrs. Greenberg, have you ever been deposed	
(12) (13)			(13)	before?	
(14)	701 Brickell Avenue Miami, Florida		(14)	A. Yes.	
	Thursday, 1:40 p.m.		(15)	Q. Just a couple of ground rules before we get	
-(15) (16)	May 28th, 1998		(16)	started so it will refresh your recollection about the	
(17) (18)	DEPOSITION OF IDAZ GREENBERG		(17)	experience. It's very important that you give me verbal answers to all of my questions, no uh-uh and	
(19)	Taken on behalf of the Defendant before		(18)	uh-huh. Make sure that you wait until I have finished	
(20) (21)	LOIS E. GUFFEY, RDR. Certified Realtime Reporter and		(20)	my question before you start answering so the court	
(22) (23)	Notary Public in and for the State of Florida at Large, pursuant to a Notice of Taking Deposition file	ed	(21)	reporter can get everything down. If you don't	
(24) (25)	in the above cause.		(22)	understand one of my questions or if you would like	
(23)			(23)	something to be clarified, please, let me know. Do	
			(24)	you understand?	
			(25)	A. Yes.	
•					
	Page 2			Page 4	
(1)	APPEARANCES :	•	(1)	Q. How many times have you been deposed before?	
(2)	STEEL, HECTOR & DAVIS LLP By: Norman Davis, Esq.,		(2)	<ul><li>A. Twice, to my memory.</li><li>O. And could you describe the circumstances under</li></ul>	
(3)	and Naomi Gray, Esg.		(3)	Q. And could you describe the circumstances under which you were deposed.	
(4)	Appearing on behalf of the Plaintiffs.		(5)	A. I was deposed as a plaintiff in copyright	
(5)	WEIL. GOTSHAL & MANGES LLP By: Robert G. Sugarman, Esq		(6)	infringement.	
	appearing on behalf of the Defendants.		(7)	Q. Could you tell me what those cases were?	
(6) (7)			(8)	A. One of them was Stanley Michaels, and the other	
(8)	*** INDEX ***		(9)	one was Mendez. MSP is the name of the company.	
(9)	WITNESS EXAMINATION BY PAGE		(10)	Q. What was the basis of the claim in the Mendez litigation?	
(10)	IDAZ GREENBERG Direct Mr. Sugarman 3		(12)	A. They had used illustrations of mine from my	
(11) (12)			(13)	book, for T-shirts.	
(13)	IG EXHIBITS FOR IDENTIFICATION 1 13		(14)	Q. How many illustrations of yours did they use?	
(14)			(15)	A. I couldn't guess. More than two, less than 20.	
(15) (16)			(16)	Q. You said they used them on T-shirts. Was that	
(17) (18)			(17)	for commercial sale? A. Yes.	
(19) (20)			(18)	A. 1 es. Q. Do you have any idea how many T-shirts were	
(21)		2	(17)	sold using your images?	
(22) (23)			(21)	A. No.	
(24)			(22)	Q. Was the use a direct copy of your illustration?	
(25)			(23)	A. I believe so. However, it was never judged - I	
			(24)	mean I - it was - You know, it's hard for me to talk	X
	6, at	÷.,	(25)	about that, because there was a gag on that and I	
		•			
			1	•	

#### MAY 28,1998 **IDAZ GREENBERG GREENBERG V NATIONAL GEOGRAPHIC**

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		Page 5			Page 7			
(1)	don't kr	now how much I can say without going against	(1)	that yo	u used as a research?			
(2)	the agre	ement.	(2)	Α.	I did a T-shirt design based of			
(3)	Q.	Let me rephrase the question. The images that	The images that (3) Douglas Faulkner of a manatee, of					
(4)	were in	dispute in that litigation were drawings of	(4)	Q.	And you used - how many of			
(5)	yours, c	correct?	(5)	you us	e?			
(6)	Α.	Correct.	(6)	Α.	One.			
(7)	Q.	And the use on the T-shirts, was that drawings	(7)	Q.	Are there any other instances			
(8)	also?		(8)	used pl	hotographs taken by anyone oth			
(9)	Α.	Yes.	(9)	Mr. G	reenberg, yourself or your son a			
(10)	Q.	And what was the outcome of that litigation?	(10)	Α.	Not that I recall right now, no			
(11)	А.	We won.	(11)	Q	Was the T-shirt that you used			
(12)	Q.	When you say, "We won," do you mean -	(12)	illustra	tion - or that was The end res			
(13)	А.	We prevailed and were paid.	(13)	illustra	tion, is that something that Seal			
(14)	Q.	Did the case go to trial?	(14)	sold?				
(15)	Α.	Yes.	(15)	Α.	No.			
(16)	Q.	Was it tried to a jury?	(16)	Q.	What was the T-shirt that was			
(17)	А.	No.	(17)	for wh	ich you did the illustration?			
(18)	Q.	Was it tried to a judge?	(18)	A.	It never went beyond a sampl			
(19)	Α.	Yes.	(19)	Q.	And why is that?			
(20)	Q.	And what was the amount of your award?	(20)	Α.	I could not produce the shirts			
(21)	Α.	I can't say.	(21)	Q.	Why not?			
(22)	Q.	Do you have - do you recall what the ballpark	(22)	<u>,</u> А.	I could not find a producer to			
(23)	was?		(23)	shirts,	and I certainly did not want to p			
(24)	А.	I really don't remember.	(24)	myself	, ,			
(25)	Q.	Could you tell me what you do for a living,	(25)	Q.	Okay. When you used Mr. Fa			

ased on a photograph by or two manatees. any of his photographs did stances where you have one other than ir son as a bases? iow, no. u used this end result of this at Seahawk Products hat was being produced, n? sample. shirts. ucer to produce the ant to print them

XMAX(2/2)

Mr. Faulkner's photograph

			<i>,</i>
	Page 6		Page 8
(I)	please, Mrs. Greenberg.	(1)	) as research material, can you describe to me what your
(2)	A. What I do for a living. Hum, I work with my	(2)	) methodology was in preparing your illustrations?
(3)	husband in our business.	(3)	A. With his permission, I traced them.
(4)	Q. And what is your business?	(4)	Q. When you say traced, could you define that for
(5)	A. Our business is Seahawk Press Products.	(5)	) me, please.
(6)	Q. And what is the nature of the Seahawk Press	(6)	) A. I used a projection from a slide and traced the
(7)	Products?	(7)	) outline. I am sorry. I used that in a coloring book
(8)	A. We are publishers of various projects that are	(8)	) subsequently.
(9)	about underwater life, marine life.	(9)	) Q. After the T-shirt project did not go forward?
(10)	Q. Do you and your husband own a business jointly?	(10)	A. Exactly.
(11)	A. No. I believe it to be a sole proprietorship	(1)	Q. You then used the drawing on a color book?
(12)	of my husband's; however, we work together and own	(12)	A. Yes, with permission.
(13)	copyrights in common.	(13)	Q. And that was a product that was sold by Seahawk
(14)	Q. And what kind of work do you do for Seahawk	(14)	Press?
(15)	Products?	(15)	A. Yes.
(16)	A. I am an illustrator. I do illustrations based,	(16)	Q. Approximately how many of those coloring books
(l7)	in large part, on my husband's photographs, my own	(17)	did Seahawk Press publish?
(18)	photographs, and my son's photographs, and I generally	(18)	A. I don't do the - supervise the printing, so I
(19)	write the publications, although sometimes Jerry does.	(19)	can't say, but it's done very well, and it is still in
(20)	Q. Have you ever used photographs, other than	(20)	print and still being sold.
(21)	those taken by Mr. Greenberg, yourself or your son, as	(21)	Q. How long have you been working as an
(22)	the basis for your illustrations?	(22)	illustrator?
(23)	A. I can recall having permission from one person	(23)	A. Oh, gosh. You mean professionally?
(24)	to use his work as research work, and I did so.	(24)	Q. We will start with that, professionally.
(25)	Q. What was the - what was the image or the images	(25)	

BSA

	Page 9	Page 11			
(1)	Q. And roughly how long would that be, what span	(1) a license until they used up their inventory. In			
(2)	of years would that be?	(2) previous years, when we had problems with, you know,			
(3)	A. I am currently 67 and still holding.	(3) unauthorized use, we would insist that the people			
(4)	Q. Didn't mean to get -	(4) cease and desist and destroy inventory, and we came up			
(5)	A. I am proud of my age. I have lived a good	(5) with a lot of very unhappy people who didn't want to			
(6)	life.	(6) settle with us on that basis, so my husband and I			
(7)	Q. Were there any unprofessional or	(7) evolved a new system much later that was a little			
(8)	nonprofessional circumstances under which you acted as	(8) kinder.			
(9)	an illustrator prior to becoming a professional	(9) It took into consideration the fact that people			
(10)	illustrator?	(10) had things out there in the marketplace and they had			
(11)	A. Yes. My mother tells me that before I could	(11) catalogs printed, and so we decided to give them two			
(12)	walk I was drawing. Told me. My mother is gone now.	(12) options. One was to pay for past use only, which we			
(13)	Q. Have you ever licensed your artistic	(13) had previously done, and cease and desist and destroy			
(14)	illustrations for republication by third parties?	(14) inventory; the other was to pay a sum of money and			
(15)	When I say third parties, I mean other than Seahawk	(15) then pay for an ongoing license, which generally only			
(16)	Press publications.	(16) was kept as long as they needed to get rid of their			
(17)	A. You mean for publication?	(17) inventory. And we had less problems settling after			
(18)	Q. Yes.	(18) that.			
(19)	A. No. Not that I can recall.	(19) Q. What was the amount for which you settled for			
(20)	Q. Did you ever license – Did you ever grant a	(20) past use in the Charles Bridge dispute?			
(21)	license to the Kansas City Star to reproduce some of	(21) A. I don't recall.			
(22)	your illustrations in association with an article that	(22) Q. Mrs. Greenberg, I would like to direct your			
(23)	they were publishing?	(23) attention to a document which was marked as Jerry			
(24)	A. I remember something vaguely about that, and I	(24) Greenberg Exhibit 1 (indicating) during			
(25)	don't remember the circumstances. I would have to	(25) Mr. Greenberg's deposition this morning.			
•					
		······································			
	Page 10	Page 12			
(I)	refresh my memory by checking. I really don't know,	(I) A. Uh-huh.			
(2)	but I - you do jog a memory there, something.	(2) Q. Were you present for Mr. Greenberg's deposition			

(3) Q. Do you remember anything about that license?

(4) A. I don't even remember the images involved in

(5) it. I do remember the name, Kansas City Star. I

(6) thought, Wizard of Oz land.

(7) Q. Are you aware of any licenses which have been

(8) granted for the use of Jerry Greenback's - Jerry

- (9) Greenberg's excuse me photographs as the basis for
- (10) artwork in advance of the photographs being used?
- (11) A. No.

(12) Q. Okay. Are you aware of a dispute between Jerry

(13) Greenberg, Seahawk Press publications and Charles

(14) Bridge publishers about the alleged use of

(15) Mr. Greenberg's images in conjunction with an alphabet

(16) book published by Charles Bridge?

(17) A. Yes.

(18) Q. How many images were involved in that dispute,

(19) Mrs. Greenberg?

- (20) A. Offhand, I recall two or three.
- (21) Q. And what were those images of?
- (22) A. I don't recall what they were.
- (23) Q. What was the resolution of that dispute?
- (24) A. It was settled for a payment for past use, and
- (25) they were permitted to continue to use it if they took

this morning?

(4) A. Yes. Almost all the time.

- (5) Q. Do you recognize Jerry Greenberg Exhibit 1?
- (6) A. Yes.

(3)

- (7) Q. And what is it?
- (8) A. It's a page from his ledger.

(9) Q. You may recall that Mr. Greenberg testified

- (10) this morning that prior to disclosing documents to us
- (11) in this litigation you had reviewed them and removed
- (12) certain items.
- (13) A. Yes.

(14) Q. Could you tell me what kinds of entries you

- (15) removed from the journal pages like Jerry Greenberg(16) Exhibit 1?
- (17) A. Actually, he remembered more about what I
- (18) removed than I did. The only thing that came to mind,
- (19) when I heard the question originally, was that I had
- (20) removed refunds, for instance. I went through each
- (21) item, item by item, and made my own judgment as to
- (22) whether it replied to the request that was in the
- (23) request for documents and in being I believe what
- (24) we were asked for was revenue, so I struck out  $\int_{a}^{b}$
- (25) anything that I felt was not revenue.

AX(3/3)

BSA	IDAZ GREENBERG GREENBERG V	ITAN	ONAL GEOGRAPHIC MAY 28,1998	XMAX(4/4
	Page 13		Page 15	
(1)	Q. And did you strike out all entries which	(1)	Q. Were you acting alone when you made the	
(2)	reflected income derived from the settlement of	(2)	decision to remove certain entries from the journals	
(3)	disputes over the alleged use of Mr. Greenberg's	(3)	prior to disclosing them in the litigation?	
(4)	images or your images?	(4)	A. Yes. It was totally my subjective judgment.	
(5)	A. That was one of the criteria, yes. I am not	(5)	MS. GRAY: May I take back just momentarily the	
(6)	sure I took out all of them. That was my criteria. I	(6)	copy of Jerry Greenberg Exhibit 1.	
(7)	felt that was not revenue.	(7)	MR. DAVIS: (Indicating).	
(8)	Q. And so your intent in reviewing these ledgers	(8)	Q. (BY MS. GRAY) I would like to direct your	
(9)	was to remove all references to such settlements; is	(9)	attention back to the document which is identified as	
0)	that correct?	(10)	Jerry Greenberg Exhibit 1. If you will look in the	
1)	A. No. All references that do not reply to the	an	very right-hand margin of the document, you will see a	
•) 2)	request for revenue. Yeah.	(12)	number of asterisks there. Is that your handwriting,	
	MS. GRAY: I would like ask the court reporter	(13)	Mrs. Greenberg?	
3) 1)	to mark this document as Idaz Greenberg Exhibit 1.	(14)	A. No.	
4) 5)	THE WITNESS: Incidentally –	(14)	Q. Do you know whose handwriting that is?	
5) 6)	MS. GRAY: Can we get it on the record?	(15)	A. No. I have not seen them before.	
6) 7)		(17)	Q. Do those asterisks appear on the original	
7) •>	THE WITNESS: I did not put those asterisks	(17)	ledger pages from which you made the copies that were	
8)	there, either.	(19)	disclosed to us in this litigation?	
9) 2)	MR. DAVIS: Wait for the questions.	1 · ·	A. I did not make the copies, so I did not – I	
20)	THE WITNESS: Okay.	(20)	-	
21)	(IG Exhibit 1 is marked)	(21)	can't remember seeing these asterisks, but, obviously,	•
!2)	Q. (BY MR. SUGARMAN) Let the record reflect that	(22)	I can't rule out that they may be in there.	
23)	I have provided a copy of Idaz Greenberg Exhibit 1 to	(23)	Q. Who made the copy?	
24)	Mr. Davis. Mrs. Greenberg, do you recognize the document	(24)	<ul> <li>A. My husband did.</li> <li>Q. Did anybody else participate in the process</li> </ul>	
	•	 		
	Page 14		Page 16	
(1)	which has been marked Idaz Greenberg Exhibit 1 for	(1)	which began with your receiving this document request	
2)	identification?	(2)	which has been marked Idaz Greenberg Exhibit 1 and	
3)	A. Yes.	(3)	which culminated in the disclosure of these documents	
(4)	Q. What is it?	(4)	to us in this litigation?	
(5)	A. It is a Defendant's request for the production	(5)	A. I only know the part that I played, and I gave	
(6)	of documents.	(6)	it to my husband for the copying. I have no idea from	
(7)	Q. Did you have Exhibit 1 in front of you - when 1	0	then on.	
(8)	say Exhibit 1, I mean Idaz Greenberg Exhibit 1. Did	(8)	Q. Does anyone, other than yourself and	
(9)	you have Idaz Greenberg Exhibit 1 in front of you when	(9)	Mr. Greenberg, have access to the books, the financial	
10)	you were going through the journal entries and	(10)	books of Seahawk Products?	
1)	removing entries which you felt were not responsive to	(11)	A. Only our bookkeeper. It is not - we do not -	
12)	these requests?	(12)	we have no employees. Our bookkeeper is someone who	
13)	A. I didn't look at the document every time I came	(13)	comes and picks the books up once a month and brings	
14)	across something that I felt should be removed, but I	(14)	them back and does whatever they do, which I don't	
15)	read it several times.	(15)	know.	
16)	Q. You read it several times prior to reading -	(15)	Q. Was that person involved in this process which	
10) 17)	prior to this exercise during which you read through		resulted in the production of documents to us in this	
	and removed entries from your journal?	(17)		
18)		(18)	litigation at all?	
19) 20)	A. Yes.	(19)	A. No.	
20)	Q. Why did you remove entries which reflected the	(20)	Q. Mrs. Greenberg, do you know a man named Warren	
:1)	settlement of disputes over the use of images owned by	(21)		
m	yourself and Mr. Greenberg?		A No Wall I should tall you I don't ramambar	

(22) A. No. Well, I should tell you, I don't remember

- (23) names well. I remember people. I remember things
- (24) that happen, but I don't remember names, disconnected.
- (25) That is to say, unless I know someone really well, I

A.

Q.

Α.

(23)

(24)

(25)

(22) yourself and Mr. Greenberg?

Damages.

I did not believe that they were true revenue.

How would you classify that income?

BSA	IDAZ GREENBERG GREENBERG
	Page 17
(1)	will not remember their name.
(2)	Q. Do you know the artist who prepared the
(3)	illustrations which were used in the Geo Pack product
(4)	which was marked as as Jerry Greenberg Exhibit –
(5)	(Mr. Sugarman leaves the room)
(6)	MR. DAVIS: 18, I think.
(7)	MS. GRAY: 18? I don't see the stamp on
(8)	there. Yes. Here we go. Jerry Greenberg Exhibit 18.
(9)	Q. (BY MS. GRAY) Do you know the artist who
(10)	prepared those illustrations, Mrs. Greenberg?
(11)	A. I-
(12)	MR. DAVIS: By know, you mean what? Does she
(13)	know him socially or personally or -
(14)	Q. (BY MS. GRAY) Have you ever spoken with the
(15)	artist who prepared the illustrations used in the Geo
(16)	Pack product which was marked as Jerry Greenberg
(17)	Exhibit 18 this morning?
(18)	A. If - it was marked this morning, you mean; not,
(19)	have I spoken to him this morning.
(20)	Q. That was marked this morning.
(21)	A. Yes. I spoke with him.
(22)	Q. When have you spoken with him?
(23)	A. I don't recall the exact day, but recently.
(24)	Q. Was this the first conversation you ever had
(25)	with him?

- (1) Α. Yes. (2) Q. Why did you call him? I called him as one artist to another to let (3) Α. him know that he - his name was given to us by (4) National Geographic in our request for people who (5)worked on the project, and I wondered if he would care (6)(7) to discuss it. (8) Ο. Did you identify yourself and your purpose at (9) the beginning of the telephone call? A. I introduced myself immediately as Idaz (10)Greenberg of Seahawk Press. My husband is Jerry (11) (12) Greenberg. We produce books, and posters, and cards on underwater subjects, and his name was given to us (13) as being the artist who worked on that project. I (14) identified myself first. (15)(16) Q. Then what did you say? (17)I told him that we were also told that he used Α. (18) our book, The Living Reef while - he had our book, The Living Reef, while he was working on the project, and (19) (20) was that true. And he said yes. (21)Then what did you say? о. (22) I asked him where he got the book from, and he Α. (23) said he did not remember.
- (24) Q. Then what did you say?
- (25) Α. I asked him, did he still have the book.

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- (1) **Q**. What did he say?
  - No. He gave it to Geographic. Α.
- Did you continue to did the conversation (3)0.

continue after that? (4)

(2)

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- Yes. He explained that he did not copy or A. (S)
- trace my work and did not feel that he had done (6)

anything wrong. (7)

Did you have a response to that statement? (8) Q.

I said, what if you questioned - what if this (9) Α.

- goes to court and you No, I didn't say that. I am (10)
- trying to think Let me think for a moment what I (11)
- said. What if someone else judged that you had copied (12)
- my work? And he said, then I would think my lawyer (13)
- was not doing his job right. (14)

Did you say anything else during the course of (15) Q. this conversation? (16)

- We had a rambling conversation. Among other (17) Α.
- things, he told me that he was not yet 62 and, yet, he (18)
- was drawing on his IRA or Kehough, I forget which. I (19)
- asked him if the book was given to him by Geographic. (20)
- (21)He said he did not remember.
- How many times did you ask him that question (22) 0. (23) during the course of your conversation?
- Once, I asked him if he had had the book (24) Α.
- during the use of the project; I asked him, did he (25)

#### Page 20

- **(I)** have it now; and I asked him, was it given to him by (2)
  - Geographic.
- Q. Did you tell Mr. Cutler, the artist who (3)
- prepared the illustrations which we are talking about, (4)
- (5) in words or in substance, that you believe that he is
- liable for copyright infringement? (6)
- No. Nor did I ever threaten that he was going (7)Α.
- to be subpoenaed for any court action. I was very (8)
- careful not to do that. I did advise him to get a (9)
- book which I have found very useful, called The Visual (10)
- Guide no The Legal Guide for the Visual Artist. (11)
- (12) Q. Why did you advise him to get that book?
- (13)Because it is a book which I have consulted Α.
- (14) many times and advised my other friends, who are
- artists, to get. It's a book that explains about (15)
- copyrights, and what an artist's rights are, and what (16)
- to be careful about, and it has model contracts in it (17)
- that show how to protect your rights when you get a (18)
- job, what sort of contracts to look for. (19)
- Was there a particular portion of that book (20)Q.
- (21)that you felt that Mr. Cutler would benefit from
- referring to? (22)
- No. I didn't point one out. He did say to me (23) Α.
- (24) at one point, "I am not sure if I should talk to you
- without a lawyer," and I said, "It's always good (25)

XMAX(5/5)

0011				
	·	Page 21		
(1)	advice to	o have a lawyer represent you."	(1)	
(2)	Q.	Did you ask him if he had a lawyer?	(2)	
(3)	Α.	He volunteered to me that he had a friend who	(3)	
(4)	was a co	ppyright lawyer.	(4)	W
(5)	Q.	Did you ask him if he had a lawyer?	(5)	J
(6)	Α.	I asked him if his friend worked for Geographic	(6)	M
(7)	and he s	aid no.	(7)	b
(8)	Q.	Did you ask him if he had a lawyer?	(8)	d
(9)	Α.	No. He volunteered to me that he had a friend	(9)	
(10)	who was	s a copyright specialist.	(10)	G
(11)	Q	Did you ask him to provide any documents to	(11)	h
(12)	you?		(12)	p
(13)	Α.	He mentioned voluntarily - I did not ask him	(13)	b
(14)	about it	<ul> <li>that at no point did his contract with</li> </ul>	(14)	
(15)	Geograp	phic require him to do original work. I asked	(15)	W
(16)	him if h	e would care to send me a copy of that	(16)	
(17)	contract	. He said no. That's the last we spoke of	(17)	
(18)	it.		(18)	
(19)	Q.	Did you ask him about any other documents that	(19)	
(20)	he may	have had in his possession?	(20)	ti
(21)	Α.	No. But he volunteered that National	(21)	L
(22)	Geograj	ohic had given him several books. And I asked	(22)	
(23)	him, co	uld he name some. And he named one. He said	(23)	t
(24)	he wasn	't sure it was the right name, but it was a	(24)	te
(20)		- Italaana Tanaana ahalikkastaana	100	

**IDAZ GREENBERG** 

BSA

- (25) name like Undersea Treasure, and it had many
  - Page 22
- (1) illustrations and photographs of children under water.
- (2) That was the only one he could remember.
- (3) I also asked him Oh, he volunteered to me
- (4) that he had produced Oh, okay. He said to me, I
- (5) always do work for hire. I mentioned to him that our
- (6) copyrights were very valuable to us, and he said,
- (7) "Well, I don't have any copyrights. I always do work
- (8) for hire. I have done several books." And I said,
- (9) "Wow, can you name any?" And he named a pop-up book
- (10) which I was familiar with. I have three
- (11) grandchildren, and I bought that book at one point,
- (12) and I told him so. It's a wonderful book.
- (13) Q. At any point in the conversation, Mrs.
- (14) Greenberg, did you tell Mr. Cutler, in words or in
- (15) substance, that you were not interested in giving him
- (16) any trouble but that you were interested in pursuing
- (17) the National Geographic in this matter?
- (18) A. No, I did not say that. I said to him at the
- (19) end of our conversation, I want you to know that I
- (20) mean you no harm. I said it sincerely.
- (21) Q. In what context did you make that comment?
- (22) A. Well, he repeated to me once again that, in his
- (23) heart of hearts, he did not believe he had done
- (24) anything wrong, and I said, I want you to know that I
- (25) wish you no harm.

- GREENBERG V NATIONAL GEOGRAPHIC MA
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XMAX(6/6)

- (1) Q. Did he have a response to that?
- (2) A. No.
- (3) Q. Just so the record is clear, Mrs. Greenberg, I
- want to confirm. You did ask him about Withdrawn.
- (5) Just so the record is clear, Mrs. Greenberg, you asked
- (6) Mr. Cutler what his sources were that he used as the(7) basis for his illustrations in the Geo Pack product
- (8) during the course of this telephone conversation?
- (9) A. No. He said he volunteered to me that the
- 10) Geographic had given him after he told me, yes, he
- (11) had had the book during the time that he worked on the
- (12) project, he said, National Geographic gave me many
- (13) books to refer to.
- 14) Q. Which book was the one that he was referring to
- (15) which contained Mr. Greenberg's images?
- (16) MR. DAVIS: Object to the form.
- (17) THE WITNESS: Shall I answer?
- (18) MR, DAVIS: If you can.
- (19) THE WITNESS: Well, he didn't mention any book
- (20) that contained my husband's images other than The
- (21) Living Reef.
- (22) Q. (BY MS. GRAY) Can you recall anything else
- (23) that Mr. Cutler said to you during the course of this
- (24) telephone conversation?
- (25) A. He did say he had a large library of his own.

(1) Ah. When the subject of the two divers came up - I

#### Page 24

<ul> <li>(15) the course of this conversation?</li> <li>(16) A. Not that I can recall right now.</li> <li>(17) Q. Is there anything else that you said to Mr.</li> <li>(18) Cutler during the course of this telephone</li> <li>(19) conversation?</li> <li>(20) A. Not that I can recall right now, no.</li> <li>(21) Q. Did you ask Mr. Cutler during the course of</li> <li>(22) this conversation if he traced or copied any of the</li> </ul>	1					
<ul> <li>(4) don't think that that diver looks anything like the</li> <li>(5) diver in your book. I took great care to make it look</li> <li>(6) like a child, and I said to him, well, the other diver</li> <li>(7) was a child. It was my son, Michael, when he was ten</li> <li>(8) years old. And the diver you're talking about was an</li> <li>(9) adult.</li> <li>(10) Q. Just so the record is clear, when you say the</li> <li>(11) two divers, you're referring to the two drawings of</li> <li>(12) scuba divers which appear -</li> <li>(13) A. On the bottom leg of the three D pack, yes.</li> <li>(14) Q. Did Mr. Cutler say anything else to you during</li> <li>(15) the course of this conversation?</li> <li>(16) A. Not that I can recall right now.</li> <li>(17) Q. Is there anything else that you said to Mr.</li> <li>(18) Cutler during the course of this telephone</li> <li>(19) conversation?</li> <li>(20) A. Not that I can recall right now, no.</li> <li>(21) Q. Did you ask Mr. Cutler during the course of</li> <li>(22) this conversation if he traced or copied any of the</li> <li>(23) images in which you or your husband owned copyright</li> <li>(24) A. No.</li> </ul>	(2)	forget what the context was. Perhaps I had mentioned				
<ul> <li>(5) diver in your book. I took great care to make it look</li> <li>(6) like a child, and I said to him, well, the other diver</li> <li>(7) was a child. It was my son, Michael, when he was ten</li> <li>(8) years old. And the diver you're talking about was an</li> <li>(9) adult.</li> <li>(10) Q. Just so the record is clear, when you say the</li> <li>(11) two divers, you're referring to the two drawings of</li> <li>(12) scuba divers which appear -</li> <li>(13) A. On the bottom leg of the three D pack, yes.</li> <li>(14) Q. Did Mr. Cutler say anything else to you during</li> <li>(15) the course of this conversation?</li> <li>(16) A. Not that I can recall right now.</li> <li>(17) Q. Is there anything else that you said to Mr.</li> <li>(18) Cutler during the course of this telephone</li> <li>(19) conversation?</li> <li>(20) A. Not that I can recall right now, no.</li> <li>(21) Q. Did you ask Mr. Cutler during the course of</li> <li>(22) this conversation if he traced or copied any of the</li> <li>(23) images in which you or your husband owned copyright</li> <li>(24) A. No.</li> </ul>	(3)	that my son was a diver. He said, look - he said, I				
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<ul> <li>(21) Q. Did you ask Mr. Cutter during the course of</li> <li>(22) this conversation if he traced or copied any of the</li> <li>(23) images in which you or your husband owned copyright</li> <li>(24) A. No.</li> </ul>	(19)	conversation?				
<ul> <li>(22) this conversation if he traced or copied any of the</li> <li>(23) images in which you or your husband owned copyright</li> <li>(24) A. No.</li> </ul>	(20)	A. Not that I can recall right now, no.				
<ul> <li>(23) images in which you or your husband owned copyright</li> <li>(24) A. No.</li> </ul>	(21)	Q. Did you ask Mr. Cutler during the course of				
(24) A. No.	(22)	this conversation if he traced or copied any of the				
	(23)	images in which you or your husband owned copyright?				
(25) MS. GRAY: I think we could take a very short	(24)	A. No				
	(25)	MS. GRAY: I think we could take a very short				

	NBERG V N	ITA	ONAL GEOGRAPHIC MAY 28,1998	XMAX(7
Page 25	1	~	Page 27 CERTIFICATE OF OATH	
(1) break at this point if it's all right with everyone.		(1)		
(2) We will resume in just a couple of minutes.		(2)	STATE OF FLORIDA )	
(3) (Short break taken)			) SS	
(4) MS. GRAY: On the record. Mrs. Greenberg, I		(3)	COUNTY OF BROWARD )	
(5) have no further questions for you at this time. Thank		(4)	I, Lois E. Guffey, RDR, and Notary Public in and	
(6) you very much for your time and cooperation. Have a			for the State of Florida at Large, do hereby certify	
(7) pleasant afternoon.		(5)	that the witness, IDAZ GREENBERG, personally appeared	
(8) THE WITNESS: Thank you.			before me and was duly sworn	
(9) MS. GRAY: Off the record.		(6)	Witness by hand and official scal this 7th of	
0) THE REPORTER: And she will read, too?			June, 1998, in the City of Hollywood, County of	
1) MR. DAVIS: Yes.		ന	Broward, State of Florida.	
(Thereupon, the taking of the deposition was concluded		(8)		
		(0)	Lois E. Guffey, RDR, Notary	
(3) at 2:25 p.m.)		<i>(</i> ))	Public, State of Florida	<i></i>
l4)		(9)	rune, state of rivida	
(5)		(10)	REPORTERIS DEPOSITION CERTIFICATE	
16)		(11)	REPORTER'S DEPOSITION CERTIFICATE	
(7)		(12)	STATE OF FLORIDA )	
8)			) \$\$	
9)		(13)	COUNTY OF BROWARD )	
20)		(14)	I, Lois E. Guffey, RDR, do hereby certify that I	
21)			was authorized to and did stenographically report the	
22)		(15)	deposition of IDAZ GREENBERG, the witness herein; that	
23)			a review of the transcript was requested; that the	
24)		(16)	foregoing pages, number from 1 through 27, inclusive,	
25)			is a true and complete record of my stenographic notes	
~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~		(17)	of the deposition by said witness; and that this	
			computer-assisted transcript was prepared under my	
		(18)	supervision.	
		(10)	I FURTHER CERTIFY that I am not a relative,	
Page 26		(19)	employee, attorney or counsel of any of the parties,	
(I) EXCEPT FOR THE CORRECTIONS			nor am I a relative or employee of any of the parties'	
MADE HEREIN BY ME, I		(20)	attorney or counsel connected with the action.	
(2) CERTIFY THIS IS A TRUE AND			DATED at Hollywood, Broward County, Florida,	
ACCURATE TRANSCRIPT.		(21)	this 7th of June, 1998.	
(3) FURTHER DEPONENT SAYETH		(22)		
NOT.	••		LOIS E. GUFFEY, RDR	
		(23)	Registered Diplomate Reporter	
(4)		(24)	Negotica 2 province activities	
		1		
(6) DEPONENT		(25)		
(7) STATE OF FLORIDA )				
) SS				
(8) COUNTY OF BROWARD )				
(9) Sworn and subscribed to before me thisday				
of , 1998.		1		
10)				
PERSONALLY KNOWN OR I.D.		1		
II)		1	•	
		1		
2) Notary Public in and for		1		
the State of Florida at	-	1		
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PEGGY ANN COOK & ASSOCIATES

305-371-1884

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## IDAZ GREENBERG

# GREENBERG V NATIONAL GEOGRAPHIC MAY 28,1998

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# CONDENSED TRANSCRIPT AND CONCORDANCE PREPARED BY:

PEGGY ANN COOK & ASSOCIATES, INC. 150 S.E. Second Avenue Suite 1011 Miami, FL 33131 Phone: 305-371-1884 FAX: 305-536-2510

BSA	IDAZ GREENBERG GREENBERG V N	NATIONAL GEOGRAPHIC MAY 28,1998 XMAX(1/1)
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(1) (2) (3) (4)	UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA CASE NO. 97-3924	<ol> <li>Thereupon:</li> <li>IDAZ GREENBERG</li> <li>was called as a witness and having been first duly</li> <li>sworn, was examined and testified on his oath as</li> </ol>
(5) (6) (7) (8)	JERRY GREENBERG, individually, and IDAZ GREENBERG, individually, Plaintiffs, vs. NATIONAL GOGRAPHIC SOCIETY, a district of Columbia composition	<ul> <li>(5) follows:</li> <li>(6) DIRECT EXAMINATION</li> <li>(7) BY MS. GRAY:</li> <li>(8) Q. Could you, please, state your full name and</li> </ul>
,	district of Columbia corporation, NATIONAL GEOGRAPHIC ENTERPRISES. INC., a corporation, and MINDSCAPE, INC., a California corporation. Defendants.	<ul> <li>(9) address for the record.</li> <li>(10) A. Idaz, I-D-A-Z, Greenberg. My address is 6840</li> <li>(11) Southwest 92nd Street, Miami, Florida 33156.</li> </ul>
<ul> <li>(12)</li> <li>(13)</li> <li>(14)</li> <li>(15)</li> <li>(16)</li> <li>(17)</li> <li>(18)</li> <li>(19)</li> <li>(20)</li> <li>(21)</li> <li>(22)</li> <li>(21)</li> <li>(22)</li> <li>(23)</li> <li>(24)</li> <li>(25)</li> </ul>	701 Brickell Avenue Miami. Florida Thursday. 1:40 p.m. May 28th. 1998 DEPOSITION OF IDAZ GREENBERG Taken on behalf of the Defendant before LOIS E. GUFFEY. RDR, Certified Realtime Reporter and Notary Public in and for the State of Florida at Large, pursuant to a Notice of Taking Deposition filed in the above cause.	<ul> <li>(12) Q. Mrs. Greenberg, have you ever been deposed</li> <li>(13) before?</li> <li>(14) A. Yes.</li> <li>(15) Q. Just a couple of ground rules before we get</li> <li>(16) started so it will refresh your recollection about the</li> <li>(17) experience. It's very important that you give me</li> <li>(18) verbal answers to all of my questions, no uh-uh and</li> <li>(19) uh-huh. Make sure that you wait until I have finished</li> <li>(20) my question before you start answering so the court</li> <li>(21) reporter can get everything down. If you don't</li> <li>(22) understand one of my questions or if you would like</li> <li>(23) something to be clarified, please, let me know. Do</li> </ul>
		<ul><li>(24) you understand?</li><li>(25) A. Yes.</li></ul>

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(1)	APPEARANCES :
(2)	STEEL, HECTOR & DAVIS LLP By: Norman Davis, Esq.
(3)	and Naomi Gray, Esq.
1 37	Appearing on behalf of the Plaintiffs.
(4)	Appearing on benation on one chamberling.
,	WEIL. GOTSHAL & MANGES LLP
(5)	By: Robert G. Sugarman, Esg.,
	appearing on behalf of the Defendants.
(6)	
(7)	
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(9)	
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(19)	
(20)	
(21)	
(22)	
(23)	
(23) (24)	
(23)	

Page 4 How many times have you been deposed before? (1) Q. (2) Α. Twice, to my memory. Q. And could you describe the circumstances under (3) which you were deposed. (4) I was deposed as a plaintiff in copyright (5) Α. (6) infringement. Could you tell me what those cases were? (7) Q. One of them was Stanley Michaels, and the other Α. (8) (9) one was Mendez. MSP is the name of the company. What was the basis of the claim in the Mendez (10)Q. litigation? (11) They had used illustrations of mine from my (12) Α. (13) book, for T-shirts. How many illustrations of yours did they use? (14) Q. (15) Α. I couldn't guess. More than two, less than 20. You said they used them on T-shirts. Was that (16) Q. (17) for commercial sale? (18) А. Yes. Do you have any idea how many T-shirts were (19) Q. sold using your images? (20) (21) Α. No. (22) Was the use a direct copy of your illustration? Q. I believe so. However, it was never judged - I (23) Α. (24) mean I - it was - You know, it's hard for me to talk about that, because there was a gag on that and I (25)

X(2/2)

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(1)	don't know how much I can say without going against	(1) that you used as a research?
(2)	the agreement.	(2) A. I did a T-shirt design based on a photograph by
(3)	Q. Let me rephrase the question. The images that	(3) Douglas Faulkner of a manatee, or two manatees.
(4)	were in dispute in that litigation were drawings of	(4) Q. And you used - how many of his photographs did
(5)	yours, correct?	(5) you use?
(6)	A. Correct.	(6) A. One.
(7)	Q. And the use on the T-shirts, was that drawings	(7) Q. Are there any other instances where you have
(8)	also?	<ul> <li>(8) used photographs taken by anyone other than</li> <li>(9) Mr. Greenberg, use wells ensure as a hear?</li> </ul>
(9) (10)	A. Yes.	<ul><li>(9) Mr. Greenberg, yourself or your son as a bases?</li><li>(10) A. Not that I recall right now, no.</li></ul>
(10) (11)	<ul><li>Q. And what was the outcome of that litigation?</li><li>A. We won.</li></ul>	
(12)	Q. When you say, "We won," do you mean -	<ul> <li>(11) Q. Was the T-shirt that you used this</li> <li>(12) illustration - or that was - The end result of this</li> </ul>
(12)	A. We prevailed and were paid.	<ul><li>(12) Indication - of that was - The end result of this</li><li>(13) illustration, is that something that Seahawk Products</li></ul>
(13)	Q. Did the case go to trial?	(14) sold?
(15)	A. Yes.	(15) A. No.
(16)	Q. Was it tried to a jury?	(16) Q. What was the T-shirt that was being produced,
(17)	A. No.	(17) for which you did the illustration?
(18)	Q. Was it tried to a judge?	(18) A. It never went beyond a sample.
(19)	A. Yes.	(19) Q. And why is that?
(20)	Q. And what was the amount of your award?	(20) A. I could not produce the shirts.
(21)	A. I can't say.	(21) Q. Why not?
(22)	Q. Do you have - do you recall what the ballpark	(22) A. I could not find a producer to produce the
(23)	was?	(23) shirts, and I certainly did not want to print them
(24)	A. I really don't remember.	(24) myself.
(25)	Q. Could you tell me what you do for a living,	(25) Q. Okay. When you used Mr. Faulkner's photograph
	Page 6	Page 8
(1)	please, Mrs. Greenberg.	(1) as research material, can you describe to me what your
(2)	A. What I do for a living. Hum. I work with my	(2) methodology was in preparing your illustrations?
(3)	husband in our business.	(3) A. With his permission, I traced them.
(4)	Q. And what is your business?	(4) Q. When you say traced, could you define that for
(5)	A. Our business is Seahawk Press Products.	(5) me, please.
(6)	Q. And what is the nature of the Seahawk Press	(6) A. I used a projection from a slide and traced the
(7)	Products?	(7) outline. I am sorry. I used that in a coloring book
(8)	A. We are publishers of various projects that are	(8) subsequently.
(9)	about underwater life, marine life.	(9) Q. After the T-shirt project did not go forward?
(10)	Q. Do you and your husband own a business jointly?	(10) A. Exactly.
(11)	A. No. I believe it to be a sole proprietorship	(11) Q. You then used the drawing on a color book?
(12)	of my husband's; however, we work together and own	(12) A. Yes, with permission.
(13)	copyrights in common.	(13) Q. And that was a product that was sold by Seahawk
(14)	Q. And what kind of work do you do for Seahawk	(14) Press?
(15)	Products?	(15) A. Yes.
(16)	A. I am an illustrator. I do illustrations based,	(16) Q. Approximately how many of those coloring books
(17)	in large part, on my husband's photographs, my own	(17) did Seahawk Press publish?
(18)	photographs, and my son's photographs, and I generally	(18) A. I don't do the - supervise the printing, so I
(19) (20)	write the publications, although sometimes Jerry does.	(19) can't say, but it's done very well, and it is still in
(21)	Q. Have you ever used photographs, other than those taken by Mr. Greenberg, yourself or your son, as	(20) print and still being sold.
(~1)	the basis for your illustrations?	(21) Q. How long have you been working as an
(22)		( L//) Whetrator'/
(22) (23)		(22) illustrator?
(23)	A. I can recall having permission from one person	(23) A. Oh, gosh. You mean professionally?

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(1)	Q. And roughly how long would that be, what span	(1) a license until they used up their inventory. In
(2)	of years would that be?	(2) previous years, when we had problems with, you know,
(3)	A. I am currently 67 and still holding.	(3) unauthorized use, we would insist that the people
(4)	Q. Didn't mean to get –	(4) cease and desist and destroy inventory, and we came up
(5)	A. I am proud of my age. I have lived a good	(5) with a lot of very unhappy people who didn't want to
(6)	life.	(6) settle with us on that basis, so my husband and I
(7)	Q. Were there any unprofessional or	(7) evolved a new system much later that was a little
(8)	nonprofessional circumstances under which you acted as	(8) kinder.
(9)	an illustrator prior to becoming a professional	(9) It took into consideration the fact that people
(10)	illustrator?	(10) had things out there in the marketplace and they had
(11)	A. Yes. My mother tells me that before I could	(11) catalogs printed, and so we decided to give them two
(12)	walk I was drawing. Told me. My mother is gone now.	(12) options. One was to pay for past use only, which we
(13)	Q. Have you ever licensed your artistic	(13) had previously done, and cease and desist and destroy
(14)	illustrations for republication by third parties?	(14) inventory; the other was to pay a sum of money and
(15)	When I say third parties, I mean other than Seahawk	(15) then pay for an ongoing license, which generally only
(16)	Press publications.	(16) was kept as long as they needed to get rid of their
(17)	A. You mean for publication?	(17) inventory. And we had less problems settling after
(18)	Q. Yes.	(18) that.
(19)	A. No. Not that I can recall.	(19) Q. What was the amount for which you settled for
(20)	Q. Did you ever license – Did you ever grant a	(20) past use in the Charles Bridge dispute?
(21)	license to the Kansas City Star to reproduce some of	(21) A. I don't recall.
(22)	your illustrations in association with an article that	(22) Q. Mrs. Greenberg, I would like to direct your
(23)	they were publishing?	(23) attention to a document which was marked as Jerry
(24)	A. I remember something vaguely about that, and I	(24) Greenberg Exhibit 1 (indicating) during
(25)	don't remember the circumstances. I would have to	(25) Mr. Greenberg's deposition this morning.

refresh my memory by checking. I really don't know, (1) but I - you do jog a memory there, something. (2)

Do you remember anything about that license? (3) 0.

(4) Α. I don't even remember the images involved in

- it. I do remember the name, Kansas City Star. I (5) thought, Wizard of Oz land. (6)
- (7) 0. Are you aware of any licenses which have been

(8) granted for the use of Jerry Greenback's - Jerry

- Greenberg's excuse me photographs as the basis for (9)
- (10) artwork in advance of the photographs being used?
- (11) Α. No.
- Okay. Are you aware of a dispute between Jerry (12)Q.
- Greenberg, Seahawk Press publications and Charles (13)
- Bridge publishers about the alleged use of (14)
- (15) Mr. Greenberg's images in conjunction with an alphabet
- (16) book published by Charles Bridge?
- (17) Α. Yes.
- (18) Q. How many images were involved in that dispute,
- (19) Mrs. Greenberg?
- (20) Α. Offhand, I recall two or three,
- (21) Q. And what were those images of?
- (22) Α. I don't recall what they were.
- (23) Q. What was the resolution of that dispute?
- (24)Α. It was settled for a payment for past use, and
- they were permitted to continue to use it if they took (25)

- this morning? Yes. Almost all the time. A.
- (4)(5)
  - Q. Do you recognize Jerry Greenberg Exhibit 1?

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Were you present for Mr. Greenberg's deposition

Yes. (6)Α.

Α.

Q.

(1)

(2)

(3)

Q. And what is it? (7) (8)

Uh-huh.

- Α. It's a page from his ledger.
- You may recall that Mr. Greenberg testified (9)Q.
- (10) this morning that prior to disclosing documents to us in this litigation you had reviewed them and removed (11)
- certain items. (12)
- (13)Α. Yes.
- Could you tell me what kinds of entries you (14) Q. (15)removed from the journal pages like Jerry Greenberg Exhibit 1? (16)
- (i7) Α. Actually, he remembered more about what I
- (18) removed than I did. The only thing that came to mind,
- (19)when I heard the question originally, was that I had
- removed refunds, for instance. I went through each (20)
- item, item by item, and made my own judgment as to (21)
- (22) whether it replied to the request that was in the (23)
- request for documents and in being I believe what we were asked for was revenue, so I struck out (24)
- anything that I felt was not revenue. (25)

XMAX(3/3)

	Page 13	l B
(1)	Q. And did you strike out all entries which	(1) Q. Were you acting along
(2)	reflected income derived from the settlement of	(1) Q: Were you doing doing (2) decision to remove certain ent
(3)	disputes over the alleged use of Mr. Greenberg's	(3) prior to disclosing them in the
(4)	images or your images?	(4) A. Yes. It was totally my
(5)	A. That was one of the criteria, yes. I am not	(5) MS. GRAY: May I take
(6)	sure I took out all of them. That was my criteria. I	(6) copy of Jerry Greenberg Exhi
(7)	felt that was not revenue.	(7) MR. DAVIS: (Indicating
(7)	Q. And so your intent in reviewing these ledgers	(8) Q. (BY MS. GRAY) I w
(9)	was to remove all references to such settlements; is	(9) attention back to the document
	that correct?	
(10)		(10) Jerry Greenberg Exhibit 1. If y
(11)	A. No. All references that do not reply to the	(11) very right-hand margin of the
(12)	request for revenue. Yeah.	(12) number of asterisks there. Is the
(13)	MS. GRAY: I would like ask the court reporter	(13) Mrs. Greenberg?
(14)	to mark this document as Idaz Greenberg Exhibit 1.	(14) A. No.
(15)	THE WITNESS: Incidentally –	(15) Q. Do you know whose I
(16)	MS. GRAY: Can we get it on the record?	(16) A. No. I have not seen the
(17)	THE WITNESS: I did not put those asterisks	(17) Q. Do those asterisks app
(18)	there, either.	(18) ledger pages from which you r
(19)	MR. DAVIS: Wait for the questions.	(19) disclosed to us in this litigation
(20)	THE WITNESS: Okay.	(20) A. I did not make the cop
(21)	(IG Exhibit 1 is marked)	(21) can't remember seeing these a
(22)	Q. (BY MR. SUGARMAN) Let the record reflect that	(22) I can't rule out that they may t
(23)	I have provided a copy of Idaz Greenberg Exhibit 1 to	(23) Q. Who made the copy?
(24)	Mr. Davis.	(24) A. My husband did.
(25)	Mrs. Greenberg, do you recognize the document	(25) Q. Did anybody else part

- which has been marked Idaz Greenberg Exhibit 1 for m
- identification? (2)
- (3) Α. Yes.
- (4) Q. What is it?
- (5) Α. It is a Defendant's request for the production
- (6) of documents.
- (7) Did you have Exhibit 1 in front of you - when I **Q**.

(8) say Exhibit 1, I mean Idaz Greenberg Exhibit 1, Did

- you have Idaz Greenberg Exhibit 1 in front of you when (9)
- you were going through the journal entries and (10)

removing entries which you felt were not responsive to (11)(12) these requests?

- (13) Α. I didn't look at the document every time I came
- (14)across something that I felt should be removed, but I
- read it several times. (15)
- You read it several times prior to reading -(16)0.
- (17) prior to this exercise during which you read through
- and removed entries from your journal? (18)
- (19) A. Yes.
- Why did you remove entries which reflected the Q. (20)
- (21) settlement of disputes over the use of images owned by
- yourself and Mr. Greenberg? (22)
- (23)Α. I did not believe that they were true revenue.
- (24) Q. How would you classify that income?
- (25) Α. Damages.

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- 0. Were you acting alone when you made the
- decision to remove certain entries from the journals
- prior to disclosing them in the litigation?
- Yes. It was totally my subjective judgment. Ä.
- MS. GRAY: May I take back just momentarily the
- copy of Jerry Greenberg Exhibit 1.
- MR. DAVIS: (Indicating).
- (BY MS. GRAY) I would like to direct your 0.
- attention back to the document which is identified as
- Jerry Greenberg Exhibit 1. If you will look in the
- very right-hand margin of the document, you will see a
- number of asterisks there. Is that your handwriting,
- Mrs. Greenberg? Α. No.
- 0. Do you know whose handwriting that is?
- A. No. I have not seen them before.
- Q. Do those asterisks appear on the original
- ledger pages from which you made the copies that were
- disclosed to us in this litigation?
- Α. I did not make the copies, so I did not - I
- can't remember seeing these asterisks, but, obviously,
- I can't rule out that they may be in there.
- Who made the copy? 0.
- My husband did. Α.
- 0. Did anybody else participate in the process

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- which began with your receiving this document request ĺ٦.
- (2)which has been marked Idaz Greenberg Exhibit 1 and
- (3) which culminated in the disclosure of these documents
- (4) to us in this litigation?
- (5)Α. I only know the part that I played, and I gave
- it to my husband for the copying. I have no idea from (6) then on. (7)
- (8) Q. Does anyone, other than yourself and
- Mr. Greenberg, have access to the books, the financial (9)
- (10) books of Seahawk Products?
- Only our bookkeeper. It is not we do not -(11)Α.
- (12) we have no employees. Our bookkeeper is someone who
- comes and picks the books up once a month and brings (13)
- (14) them back and does whatever they do, which I don't (15) know.
- Was that person involved in this process which (16) Q.
- (17) resulted in the production of documents to us in this
- (18) litigation at all?
- (19)Α. No.
- (20)Q. Mrs. Greenberg, do you know a man named Warren (21) Cutler?
- (22)Α. No. Well, I should tell you, I don't remember
- (23)names well. I remember people. I remember things
- that happen, but I don't remember names, disconnected. (24)
- (25) That is to say, unless I know someone really well. I

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(1)	will not remember their name.	(1)	Q. What did he say?
(2)	Q. Do you know the artist who prepared the	(2)	A. No. He gave it to Geographic.
(3)	illustrations which were used in the Geo Pack product	(3)	Q. Did you continue to - did the conversation
(4)	which was marked as as Jerry Greenberg Exhibit -	(4)	continue after that?
(5)	(Mr. Sugarman leaves the room)	(5)	A. Yes. He explained that he did not copy or
(6)	MR. DAVIS: 18, I think.	(6)	trace my work and did not feel that he had done
(7)	MS. GRAY: 18? I don't see the stamp on	(7)	anything wrong.
(8)	there. Yes. Here we go. Jerry Greenberg Exhibit 18.	(8)	Q. Did you have a response to that statement?
(9)	Q. (BY MS. GRAY) Do you know the artist who	(9)	A. I said, what if you questioned - what if this
(10)	prepared those illustrations, Mrs. Greenberg?	(10)	goes to court and you - No, I didn't say that. I am
(14)	A. I -	(11)	trying to think - Let me think for a moment what I
(12)	MR. DAVIS: By know, you mean what? Does she	(12)	said. What if someone else judged that you had copied
(13)	know him socially or personally or -	(13)	my work? And he said, then I would think my lawyer
(14)	Q. (BY MS. GRAY) Have you ever spoken with the	(14)	was not doing his job right.
(15)	artist who prepared the illustrations used in the Geo	(15)	Q. Did you say anything else during the course of
(16)	Pack product which was marked as Jerry Greenberg	(16)	this conversation?
(17)	Exhibit 18 this morning?	(17)	A. We had a rambling conversation. Among other
(18)	A. If - it was marked this morning, you mean; not,	(18)	things, he told me that he was not yet 62 and, yet, he
(19)	have I spoken to him this morning.	(19)	was drawing on his IRA or Kehough, I forget which. I
(20)	Q. That was marked this morning.	(20)	asked him if the book was given to him by Geographic.
(21)	A. Yes. I spoke with him.	(21)	He said he did not remember.
(22)	Q. When have you spoken with him?	(22)	Q. How many times did you ask him that question
(23)	A. I don't recall the exact day, but recently.	(23)	during the course of your conversation?
(24)	Q. Was this the first conversation you ever had	(24)	A. Once. I asked him if he had had the book
(25)	with him?	(25)	during the use of the project; I asked him, did he

(1) have it now; and I asked him, was it given to him by

(2)

Geographic.

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(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

(11)

(12)

(13)

(14)

(15)

(16)

(17)

(18)

(19)

(20)

(21)

(22)

(23)

(24)

(25)

Α.

Q.

Α.

to discuss it.

Q. .

Α.

Q.

А.

Q.

Α.

Q.

Α.

identified myself first.

was that true. And he said yes.

said he did not remember.

Yes.

Why did you call him?

the beginning of the telephone call?

Then what did you say?

Then what did you say?

Then what did you say?

XMAX(5/5)

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(1)	advice to have a lawyer represent you."	(1)	Q. Did he have a response	to that?	
(2)	Q. Did you ask him if he had a lawyer?	(2)	A. No.		
(3)	A. He volunteered to me that he had a friend who	(3)	Q. Just so the record is cle	ar, Mrs. Greenberg, I	
(4)	was a copyright lawyer.	(4)	want to confirm. You did ask hi	m about – Withdrawn.	-
(5)	Q. Did you ask him if he had a lawyer?	(5)	Just so the record is clear, Mrs.	Greenberg, you asked	
(6)	A. I asked him if his friend worked for Geographic	(6)	Mr. Cutler what his sources we	re that he used as the	
(7)	and he said no.	(7)	basis for his illustrations in the G	Geo Pack product	
(8)	Q. Did you ask him if he had a lawyer?	(8)	during the course of this telepho	ne conversation?	
(9)	A. No. He volunteered to me that he had a friend	(9)	A. No. He said - he volum	teered to me that the	
(10)	who was a copyright specialist.	(10)	Geographic had given him - afte	er he told me, yes, he	
(11)	Q. Did you ask him to provide any documents to	(11)	had had the book during the tim	e that he worked on the	-
(12)	you?	(12)	project, he said, National Geogr	aphic gave me many	
. (13)	A. He mentioned voluntarily - I did not ask him	(13)	books to refer to.		
(14)	about it - that at no point did his contract with	(14)	Q. Which book was the on	e that he was referring to	
(15)	Geographic require him to do original work. I asked	(15)	which contained Mr. Greenberg	's images?	
(16)	him if he would care to send me a copy of that	(16)	MR. DAVIS: Object to the	e form.	
(17)	contract. He said no. That's the last we spoke of	(17)	THE WITNESS: Shall I at	iswer?	
(18)	it.	(18)	MR. DAVIS: If you can.	а. — — — — — — — — — — — — — — — — — — —	
(19)	Q. Did you ask him about any other documents that	(19)	THE WITNESS: Well, he	didn't mention any book	
(20)	he may have had in his possession?	(20)	that contained my husband's im-	ages other than The	
(21)	A. No. But he volunteered that National	(21)	Living Reef.		
(22)	Geographic had given him several books. And I asked	(22)	Q. (BY MS. GRAY) Can	you recall anything else	
(23)	him, could he name some. And he named one. He said	(23)	that Mr. Cutler said to you durin	ng the course of this	.*
(24)	he wasn't sure it was the right name, but it was a	(24)	telephone conversation?		
(25)	name like Undersea Treasure, and it had many	(25)	A. He did say he had a lar	ge library of his own.	

- illustrations and photographs of children under water. (1)
- (2) That was the only one he could remember.
- I also asked him Oh, he volunteered to me .(3)
- that he had produced Oh, okay. He said to me, I (4)
- (5) always do work for hire. I mentioned to him that our
- copyrights were very valuable to us, and he said, (6)
- "Well, I don't have any copyrights. I always do work (7)
- for hire. I have done several books." And I said, (8)
- "Wow, can you name any?" And he named a pop-up book (9)
- (10)which I was familiar with. I have three
- grandchildren, and I bought that book at one point, (11)
- and I told him so. It's a wonderful book. (12)
- (13) 0. At any point in the conversation, Mrs.
- Greenberg, did you tell Mr. Cutler, in words or in (14)
- substance, that you were not interested in giving him (15)
- (16)any trouble but that you were interested in pursuing
- (17) the National Geographic in this matter?
- No, I did not say that. I said to him at the (18)Α.
- (19) end of our conversation, I want you to know that I
- mean you no harm. I said it sincerely. (20)
- (21) In what context did you make that comment? Q.
- (22) Α. Well, he repeated to me once again that, in his
- (23)heart of hearts, he did not believe he had done
- anything wrong, and I said, I want you to know that I (24)
- (25) wish you no harm.

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- (1) Ah. When the subject of the two divers came up I
- forget what the context was. Perhaps I had mentioned (2)
- (3) that my son was a diver. He said, look - he said, I
- don't think that that diver looks anything like the (4)
- diver in your book. I took great care to make it look (5)
- like a child, and I said to him, well, the other diver (6)
- (7)was a child. It was my son, Michael, when he was ten
- years old. And the diver you're talking about was an (8) adult. (9)
- (10)0. Just so the record is clear, when you say the
- two divers, you're referring to the two drawings of (11)
- (12) scuba divers which appear ---
- (13) On the bottom leg of the three D pack, yes. Α.
- (14) Q. Did Mr. Cutler say anything else to you during
- (15) the course of this conversation?
- (16)Α. Not that I can recall right now.
- (17) Is there anything else that you said to Mr. Q.
- (18) Cutler during the course of this telephone
- (19) conversation?
- (20) Α. Not that I can recall right now, no.
- Did you ask Mr. Cutler during the course of (21) 0.
- (22) this conversation if he traced or copied any of the
- images in which you or your husband owned copyright? (23)
- (24) Α. No.
- (25) MS. GRAY: I think we could take a very short

BSA	IDAZ GREENBERG GREENBERG V N	<b>IATI</b>	ONAL GEOGRAPHIC MAY 28,1998	XMAX(7/
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(1)	break at this point if it's all right with everyone.	(1)	CERTIFICATE OF OATH	
(2)	We will resume in just a couple of minutes.	-(2)	STATE OF FLORIDA )	
(3)	(Short break taken)		) SS	
(4)	MS. GRAY: On the record. Mrs. Greenberg, I	(3)	COUNTY OF BROWARD )	
(5)	have no further questions for you at this time. Thank	(4)	I, Lois E. Guffey, RDR, and Notary Public in and	•
(6)	you very much for your time and cooperation. Have a		for the State of Florida at Large, do hereby certify	•
(7)	pleasant afternoon.	(5)	that the witness, IDAZ GREENBERG, personally appeared	
(8)	THE WITNESS: Thank you.		before me and was duly sworn	
(9)	MS. GRAY: Off the record.	(6)	Witness by hand and official seal this 7th of	
(10)	THE REPORTER: And she will read, too?		June, 1998, in the City of Hollywood, County of	
(11)	MR, DAVIS: Yes.	(7)	Broward, State of Florida.	
(12)	(Thereupon, the taking of the deposition was concluded	(8)		
(13)	at 2:25 p.m.)		Lois E. Guffey, RDR, Notary	
(14)		(9)	Public, State of Florida	· .
(15)		(10)		
(16)		(11)	REPORTER'S DEPOSITION CERTIFICATE	
(17)		(12)	STATE OF FLORIDA )	
(18)			) SS	
(19)		(13)	COUNTY OF BROWARD )	
(20)		(14)	I, Lois E. Guffey, RDR, do hereby certify that I	
(21)			was authorized to and did stenographically report the	
(22)		(15)	deposition of IDAZ GREENBERG, the witness herein; that	·
(23)			a review of the transcript was requested; that the	
(24)		(16)	foregoing pages, number from 1 through 27, inclusive,	4
(25)		ŀ	is a true and complete record of my stenographic notes	
		(17)	of the deposition by said witness; and that this	
			computer-assisted transcript was prepared under my	
		(18)	supervision.	
			I FURTHER CERTIFY that I am not a relative,	
	Page 26	(19)	employee, attorney or counsel of any of the parties,	
(1)	EXCEPT FOR THE CORRECTIONS		nor am I a relative or employee of any of the parties'	
	MADE HEREIN BY ME, I	(20)	attorney or counsel connected with the action.	
(2)	CERTIFY THIS IS A TRUE AND		DATED at Hollywood, Broward County, Florida,	
	ACCURATE TRANSCRIPT.	(21)	this 7th of June, 1998.	
(3)	FURTHER DEPONENT SAYETH	(22)		
	NOT.		LOIS E. GUFFEY, RDR	
(4)		(23)	Registered Diplomate Reporter	
(5)		(24)		
(6)	DEPONENT	(25)		
(7)	STATE OF FLORIDA )	(~~)		
<i>、</i> ,,	) SS			

(8) COUNTY OF BROWARD )

- (9) Sworn and subscribed to before me thisday of , 1998.
- (10)
  - PERSONALLY KNOWN OR I.D.
- (11)
- (12) Notary Public in and for the State of Florida at
- (13) Large
- (14)
- (15)
- (16)
- (17)
- (18)
- (19) (20) (21)
- (22) BEGGY ANN COOK & ASSOCIATES

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From Hum to oath

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