JERRY GREENBERG GREENBERG V NATIONAL GEOGRAPHIC MAY 28,1998

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 97-3924

JERRY GREENBERG, individually, and IDAZ GREENBERG, individually,
Plaintiffs,
vs.
NATIONAL GEOGRAPHIC SOCIETY, a district of Columbia corporation, NATIONAL GEOGRAPHIC ENTERPRISES, INC., a corporation, and MINDSCAPE, INC., a California corporation,
Defendants.
----------x

701 Brickell Avenue
Miami, Florida
Thursday, 9:30 a.m.
May 28th, 1998

DEPOSITION OF JERRY 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.

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APPEARANCES:
STEEL, HECTOR & DAVIS LLP
By: Norman Davis, Esq.,
and Naomi Gray, Esq.
Appearing on behalf of the Plaintiffs.

WEIL, GOTSHAL & MANGES LLP
By: Robert G. Sugarman, Esq., of counsel
appearing on behalf of the Defendants.

*** I N D E X ***

WITNESS	EXAMINATION BY	PAGE
JERRY GREENBERG	Direct Mr. Sugarman	3

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Thereupon:
JERRY GREENBERG
was called as a witness and having been first duly sworn, was examined and testified on his oath as follows:
DIRECT EXAMINATION
BY MR. SUGARMAN:
Q. Mr. Greenberg, have you ever had your deposition taken before?
A. Yes.
Q. On how many occasions, roughly?
A. Two or three.
Q. I am, as you undoubtedly know, going to ask you some questions. If you don't understand the questions, let me know and I will try to rephrase them.
A. Yes.
Q. Let me finish the question before you answer so the reporter can try to separate the question from the answer and, if you can verbalize your answers, that would be good. Okay?
A. Yes. Of course.
Q. You said you had been deposed two or three times before. Were those depositions in cases in which you or your company was a party?

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A. That is correct, yes.
Q. Would you describe just generally what those cases were about.
A. Copyright infringement actions.
Q. Were you or your company plaintiffs in those actions?
A. Yes, we were.
Q. And who were the defendants in the various actions?
A. Mendez Screen Printing, N.W. Air and the Bahamanian Ministry of Tourism. I can't remember the third one right now.
Q. Did either of those lawsuits go to trial?
A. Yes, sir.
Q. Which?
A. The Mendez Screen Printing.
Q. And where was that tried?
A. The Seventh District of Florida.
Q. When, approximately?
A. The date escapes me. I am sorry.
Q. Was it in the nineties?
A. I can't nail it down. I am sorry.
Q. What was the outcome?
A. We received a partial summary judgment against them, and then they decided to make a settlement with

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us.
Q. And what –
A. No. Yes. That's right. Yes.
Q. What images were involved in that lawsuit?
A. To the best of my knowledge, my wife's artwork images out of our Guide to Corals and Fishes book.
Q. And what was the outcome of the litigation with N.W. Air and the Bahamanian Ministry of Tourism?
A. They settled up with us.
Q. And what images were involved in that case?
A. My wife's artwork and my photograph.
Q. When you say your photograph, was it one photograph?
A. Yes, sir.
Q. Of what?
A. The queen angelfish.
Q. In what way was that photograph used by N.W. Air and the Bahamian Ministry of Tourism?
A. Well, it was the photograph or the artwork. We couldn't get the precise information, if my memory is clear. I believe it was my wife's artwork that they had in their - handing out a poster. But I also had a photograph of the very same image she made her artwork from. It was used in a billboard.
Q. What was the amount of the settlement?

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A. I don't remember on that one. I am sorry.
Q. Have you or your company ever been involved in any litigation with Sports Illustrated?
A. No, sir.
Q. How long have you been working as a photographer?
A. Since 1950 I had my first major piece published.
Q. And what –
A. '52, '52.
Q. What major piece was that?
A. That was a piece in Underwater Photography, in like a magazine.
Q. Do you have a specialty in the photography field?
A. Yes. It's underwater photography.
Q. Do you do your business through a corporate entity?
A. I don't understand what a corporate entity is, Mr. Sugarman.
Q. Well, do you have a business name?
A. Yes. It's Seahawk Products, Seahawk Press.
Q. Is that a corporation or a partnership?
A. It is not a corporation. I am not incorporated.

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Q. Are you still, today, active in taking underwater photographs?
A. Yes, all the time, whenever weather permits.
Q. Do you have – Withdrawn. How is it that you – Withdrawn. Do you get assignments from publications to actually take photographs?
A. Now or –
Q. Now.
A. No, sir. Occasionally something may come through where they want to buy some series of photographs or a photograph for lease for one-time use or specific use, and if the terms are right and it's a worthwhile client, we do it.
Q. Do you, today, take photographs which you then submit to publications?
A. No. The photographs that I take - all the work that I am active in is only funneled through our own Seahawk Press, Seahawk Products. We are self-publishers.
Q. Now when you say you are self-publishers, what do you self-publish?
A. Seahawk Press publishes books. We have six current titles, in color. We produce plastic field guides, submersible field guides. We were the innovators of that product back in 1979. We had a

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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?
A. Artwork that came from my photographs or my wife's photograph or my son's photograph.
Q. I take it your wife is also affiliated with Seahawk Products?

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A. Yes. That is correct.
Q. Is your son also?
A. Loosely. He supplies work to us when we need it.
Q. In addition to the finished products that you have described, the books, the field guides, the T-shirts –
A. Uh-huh.
Q. – does Seahawk Products or do you personally license photographs for use in publications published by others?
A. Yes, yes. In publications or other uses for advertising use.
Q. So do you distinguish in your own mind advertising uses from other uses?
A. Licensing is licensing. It's just another way to, you know, derive revenue from what you create. It's a license either to use it for an advertisement or license for one-time use in a magazine.
Q. Is there a difference in the revenue that you receive when an image is licensed for an advertising use, as opposed to a nonadvertising use?
A. Considerably more, yes.
Q. Considerably more for the advertising use?
A. Yes.

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Q. And why is that?
A. Well, if an agency is going to spend $500,000 or $750,000 for ad space, they're inclined to pay more for the illustration than a magazine would for inside editorial use. Inside editorial use is the lower of the two, the least amount of money, least amount of money brought in.
Q. When you say inside editorial use, what kinds of uses – Withdrawn. Have you, over the years, licensed photographs for use by the National Geographic?
A. I receive an assignment from them. The last job I did for them was 19 - the assignment was 1989 and the article appeared in the 1990 July issue.
Q. Has the National Geographic ever published images that you have taken, photographs that you have taken, where there wasn't an assignment, but they were aware of a photograph, they wanted to use it and contacted you and you permitted them to use it?
A. Occasionally that would happen.
Q. And when that happened, would you consider that an editorial use, an advertising use? Which?
A. If they specify editorial use when they would contact me, it would be for editorial use. If they had other uses for it, they would specify that.

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Generally things came after the fact in many cases.
Q. When you say things came after the fact, what does that mean?
A. Payment and the rights and permissions came after the fact that they used it.
Q. So in other words, they would use it and, then, after the use, would contact you or you would contact them?
A. No. The bulk of it, they would – I am sorry. They would contact me and tell me what they were going to pay.
Q. Would that have been before the use or after the use?
A. After the use.
Q. Can you recall any instance in which the National Geographic used any of your images in advertisements?
A. Only for in-house use, specifically, never on the outside. What I mean, in-house, either it would appear as a brochure for a product, an announcement – It was only used in the context and under the umbrella of the National Geographic Society, never for outside ads. In fact, I was approached once for an outside ad use for a shark illustration for a TV series. I think it was - Texaco was sponsoring it. But I said, no,

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they didn't want to pay enough for it.
Q. Do you recall what they offered to pay for it?
A. I don't recall a precise fee. It did not sit well with me. It didn't feel right, so I declined.
Q. Have you ever licensed the use of photographs, that you have taken, to be used as the basis for illustrations or drawings done by –
A. Outside?
Q. – people for magazines? Outsiders.
A. Never. Never.
Q. Have you or Seahawk ever licensed the use of drawings made by Mrs. Greenberg based on photographs that you have taken? And again, to outsiders.
A. The only situation that comes to my mind is when a publishing firm that did hotel-type of books in Hawaii came to us and utilized the artwork in a publication for one-time use.
Q. Aside from the publications that are at issue in this litigation, which are the Geo Pack and the Jason project –
A. Yes.
Q. – are you aware of any instance in which a publication used a photograph, that you took, as the basis for a drawing or an illustration that that publication used in one of its magazines or books or

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whatever?
A. At the present moment I can't - nothing comes to my mind right now.
Q. You mentioned two general categories of use, advertising use and editorial use. In what category - which of those categories would you put the use that was made in the Jason project?
A. I can't put - it wasn't used outside -- Well, I don't know where that went, whether it was an ad -- I believe it was, to the best of my knowledge now, on the Jason project it was used in-house. I don't think it was used outside Society.
Q. And what about the Geo Pack, would that be an advertising use, an editorial use, what?
A. That's a product use. It's not editorial. I don't consider that product to be editorial.
Q. What do you consider it to be?
A. A product like our books, our plastic cards. It's something for sale over the counter in stores.
Q. Well, okay. Within the product, itself, is the image, or images, used for advertising?
A. If they put it in a catalog and you see the image in the catalog, it's advertisement. But the product, itself, is an item for sale, for retail sale.
Q. Yeah. I understand that. I mean a magazine

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would be a product for sale, correct?
A. Yes.
Q. And within the magazine there are editorial uses and advertising uses, right?
A. Yes, sir.
Q. So take the Geo Pack, which is a product for sale. Is the use within the Geo Pack, in your view, an advertising use or an editorial use?
A. I can't cut it one way or the other. It's a product use.
Q. And it's a product use because what?
A. It's an educational product use and it's - in itself, it's a product - it doesn't have other articles in it, doesn't have any advertising in it, per se, except when the image is used in the catalog and you can see it. I don't consider that editorial use, from my point of view of my experience. Because there are many ways that things can be used and licensed, and editorial and advertising is two; product use is another, three. I am sure there are other things out there that will fall into another category.
Q. Who is responsible for keeping the financial records of Seahawk Products?
A. I take care of all the invoices and I do all of

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the posting.
Q. When you say, I do all the posting, what does that mean?
A. In the journal.
Q. Would you generally describe the process of billing and collection that you engage in on behalf of Seahawk.
A. I am sorry. I didn't -- Will you repeat that?
Q. Yes. Just describe the process of how you bill your clients, collect the money, post it.
A. Sure. Very simple system. I sell mainly to distributors. A distributor makes the order. They pick it up or I ship it to them. I send them the invoice. And at the end of the first quarter, I log in all of the invoices into my journal.
Q. Do you prepare or does anyone else prepare, for Seahawk Products, any yearly summaries of financial results?
A. Yes, sir.
Q. Who prepares those?
A. My CPA.
Q. What, as best you recall, was the level of sales for 1997?
A. I don't have that in my head but it was reflected in the invoices that we provided to you.

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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?
A. Repeat that one more time because I got a little lost.
MR. SUGARMAN: Why don't you read it back.
(The requested portion of the record is read as above recorded)
THE WITNESS: Each year would be different and each year would be reflected in the invoices we provided to you. Off the top of my head, the answer is, I can't give you a demarcation. If I have the invoices in front of me, then I can give you a better idea.
Q. (BY MR. SUGARMAN) Let's focus for a second on the instances in which Sea Hawk Products licenses other publications for use of - one-time use of images that you have photographed.
A. Publications?
Q. Publications.
A. Only. Yes.
Q. How do you go about determining the price or the fee that is charged to such a publication?
A. The bulk of my activity now - for editorial use

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of my photographs doesn't come up very much. The bulk of my livelihood and activity and my focus of my entire existence is with Seahawk Press, selling our products as a product or the licensing of the specific product to certain customers. For editorial use, I don't solicit much business. It comes to me. But the most recent licensing arrangement I made for a one-time use magazine was with Audubon magazine, and that is one that I solicited them to see whether they would be interested in our mangrove trees in the sea project.

Q. And I take it that they were interested?

A. At first they gave me no answer. Then I told them to send the material back to me. And once they found out it had never been used before, obviously, they liked what they saw, they got very excited about it.

Q. Did you then arrive at an arrangement for them to use the images?

A. Yes, sir, we did, uh-huh.

Q. And in that particular instance, how did you, in your own mind, go about deciding what the price for the use would be?

A. I have been selling or leasing photographs since the mid fifties, early sixties. At one time I

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had my own photo agency for my own work, my own underwater photographs, underwater stock photo agency. So I had a pretty fair idea what I could get for my work. I always was on the high side. In this instance, I felt what I would want as a fair price, and I asked for it, and I told them what the terms were and what the other aspects of the transaction would be, and they agreed to it.

Q. And what was the price and what were the terms?

A. The price for that specific use for six to eight photographs, inside editorial use for Audubon, one-time use only in the magazine with the appropriate copyright photo credit line was $3500. They would pay it in advance. They also would pay for the duplicate transparencies they would be using for the separations and return them because they were my property.

Q. Can you think of any other instances in the last three years where you have made a similar arrangement with a publication for one-time use of the images that you have taken?

A. Editorial, no. I am not really active in the leasing of my photos in the editorial area. There was an advertising use of one of my images in '93, I believe. I am certain it was '93.

Q. And to whom did you license that?

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A. J. Walter Thompson Agency.

MR. SUGARMAN: I am going to ask the reporter to mark as Jerry Greenberg Exhibit 1 a document that is Bates stamped JG 2955, headed January 1995.

MR. SUGARMAN: Mr. Greenberg, why don't you look at the other one that's been marked. The other is a copy for your counsel.

(JG Exhibit 1 is marked)

Q. (BY MR. SUGARMAN) Can you identify Jerry Greenberg Exhibit 1?

A. Yes. It's a photocopy of a page from the journal, January of 1995.

Q. Whose handwriting is that?

A. That's mine.

Q. And is that one of the journal pages that you have prepared as you described earlier today?

A. Yes.

Q. Would you just take us through the columns and tell us what the entries in each column represent.

A. Certainly. Do you want me to start with the top?

Q. Yes.

A. Miss Cocoa, Incorporated (phonetic). It's a local distributor.

Q. No. I actually just wanted you to describe

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what the entries are in the first column, one, two, three, four, ten, and then what is in the next column. In other words, what is reflected there?

A. In the first column is the dates.

Q. The date of what?

A. Of the transaction and of the invoice.

Q. Okay. The second column is the –

A. Customer.

Q. All right. The third column?

A. Products or services or whatever we provided to them.

Q. All right. The next - which says PD is, obviously, if it's paid.

A. Hopefully, yes.

Q. Looks like you have a pretty good record on that. And the last column?

A. The amounts that came in, sir.

Q. On the right-hand margin there are four asterisks. What do those represent?

A. Those - the asterisks?

Q. Yes.

A. I don't know.

Q. Are they in your handwriting?

A. That's not my asterisk.

Q. Okay. I notice that between the entry for

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January 10 and the entry for January 11, there is a space.
A. Yes, sir.
Q. Can you explain why there is a space.
A. Yes. My wife went through all of the journals there, and whatever in there was - that had - that was - had nothing to do about revenues from products and revenues from licensing was removed.
Q. At the bottom of the page on the right-hand side there is the word "total," and there is no number there. Was there a number on the original of this document?
A. Yes, sir, there was.
Q. And why is that not there?
A. Because the total would reflect items in there that had nothing to do with your request. Request for documents, that is.
Q. Now looking at the third column, which is the column which identifies the product –
A. The one under 1995?
Q. The one under '95.
A. Yes.
Q. The first entry is for books.
A. Yes.
Q. Would you generally describe what it means when

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you see an entry, "books"?
A. Yes. It would be strictly a transaction for our books, the books that we produce, not the plastic cards.
Q. And then, the next one down is cards?
A. Yes. That would be strictly a transaction for plastic cards.
Q. Then the entry for the 10th says, "license"?
A. Yes, sir.
Q. Would you describe what that was.
A. It was a license to use an artwork rendition of my photograph in a T-shirt.
Q. What kind of a company is Habitat, if you know?
A. It's - the company's name will be on the invoice for that date. It's a T-shirt manufacturing company.
Q. Do you recall the image that they used as the basis for the drawing?
A. Image or images, no, not off the top of my head but it was a licensing arrangement we made with them.
Q. Was it one or more than one image?
A. I would have to look at the shirt. I am sorry.
Q. There is an entry on the 12th that says, "T-shirts."
A. Yes, sir.

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Q. And what was the - what was that transaction?
A. I would have to see the invoice to give you precise information on that. If you have it, I can explain it.
Q. Then there is an entry on the 17th, American Teaching, for license.
A. Yes, sir.
Q. What was that?
A. A license to utilize our - renditions of our images on a product.
Q. When you say our renditions of our images, what was actually –
A. No. Their rendition of our images.
Q. So that was a case - okay. When you say "our images," do you mean a photograph or a drawing?
A. I would have to see the product again and double check it. That escapes me right now.
Q. Do you know what the product was that American Teaching used the images for?
A. Yes. One was a poster and one was a jigsaw puzzle.
Q. Then there is an entry on the 20th for Sheldon Kaplan Associates. It says, "transfers." What does that mean?
A. Yes, sir. We provided our - a match print to

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Sheldon Kaplan where he would make heat transfers off a match print that could be imprinted on a T-shirt, and he paid us so much a shirt. He paid for his own transfers. He paid so much a shirt royalty.
Q. How often do you, as a normal practice, make entries in the journal pages which is copied as JG 1?
A. I should do it at the end of the month. It usually is done at the end of the month. I get up early and do it.
Q. So it's - to the extent that you can, you try to do it on a monthly basis?
A. Yes, sir.
Q. And to the best of your knowledge, the entries that are on these journals are an accurate reflection of the activity of that month?
A. Yes. That's all reflected in the invoices. I only have one set of books.
MR. SUGARMAN: I ask the reporter to mark as Jerry Greenberg Exhibit 2 an invoice that is Bates stamped JG 0358, dated March 26, 1997.
(Exhibit 2 is marked)
Q. (BY MR. SUGARMAN) Can you identify what has been marked as Jerry Greenberg Exhibit 2.
A. Yes, sir.
Q. What is it?

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A. It's an invoice for a shipment of books that went to Turks and Caicos.
Q. And are these books that are published by Seahawk?
A. Yes, sir.
Q. There is an entry in the middle of the invoice that says, educational material?
A. Yes.
Q. What does that mean?
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. 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. 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, and that goes out as the commercial invoice with my

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name on it and the gold seal imprint of a seahawk on it. I don't usually use that original invoice, educational material, on domestic shipments, only on exports.
Q. I take it, then, that you consider the books that are listed on JG Exhibit - Jerry Greenberg Exhibit 2 to be educational materials.
MR. DAVIS: Object to the form of the question.
THE WITNESS: They could be. It depends on what hands they fall in. A lot of times it goes - for the most part, it goes in the tourist shops. Tourisms use them, occasional art books will use them for teaching in classes. But the bulk of the stuff is for tourist-oriented use. Did I –
Q. (BY MR. SUGARMAN) The – But are they used for the education of tourists?
A. I –
MR. DAVIS: Object to the form.
THE WITNESS: – don't know. I am sorry.
MR. DAVIS: Go ahead.
THE WITNESS: I don't know what the tourists do with it when they get them. I hope they will enjoy it.
Q. (BY MR. SUGARMAN) And maybe learn something

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from it?
A. Possibly, yes. I would hope so. Gives them a better understanding.
MR. SUGARMAN: I ask the reporter mark Jerry Greenberg Exhibit 3, a document stamped Bates number JG 0562 (indicating).
(Exhibit 3 is marked)
MR. SUGARMAN: Why don't you give me back the ones we have marked already so I can keep track of them.
MR. DAVIS: (Indicating).
MR. SUGARMAN: Thanks.
Q. (BY MR. SUGARMAN) Can you identify Jerry Greenberg Exhibit 3?
A. Yes, sir.
Q. What is it?
A. It's a payment of royalties for the use of artwork that were made from our photographs for both versions of the alphabet book for the year 1993.
Q. What is the Underwater Alphabet Book?
A. It's a book with alphabet numbers - alphabet letters in it that had a corresponding artwork illustration next to it.
Q. And is the Underwater Alphabet Book a book published by the Charles Bridge Publishing Company?

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A. Yes, sir.
Q. Now when you say in the invoice, for the use of artwork from Jerry Greenberg's photographs, who did the artwork?
A. Their artists did.
Q. How many photographs were involved?
A. I don't remember, Mr. Sugarman.
Q. Do you know – Withdrawn. What was the nature of the artwork that they did?
A. I don't remember that. I am sorry.
Q. Did you ever get a copy of the Underwater Alphabet Book in which there was artwork from your photographs?
A. I certainly had the book in my hands somewhere along the lines.
Q. Do you presently have that book in your possession?
A. I don't believe so.
MR. SUGARMAN: If it is in the possession of the Greenbergs or Seahawk, Mr. Davis, I would ask that that be produced.
MR. DAVIS: We will consider it.
Q. (BY MR. SUGARMAN) How – Withdrawn. I take it that the price that was charged and paid was $2,000?
A. For the license for that year, yes, sir.

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Q. For that year?
A. Uh-huh.
Q. How did you arrive at the $2,000 number?
A. It was an arrangement we made with them on an overall settlement for licensing.
Q. When you say overall settlement, what does that mean?
A. They had these illustrations in this book, and there was no question in my mind that they derived from our work, copies of our work. So they paid us a settlement fee for busting into our copyrights, and they also took the option to continue using it under a licensing arrangement.
Q. So this was an instance in which the use by Charles Bridge's publishing preceded any arrangement that you made with them; is that right?
A. I don't understand the –
Q. Well, in other words, they used the images first and then, after their use, you made this arrangement with them?
A. Yes.
Q. How was it that you discovered the use of the photographs in the artwork in the Underwater Alphabet Book?
A. Found the book in the book store, looked at it.

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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?
A. I didn't contact Charles Bridge. My attorney did.
Q. Do you know how it was that the $2,000 number was arrived at?
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 stuff or take a license out.
Q. What was the – Withdrawn. In addition to the $2,000 payment that is reflected on Jerry Greenberg Exhibit 3 - and I understand there are additional $2,000 payments for use in subsequent years - was there an additional lump sum payment that was made?
A. Yes, sir.
Q. And in what amount?
A. I forget the amount.
Q. Was it more than $5,000?
A. I don't remember the amount, sir. I am sorry.
Q. Would there be records that you have that reflect the amount of that payment?
A. I believe so, yes, sir.

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MR. SUGARMAN: I ask that records sufficient to indicate the amounts of that payment be produced. We will ask Mrs. Greenberg if she has a recollection. That will be fine.
Q. (BY MR. SUGARMAN) Do you have any information as to how many copies of the Underwater Alphabet Book were printed by Charles Bridge Publishing in 1993?
A. No, sir.
Q. Or in any other year?
A. No. We don't have that, no.
Q. Do you know whether there are any records that you or your counsel have that might reflect that?
A. I don't believe so. No, sir.
Q. Do you have an understanding as to whether the Underwater Alphabet Book is a product that is sold in book stores or elsewhere by Charles Bridge publishing?
A. Yes, sir. I assume that they're selling it.
(Short break)
Q. (BY MR. SUGARMAN) Can you recall any instances, other than Charles Bridge's publishing of the Underwater Alphabet Book and the matters at issue in this litigation, other than those, where you discovered the use by a publisher, of images that you took, either the images, themselves, or artwork from those images?

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A. Repeat that question again. I sort of lost it.
(The requested portion of the record is read as above recorded)
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.
A. Yes.
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.
A. Yes, sir.
Q. Put those aside. My question is whether you can recall discovering the use of your images in any publication where you did not consent to that use.
A. You mean publication or product?
Q. Any, any use.
A. Many times, many, many times.
Q. Give me examples that come to mind of such use.
A. The biggest problem was for T-shirt manufacturers. That was the bulk of the products that we face. There are others that were not T-shirts and they printed product, a poster. Many, many times it's the problem that you have when you publish books. People will get into your images. We have it,

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Geographic has it, everyone seems to have this problem. Every publisher has it. It's a fact of life, really.

Q. Can you recall any instances in which you or your counsel contacted any of the publishers or T-shirt manufacturers or entities that used your images as, obviously, someone did with respect to Charles Bridge?

A. I can't give you a name-by-name count but there were a considerable amount of problems that we and other people face.

Q. Can you recall any instances where, as a result of those contacts, payments were made to Seahawk Press or to you for the uses that were made of your images?

A. Virtually all the times that we contacted people, my attorney (indicating), a settlement was reached and they had the option to continue with the license or stop doing it.

Q. Can you recall any names of any of those companies where a settlement was reached and they continued to use the images pursuant to a license?

A. Not off the top of my head right now.

MR. SUGARMAN: I request any documents that would indicate whether there were such settlements and license arrangements.

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MR. DAVIS: Settlements and license arrangements?

MR. SUGARMAN: Or either.

Would you mark as Jerry Greenberg Exhibit 4 a document Bates stamped JG 0461 (indicating).

(Exhibit 4 is marked)

Q. (BY MR. SUGARMAN) Can you identify Jerry Greenberg Exhibit 4?

A. Yes, sir.

Q. What is it?

A. One-time art charge, logged in that way, for the use of my photograph that was put on a poster.

Q. Was this an instance where the agreement to use the image was made prior to the publication of the poster or subsequent?

A. I don't recall. There may have been a second invoice on that for other use. I am not sure.

Q. What was the nature of the poster on which the image was used?

A. For a premier cruise line. They had a family cruises they tried to get off the ground and they did a poster. I believe it was a poster. I am trying to think. That's 1993. I forget what the exact product was. Small use, but I believe there was a second transaction. I am not sure, though.

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Q. Was the – Withdrawn. Do you consider a poster for a cruise line to be an advertising use?

A. I can't answer that. I am not sophisticated enough in the uses of photos. It wasn't a pic for a paid advertising, so I don't know what category it would be under.

Q. Would you consider it an editorial use?

A. It's just betwixt and between.

Q. Do you have, in your files, a copy of the poster that contains the image that was licensed and paid for as evidenced by Jerry Greenberg, Exhibit 4?

A. I have no idea.

MR. SUGARMAN: To the extent that it exists, we would ask that it be produced.

MR. DAVIS: So I don't clutter up the record, any time you ask for one of these, we will consider it.

MR. SUGARMAN: I understand.

Would you mark as Jerry Greenberg Exhibit 5 a document Bates stamped JG 0256 (indicating).

(Exhibit 5 is marked)

Q. (BY MR. SUGARMAN) Can you identify Jerry Greenberg Exhibit 5?

A. Yes. That's an invoice indicating that we 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 illustration was, but it was used - they picked up one of the images from our book and used it in a very small ad in a diving magazine which was given away free.

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

A. It was my way of indicating it wasn't a book, it wasn't a plastic card, but it was a fee we charged after the fact - always, it seems - for the use of the item, against a small dive shop.

Q. Was this, to your recollection, for the use of an actual photograph that they reproduced?

A. I believe it was a piece of artwork from our publication.

Q. One more question on this. How did you arrive at the fee of $500?

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

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try to take money out of people who can't afford it who are really innocent.

MR. SUGARMAN: Would you mark as Jerry Greenberg Exhibit 6, a copy of the document Bates stamped JG 0064 (indicating).

(Exhibit 6 is marked)

Q. (BY MR. SUGARMAN) Can you identify Jerry Greenberg Exhibit 6?

A. Yes.

Q. What is it?

A. It's an invoice there on an overall settlement and license to use it for a certain length of time for picking up our artwork from our cards for a car, for a car, utilizing the submarine service they have there. I put it down as artwork, reference, for lack of a better word, but it was - we allowed them to continue using it, and we took a flat payment to allow them to continue to use it until the end of a certain length of time.

Q. All right. This, again, was an after-the-fact settlement for the use of the images?

A. Yes, sir.

Q. Describe, as best you recall, the use to which Nautilus Sub Sea Adventures put the images. In other words, what product did Nautilus Sub Sea Adventures

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have that utilized your images?

A. It was a card that they utilized to identify the fishes, in their submarine, people would see in the submarine.

Q. How many images were involved?

A. I don't remember right now.

Q. Do you have, in your possession, a copy of the card which was used by Nautilus Sub Sea Adventures?

A. I am not sure.

MR. SUGARMAN: If there is such a copy, Mr. Davis, we ask that it be produced.

Q. (BY MR. SUGARMAN) How did you find out about the use by Nautilus of the images in their card?

A. All the way from Hawaii. Someone sent me a copy of the card. I didn't find it in a book store. 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 awhile, and I went –

Q. How did you arrive at the total fee of $10,000?

A. I don't remember.

MR. SUGARMAN: Would you mark as Jerry Greenberg Exhibit 7 a document Bates stamped JG 2949 (indicating).

(Exhibit 7 is marked)

Q. (BY MR. SUGARMAN) Can you identify Jerry

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Greenberg Exhibit 7?

A. Yes, sir. It's a photocopy of my journal, July 1996.

Q. Looking back at Jerry Greenberg Exhibit 6, which is dated July 11, 1996, it does not appear that there is an entry for the Nautilus Sub Sea Adventures transaction on the July 1996 summary, which is JG Exhibit 7. And my question is, can you explain why that is.

A. Yes, sir. The journal - it was taken out because of a settlement arrangement, and apparently, I - it got left in on the invoices that you have received.

Q. So is my understanding that some of the redactions that are made in the journals were for settlements that were arrived at for use of your images?

A. Yes, sir. But also – Redactions? Excuse me. What is a redaction?

Q. Redaction is a whiteout or a maskout or an elimination.

A. Some cases there were settlements. Some cases it was a refund, income tax. Some cases it was Social Security. Some cases are refunds on Medicare part A or part B. They didn't pertain.

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MR. DAVIS: Just answer yes.

THE WITNESS: Sorry.

MR. SUGARMAN: I would ask that any of the entries that were redacted which reflect settlements or payments for use of images after the fact be provided to us. I am not interested in the Medicaid tax transactions.

THE WITNESS: I am sorry. I haven't looked at it (indicating). Excuse me. You had that. Did you want to cover it?

MR. SUGARMAN: No. I am finished with my questions about that.

THE WITNES: Uh-huh.

MR. SUGARMAN: Would you mark as Jerry Greenberg Exhibit 8 a document Bates stamped JG 0056 (indicating).

(Exhibit 8 is marked)

Q. (BY MR. SUGARMAN) Can you identify Jerry Greenberg Exhibit 8?

A. Yes.

Q. What is it?

A. It's an invoice for Innovative Scuba Concepts.

Q. To do what?

A. They were supplied one of our artwork illustrations by one of their customers, clients.

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They put it on the mask strap of their product and as per their customer's request and delivered to them.
Q. I take it, then, that this was another after-the-fact payment for that use?
A. Yes, but they didn't do it themselves. They were given the material, and they took care of it.
MR. SUGARMAN: Would you mark as Jerry Greenberg Exhibit 9 a document Bates stamped JG 0277 (indicating).
(Exhibit 9 it is marked)
Q. (BY MR. SUGARMAN) Can you identify Jerry Greenberg Exhibit 9.
A. Yes. It's the Stack Pole (phonetic) books, and it's a license fee to utilize an artwork rendition of our copyrighted material in a book for that year, 1998. It's a license fee.
Q. Was this a license fee that was agreed on before publication or after the fact?
A. After the fact.
Q. How did you discover the use by Stack Pole books of the image?
A. Found the book in Borders book shop.
Q. In?
A. Borders book shop.
Q. And what – Withdrawn. How many images were

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used?
A. I don't remember.
Q. What was the nature of the use?
A. They used them for side bar illustrations.
Q. I think you said before that they were drawings of –
A. Our copyrighted material.
Q. How did you arrive at the amount of a thousand dollars?
A. That was a licensing fee. That's the minimum we generally charge for continued yearly use. I never let it go anything above that.
Q. And this is for use during the year 1998; is that right?
A. Yes, sir.
Q. Do you have any understanding as to whether Stack Pole will continue to use the image in future years?
A. Well, when I get the check in December of 1998, I guess they're going to seek another year's usage of it, yes, sir.
Q. Is it your understanding that you are going to receive a thousand dollars a year for every year that they use the images?
A. As long as they continue to use it, we will be

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paid for it.
Q. And that is pursuant to a contract, dated January 21, '97?
A. Yes, sir. Uh-huh.
MR. SUGARMAN: I ask for a copy of that contract and for a copy of the book, West of Key West, to the extent it is in the possession of the Greenbergs.
(Mrs. Greenberg leaves the deposition)
MR. SUGARMAN: Would you mark, as Jerry Greenberg Exhibit 10, a series of documents, all of them invoices to Habitat, Bates stamped JG 0744, 0266, 0136 and 0384 (indicating).
MR. DAVIS: This is a Composite Exhibit?
MR. SUGARMAN: Yes.
(Exhibit 10 is marked)
Q. (BY MR. SUGARMAN) Can you identify the documents that have been marked as Jerry Greenberg Exhibit 10?
A. Yes, sir.
Q. What are they?
A. It's a license arrangement with Habitat for the continued use of the images involved for the year 1994.
Q. And then the succeeding pages are for the years

$1,000.00 A YEAR STACK POLE

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'95, '96 and '97, correct?
A. Yes, sir.
Q. What is the nature of the use to which Habitat is putting the images?
A. On a T-shirt.
Q. How many images?
A. I don't remember. I am sorry.
Q. How did you – Withdrawn. Was this another after-the-fact discovery of use?
A. Yes. This is a licensing procedure they decided to utilize after they settled up with us.
Q. But they used it initially without your permission and then –
A. Yes, sir.
Q. – settled up with you?
A. Yes. Very quick. Yes, sir.
Q. How did you discover the use by Habitat of the images?
A. Found the T-shirt in the Florida Keys.
Q. I take it that the arrangement is documented in an agreement, dated September 23, 1993?
A. Yes, sir.
MR. SUGARMAN: I ask for a copy of that agreement.
Q. (BY MR. SUGARMAN) Do you have in your

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possession any of the T-shirts that utilize the images that we were just talking about, the Habitat T-shirt?

A. I am not sure if I do, sir.

Q. If there is a T-shirt, we ask for the ability to inspect it.

MR. SUGARMAN: Would you mark, as Jerry Greenberg Exhibit 11, a document Bates stamped JG 0682 (indicating).

(Exhibit 11 is marked)

Q. (BY MR. SUGARMAN) Can you identify the Jerry Greenberg Exhibit 11?

A. Yes, sir.

Q. What is it?

A. It's a one-time payment to utilize our images on a ruler. I found this product in Sharm el Sheik in 1994 when I went there. I went to Israel and Jordan. I went down to Sharm el Sheik and back into Isreal again, and I found this product in there and confronted them. $300. I wanted them to stop using it, pay me and stop using it. That's all it was there. He didn't have a continuation use of it. I said, it will take care of it for the year. I said, don't do it anymore and, please, stay out of our copyrights.

Q. And he agreed?

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A. He may still be using it, Mr. Sugarman.

MR. SUGARMAN: Would you mark, as Jerry Greenberg Exhibit 12, a document Bates stamped JG 0046.

(JG Exhibit 12 is marked)

Q. (BY MR. SUGARMAN) I believe earlier today you mentioned an arrangement with J. Walter Thompson. And is Jerry Greenberg Exhibit 12 the invoice that reflects that arrangement?

A. Yes, sir.

Q. All right. Was this a before-the-fact or after-the-fact transaction?

A. This is an arm's length transaction.

Q. Before the use?

A. Yes, sir.

Q. And how did that transaction come about?

A. They called me. They wanted to use one of my photographs that appeared in the 1990 issue of - July issue of National Geographic for an ad campaign for Cities Banks.

Q. Go ahead. Why don't you describe what then happened.

A. They sent me a copy of the layout and they wanted to use it for a year's time in business publications, wherever they wanted to use it. They

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told me they wanted to pay $2,000 for the use of it. I told them I was marching to a different drummer, that's not enough money for me. And – Well, we have other images we are considering. And I said, well, by all means, use the other images. It ended up – Well, they said, what do you want? And I sat down with my wife and gave them a figure for a specific use. They wanted - provided my copyright credit line would be on the illustration - the use of the photo, and they would send me tear sheets. And that was that transaction right there. That's for a Geographic photograph that I own the copyrights to.

Q. And was the number you gave them the $9800 that was agreed on?

A. That's what I told them I wanted and said, use it or don't use it.

Q. And they agreed that they would pay that and use it?

A. Well, I got the check and got the tear sheets (indicating).

Q. What photograph was used? Was it – First of all, was it one photograph?

A. One photograph, yes.

Q. And which photograph was it?

A. That was a photograph in the lead of the 1990

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National Geographic July piece I did for them, entitled, Florida's Coral Reefs are Imperiled. It's a lead shot of a bunch of divers over Christ's statue.

Q. Do you have in your possession any of the tear sheets that they sent to you?

A. Possibly have, yes, sir.

MR. SUGARMAN: I ask that they be produced.

Q. (BY MR. SUGARMAN) And when it says on the invoice, unlimited worldwide, then, business trade publications, what does that mean?

A. It didn't mean for use in Life magazine. It meant for business trade, Wall Street Journal, Banking News, whatever, but it wouldn't be for any national, top-of-the-line magazines.

Q. So it was a license to use this photograph in business trade publications for a year; is that right?

A. Yes. And then it would stop.

MR. SUGARMAN: Would you mark as Jerry Greenberg Exhibit 12 a copy of invoice stamped JG 0692.

THE REPORTER: It's 13.

MR. SUGARMAN: Okay.

(Exhibit 13 is marked)

Q. (BY MR. SUGARMAN) Can you identify Jerry Greenberg Exhibit 13?

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A. Yes.
Q. What is it?
A. It's a settlement payment for the unauthorized use of my photograph in Travel magazine.
Q. Would you describe the events that led up to the settlement which –
A. Yes.
Q. – resulted in the payment of $750?
A. Yes. In 1984 I received an assignment from National Geographic's director of photography to do a photo essay on Florida's marine wilderness for Travel magazine. I took the assignment with the understanding that, what they would use, their - whether - either if it was from my own personal collection or material that I shot for them on assignment, they would have one-time use. I would pull my own copyright, federal copyright, on it. They were to put the copyright credit in, witnessed on the piece. They would return their originals which I gave them for use in the magazine. I got paid back, in 1985, X amount of dollars. '85. That was 10 years before the incident in '94.
I go into a book store, look in the magazines, and there is Traveler magazine, in 1994, and I see the same photograph used again. And I was surprised,

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because they didn't keep their agreement with me back with the '84 transaction for one-time use only. They used it again, and without my permission, this time.
I sent a letter on to Geographic. It went to the editor of Traveler, if remembrance recalls. They called me, and I didn't understand how it got in there if they returned my chromes to me. And he offered to pay me $75 after the fact, and I told him that was not acceptable and I want ten times that amount. And I also wanted - it seems if they had - if this was done with a duplicate tranparency that I didn't even know existed, I ask that they return that. And, at the same time, I have to go back to that letter dated March 11th, 19--- whatever the letter is involved with. But he told me, well, if you charge us this we won't be able to use your stock photos again, and I told him I didn't care. I told him there shouldn't be an infringement on my copyright like this. So they paid it, reluctantly, but they paid it. They returned the 4 by 5 repro dupes they had, that I knew nothing about, and they didn't comply with the rest of the agreement that I put in the letter to them. There was a lot of my material in a file there that shouldn't be in there. It keeps – this shouldn't have been in their file.

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Q. When you say they didn't comply with the letter that you sent them, is that the March 11, 1994 letter?
A. I believe so.
Q. And the reason they didn't comply is what?
A. I received another letter from Allen Royce saying that these items – You would have to look at the letter. I don't have the letter in front of me, but it's on file there, very unsatisfactory reply to what the problems were.
MR. SUGARMAN: I ask for the production of a copy of the March 11th, 1994 letter that is referred to in Jerry Greenberg Exhibit 13.
MR. SUGARMAN: Would you mark as Jerry Greenberg Exhibit 14 a document Bates stamped JG 1662 (indicating).
(Exhibit 14 is marked)
Q. (BY MR. SUGARMAN) Can you identify Jerry Greenberg Exhibit 14?
A. Yes.
Q. What is it?
A. It's a letter to me and my wife from Norman Davis's secretary giving me a check for $5,000 from Sherry Manufacturing.
Q. Describe what led up to the payment by Sherry Manufacturing of $5,000.

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A. They got into our copyrighted images and put 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 doing it.
Q. Do you have any information as to how many shirts were produced with your images on them?
A. No, we didn't base it on how many shirts they sold. Strictly on what we felt a proper payment would be. We don't like to delay people's books.
Q. What image or images of yours were used on the T-shirt put out by Sherry Manufacturing?
A. I forget that one.
Q. Do you have a sample of the T-shirt in your possession?
A. I don't think so.
MR. SUGARMAN: If there is one, we ask to be able to look at it.
Would you mark as Jerry Greenberg Exhibit 15 a copy of a document Bates stamped JG 0673 (indicating).
(Exhibit 15 is marked)
Q. (BY MR. SUGARMAN) Can you identify Jerry Greenberg Exhibit 15?
A. Yes, sir.
Q. What is it?

TRAVELER 1994
10 X 75.00
FEE

SHERRY MFG.
$5,000.00

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A. It's an invoice logging in the partial payment and settlement of a copyright infringement suit against Stanley Michael's, Incorporated in Hialeah.
Q. What was the - what were the events that led up to the copyright infringement suit against Stanley Michael's, Inc?
A. We found some T-shirt stores in the market out there, one - one shirt that had our images on it. I am trying to reconstruct it, but it actually happened years before that. The bottom line is that it went into litigation in federal court. There were other shirts that - we found some images on them, and they ended up paying a total payment, including legal - I forget what the total payment was, but the payment to us was $108,000.
Q. Was that a case that was brought in the Southern District of Florida?
A. Yes, sir.
Q. The invoice marked as Jerry Greenberg Exhibit 15 indicates there is a balance of $103,038 still due. Has that amount been received?
A. Yes, it has. It's all been paid up.
Q. Do you have any reason to believe that any of your images or artwork was used in the motion picture Jaws?

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A. Yes.
Q. And what is the basis of your belief, and what images do you believe were used?
A. Before Jaws was released as a motion picture - I am trying to reconstruct this. MCA Universal contacted me and they wanted to get permission to use a geographic photograph in a sequence in their movie. It's when Sheriff Brody was turning the pages of a book and there it pops out, you know, Geographic images, one of which was mine. He wanted to use it and I didn't give him permission. And he came back with counteroffers, and this and that, and I didn't - I don't believe I owned the copyright to it at that time, but he wanted permission to do it properly, and I turned it over to an agent, at the time, in New York, the photo researchers, and they negotiated for us its use for the movie, and subsequent use for pay TV, and subsequent use for general TV. It was only on the screen for a short length of time.
Q. And what was the amount that – So I take it that eventually you permitted the use; is that correct?
A. Yes. I agreed to it, yes.
Q. And what was the amount of the fee for the uses that you describe?

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A. I don't remember what it is - what it was.
MR. SUGARMAN: I ask for the production of documents sufficient to indicate that amount.
Q. (BY MR. SUGARMAN) Do you or does Seahawk Products have any claim that you know of for any unauthorized use of any images in the motion picture Jaws?
A. No, sir.
MR. SUGARMAN: Would you mark as Jerry Greenberg Exhibit 16 a book entitled, The Coral Reef, and as Jerry Greenberg Exhibit 17 a book entitled, The Living Reef (indicating).
(Exhibits 16 and 17 are marked)
Q. (BY MR. SUGARMAN) Can you identify what I have marked as Jerry Greenberg Exhibits 16 and 17 (indicating)?
A. The Seahawk Press publications, Coral Reef, and the new edition of The Living Reef.
Q. When you say the new edition of the Living Reef, what do you mean?
A. First edition came out with less pages and no artwork and illustrations in back.
Q. And that's been added in the new edition?
A. This is the new edition.
Q. The new edition has more pages, plus the

STANLEY MICHAELS THEIR TOTAL PAYMENT WAS 195,000 ?? TO J. ABRAMS

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artwork in the back?
A. No. The new edition has artwork in the back that comes up to 126 pages.
Q. Are the photographs that appear in Coral Reef and The Living Reef all photographs that you took?
A. Yes. Every one of them.
Q. And are the individual images in The Living Reef and The Coral Reef individually registered for copyright?
A. There is one copyright for the first edition of Living Reef. There is another copyright for the Living Reef that covers the text and the artwork supplement. And there is a different copyright for the Coral Reef (indicating), and I believe that another copyright may cover the crab on the back of this.
Q. This, being The Coral Reef?
A. Coral Reef, yes.
MR. SUGARMAN: Would you mark as Jerry Greenberg Exhibit 18 a photocopy of a document called Geo Safari Reefs and Oceans which bears production numbers NGS 1 through 20.
(Exhibit 18 is marked)
Q. (BY MR. SUGARMAN) Can you identify - I only have one copy of this but we will make more - document

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I have marked Jerry Greenberg Exhibit 18?
MR. DAVIS: This is a composite exhibit?
MR. SUGARMAN: Yes. It's an exhibit that includes all of the pages.
THE WITNESS: I want to look through all of the pages.
MR. DAVIS: Yes. Look through every page.
THE WITNESS: It's two-sided.
MS. GRAY: Some of the pages are two-sided.
(Mrs. Greenberg leaves the room)
MR. SUGARMAN: Reread the question.
(The requested portion of the record is read as above recorded)
THE WITNESS: Yes.
Q. (BY MR. SUGARMAN) What is it?
A. It's a black-and-white photocopy, sometimes one-sided, other times two-sided, of the oceans and - reefs and oceans; educational, inside product.
Q. Is that one of the publications on which this lawsuit is based?
(Mrs. Greenberg enters the room)
A. I don't know whether it's a publication, but it's a product, yes, sir.
Q. (BY MR. SUGARMAN) Okay. A product. And would you identify, in Exhibit 18, the images that are the

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basis for the claim of copyright infringement in this case?
A. Red-band parrot fish.
Q. On what Bates-numbered page is that?
A. NGS 00017.
Q. Okay.
A. What they call parrot fish. It's a stoplight parrot fish, number 8, on NGS 00017. Moray eel, number 6 on the same page, 00017. The two divers on NGS 00020. Don't you want to get some copies made of this?
MR. DAVIS: No. Just –
MR. SUGARMAN: We will get copies made but I don't want to waste the time at the moment.
Q. (BY MR. SUGARMAN) Would you – Withdrawn. I take it that the images that you have just identified, the red-band parrot fish, the stoplight parrot fish, moray eel and the two divers are images that are either photographs that you took or drawings that Mrs. Greenberg made; is that right?
A. Those are from photographs. Those are from photographs.
Q. They're all from photographs?
A. Yes, sir.
Q. And where did those photographs appear? In

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other words, in what publication did those photographs originally appear?
A. Living Reef, Coral Reef, Corals of the Tropical Atlantic poster.
Q. Now would you take a look at the Living Reef book that I have marked as - I believe it's under there.
MS. GRAY: It's 17.
Q. (BY MR. SUGARMAN) – (continuing) Exhibit 17 and identify for me in that book the page on which the red-band parrot fish, on which your claim is based, appears.
A. It appears on the cover of The Living Reef and it appears on page 49 of The Living Reef.
Q. Now is there an individual copyright registration for the image, itself, as opposed to a copyright registration for the whole book?
A. The entire book covers everything that's in it for the –
Q. Okay. I am sorry –
A. – for the first edition and the new editions.
Q. Identify on which page the stoplight parrot fish appears.
A. Page 50.
Q. And on which page does the moray eel appear?

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A. Page 83 to 84.
Q. And identify the page or pages on which the two divers appear.
A. 17, 74.
Q. Are there any copyright registrations for the individual images of the parrot fish, the moray eel or the two divers, as opposed to the registration for the whole book?
MR. DAVIS: Let me object to the extent that calls for a legal conclusion. You can answer.
THE WITNESS: Not that I am aware of.
Q. (BY MR. SUGARMAN) How was it that the images that appear in the document that I have marked as –
MS. GRAY: 18.
Q. (BY MR. SUGARMAN) – Jerry Greenberg Exhibit 18 first came to your attention?
A. May I see it?
In March 1996 I went into a shop, called Get Smart, looking for some jigsaw puzzles. I walked by this Educational Insights rack that had a number of products on it. I saw the outside of the package of that - creatures of the ocean reef product, saw my images on the literature in the front. I opened it up and looked inside to go to the transition piece, and they were my images there. Recognized them right

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away.
Q. And then what?
A. Well, I was very upset. I had no arrangement with them to do this, especially for an outside company. Brought it home, showed it to my wife, put it in the hands of Norman Davis, made it an exhibit.
Q. Did you ever have any discussions with any person at Educational Insights?
A. No, sir. No, I didn't.
Q. Did Mrs. Greenberg, to your knowledge?
A. No, we didn't do it that way.
Q. Had you been approached by Educational Insights for the use of the images that were used in Exhibit 18 was there any reason why you would not have consented to that use, if appropriate compensation would have been arranged?
MR. DAVIS: Objection. It's hypothetical, speculative.
THE WITNESS: You would have to put the deal on the table and the - know what it is, and I would look at it and either say yes or no. Never happened.
Q. (BY MR. SUGARMAN) Okay.
A. It's speculation.
Q. What factors would go into your decision as to whether you would say yes or no?

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MR. DAVIS: Same objection.
THE WITNESS: We wouldn't allow piecemeal use of our material on a product like this. Either it's a full Seahawk Press package that had all our images on it or - I have a huge library - would have a huge, large collection of our material on it, but I wouldn't want our stuff used piecemeal like this, if someone came to me.
Q. (BY MR. SUGARMAN) Has anyone ever come to you for the use of one image from The Living Reef in a publication or product, another company or person?
A. From that - from Educational Insights?
Q. No, another instance. Has any other person or entity ever come to you to ask for permission to use an image from The Living Reef?
A. No. Our business is not set up in small, single images like that.
Q. What is the reason why you would not allow a publication to use individual images that you have taken, as opposed to the whole series?
A. We're not in that business of utilizing piecemeal portions of our material. I am mainly interested in an overall package of full illustrated pieces of our material. If someone wants to do it, it would have to be all pure Seahawk.

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Q. When you say all pure Seahawk, what do you mean?
A. Well, we have licensing arrangements with cruise lines to produce a product for them that is pure Seahawk images. I wouldn't want our stuff used on a piece like this (indicating) where we wouldn't have control over the quality of it and the royalties of it. It's not how I - that's not how I run the business.
MR. SUGARMAN: Would you mark, as Greenberg Exhibit 19, a document which is headed Adapting to a Changing Sea, a copy of which was produced in discovery.
(Exhibit 19 is marked)
Q. (BY MR. SUGARMAN) I have marked on the back of the document, as Exhibit 19, a copy of a document headed, Adapting to a Changing Sea. Could you identify that document, Mr. Greenberg (indicating).
A. It appears to be a printed piece they did for the Jason project.
Q. And when you say they did, who is they?
A. National Geographic Society.
Q. What, as you understand it, is or was the Jason project?
A. I don't know, Mr. Sugarman.

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Q. What image of yours is claimed to be infringed on that poster?
A. The sea fan image on top, upper right.
Q. Upper right?
A. Yes, sir.
Q. And in which of your publications does that photograph appear, The Living Reef, The Coral Reef, all –
A. It doesn't –
Q. – other –
A. It doesn't appear in the publications. I hold the copyright to it after it was published in the 1990 issue of National Geographic, the July issue.
Q. So that was one of the images that was published in the National Geographic based on the assignment that you have described earlier?
A. Yes, sir.
Q. Is the image that appears on Jerry Greenberg Exhibit 19 a photograph or a - a copy of a photograph or a copy of a drawing, if you know?
A. It's a reproduction of my photograph, but flopped.
Q. Excuse me?
A. It's reversed.
Q. I see. Is that a reproduction of your entire

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photograph or a part of it?
A. I don't have the 1990 issue of National Geographic to compare it to.
Q. And you can't tell from looking at it?
A. Not unless I see the 1990 issue or exhibit.
Q. How did the reproduction of your photograph in Exhibit 19 come to your attention?
A. They contacted me after they used it.
Q. Who is they?
A. Rockwell Wheeler.
Q. What position did Rockwell Wheeler have and with whom was he affiliated?
A. I don't have the document in front of me. He's with the Society, apparently involved with this - doing this piece (indicating).
Q. And when you say he contacted you, was that orally or in writing?
A. In writing.
Q. And what did you do, if anything, when you received the writing from Mr. Wheeler?
A. I was very upset that this is a continuation of what they were doing with the Traveler piece, and now it's this. And the head of it came to me when this Insight piece came out. I was very, very mad. In fact, I was furious.

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Q. What – Are you saying the Insight piece came out before the Jason project came to your attention?
A. No, sir. This is 1995 (indicating).
Q. I see.
A. Jason came out in 1996.
Q. Insight, you mean –
A. I am sorry. The Educational Insights piece.
Q. But going back to the Jason project, I understand you got a letter from Mr. Wheeler. And my question is, after you got that letter, what did you do?
A. I did not respond.
Q. And when is the next time that you had any discussion or took any action with respect to the Jason project piece?
A. When Norman Davis sent them a letter in regard to Educational Insights that included the Jason product and mentioned other problems that I had with them previously.
Q. In the communication from Mr. Wheeler was there an amount of money offered to you for the use in the - of your image in the Jason project?
A. Yes, sir.
Q. What was that?
A. $500.

JASON: SCAFAM 10X $500.00

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Q. Did you have any discussion about that offer with anyone?
A. At the Geographic or –
Q. No. I understand you said before that you didn't respond, and I take it that means that you didn't have any discussion with anybody at the Geographic. My question is, did you have any discussions with anyone else about the $500 offer? Just answer yes or no for the moment.
A. Yes.
Q. With whom?
A. (Indicating).
Q. Pointing to Mrs. Greenberg?
A. My wife, yes.
Q. What did you say to her and what did she say to you?
A. I don't recall the exact words but the essence of it –
Q. Substance.
A. This is an outrageous situation that is continuing and don't even answer them.
Q. So you collectively made the decision that you were not going to answer them; is that right?
A. Yes. That's correct.
Q. After you saw the Educational Insights piece,

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which is Jerry Greenberg Exhibit 18, did you have any discussions about that with Mrs. Greenberg?
A. Yes.
Q. What did you say to her and what did she say to you about that?
A. I think it's about time that we approach them and try to get these problems straightened out once and for all and make them stop infringing on our copyrights.
Q. Is that what you said or she said or that was the substance of it?
A. The general theme. We are very protective of our copyrights.
Q. And as a result of that discussion, what action, if any, did you take?
A. It was put in the hands of Norman Davis.
Q. Have you, personally, at any time since you became aware of the Jason project piece, which is Exhibit 19, had any discussions with anybody at the National Geographic about the use in the Jason project or the use that you allege in the Educational Insights?
A. No, sir.
Q. With whom, at the National Geographic, did you speak when you arranged to do the assignment that you

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did back in 1990?
A. The assignment was in 1989, and my friend, Fred Ward, approached them that both of us do a followup story on the Pennecamp Park, almost 30 years later. We do it as a team. He would write it and photograph it, and I would photograph it, also. We got the okay from Bill Garrett, the editor at that time. He sent me the contract. It was not acceptable to me. Since Fred Ward was handling all of the negotiations for the overall project, I told Fred, I won't take this assignment unless it's on a parallel situation, that if - for Traveler, back in 1984, when it appeared in 1985; that is, I will provide whatever they need from my vast collection of photographs on Pennecamp Park. Whatever I shoot for them, plus, my stock would be used. They would return all originals. They would put my copyright on the inside there. And I would pull my own VA form for my participation in that project.
Q. You say VA form. What does that mean?
A. Visual arts copyright form.
Q. Now these were the conditions that you set down in your discussion with Mr. Ward –
A. Yes.
Q. – and he then relayed them to the National

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Geographic people?
A. Yes.
Q. So I take it that you didn't have any direct discussions with anybody at National Geographic?
A. No, sir.
Q. When is the last time you did have any discussions with anyone at the National Geographic, if you ever had such a discussion?
A. Recently, they asked permission to utilize that same photograph they ripped off in Traveler. They called me again to get permission to use it in the Turkish edition of Traveler, done by Leonard, I believe. I said, no, I am not interested. They responded back. It won't be used.
Q. When is the last time, before that, that you had any communication with anybody at?
A. Someone in the image collection contacted me to utilize one of the images from that 1990 take, if you want to call it a take, for a pharmaceutical yearbook - annual report, and I wrote back to her and told her, no, it wasn't an in-house - it wasn't an in-house piece. And I said, no, I do not want National Geographic to act as my agent for use of my - selling my photos. This is with the image collection and it's – They never would allow photographs to be

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used in the outside before, when it was a different Society, in the umbrella framework of that. I said no, and I sent her a letter and said, I do not want you folks to utilize it. And whatever I sent to her, we have a copy of it.
Q. Did you ever – Did you, thereafter, have any direct contract with the pharmaceutical company that wanted to use the image?
A. No, sir.
Q. I take it, to the best of your knowledge, the image was not used?
A. I hope not.
MR. SUGARMAN: Why don't we take a two-minute break. I think I am finished. Maybe there will be a few more questions.
(Short break taken)
Q. (BY MR. SUGARMAN) Have you ever, before the fact, licensed the reproduction, of a photograph that you have taken, to another entity?
A. Starting from what time in my life?
Q. As far back as you can recall.
A. Well, when I had my own photo agency I did quite a bit of that, yes.
Q. Put that aside. Take the time period after you stopped having your own photo agency. Let's say in

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the last 10 years.
A. Whatever photo licensing that I had in the last five years is reflected –
MR. DAVIS: Just listen to his question.
Q. (BY MR. SUGARMAN) The question is, in the last 10 years can you recall licensing another person or entity to reproduce one of your photos?
A. I can't recall right now.
Q. Would you look again at Jerry Greenberg Exhibit 3 (indicating), which is the invoice for the use of artwork from photographs in the Underwater Alphabet Book. And I think you testified before that this was an after-the-fact arrangement, correct?
A. Yes, sir.
Q. Is there a reason to distinguish the fact that you agreed to an after-the-fact arrangement with Charles Bridge Publishing for the Underwater Alphabet Book but you did not respond to the letter from the Geographic suggesting an after-the-fact arrangement for the use of your image in the Jason project, which is Exhibit 19?
A. This Charles Bridge (indicating) transaction, licensing, came afterwards, when they made a proper payment to us as a settlement and took the option to continue using it under a civilized relationship to

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pay a yearly fee. The other situation, I had nothing like that in my head. It became an ongoing problem with the Society.

Q. Going back to the question I asked before about licensing of any individual image for reproduction of a photograph, let me ask that question again and let me ask you, before answering, to just flip through the pages of The Living Reef and The Coral Reef to see whether looking at any of those images refreshes your recollection as to whether you licensed, any time within the last 10 years, the use of an individual image, and that will be the last question.

MR. DAVIS: Take time to look at every page. Do you recall the question?

THE WITNESS: Yes. Repeat it to me again. I will take the question again, please.

(The requested portion of the record is read as above recorded)

THE WITNESS: An arm's length licensing arrangement, no.

Q. (BY MR. SUGARMAN) And you distinguish between an arm's length and an after the fact?

A. Yes, sir.

Q. And what about after-the-fact licensing arrangements?

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A. Some of these images, photographic images, I believe appeared on the arrangements that I made with Habitat. To the best of my knowledge that I can think of right now sitting here, I don't recall anything.

MR. SUGARMAN: Okay. I don't have any further questions. Thank you for your time.

THE WITNESS: Thank you for your courtesy to us.

MR. SUGARMAN: Why don't we break and -- 2:00 o'clock?

MR. DAVIS: Sure. We will read.

(Thereupon, the taking of the deposition was concluded at 12:25 p.m.)

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EXCEPT FOR THE CORRECTIONS MADE HEREIN BY ME, I CERTIFY THIS IS A TRUE AND ACCURATE TRANSCRIPT. FURTHER DEPONENT SAYETH NOT.

DEPONENT

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

Sworn and subscribed to before me thisday of , 1998.

PERSONALLY KNOWN OR I.D.

Notary Public in and for the State of Florida at Large

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CERTIFICATE OF OATH

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

I, Lois E. Guffey, RDR, and Notary Public in and for the State of Florida at Large, do hereby certify that the witness, JERRY GREENBERG, personally appeared before me and was duly sworn

Witness by hand and official seal this 7th of June, 1998, in the City of Hollywood, County of Broward, State of Florida.

Lois E. Guffey, RDR, Notary Public, State of Florida

REPORTER'S DEPOSITION CERTIFICATE

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

I, Lois E. Guffey, RDR, do hereby certify that I was authorized to and did stenographically report the deposition of JERRY GREENBERG, the witness herein; that a review of the transcript was requested; that the foregoing pages, number from 1 through 76, inclusive, is a true and complete record of my stenographic notes of the deposition by said witness; and that this computer-assisted transcript was prepared under my supervision.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties

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Look-See Concordance Report

UNIQUE WORDS: **1,328**
TOTAL OCCURRENCES: **4,480**
NOISE WORDS: **384**
TOTAL WORDS IN FILE: **13,444**

SINGLE FILE CONCORDANCE

CASE SENSITIVE

COVER PAGES = 2

INCLUDES ALL TEXT OCCURRENCES

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