ERRATA SHEET

In Re: Jerry Greenberg vs National Geographic
DEPO OF: Jerry Greenberg
TAKEN: 07/30/02

DO NOT WRITE ON TRANSCRIPT -- ENTER CHANGES HERE:

Page #	Line #	Change	Reason
92	17	ADVENTURE MAGAZINES	NO CAPS
92	23	,CONTAX	SP
93	13	PARK	ADD CAP
98	23	JINGLE	SP
110	8	CARTON	SP
110	9	CARTON	SP
110	10	WE CUT "YOU"	YOU
111	7	VISITOR SHOPS "M"	M
128	6	YOUNG TURKS.	ADD CAPS
134	12	TONGUE OF THE OCEAN	ADD CAPS
134	24	" " " " "	" "
135	5	SHACKLE PHOTOS	
135	9	TONGUE OF THE OCEAN	ADD CAPS
136	17	" " " " " "	" "

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

Under penalties of perjury, I declare that I have read my deposition transcript, and it is true and correct subject to any changes in form or substance entered here.

SEPT 13, 2002
Date

Jerry Greenberg
Signature

ERRATA SHEET

Page #	Line #	Change	Reason
155	19	NASA	SP
186	19	Buck	SP

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 97-3924

JERRY GREENBERG, individually, and IDAZ GREENBERG, individually,

ORIGINAL

Plaintiffs,

vs.

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

Defendants.
_____/

701 Brickell Avenue
21st Floor
Miami, Florida 33131
Tuesday, July 30, 2002
10:00 a.m.

CONTINUED DEPOSITION OF JERRY GREENBERG

Taken on behalf of the Defendants, before Debbie L. Oates, RPR, Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause.

APPEARANCES:

STEEL, HECTOR & DAVIS
BY: NORMAN DAVIS, ESQ.
200 South Biscayne Boulevard
Miami, Florida 33131
on behalf of the Plaintiff.

WEIL, GOTSHAL
BY: ROBERT G. SUGARMAN, ESQ.
767 Fifth Avenue
New York, NY 10153
on behalf of the Defendant.

ALSO PRESENT:

Idaz Greenberg

I N D E X

Witness	Direct	Cross
Jerry Greenberg (By Mr. Sugarman)	80	

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(Exhibits were retained by Mr. Sugarman and not provided to the reporter to be attached to transcript.)

THEREUPON,

JERRY GREENBERG

having first been duly sworn and responded, "Yes," was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SUGARMAN:

Q. This is a continuation of your deposition that was commenced on May 28th, 1998, and, as I said then, Mr. Greenberg, I'm going to ask you some questions. If you don't understand them, please tell me and I'll rephrase them and if you do answer and don't ask me to rephrase, I'll assume that you understood the question. Is that fair?

A. Yes. Yes.

Q. Did you recently receive --

MR. DAVIS: Excuse me, Bob, could I just put something on the record before we get started and make it a -- I'd like to object to any inquiry that seeks information pertaining to the issue of the number of works to be counted for the calculation of statutory damages. As you're aware, we raised that issue in the papers for the motion that is pending now in the District Court, so if I may, I'll just have a standing objection at the outset on that and not have to say

something anymore.

MR. SUGARMAN: That's fine.

MR. DAVIS: Thank you.

BY MR. SUGARMAN:

Q. Did you recently receive a document request which asked for the production of certain books and records?

A. Yes, sir.

Q. And what did you do in order to comply with that document request?

A. Read it over several times, then I checked with my attorney and asked him.

Q. You don't have to tell me about conversations you had with your lawyer.

A. Certainly. Once I understood exactly what you were looking for, I started to search through my materials to find the appropriate information you asked for.

Q. Okay. I've been through those materials and my review of them indicates that there are certain categories of documents that were produced. What I'd like to do is just mention the categories that I saw and ask you if there are any other categories that I've missed, if you recall.

So the categories that I saw there were

invoices for the sale of books and other materials. And I actually had one pulled out, but they are being collated, and so that's one category.

And then there were documents relating to the licensing of the use of your individual photos, an example of that would be the license to the Boy Scouts recently granted.

Then there were significant correspondence with the National Geographic, that's another category.

There were certain of your books produced in their entirety.

There were copies of the stories or some of the stories that appeared in the National Geographic magazine.

And then there was a binder which is Bates stamped 6024 and which I'll mark later that is a reproduction of certain pages with the legend "Image not available" on the page.

And there were two binders, one Bates stamped JG/D 6025 and the other one 6026 that are -- I'll call them illustrations. I'm going to ask you more about those later.

And then finally there was a document that was Bates stamped 6007 which I gather was received by

you from Mr. Ward.

So my question is, as you sit there today, are there any other categories of documents that were in the production that you just made that I haven't enumerated?

A. To the best of my knowledge, no.

Q. All right. The Bates stamps that are prefixed -- or the numbers are prefixed with the legend JG/D. Is there a particular reason for those letters?

A. My attorney affixed that for me. No, my attorney affixed that on there.

MR. SUGARMAN: Okay. Mr. Davis, is there a method to the --

MR. DAVIS: Slash D has to do with damages.

BY MR. SUGARMAN:

Q. Okay. In the earlier production, which took place a number of years ago, there were produced certain copies of journal entries and at the first session of your deposition we went over some of those. I didn't see any journal entries that were produced in connection with this production. Can you explain why that is?

A. Yes. When you originally asked for any and all materials on Counts I and II, I had the journals

available. You asked for the last five years and if indeed the action was 1997, I just went back to the five years. I had most of all 1990 there, but you only had requested the last five years starting from 1997. I couldn't find the other journals that went beyond that.

Q. Okay. Are there any journals -- let me see if I understand. Are there any journals that date from 1998 forward to today?

A. 1998 to today. Yes.

Q. And do any of those journals contain entries that reflect income that was received by either Jerry Greenberg or Seahawk Productions? And I'll use them together.

A. No, the information -- I'm sorry.

MR. DAVIS: Go ahead.

THE WITNESS: The information that I supplied you with on the invoices is quite precise in that time frame that you asked about.

BY MR. SUGARMAN:

Q. Right. I understand that, but my question is are there -- did you in that time frame, 1998 to the present, transpose the information from the invoices onto the journal?

A. Yes, sir.

Q. All right. So I would ask for production of the journal entries that reflect the transposition of the information.

Is there any cost information that is reflected on the journals?

A. No, sir.

Q. Do you -- and by "you" I mean Jerry Greenberg or Seahawk -- keep track of cost information on a regular basis?

A. What do you mean by cost information?

Q. The cost of film, the cost of paper for printing, the cost of binding a book, shipping costs, things like that.

A. There are production costs that my printer invoices me at.

Q. So you would have copies of those invoices?

A. Yes.

Q. Is that information also transposed to another record like a journal?

A. No, sir.

Q. Is there a document or documents that summarize on, say, a yearly basis the costs that Seahawk/Jerry Greenberg has incurred?

A. No, sir.

Q. Why don't we agree that I will use Seahawk

and that will include Seahawk, Jerry Greenberg and Idaz Greenberg; is that okay?

A. Yes.

Q. Does Seahawk prepare or have someone prepare an annual financial review statement which reflects how much income there has been for a particular year and how much expense there's been?

A. I have a bookkeeping service that logs in all the information that I give to them.

Q. And what do they produce, if anything, with the information that you give to them?

A. It's -- they only have -- the firm that does my bookkeeping also does my Federal Income Tax and they use it in that capacity.

Q. Does that firm in addition to giving you your Federal Income Tax Returns also give you any kind of a statement, either yearly or quarterly or semiannually, of the profit and/or loss that is incurred or made by Seahawk?

A. No, sir.

MR. DAVIS: If I may, you may be aware Seahawk Press is not an entity; it's a d/b/a.

BY MR. SUGARMAN:

Q. I think Mr. Greenberg made that clear in his first deposition.

Do the annual tax returns reflect the income and expense that is incurred by Seahawk during a particular tax year?

A. I would assume that's the function of how we pay our taxes.

MR. SUGARMAN: Okay. I would ask for production of the tax returns and I am perfectly happy to enter into whatever kind of confidentiality agreement we can agree to before they're produced.

MR. DAVIS: Which tax returns?

MR. SUGARMAN: From 1994 to the present. I'm choosing 1994 because it's three years or so before the publication of the Complete National Geographic.

MR. DAVIS: Okay. We'll consider it.

BY MR. SUGARMAN:

Q. At the time that your deposition was started in 1998 you said that you were active in continuing to take photographs. Are you active today in that regard?

A. Yes.

Q. Has Seahawk Press published any new books or other materials since 1995?

A. I believe our latest publication was

Mangroves: Trees in the Sea. That was about --

(There was an interruption after which the following proceedings were held:)

(The court reporter read back the last answer as previously recorded.)

BY MR. SUGARMAN:

Q. I think you were interrupted when you said that was about when?

A. About two years ago, two and a half years ago.

Q. And have there been any other books published since 1995?

A. Just reprints of whatever we need at the time.

Q. When was the last book published before the Mangrove Trees book? Approximately. And which was it?

A. Published or reprinted?

Q. Initially published.

A. Pocket Guide to Corals and Fishes.

Q. And when was that?

A. An educated guess would be about -- I don't have the book in front of me. An educated guess would be about five or six years ago. If I had the book in front of me, I would give you the precise date of the

publication.

Q. Right.

Do you keep an inventory or library of all of the books and other materials that you and/or Seahawk have published over the years?

A. An inventory of books, yes, as I deal with distributors.

Q. Now, aside from books what other materials have traditionally been published by Seahawk?

A. Well, Seahawk only publishes our own creative output. We don't utilize the work of other people.

Q. Right. And I understand that. My question is in terms of types of materials. You mentioned books. Are there other types of materials that are published?

A. Yes, sir. Books, calendars, plastic ID cards, maps, posters. I may have missed on one thing I did 20 years ago, but I'm giving you a general overall view of what we generally do.

Q. Do you have an inventory or a library of the various calendars and plastic cards and maps and posters that you -- Seahawk has published over the years?

A. The only inventory I have that's at my

fingertips are what we're currently selling.

Q. Do you keep some kind of an archive where you at least have one copy of every piece of material, whether it's a book or a card or a map or a poster, that Seahawk has ever produced?

A. There may be samples there, but it's not -- it's no way complete, but there may be samples there.

MR. SUGARMAN: To the extent that those have not been produced I'd like to arrange to at least take a look at them. Whether they have to be produced or not is a different question.

MR. DAVIS: Were they encompassed in your document request?

MR. SUGARMAN: I don't have it in front of me, so I don't know whether they were or they weren't.

MR. DAVIS: My recollection is that they weren't.

MR. SUGARMAN: Certain of the books were produced in the production that you sent over yesterday, but we can discuss that.

MR. DAVIS: Those were produced for a different purpose than I think you seem to have in mind. This is for part of our case. You asked us to produce documents we would use in our

case on damages.

BY MR. SUGARMAN:

Q. Has Seahawk published any of these other materials -- calendars, plastic ID cards, maps, posters -- since 1995? And I'm talking about newly published as opposed to reprinted.

A. I would have to look at the last card that we produced and the last two books we produced, but I believe I've given you the parameters of the books and I'd have to look at the last plastic card we've done.

Q. Do you have a copy of Mr. Greenberg's transcript from the first session?

MR. DAVIS: Yes. Do you have your own?

MR. SUGARMAN: I do, but if you could show Mr. Greenberg the transcript.

BY MR. SUGARMAN:

Q. Could you turn to Page 17. And on that page there is a statement in the middle of an answer. It's the end of line one that says, "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 licensing a specific product to certain customers for editorial use. I don't solicit much business; it comes to me."

My question is, is that statement still

accurate today?

A. It's accurate in the time frame of when I gave it to you. It doesn't reflect an overall view of my 40 odd years of being a -- creating intellectual properties.

Q. Okay. Is it accurate for the last ten years?

A. Yes, it's fairly accurate. It's an honest answer for that time frame. At least the time I gave it, yes.

Q. In what ways would it be different for the period earlier than the last ten years?

A. Now I have to go into a time machine to go back 40 years. When I first started to become interested in underwater photography I did a lot of other things at the same time. Besides doing freelance photography for Adventure Magazines, editorial work.

At one time I had my own photo agency, stock photo agency. At the same time I used to manufacture underwater camera housings. They were machined out of metal and made for the Leica, Argus C3 and C4 -- Argus C3 and C4, Leica ~~context~~ CONTAX.

I also created some new equipment under the Seahawk products line. I had a working relationship

with the National Geographic starting from 1960 until whatever.

I also did work for the David Taylor model basin that was channeled into the U.S. Navy projects that included hydrodynamic surveys of vessels and that was under -- they were classified secret and top-secret projects.

And then there came a point in my life maybe in the late '60s -- well, even before that I started to publish my own books middle of 1956, the tail end of 1957. We started to publish our own books in black and white. And we had a line of four different titles and a Pennekamp park map and about the tail end of 1960 we decided to go full-bore into publishing our own work and we created that book The Living Reef, which is an all-color book with corals and fishes of the Tropical Atlantic.

Q. All right. Looking again at the excerpt I directed you to, you used the phrase as part of the answer, "selling our products as a product or licensing -- or the licensing of the specific product to certain customers." What were you talking about when you used those words? And let's break it into two because there are two thoughts there. First is selling our products as a product. What product do

you mean?

A. The finished published book from Seahawk Press.

Q. And would you also include calendars and ID cards and maps and the like?

A. Yes, sir.

Q. And then it says, "Or the licensing of the specific product to certain customers". And, again, what did you mean by the specific product?

A. Photographic product or artwork product for a specific licensing outside the realm of Seahawk Press.

Q. Is the Boy Scout example an example of that?

A. It's a good example, yes.

Q. Can you approximate the frequency of the selling of your product, the books, the calendars, whatever on the one hand and the licensing of specific photographs like the Boy Scout photograph on the other?

MR. DAVIS: Excuse me, when you say quantify, what do you mean?

MR. SUGARMAN: In terms of the emphasis how much of one as opposed to how much of the other make up the business.

MR. DAVIS: As a percentage for each

activity?

MR. SUGARMAN: Sure. That would be fine.

THE WITNESS: I can't give an exact percentage, but as the publishing became more and more lucrative, I didn't -- I didn't pursue the actual licensing of our images as much because the time spent on negotiating and working on that is considerable. And I always felt I would be in a much better position if someone saw a very specific, unusual photograph that we had produced in our various publications or elsewhere, I'd be in much better shape if people they would come to me directly rather than go around with my hat in my hand.

BY MR. SUGARMAN:

Q. And is that the -- basically the same response as the next line in the first transcript which says, "For editorial use I don't solicit much business; it comes to me"?

A. That's very close to it, yes, sir.

Q. Further along in that deposition transcript you describe an arrangement with the Audubon Society. There's a reference to it starting on Page 18, Line 10. There's also a reference up on Page 17 starting at Line 6.

A. Yes.

Q. And could you describe the circumstances which led to that licensing arrangement?

A. Yes, sir.

MR. DAVIS: Do you need to read this?

THE WITNESS: No, I'm familiar with what I said and the circumstances.

Before that I offered my Mangrove piece to the National Geographic, I felt it was important to do this piece because it's a little known area of a national environment in the Keys. They weren't interested and a little bit later I still felt I would like to see this work which had never been seen before and the way I did it to be utilized by someone in the magazine field.

In that specific case I did contact Audubon Society directly -- Audubon Magazine directly.

BY MR. SUGARMAN:

Q. And generally describe what happened thereafter.

A. Well, they saw my catalog of material and they loved it and they purchased one-time rights to utilize it in the magazine.

Q. Okay. When you say purchased one-time rights to use it in the magazine, what is it?

A. My photographs. My images.

Q. Okay. How many of them?

A. I don't have the article in front of me. It was not asked for, but I could produce it if you would like to see it.

Q. Were the images that were later or were produced in the Audubon Magazine images that had appeared in the Mangrove Trees book that you referred to before?

A. Some did, some didn't.

Q. So in other words the article contained some pictures from the Mangrove Trees book and some others, is that correct?

A. From that collection, yes.

Q. Can you recall the financial arrangement that you and the Audubon Magazine made for the use of your images?

A. Yes.

Q. What was it?

A. It paid $3500.

Q. And approximately what year was that?

A. I don't have it at the top of my head.

Q. Was it the -- this deposition, the first session took place in 1998 and you said that it was the most recent licensing arrangement, so obviously it

took place before May of 1998. Was it within a year or two before that or five or six or --

A. No, a year or two would be closer to it.

Q. I did not see any documents in the production that reflected the arrangement with Audubon Magazine. It may well be that they're there, but I would ask that they be produced as well.

Describe how it was that the amount of $3500 was arrived at for the use of those images?

A. I arrived at that price which I felt was fair and reasonable.

Q. And they accepted your offer or demand?

A. It wasn't a demand; it was a request.

Q. Request.

A. Request. Yes. They liked the material. They thought it was quite special, never been seen before, and they loved it and they used it, paid for it.

Q. How did you go about arriving at the number of $3500 as being as you put it fair?

A. It depended upon how many pages I thought they could or should use. And I came to that figure I felt with a good jade on my pocket. And I felt it was reasonable for the uniqueness of the material. No one else had stuff like it. And I felt the story should

be told and it didn't hurt having the article in there because the book was either in production or ready to go into publication.

Q. Was the article published before the book was published or about the same time or after?

A. I don't remember.

Q. And when you say it wouldn't hurt to have the article published, why is that?

A. People would see it, hopefully appreciate it. It might lead to other revenue from re-use of the material that was either in the book or in the article itself.

Q. Did you think that it would or could lead to increased sales of the book itself?

A. There's always that hope and that chance.

Q. Did you think that publication of these images in the Audubon Magazine would detract from the sale of the book?

A. There's always that chance. There's no way of really telling. It's pure speculation really.

Q. As a result of the publication of the images in the Audubon Magazine, did additional licensing activity take place?

A. No additional licensing did take place.

Q. Did any other commercial activity take place

as a result of the publication of your images in the Audubon Magazine?

A. Not through us.

Q. Well, when you say not through us, are you aware of any activity through anybody else?

A. Just didn't exist. It never came through.

Q. So whether it was through you or through someone else, you're not aware of any additional commercial activity that resulted from the publication of your images in the magazine -- in the Audubon Magazine, is that right?

A. No.

Q. That's correct?

A. That's correct, yes.

Q. Would you look on Page 18 from Lines 17 to 24 and read those to yourself.

A. Yes, sir.

Q. I'm going to bring that question up-to-date. And the question is, can you think of any instances since May of 1998 where you made a similar arrangement with a publication for one-time use of images that you have taken?

And I know we've talked about the Boy Scouts, so that would be one I assume.

A. I'm a little confused there. Are you

talking about the images on Counts III and IV or images in general?

Q. I'm talking about images in general. Any arrangement like the Audubon Magazine where there was a license to a publication to use images that you had created?

A. At the present time I can't put my finger on it, but I would have to look back. I wasn't aware that was a point that you need the information on.

Q. Well, in the documents that have been produced, and we'll go through them later, you did produce -- I might as well mark it right now.

I ask the reporter to mark as Jerry Greenberg Exhibit 20 two pages Bates stamped 5086 and 5087.

(The document was marked as Exhibit No. 20 for identification.)

BY MR. SUGARMAN:

Q. Mr. Greenberg, could you identify what I've marked as Jerry Greenberg Exhibit 20?

A. Yes, sir.

Q. What is it?

A. It's a final invoice for the balance of the payment that was given to me for the photographs that were used in the Boy Scouts of America, Boys' Life

Magazine.

Q. Okay. Now I show you that now because I assume that's one example of an arrangement that you made with a publication for one-time use of images that you created, is that correct?

A. Yes, sir.

Q. And my question is: Are there any other examples of these kinds of arrangements -- this kind of arrangement, which is an arrangement for a publication to use an image that you took, any other examples other than the Boy Scouts of America example that you can recall in the last four years, since May of 1998?

A. Whatever transactions that I had with images that pertained to Counts III and IV were put together and given to you to the best of my knowledge complete.

Q. Okay. That's fine.

Would you describe the circumstances which lead to the publication of these images in Boys' Life Magazine?

A. Yes. In May of 2001 the photo editor or his assistant contacted me in regards to utilizing some of the images that appeared in the July 1990 issue of National Geographic. I gave them a ballpark figure of what I wanted for the piece for inside use, excluding

cover. The price was $3500 for inside use, excluding cover, one-time use. And I wanted a $500 presentation fee to send the material to them, which would be deducted. The total price being $3500.

Q. And what did they say?

A. They said here's our Fed Ex number and send it to us.

Q. Did they specify which images from the July 1990 story in the Geographic that they wanted to use?

A. One of the requests that stick in my memory is the before and after of the Molasses Reef scene from 1985 and rephotographed in 1998 I believe. Plus there were other things they wanted in that that had particular interest to them. It's sort of an archive of what it used to be and what it is now.

Q. How many images did they have the right to use for the $3500 that was agreed on?

A. Three to four pages excluding cover. I would have wanted $3500 if it was three and if they wanted to use a fourth page, I felt that was still reasonable and still profitable.

Q. When you say three or four pages, what do you mean when you say pages?

A. A page can either have one photograph on it or two photographs.

Q. Is that referring to pages of the 1990 Geographic issue or pages of Boys' Life Magazine?

A. Boys' Life of course.

Q. Now when you say inside use, what do you mean?

A. Excluding cover.

Q. Inside the magazine?

A. Yes.

Q. How did you come up with the figure of $3500 including 500 for the presentation fee?

A. You mean excluding the $500 presentation fee.

Q. What was the total amount that you received from --

A. That I wanted. I wanted $3500 whether it was three pages or four pages.

Q. Okay. Did that include the presentation fee or was the presentation fee additional?

A. Presentation fee was part of the package there. If they would have taken the material, paid me the $500 presentation fee and not used it, it would have ended up in my pocket as $500. Otherwise, I felt it was proper to deduct it.

Q. So the $500 presentation fee was a guaranteed minimum, but if they used the material, it

would be factored in?

A. No, it's not a guaranteed minimum. Guaranteed minimum was $3500. The presentation fee was $500. If they decided not to do it, I would be in my pocket $500 and that would be the end of the matter.

Q. Okay. And since they did decide to do it, they paid you $3500 total?

A. Yes.

Q. How did you come up with the $500 presentation fee and $3500 total fee for the use of these images?

A. I really didn't want to be bothered going through my files to dig up material for less than $500. It's a full day's work. Thirty-five I felt was civilized and reasonable and if they wanted it, they would pay the fee. And if they balked at it, there was no -- I wasn't going to change my requirement there.

Q. Can you remember the name or names of the people at the Boy Scouts of America Magazine division with whom you dealt?

A. I think it was in the information I provided my attorney on that.

Q. Do you recall it as you sit here?

A. No, sir, I don't.

Q. Do you know how the people at the Boy Scouts found out about the article in the 1990 edition of the Geographic which prompted them to contact you?

A. Well, one would assume they saw the magazine. The 1990 issue of July.

Q. One could assume that. My question is whether you have any knowledge. Did somebody, for example, tell you we saw your piece in the magazine or did they tell you something else? Do you have any information as to how they determined that?

A. No, just see the plans, they had to have seen the article. Whether they saw it in the dentist's office or in the library or whatever, I don't know the circumstances.

Q. Is it also possible that someone saw the article in the CD-ROM product?

MR. DAVIS: Object to the form.

THE WITNESS: I have no way of telling.

BY MR. SUGARMAN:

Q. So that's possible or not. You just don't know.

A. There's no way of telling in any way, shape how they saw it.

Q. As a general rule -- if there is a general

rule -- do your books contain images which were also published in stories in the National Geographic Magazine?

A. Currently available titles which we have produced do contain those images, yes.

Q. And do they as well contain images that were not published in stories that were run in the National Geographic Magazine?

A. Yes, sir.

Q. Do you have any way of approximating by general percentage how many of your books or what percentage of your books are images that were in the Geographic Magazine and what percentage of your books are images that were not?

A. Our current list of all photographic books had images that appeared in the National Geographic Magazine. Our current books with artwork in it only do not have any photographs from the Geographic.

Q. Okay. You mentioned the books that are currently in inventory, which books are those?

A. I believe you have the titles right there on the table.

Q. Okay. All right. Let me ask the reporter to mark as Jerry Greenberg Exhibit 21 a book entitled Beneath Tropic Seas which is Bates stamped 6017. As

Jerry Greenberg Exhibit 22 a book entitled Sharks and Other Dangerous Sea Creatures Bates stamped 6018. And as 23 a book entitled the Coral Reef Bates stamped 6019.

(The documents were marked as Exhibits No. 21, 22, and 23 for identification.)

BY MR. SUGARMAN:

Q. Mr. Greenberg, I show you what have been marked as Exhibits 21, 22 and 23. And are those the books that you refer to that had been produced?

A. Currently available titles.

Q. So those three -- 21, 22 and 23 -- are the current available titles?

A. Currently available, yes.

Q. From Seahawk?

A. Yes, sir.

Q. If somebody wanted to purchase 500 copies of another book -- the Living Reef, for example -- could that be done; and if so, how?

A. I would have to reprint it for them. That's a 170-page perfect bound book. We currently only do half books, six by nine. It could be done if they want to pay for it.

Q. Okay. Are there materials -- calendars, plastic ID cards, maps, posters and the like -- which

also are currently available for sale?

A. Plastic cards, yes. Calendars, no.

What were some of the other items you mentioned?

Posters.

Q. Posters and maps.

A. The film exists. I could reprint it. So if someone wants to buy several thousand, I certainly could reprint it.

Q. But are any of those in inventory that could be shipped immediately without reprinting?

A. No, sir.

Q. Do you advertise and/or promote the products that are available from Seahawk?

A. Not advertise, but we do print sheets up of what we have that's available in our line.

Q. And what do you do with those sheets when you print them?

A. They go to our distributors.

Q. And you mentioned distributors and you mentioned that before. How many distributors do you have at this point?

A. At this time seven or eight. Six, seven, eight master distributors.

Q. When you use the term master distributors,

is there a distinction between master distributors and other distributors?

A. Yes, sir.

Q. What's that distinction?

A. At one time we had another category regular yellow sheet distributors. The yellow sheet was indicative of the type of legal size yellow paper that their list was on. That was only carbon lots, but the masters would buy stuff in multiple carbon lots and they got better prices. We ~~you~~ cut the yellow sheet distributors away the fall of last year and asked them to buy the products from master distributors.

Q. Why did you do that?

A. Less people to deal with and I felt like you got better service from a master distributor who is open 30 days -- theoretically 30 days out of the year. I was only open the first five days of each -- I'm sorry, 30 days of out of each month I was only open for the first five days of each month.

Q. When you say "I was only open", what does that mean?

A. To service all distributors.

Q. So you would service the distributors the first five days and they would then sell the product to the field?

A. To the trade.

Q. To the trade.

A. Yes.

Q. And when you say the trade, what is the trade? What's the end typical or the group of end users or buyers of your products?

A. Visa M shops, aquariums, dive shops, tourist outlets, book stores, whoever wanted to stock our titles.

Q. Would Seahawk as well take any orders directly from the trade?

A. Not at this stage of my commercial activity. At one time we did as well as distributors.

Q. In the last five years did you take any direct orders or during that time period was it basically through distributors?

A. To the best of my knowledge mainly through distributors, but that would be reflected on the paperwork that I provided my attorney.

Q. So to the best of your knowledge the paperwork that you provided to your attorney covers the transactions that took place during the time period that the production represents, is that right?

A. Yes, sir, it's 40 years.

Q. Give me the names of as many of those seven

or eight distributors that you can think of as you sit there.

A. They are on the paperwork that I provided to you. It's all there. I just can't get a --

Q. Well, one I see it's a 1976 invoice is Associated Book Distributors in Largo, Florida.

A. Yes, sir.

Q. Are they still a distributor?

A. They are out of business I believe.

Q. Another very old one is Sailing Book Service in Tuckahoe, New York.

A. Is that a distributor or a dealer?

Q. I don't know.

A. May I see the transaction, please.

Q. Sure. I ask the reporter to mark as Jerry Greenberg Exhibit 24 an invoice Bates stamped GJ/D 129.

(The document was marked as Exhibit No. 24 for identification.)

BY MR. SUGARMAN:

Q. I've shown you what's been marked as Jerry Greenberg Exhibit 24. Can you tell me whether the entity named there is a distributor or an account or was? It's a long time ago I realize.

A. I don't know whether they were a retail

store, a dealer, buying it in bulk lots for sale out of their store or if indeed they also serviced other people out there. I have no knowledge as to what they are.

Q. In an earlier answer you said that in books with illustrations there are no images which were published in the National Geographic Magazine, is that right?

MR. DAVIS: Object to the form. I don't understand.

BY MR. SUGARMAN:

Q. I thought in answer to an earlier question you made a distinction between books which contained illustrations and other books. And I thought you said -- and correct me if I'm wrong -- that the books that contained illustrations did not contain images that had been published in National Geographic. Is that correct or is that not correct?

A. When I use the word illustrations, I mainly refer to my wife's artwork. When I use photographs or reproductions of photographs, I sort of bifurcate the two. So when I use that wording, I consider the artwork illustrations.

Q. Okay. Then let's just talk about the books in which there are photographs.

A. Yes, sir.

Q. Are there any of those books which were published which did not contain any of the images that were published in the National Geographic Magazine?

A. Yes.

Q. Which books were they?

A. Waterproof Guide to Corals and Fishes. Guide to Corals and Fishes. The Spanish language version of the same. The Spanish language version of the Waterproof Guide to Corals and Fishes. Waterproof Pocket Guide to Corals and Fishes, half size book. And Pocket Guide to Corals and Fishes.

Q. With respect to Exhibits 21, 22 and 23, are there images in these books which were also published in issues of the National Geographic Magazine?

A. Yes, sir.

Q. And are there images in these books which were not published in issues of the National Geographic Magazine?

A. Yes, sir.

Q. Over the last five years has there been a change in the way you and/or Seahawk advertises and promotes the products that are sold?

A. No, sir.

Q. What about the last ten years, broadening it

a little bit more, has there been any change in the method by which Seahawk advertises or promotes its product?

A. It's hard for me to get back in that but to the best of my knowledge it's -- the answer is -- remains the same. To the best of my knowledge right now without digging into what I've done, no.

Q. And over that time period what are the ways in which Seahawk and you have advertised or promoted the product?

A. We don't advertise. We print up sheets showing our titles and provide these sheets for our various distributors. Sometime even printing their name on it.

Q. Off the record.

(There was a break taken after which the following proceedings were held:)

BY MR. SUGARMAN:

Q. I asked you some questions before about yearly records of profits which you answered. I'm not sure I asked you whether there is any yearly document which summarizes the sales of your various product by product?

A. Yes, there are.

Q. And who prepares that?

A. I do at the end of the year.

MR. SUGARMAN: I ask for production of it.

MR. DAVIS: You have it.

MR. SUGARMAN: That's been produced?

MR. DAVIS: Uh-huh.

BY MR. SUGARMAN:

Q. You indicated earlier that the books that have been marked as Exhibits 21, 22 and 23 are the books that are presently in inventory. Over the last five years have there been any other books that were in inventory but are not now in inventory?

MR. DAVIS: You mean books, just generally books?

BY MR. SUGARMAN:

Q. Books published by Seahawk Press.

A. Everything we have currently available is in inventory. The inventory may be low, but we have an inventory.

Q. Right. But my question was the flip side of that. Are there any books that are not -- are not now currently on sale or in inventory which were in inventory in the last five years?

A. Whatever the list that I provided on the overall view of 1975 on and before that gave the overall picture, but all these titles that we have now

are currently now available.

Q. Currently not available?

A. Currently available.

MR. DAVIS: He's talking about those that are not currently available.

BY MR. SUGARMAN:

Q. Yeah, let me retry to rephrase it.

In an earlier answer you testified that right now you have available the books that have been marked as Exhibits 21, 22 and 23. My question is within the last five years have there been any other books published by Seahawk Press which were available but which are not available now?

A. No. Whatever we have on our sheet is available, that includes these and whatever else is in the line that I mentioned to you.

Q. Right. So to ask it another way. If you put yourself back five years, would the sheet from five years ago contain any books in addition to the ones that have been marked 21, 22 and 23? In other words, that were available five years ago but are not on your sheets now.

A. No.

Q. As a general matter how have sales levels of the books overall been since 1995? And by that I mean

are sales now higher than they were then, lower than they were then or basically about the same as they were then?

A. It's hard for me to pinpoint that. Each year is different. A hurricane comes through an area, it kills the sales for books. I can't give you an overall picture except what I provided to you on the overall view of the sales for each year. I'd be guessing at it.

Q. Are there any factors which come to mind as you sit there, say, since 1995 which is about the last seven years. Any factors which did effect the sales of your books?

A. I can't put my finger on it. We go from year to year.

Q. Right. Well, you mentioned hurricanes for example. Have there been to your recollection any hurricanes in the last seven years which did have an effect on the sales?

A. If the hurricane is in Florida, it would certainly have an effect with sales in Florida.

Q. Yeah, I understand that. My question is: To your knowledge as you sit there, were there any hurricanes in the last seven years that did have an effect on sales?

A. I don't remember the cycle of hurricanes.

Q. Has the publication of what I'll call the complete National Geographic, which is the National Geographic on CD-ROM had any effect on the sales of your books?

A. There's no possible way that I could determine that.

Q. And would the answer be the same with respect to any effect on the other materials that you sell?

A. I have no way to --

Q. You have no way to?

A. Put it in perspective.

Q. Okay. Let's focus for a minute on the -- what I'll call the licensing activities which are the Audubon Book, magazine, the Boy Scouts. Has the level of that activity changed at all over the last ten years either up, down or is it basically the same?

A. Whatever information I provided to you for licensing it has been provided to you.

Q. Okay. But as you sit there, do you have a sense of it being about the same, more active or less active?

A. I have no idea.

Q. Are you aware of any instances where any of

your images was used without authorization in the last five years?

And I'm not -- this is not a trick question. I know that you claim that the use in the Complete National Geographic was unauthorized and I'm not referring to that. My question is whether aside from that publication which you claim was unauthorized have there been any other uses of any of your images without proper authorization?

A. You say any of our images. Do you mean the images that are contained within Counts III to IV or overall images in general?

Q. In general.

A. In general.

I can't produce it right on the exact time frame you're talking about. There's always problems that come through that we become aware about. When you talk about unauthorized use, if we don't see it, we never know about it.

Q. Right.

A. The only way we find it's unauthorized if we actually have the product in our hand that it exists. It's a chronic problem when you create intellectual properties that have value, whether you're Seahawk Press or National Geographic or anyone.

Q. Right. And I realize that there may well be uses out there that are unauthorized that you don't know about. Obviously you can't testify to those, but my question is: Are there any that have taken place in the last five years that you do know about?

A. At the present moment I can't think of it but it's a problem that all publishers face.

Q. Right. Making that question a little more narrow. Are you aware of the use of any image that you took which resulted from someone out there copying those images from the Complete National Geographic, the CD-ROM product?

A. There's no way of telling who's ripped into that. No way for me to know about that. I haven't seen any product yet. It doesn't mean it doesn't exist. I just haven't seen it yet.

Q. Whether you've seen it or not, has anybody said anything to you about any such use? Do you have any information about it?

A. The only time I have knowledge of use or desired use of our products is when someone comes to us, an ethical company, and deals with us at an arm's length transaction to license the use of it such as Boys' Life, or any other -- anything else that I provided you with.

It's the ones that we don't know about that exist out there we have no way of nailing down. There's no way to prove it.

Q. So just to be clear there's no use that you know about that resulted from anyone copying any of your images from the Complete National Geographic even though there may be some out there; is that fair?

A. I personally know about, not to my knowledge right now.

Q. Are you aware of any instance where you lost an opportunity to license one of your photographs or a group of your photographs because the Complete National Geographic had been published?

A. No one came up to me and said we are not going to utilize this photograph because we can get it off the CD-ROM, no, it doesn't happen that way. If it's done, I have no way of knowing it.

Q. Same question with respect to any loss of any book sales. Are you aware of the loss of any book sales of Seahawk Press which resulted from the fact that the images in those books were also published in the Complete National Geographic?

A. To the best of my knowledge I have nothing to provide you with on that.

Q. Okay. I've pulled some of the documents

from the larger amount that have been produced and I'm going to mark some of them and go through them and ask some questions with respect to them, so let's mark as Jerry Greenberg Exhibit 25 a letter dated July 15, 1964 Bates stamped JG/D 5006.

(The document was marked as Exhibit No. 25 for identification.)

BY MR. SUGARMAN:

Q. Would you read to yourself Exhibit 25 and tell me when you've finished.

A. Yes, sir.

Q. I realize this is a long time ago, 1964, but my only question about this document is do you know how the amount of $200 was determined?

A. At that time frame Society's policy was not to pay additionally for the re-use of material that first appeared in the National Geographic. That was changed later on into the mid '60s and on. In this specific case I was very helpful to them in aiding them to put together all the illustrations that pertain in this area for this new book of fishes. In lieu of that they wanted to give me a -- what they feel was right at the time, even though they weren't paying for additional use at that time. They paid me additional $200 for the use of that specific

illustration in the book itself.

Q. I ask the reporter to mark as Jerry Greenberg Exhibit 26 a letter dated November 7, 1967 Bates stamped JG/D 5012.

(The document was marked as Exhibit No. 26 for identification.)

BY MR. SUGARMAN:

Q. Would you read Exhibit 26 to yourself and tell me when you're finished.

A. Yes, sir.

Q. Can you tell me how the $400 that's mentioned in the first line of the second paragraph was determined?

A. That was a price that they utilized for the rates for that double truck use in the shark article. The shark assignment that I did for them.

Q. You used the term double truck?

A. Double page.

Q. When you say it was an amount they determined, who's they?

A. The original assignment was based on a minimum guarantee, thirty-three, 3200 against the page rate when I first got the assignment. Once they determined what the page rate was going to be, they decided to pay $400 for that double page or double

truck use.

Q. Over and above the initial 3200?

A. That was taken out of the 3200.

Q. Now, you used the term per page rate and that's going to appear in some documents that I'm going to mark. What does that mean? What is the per page rate generally?

A. Generally it had a page rate established for what they would -- felt would be appropriate for the use in the magazine. For other pieces that were a little more difficult to do or dangerous or whatever, they would pay bonuses for the extra effort and the extra work that was involved. Working underwater certainly, you know, provided a premium rate to be paid. Working with sharks was in the same category. I'm not sure whether that $400 was over and above what they guaranteed me since it did come from my file.

Q. When you say since it doesn't come from your file, what do you mean?

A. Well, the photograph was N1 was a hammerhead shark came from my own personal collection. What I'm not positive is whether that $400 was part of the $3200 minimum guarantee or over and above that.

Q. Okay. So do I understand correctly that the photograph we're talking about here, the hammerhead

shark, was not one of the photographs that you took on the assignment but was instead a photograph that you had already taken?

A. Yes, sir.

Q. Would you mark as Jerry Greenberg Exhibit 27 a letter dated March 28, 1967 Bates stamped JG/D 5015.

(The document was marked as Exhibit No. 27 for identification.)

BY MR. SUGARMAN:

Q. Let me know when you've finished reading it, Mr. Greenberg.

A. Yes, sir.

Q. The picture that's the subject of this letter is one of Judy Meade swimming in the Coral Reef Park, is that correct?

A. Yes, sir.

Q. Was that picture taken on an assignment?

A. Yes, it was.

Q. And then it was used in the June special publications announcement in the magazine, is that correct?

A. That is correct.

Q. Okay. And the letter says that a $75 check was sent or paid. And my question is how was the $75 number determined, if you know?

A. They determined that on the basis of their owning the copyright to the photograph.

Q. When you say "they", the people at the Geographic?

A. Yes, sir.

Q. When you say it was determined on the basis of them owning the copyright, what did you understand to be the relevance in determining the $75 that the Geographic owned the copyright?

A. Well, there's two aspects to that. First of all that they were paying additional moneys for the re-use of the material that first appeared in the Geographic. The second part of that is they could have paid me whatever they wanted, as little or as much as they wanted, I would have had no complaints about it because they own the rights to it. They own the copyrights to it.

Q. Did you ever have any understanding as to why it was that the Geographic did pay additional money for the use of the images when they owned all the rights?

A. Yes.

Q. What was your understanding in that regard?

A. In the early days -- and that was reflected in the Leonard Grant letter to me for the additional

moneys that they over and above paid. In the early days of my relationship with them, '62, '63, to a certain point there, they generally did not pay for additional use. After that point, the younger generation of illustration editors came into their own. I call them the young turks. There were changes there in the policy under the guidance of Bob Gilka it became their policy to pay additional -- pay the photographers additionally for the re-use of material that the Geographic actually owned and that was their policy from then on. They always -- the new management in place, since we all came from the same generation, Vets. They felt that we had to find some way to exist and it's the way of additional payments that came to us from that. From then on there always was a wonderful way of getting passive income on the re-use of material even though we didn't own the copyrights to it, we had some hand in the continuation of the use of the material.

Q. Do you have any understanding of what motivated Mr. Gilka and others to institute this policy?

A. Yes. The Geographics in the '60s started to pull the new young talent they needed from two different areas that I remember. One was from the

University of Missouri journalism department, and the other one -- the other set of talent came from, to the best of my knowledge, the Milwaukee Journal which was a leader in photo uses. These fellows came to the society mainly in the capacity of assistant illustration editors. Later they became illustration editors, director of photography. They went up the scale in management, but there was an understanding in order for creative people to stay alive, freelancers, myself, contract photographers, we just couldn't exist without some kind of continued payments and royalties.

Q. Would you mark as Jerry Greenberg Exhibit 28 an invoice dated May 27, 1975 Bates stamped JG/D 3053.

(The document was marked as Exhibit No. 28 for identification.)

BY MR. SUGARMAN:

Q. Can you identify Jerry Greenberg Exhibit 28?

A. Yes. It's an invoice from me to Photo Researchers, Incorporated for handling the transaction with MCA for the one -- for the use of my photograph that appeared in the theatrical movie Jaws.

Q. Would you describe the circumstances that led to the use of your image in Jaws and the resulting payments.

A. Previously to May 27th I received a phone call from someone at MCA, that's Music Corporation of America, Universal who produced Jaws and they wanted permission to utilize one of the photographs that appeared in the National Geographic Magazine in the movie -- in a sequence of the movie. I don't know whether we talked about money or not, but I didn't feel like dealing with Hollywood on something I didn't know too much about, so I passed on this query to Photo Researchers, Incorporated to handle the deal and I told them that they would get a 20 percent commission.

Q. What kind of business was Photo Researchers at the time?

A. It was a photo agency.

Q. Stock photo agency?

A. Yes, sir.

Q. So I take it that Photo Researchers and MCA/Universal agreed on a price of a thousand dollars?

A. For the theatrical use of that image. I think it was already in the can frankly.

Q. And this is evidence that the thousand was paid and two hundred of it went to Photo Researchers as their commission?

A. Yes, sir. Uh-huh.

Q. Let's go off the record for a second.

(There was a break taken after which the following proceedings were held:)

BY MR. SUGARMAN:

Q. Please mark as Jerry Greenberg Exhibit 29 a two page -- two pages Bates stamped JG/D 3021 and 3020, one a letter dated September 25, 1975 and on the same page there's a copy of an image, and the second of the two pages has two invoices.

(The document was marked as Exhibit No. 29 for identification.)

BY MR. SUGARMAN:

Q. Can you identify the documents that comprise Jerry Greenberg Exhibit 29?

A. Yes. It's a letter from Laura Smith in the Promotion Division indicating that they were pleased to inform me that their division had selected one of my transparencies for publication in a special membership promotion test package. It was a brochure they printed up. The photograph that they utilized was labelled JG 972 and they told me they were going to pay me a hundred dollars for the use of this very short-run, as I understood it, promotion package.

The other page indicates two different transactions there. One for a hundred and the other

one for a hundred -- the other one indicates that the total payment after I talked to them about it with P. Jones was arrived at the $200 figure. That photograph never was their property to begin with. It came from my file and it was originally used in the underwater book as they called it. I never even knew that they still had the chrome there. They had the idea on it. And what they utilized was they took the separation that appeared in the book and re-used the color separations for this promotion piece without asking me and then after the fact let me know about it and I told them that this was not an appropriate amount of money that I felt was adequate and I felt that $200 for this very minimal use was reasonable. Keeping in mind that they only utilized -- had rights to use this photograph in the first and later on the second edition of that specific book and nothing more than that. It came from my file.

Q. Okay. So the original use was not in the National Geographic Magazine but was in another publication, is that correct?

A. Special publications.

Q. Okay. Would you mark as Jerry Greenberg Exhibit 30 a letter dated January 26, 1976, Bates stamped JG/D 5034.

(The document was marked as Exhibit No. 30 for identification.)

BY MR. SUGARMAN:

Q. Can you identify Jerry Greenberg Exhibit 30?

A. Yes, sir. It's a letter to me advising me that they decided to use one of the photographs that appeared in National Geographic World, the diver in the shark cage, and this photograph originally appeared in the February '68 issue of National Geographic. And this one document that they sent to me I think changed the course of my view of the society and changed my ideas of what I want to do in the future and it hinged around the shark assignment.

Q. Could you explain that?

A. Certainly. Early '60s for a one-year period I started to promote, prod the society to do a shark article. I did a number of illustrations, four or five pages of illustrations, and I did an outline and I plugged at it and plugged at it. It was my idea, my story, my artwork, my suggestions and they have correspondence on that. And I finally got the assignment and the assignment was for -- they give me a minimum guarantee of $3200 against the pages used and I was to be responsible for my own safety, there

was no insurance on it, no coverage. And he cut me loose to do the story. And I spent a lot of time on that story in dangerous situations to get what I had to get for them. I had a terrible time not so much with the sharks but with the inability of the illustration editor I was dealing with to give me direction on usage. There came a point there when they wanted me to stop doing photography on the sharks. The quote that I remember is we have enough shark photos.

Well, I went out on my own and paid for going back out, going out to the tongue of the ocean. That's the area between Andros and New Providence. There's a deep trench out there that had Navy sonic buoys tethered in a mile or so of water and I heard there were sharks out there. The Geographic didn't want to pay me any additional money to go out there so I did it on my own. And I contracted with a local marine acoustic firm. I said, if you're able to get this boat -- and I would be able to utilize it, I would do special projects for you in the field that you would be able to utilize to get additional Government work to do possibly and we need to go out to tongue of the ocean and tie up to the buoys out there and I understand there's a lot of sharks out

there.

Did it with my own nickel, my own time, my money, my energy and I did the extra work for them. In some cases I went down to 230 or 40 feet of water before. They got shackles PHOTOS ~~on me~~ FROM from moorings out there as well as do overlapping panorama work for them, for the marine acoustic firm so they could possibly solicit additional government work.

Well, we went out to tongue of the ocean. Boy, there were sharks all over the place. I spent three days out there photographing sharks. We launched the cage in the water. Spent three days on it. Got fabulous stuff. Once I turned over this material to the Geographic I shot on my own, it rejuvenated the piece and they became very enthused about it.

Well, they went ahead and put an article together, utilized a bunch of other photographers and they published it and for all the work I did on the original idea, the outline, the artwork and all the work I did out in the field they paid me the $3200 for what they used. Unfortunately, in the overall scheme of things not all the photographs were mine and they -- some bean counter up there decided that I owed them against the photographs used $675 and that's how

that thing started right there. And that's why they had a balance due of $675 against a minimum guarantee. So they deducted $50 from that, but the proper thing to do was to pay me the $3200. And they were going to use the stuff over and again and since they own the copyrights at that time, they paid me additionally.

At that point I knew my days there were numbered. I knew that I would no longer have a decent working relationship with them.

Did I answer your question?

Q. Who was the photo editor at the time?

A. That's part of the problem. I initially had someone from Oklahoma. I forget his name. Later on I got a crackerjack on this -- after I went out and did the extra work. He put it together and off of that shoot that I made on my own at tongue of the ocean they got a cover off of it, inside double truck, second inside double truck and a single page out of it. The guts of the piece hinged, in my point of view, on the stuff I did on my own my nickel, my own time.

Q. Who was the top photo editor at Geographic at the time? Not the individual photo editor on this piece. If you remember.

A. Bob Gilka.

Q. Did you have any discussions with him about your dissatisfaction with what was going on?

A. No, I took it and swallowed it.

Q. Do you know how the $50 amount was arrived at for world usage that was being made in the re-publication of your picture?

A. When you say world usage, you mean use in the specific edition of World Magazine?

Q. Oh, okay, you're right. Use in National Geographic World.

A. Yes. It's a children's thing. It's a far cry from Damascus on that one.

Q. Okay. Let me rephrase the question.

A. Okay.

Q. Do you know how the number $50 was arrived at for the use of that picture in the January 1976 issue of National Geographic World?

A. It was their copyright, their property, they always would pay additional for it, and they figured up what they felt would be appropriate for that, what their rates were. I accepted it. It was a bitter pill that I got stuck with that $675 balance after creating the piece from scratch.

Q. Would you mark as Jerry Greenberg Exhibit 31 a letter dated November 25, 1980 Bates stamped JG/D

5036.

(The document was marked as Exhibit No. 31 for identification.)

BY MR. SUGARMAN:

Q. Can you identify Jerry Greenberg Exhibit 31?

A. Yes, it's a continuation of what I just talked about where the -- for the use of the cover photograph of the turning oceanic white-tip shark to be used in a specific use; Educational Services Journal ad and Educational Services direct mail flier, both promoting the film about sharks.

Q. In the third paragraph there's a reference to the standard payment for promotional use of $100, but -- and then I'll quote. "In this case, payment of 200 would be made upon receipt of your permission." And my first question is there's some handwriting in the right-hand margin. Can you identify that?

A. Yes, that's mine.

Q. And it says as I read it okay W slash credit line, correct?

A. That's right, sir.

Q. What does that mean?

A. That's the $200 fee would be fine provided they give me a credit line on the photograph. They

owned the copyright at that time and all I wanted was, you know, my photo credit line on it.

Q. Okay. Do you know who it was who determined that the standard payment for promotional use at that time, which is 1980, was a hundred dollars per transparency?

A. 1980, a hundred dollars, no, I don't know who decided that was the rate.

Q. Do you know who decided that in this case there would be payment of $200 instead of the standard $100?

A. Not that I know of unless Barbara Scott felt friendly towards me.

Q. So I take it that there was no discussion of this, that you just got this letter and you were advised that there would be a $200 payment in this case, is that right?

A. That's correct. They own the copyright, they own the rights to re-use it. It's passive income -- constantly passive income when it was paid coming into me all the time. I couldn't say no because it wasn't part of the deal.

Q. Would you mark as Jerry Greenberg Exhibit 32 a letter dated June 8, 1988 Bates stamped JG/D 5040.

(The document was marked as Exhibit No. 32 for identification.)

BY MR. SUGARMAN:

Q. Can you identify Jerry Greenberg Exhibit 32?

A. Yes, it's a letter from Carolyn Jones who's an assistant to Bill Gray in the Publications and Educational Division, and they refer to a use of a photograph in the society publication called How Animals Hide. And apparently back in 1973 they used it, but I could never find -- '73 is before they even -- before I owned the copyrights.

They could not find the original record of a payment for this. More than likely it slipped through the cracks, which is unusual. They usually were quite good about paying you. And they said they would make a payment of 25 percent of the page rate. Well, at that time I owned the copyright after '85, but since they used it back in 1973 and we had a relationship there for the re-use of material at whatever rates they wanted to utilize I honored that relationship even though I didn't have to. Why create problems with people that you've had relations with and it was a good one. So I took whatever payment there was, which is not really what I felt it was worth because I

should have the opportunity to decide what I get paid for it after I own the copyright, but I accepted it and that's why it's such a low, low amount of money.

Q. So this letter dealt with the use that had been actually made 15 years before it?

A. Yes, I honored it.

Q. It wasn't another use that was being made in 1988, it was to pay for a use that had been made in 1973?

A. According to this letter it refers back to the original use.

Q. Okay. Do you have any --

A. Well, excuse me, now that I see the bottom portion. They were planning to do a Spanish language edition of this book before the end of the year in 1988. Well, I owned the copyrights then so what do you do in a case like that? I accommodated them. Why not.

Q. Do you know how it was that the 25 percent of the page rate was determined?

A. They arbitrarily picked that figure up and from their point of view I felt it was -- they felt it was fair. For someone who was in the photo market or the business it's a trifle. It's not appropriate.

Q. Why don't we break for lunch.

(There was a lunch break taken at 12:30 p.m. after which the following proceedings were held at 12:55 p.m.)

BY MR. SUGARMAN:

Q. Would you mark as Exhibit 33, a letter dated February 23, 1989, Bates stamped JG/D 5044.

(The document was marked as Exhibit No. 33 for identification.)

BY MR. SUGARMAN:

Q. Can you identify this exhibit?

A. Yes, sir. It's a letter from Susan Smith. Susan Smith, yes, advising me that the Chin Cho Cultural Enterprise will be publishing a Chinese version edition of How Animals Hide in 1989. This is the same photograph that was used in a Norma Edition from previous correspondence.

MR. SUGARMAN: You want to read back the beginning of the answer.

(The court reporter read back the answer as previously recorded.)

THE WITNESS: It's a re-use of the same photograph. Well, the original use was back in the '70s when they still owned the copyright. The secondary use to Norma was picked up after I owned the copyright. I left it intact. Even

though the money wasn't really worthwhile I kept it intact to please them.

And now they are using the very same photograph the Chinese edition. I left the relationship intact there even though the money wasn't I think what we should have been paid for it. It was an accommodation sale or usage.

BY MR. SUGARMAN:

Q. What amount of money would have been appropriate in your view for the re-use of this photograph?

A. Well, I would have to have seen for one how it was used and knowing that my minimum for the very scantiest use generally was $500. For larger size I tell people my minimum use for larger size is a thousand dollars. That's the way I get rid of people to stop wasting my time.

Q. When you say larger use, what do you mean by larger?

A. Well, if you notice how the illustration was used, the size of a -- probably a Morgan silver dollar and I left the relationship intact. Why, you know, disturb old friends I was doing business with. It was a constant source of income. This was not worthwhile but why treat people that way.

Q. So when you say larger, you mean larger size of image?

A. Yes.

Q. Okay. Will you mark as Jerry Greenberg Exhibit 34 an invoice dated March 26, 1989 stamped JG/D 2003.

(The document was marked as Exhibit No. 34 for identification.)

BY MR. SUGARMAN:

Q. Can you identify Jerry Greenberg Exhibit 34?

A. Yes, it's an invoice to Comex Marine Parks who had a mailing address in South Miami and what we found was a brochure promoting a marine park that came out of France that was promoted in the United States. We saw it at a Cruising Show -- a Cruising Boat Show and there was some -- a number of illustrations in that that were just taken out of our publication.

Q. Which publication, do you know?

A. Guide to Corals and Fishes to the best of my knowledge. It came from artwork illustrations.

Q. Do you have any knowledge of how the Comex Marine People got the images that they used?

A. Well, not specifically but since this fitted precisely to my wife's and our published artwork, I would assume they had a copy of our Guide to Corals

and Fishes.

Q. Right.

How was the amount of $5,000 determined?

A. Assuming this is going to cost us money to pursue with an attorney, also added to it is what we would have asked for had the material been used at an arm's-length transaction. We arrived at what we felt was a fair figure.

Q. Okay. When you say we arrived at what we thought was a fair figure, who is we?

A. My wife, myself and my attorney at the time.

Q. Did you make a determination as to what appropriate payment would have been had there been an arm's-length discussion before the use?

A. There's no way to tell because I'd have to have seen the layout, seen the appropriate paperwork and what they use wanted to use and determine that.

(There was an interruption in the deposition after which the following proceedings were held:)

THE WITNESS: We use our own judgment what we feel to be fair.

BY MR. SUGARMAN:

Q. Do you recall whether there was any multiple applied because the use was unauthorized in the first instance?

A. I don't remember. It's been awhile.

Q. Let's go off the record for a second.

(There was a discussion held off the record after which the following proceedings were held:)

BY MR. SUGARMAN:

Q. Would you mark as Jerry Greenberg Exhibit 35 a letter dated November 1, 1989 which is Bates stamped JG/D 5048.

(The document was marked as Exhibit No. 35 for identification.)

BY MR. SUGARMAN:

Q. Can you identify Jerry Greenberg Exhibit 35?

A. It's a letter from Carolyn Gobley who was an assistant to William Gray. It's in regards to an overdue letter regarding my photographs in Treasures in the Sea.

Q. What was Treasures in the Sea?

A. I had this -- it was a book done by special publications or publications in educational media and I had the information that was sent to you a couple -- a year or so ago in a blue folder and I believe it was part of the package that I provided my attorney with, but if you're asking me to guess now --

MR. DAVIS: Don't guess.

THE WITNESS: Don't guess.

BY MR. SUGARMAN:

Q. Was Treasures in the Sea a book title or a magazine title or something else?

A. It's a book title.

Q. A book title.

Now, there was evidently a check and a voucher enclosed and we didn't find it in the production. It may well have been there, but do you recall the amount that was paid?

A. No, I don't.

Q. Would you mark as Jerry Greenberg Exhibit 36 a copy of a letter dated May 9, 1990, Bates stamped JG/D 3026 to which is attached an invoice Bates JG/D 3027.

(The document was marked as Exhibit No. 36 for identification.)

BY MR. SUGARMAN:

Q. Can you identify Jerry Greenberg Exhibit 36?

A. If you will allow me to read through it first.

Q. Sure.

A. May I look at that specific issue to refresh my memory, please? 1990 July. It's got the

bird on the cover. The white bird. The white bird.

Q. Let's mark as Jerry Greenberg Exhibit 37 a reprint of the cover of the July 1990 edition of the National Geographic and Pages 115 through 132 of that issue. There's also on the inside front cover a color image of divers.

(The document was marked as Exhibit No. 37 for identification.)

BY MR. SUGARMAN:

Q. Mr. Greenberg, I show you the --

A. I'm still going to still dig into this copy.

Q. Take your time.

I'm showing you the issue -- the story that you've identified?

A. Yes, sir.

Okay.

Q. What were the circumstances which led to the payment of 3,000 as evidenced by this letter and invoice that we marked as Jerry Greenberg Exhibit 36?

A. It was a letter describing items that appeared in the July issue that were going to be paid for over and above what their minimum guarantee would be for my participation in that. One payment -- one payment of $2500 was for the panorama photograph done back in 1960 that was spliced together from five

frames that I own the copyrights to. They paid over and above the guarantee.

And the other one for that three for that $2500 figure was for two transparencies that were -- yeah, two transparencies from the photograph that I took in 1983 five years earlier, whatever the time would have been of a section of Molasses Reef, so that $2500 was payment for the one-time reproduction rights of two separate panorama illustrations.

Q. And what about the $500?

A. The $500 was an additional payment for an item that I had shot on my own before I received the assignment of a -- as far as I can remember of a boat that was hung up on the reef, an outboard that was hung up on the reef and they paid $500 for that one. I believe that was the -- what they are referring to.

Q. How were the amounts determined, the 1250 for each of the uses described in the first paragraph, the invoice and the 500 for the use described in the second paragraph of the invoice?

A. On the 500 it was based on the uniqueness of the photograph and the size that it was used in the article. The uniqueness of it was showing of the damage to the reef by an outboard.

The 2500 was for the two separate panorama

photograph pieces that also appeared in the article.

Q. Did you have any discussions with anybody at the Geographic about these amounts, the 500 for the outboard and the 1250 for each of the others?

A. No, because I received so much money on the minimum guarantee from the pieces, it was additional over and above found money.

Q. So I take it that those amounts were determined by somebody at the Geographic and suggested to you, is that right?

A. Yes.

Q. And those were the amounts that were paid?

A. Yes, sir.

Q. Would you mark as Jerry Greenberg Exhibit 38 a document Bates stamped JG/D 3017 which seems to be a composite of two separate documents.

(The document was marked as Exhibit No. 38 for identification.)

BY MR. SUGARMAN:

Q. Can you identify the documents that together make up --

A. Yes.

Q. -- Jerry Greenberg Exhibit 38?

A. The one on the left is a letter from Susan Smith, director of some support services, and it's in

relationship to the re-use of the photographs that originally appeared in Traveler Magazine many years before that. I did the Traveler Magazine assignment. I forget the exact year, but I took it as an assignment from National Geographic Society from Bob Gilka with the understanding that they would be purchasing one-time use only of everything whether it came from my file or items that I shot for them and everything would be returned back to me whether it was materials I shot for them or whether it came from my file and I would then copyright the material under my name.

Once that was said and done, this query did come through in 1990 where they had a working relationship with the German edition of Traveler called Global. They wanted to re-use this material. They discussed a price with me and I forget exactly what the fee was, but I felt that $1500 would be something I could live with for the one-time re-use of this material in the German edition of Global.

Whatever I discussed on the phone I put it on the correspondence and I followed it up with a post card to Ms. Gobley indicating what the deal was as I understood it.

Q. Okay. If you look at the next to last

paragraph of the letter on the left-hand side of the exhibit.

A. Yes.

Q. It refers to a payment at "50 percent of the original page rate for Travelers."

What would that have come to?

A. I'd have to have pulled the original payment from that. I didn't have it in my hands at the time. Maybe it would have ended up being a thousand dollars. I don't remember. But $1500 sounded right for this specific use.

Q. Who was it that came up with the $1500 price?

A. I did.

Q. How did you come up with that number?

A. On the same basis that I had come up with other requests for material, my own feelings of what I felt it was worth on that market and $1500 sounded right to me. Reasonable.

Q. What are the factors that you consider in coming to the conclusion that $1500 sounded right to you?

A. Well, I didn't know what the actual circulation of the magazine was, I didn't see the layout. I don't remember what the original fee was

for the job that they used, what they paid me for. But $1500 was something I felt I could live with that was reasonable and acceptable to me.

Q. Would you mark as Jerry Greenberg Exhibit 39 a composite exhibit of a letter dated July 9, 1990 and an invoice and it's Bates stamped JG/D 3018.

(The document was marked as Exhibit No. 39 for identification.)

BY MR. SUGARMAN:

Q. Can you identify Jerry Greenberg Exhibit 39?

A. Yes. It's a letter from Carolyn Gobley advising that please find enclosed the society's check for payment for the reproduction rights to your photographs that appear in the German edition of Traveler Magazine for the agreed payment of $1500. Then she mentions that the story byline and credits will appear as they appeared in the original Traveler format with a few exceptions shown to you earlier.

Okay. That's not what the deal was that I made with them. The deal I made with them that I would request a copyright credit line with the article, with the piece. Then they told me that copyrights are protected in every issue of Global, the German edition of Traveler, and all rights are reserved. That may very well be all well and good.

That was not the deal I made with them.

Q. Was the payment of $1500 made?

A. Yes.

Q. And I take it that it was -- that you deposited the $1500?

A. Yes, sir.

Q. How was the $1500 number arrived at, if you know?

A. As I previously explained to you, assuming there was a copyright photo credit line with the entire package to be used that way, the German edition of Global, I decided $1500 was just about right for that specific use. I didn't know the amount of editions they were printing. I try to make it attractive to them and attractive to myself, but it was tied to the copyright credit line.

Q. Now, what, if anything, was done when it came to your attention that they weren't following the deal that you had made?

A. Rather than make it a major problem for everyone involved, I just let it go at the time. It wasn't right, it wasn't proper. I just let it go. Hopefully that the copyright still would be protected.

Q. Would you mark as Jerry Greenberg Exhibit 40

a group of pages of documents, the first one is a memorandum to Mr. Greenberg from Blake Lewin at Warner New Media dated May 15, 1992 that's Bates stamped 3036. And the rest of the document -- the exhibit rather includes documents Bates stamped 3037, 3038, 3040, 3050, 5065, 5061, and 5059.

(The document was marked as Exhibit No. 40 for identification.)

BY MR. SUGARMAN:

Q. Would you look through that and let me know when you've finished.

A. Yes.

Q. Can you generally identify the documents which compromise Jerry Greenberg Exhibit 40?

A. It's a request from Warner New Media 1992 to utilize one of my images that originally appeared in National Geographic to be utilized in a CD-ROM disk commemorating the launching of Voyagers I and II from Nassau into space. In it they explained the three different formats that they had and the royalty on payments they were ready to pay for the use of a single photograph in the product.

NASA

Q. Okay. Were you aware at the time of the number of copies of each of the formats that was contemplated?

A. Only in the extent of what they told me what these would be. I wasn't familiar with the individual products themselves or the capabilities of them.

Q. Well, what did they tell you, if anything, concerning the number of copies of these products that would be manufactured?

A. They didn't give me a projection. They just gave me the prices they were willing to pay per unit, with that one photograph in it per unit.

Q. Do you know how the compensation amount that was offered was determined?

A. No.

Q. That was done by somebody at Warner New Media?

A. I would assume so, yes.

Q. Now document Bates stamped JG/D 3050 seems to be an invoice for a thousand dollars. Is that invoice for this particular arrangement?

A. For the CD-ROM version of Murmurs in Earth based on four cents a disk with one photo in it of that. It was an advance against royalties of -- the thousand dollars was an advance against royalties of four cents for that specific photo per disk.

Q. Okay. Now, looking back on the second page

of the document, the one that's Bates stamped JG/D 3037.

A. Yes.

Q. There are royalty rates listed there including something called LD with a unit price of sixty-nine ninety-eight and the royalty per unit of four cents. Is that the same or different from the royalty rate that's reflected on the invoice which is 3050?

A. It's different.

Q. Could you explain --

A. Yes.

Q. -- that?

A. What I based my four dollar fee on was strictly for the CD-ROM product itself.

Q. The four cents fee?

A. Yes.

Q. Okay. So is it that you were going to be paid four cents per disk on the CD and as well four cents per unit on what is known as the LD?

A. I wasn't interested in anything else except CD-ROM product at four cents a piece. Nothing else.

Q. Okay. So that was the deal, four cents on the CD-ROM product and this was an advance of a thousand dollars against that?

A. Yes, sir.

Q. So the proposal that's on Page 3037 was never agreed upon?

A. Never acceptable, never agreed upon.

Q. Now, how did you determine that four cent per disk royalty was appropriate?

A. That was the best price they had to offer me for the most use, so I took the least possible use and tacked it onto the four cents.

Q. When you say the least possible use, what do you mean?

A. Well, look at the one cent price. That's based on whatever the product was, then you look at the four cents price for an extended product. I took the bare bones product itself -- I assumed the CD-ROM I was talking about -- and asked for the top price they are willing to pay for it and that's how I arrived at it. They gave me the figure. I just turned it around and used it to what I felt was the best and acceptable.

Q. Look at the last three pages of the exhibit, the ones stamped 5065, 5061 and 5059.

A. Yes.

Q. What are those?

A. Just quarterly statements as to what

royalties I am due for that four cents an image in that specific product times the amount of disks sold. Of course they paid me a thousand dollar advance so this would be used against a thousand.

Q. So looking at the last of the group which is 5059 it's a statement dated February 8, '94 for the period ending 12/31/93. And I take it at this point the advance was unrecouped to the tune of $395.62, is that right?

A. That's right. They never really caught up to the advance.

Q. Is this piece of paper, 5059, the last in the series of royalty statements?

A. Yes, sir, to the best of my knowledge.

Q. Could you mark as Jerry Greenberg Exhibit 41 an invoice dated November 29, 1992 Bates stamped JG/D 4139.

(The document was marked as Exhibit No. 41 for identification.)

BY MR. SUGARMAN:

Q. Can you identify Jerry Greenberg Exhibit 41?

A. Yes. It's an invoice, it was marked paid, to Fred Ward Productions for my share of the re-use of the July 1990 Coral Reef Park story that was marketed through Black Star.

Q. Would you explain the circumstances which lead to the payment of this invoice?

A. Yes. Since Fred Ward and I did the story together as a dual assignment, after it appeared in the July 1990 issue of Geographic we had access to all of our material including the published work, certainly including my published work, 60 days later that could be marketed in the open commercial area through Black Star Photo Agency. We split it down the middle, whatever money came in from the agency minus their cut and the subagency's cut. Whatever Fred got he would split down the middle with me.

Q. Okay. To which European publication was this material licensed?

A. I have no idea.

Q. And do you know which of the images from the July 1990 story were used by the publication?

A. No, sir, I never had a chance to see any tear sheets on it.

Q. Do you know the number of copies of the European publication that were distributed or printed?

A. I have no knowledge of any of it.

Q. Do you know how -- well, I take it you -- your testimony is that the $714 was half of whatever Black Star arranged to be paid?

A. No, that amount was half of what Fred Ward received from Black Star.

Q. Okay. Do you know what the total amount Black Star received?

A. No, I don't.

Q. Do you know how that amount was arrived at, whatever the total was?

A. No, I have no knowledge of it.

Q. Did you have -- I take it you had discussions with Mr. Ward about this use, is that correct?

A. We had to have had in order to have a working relationship for the marketing of it, yes.

Q. Do you have any recollection of any of the discussions that you had with him on this subject?

A. Yes. We would split -- whatever moneys he got we would split it right down the center 50/50.

Q. Would you mark as Jerry Greenberg Exhibit 42 a series of documents. The first of which is a document on a letterhead or invoice head of J. Walter Thompson Bates stamped JG/D 3047 and the remaining documents are 3046, 3043, 3045, 3047, 3048 and 3049.

(The document was marked as Exhibit No. 42 for identification.)

BY MR. SUGARMAN:

Q. Mr. Greenberg, would you look through that composite exhibit and tell me when you've finished looking at it.

While you're looking at it, I note in going through it that Page 3047 appears twice, so we'll just pull out the second of those from the exhibit.

A. Yes, you gave me a duplicate.

Okay. I'm ready.

Q. Okay. These documents appear to be documentation of an arrangement for the use of a photo of divers underwater by J. Walter Thompson or Citibank for a Citibank ad campaign. Could you describe the circumstances that led up to this arrangement?

A. Yes. I received a phone call from someone at J. Walter Thompson agency the month of August 1993. They wanted to know what I would charge for them to utilize the photograph that appeared of the divers around the Christ statute in unlimited one-year usage worldwide trade publications in the banking journals, banking newspapers. They told me they had a number of photographs they were looking at but they did like ours and they were going to pay -- most they would want to pay would be three or four or $5,000. I forget the exact amount. I researched out what the

ads would cost once I knew the size of the ad in various banking magazines and publications and saw roughly what they would be putting out of their end of it for their client and I initially decided upon the fee of being $10,000.

My wife and I talked about it and she felt that $9,800 might sound better to them rather than a flat $10,000, so I took her advice and I told the agency that it would be $9,800 based on the appropriate legible copyright credit line reading photo copyright Jerry Greenberg all rights reserved. I also indicated to them the penalty for each instance of use without the proper copyright would be $250 additional. I also indicated I'd need tear sheets and so on and so forth and I requested a purchase order on that basis. And they did send me a written purchase order -- that's 42 -- and invoice and instructions which I objected to on Line 16.

After it was all said and done they accepted my terms. I sent them an invoice for that specific use for one year's unlimited worldwide business trade publications, the specific terms of the agreement.

Q. Why did you research the amount that J. Walter Thompson would have to pay for this ad campaign before you set your price?

A. Well, if it was only going to one trade publication and appearing four or five times in that calendar year, I would base my fee on that. If it's worldwide for various trade publications, not knowing exactly where they were going to go and what the things were, I felt that $10,000 and 9,000 end would be better for my pocketbook.

Q. Where did you get the information about what the ad campaign would cost J. Walter Thompson?

A. I had access at that time to a book listing the various magazines and newspapers and what their rates were.

Q. So you felt there was a relevance between the amount that J. Walter Thompson would pay and the amount you should get?

A. What they would get -- pay and get and what I should be getting out of it, yes.

Q. And why was there a relationship between those two amounts?

A. Well, if indeed they would spend a million dollars for that ad campaign in the year there, I'd want X amount. I had it priced out what I thought the maximum would be. They may have told me different publications that it would be in, but I checked it as much as I could out and I don't have all the details

to it, and I felt that the $10,000, $9,800 would be a proper amount to pay for this specific limited use in a non-national publication like Life. It wasn't going into Life.

Q. Do you distinguish in terms of value between an educational use on the one hand and an advertising or promotional use on the other hand? And I would assume you would classify this use by J. Walter Thompson as an advertising promotional use, correct?

As opposed to an editorial use.

A. It didn't sound -- when you talk about educational. Depends on how many editions were made, how many language editions were made, is it North American, is it Canadian, how many different languages go out, it depends -- when you say educational, you have to really --

Q. I think I said editorial.

A. Yes, but you also mentioned --

MR. DAVIS: You said both.

MR. SUGARMAN: I said both.

THE WITNESS: Yes. So if you look at the editorial, I look at the magazine that it goes into, what the rates are, the circulation. The circulation is important. If you look at the educational, it could be a lot of money involved,

a lot of income for all concerned and if indeed it goes and you're talking about U.S. edition, you're talking about North American and French Canadian, you're talking Spanish language. It depends on what you're talking about in educational. It could be up there with everything else.

BY MR. SUGARMAN:

Q. Is there a general rule that fees for a commercial or advertising use are higher than fees for editorial use?

A. I don't know what's done on the outside area. All I know is what my point of view is, how I market it. I try to find what uses it may be put to, what's the circulation, what language editions, and everything.

Q. Do you know how J. Walter Thompson found your image of the divers?

A. Either had the issue -- it's a speculation. I would assume they saw it in the magazine itself.

Q. Yeah, again, my question is, was there any information that you got in the discussions with them in which somebody said this is how we found your image?

A. No. It's only published in one place and

that's in the magazine. I would assume they found it in the magazine.

Q. So I take it this image was not published in any of the -- certainly not in 1993 in any of the books that Seahawk published?

A. No. No.

Q. Would you mark as Exhibit 43 a memorandum dated March 11, 1994 Bates stamped 3022.

(The document was marked as Exhibit No. 43 for identification.)

THE WITNESS: The enclosures aren't indicated.

MR. DAVIS: Just wait for a question.

THE WITNESS: I'm sorry. Go ahead. Sorry.

BY MR. SUGARMAN:

Q. That's all right.

This document indicates to me that there was a payment of $750 for one-time use of your underwater photography on Page 7 of the March/April 1994 issue of Traveler Magazine. My only question is how -- well, first of all who determined that there would be -- that the amount would be $750?

A. I did.

Q. And how did you determine that?

A. Not so much from the size of the photograph

used but the fact that it was in their hands without my permission and used without my permission and I felt for the smallest size used that $750 would be a civilized amount of money to ask for provided that the other parts of this letter were agreed upon or taken care of.

Q. Was the amount of $750 accepted by the Geographic?

A. Apparently if I have a --

MR. DAVIS: Don't guess.

THE WITNESS: I believe so.

BY MR. SUGARMAN:

Q. At the time you set the amount of 750 did you know how many copies of the March/April 1994 edition of Traveler Magazine were going to be printed?

A. No.

Q. Did you know whether they were -- that that issue was circulated in the United States or worldwide?

A. I had no knowledge of it.

Q. Did you know whether there were any non-English speaking editions of Traveler Magazine that were going to be printed?

A. It was only -- only analogy I had was what they published at that time in that one specific

edition, English language.

Q. So it was your understanding that there was only an English language edition of Traveler Magazine at that time?

A. I took them at their word, yes.

Q. Was that something that was represented to you? Did somebody tell you that it was just an English language publication?

A. That's the only thing I was aware of and had in my hand and knew about.

Q. Would you mark as Jerry Greenberg Exhibit 44 a copy of an April 2, 1997 letter to Mr. Greenberg which is Bates stamped JG/D 3029.

(The document was marked as Exhibit No. 44 for identification.)

THE WITNESS: Yes, sir.

BY MR. SUGARMAN:

Q. Could you describe the circumstances which led to your receipt of Jerry Greenberg Exhibit 44?

A. Yes, it was a fax transmission from Diana Boradays, picture editor, in regards to their interest in using one of my photographs that they had on a disk and they wanted to use it in a special picture pack on coral reef to be distributed to elementary schools in the near future; 10,000 copies.

Q. Did you respond to this memo or this letter?
A. I don't remember.
Q. Do you recall whether there ever was an authorization by you to use the image in this picture pack?
A. To the best of my knowledge they never responded to this.
Q. And so it just never went anywhere?
A. I would assume they would not use it without permission.
Q. Would you mark as Jerry Greenberg Exhibit 45 a letter dated April 30, 1998 which is from a Howard Payne to Mr. Greenberg and then there's typed at the bottom right-hand corner some typing which also includes Mr. Greenberg's name and signature. It's Bates stamped JG/D 3028.
(The document was marked as Exhibit No. 45 for identification.)
THE WITNESS: Yes, sir.
BY MR. SUGARMAN:
Q. Could you describe the circumstances which lead to your receipt of the top portion of Exhibit 45 and your sending the bottom portion?
A. Yes. It was sent to me by -- I believe it came in through the mail. At that time it requested

use of some material that originally appeared in Traveler Magazine some years ago which I own the copyrights to and telling me that they would pay 25 percent of the original book. They meant magazine page rate. It wasn't book form. And I replied that I did not want my work to be published in the Turkish edition of Traveler Magazine Gezi.

Q. Why was it that you were not interested in having your photograph published in the Turkish edition of Traveler?

A. Well, at that point after we filed against the Geographic and Educational Insight in 1997 I really didn't want to have anything else to do with them.

Q. Would you look back at the transcript of the deposition -- of the first session of your deposition. In particular at Page 51, Line 21. And actually read from 51, 21 to 52, 16.

Do you have any information as to how Sherry Manufacturing found the image that it used on the T-shirt?

A. No, sir.

Q. How was the amount of $5,000 arrived at?

And the $5,000 is the payment by Sherry Manufacturing?

A. Yes. It was based on the fact it was a very small image and the fact that this is the second time around with Sherry Manufacturing.

Q. What was the significance of the fact that it was the second time around?

A. First time around they got into our material, our properties and made a product. We caught them at it. We made a demand of payment. I'm trying to reconstruct what happened many, many years ago. They offered $75. It was not acceptable. We gave them Norman Davis and we told him what the figure we wanted from them and he took care of it.

Q. Okay. What were the factors that went into the decision to ask for $5,000?

A. Okay. Let me go back to the first one. I'm getting a little confused. They offered 75 and we multiplied it by the factor of ten and they took care of it through the proper way to take care of it through an attorney, our attorney. Then a couple of years later this other thing came out. It's a smaller thing and we caught them at it again and we figured $5,000 would be appropriate for that small size used.

Q. When you say small size, that's the size of the image, not the size of the -- the number of T-shirts printed?

A. No, it was the size of our specific image. They stopped making the shirt.

Q. Now you said that you thought that it was an appropriate number, but my question is what are the factors that went into the mix to lead you to that conclusion?

A. Well, the first time we got paid $7500 for it, for other images on the original problems we had with them. This was a smaller amount. In looking at it we felt that $5,000 would be an appropriate and fair amount of money to be paid for that specific use.

Q. Okay. You said $7500. In your earlier answers you said they offered 75 and you multiplied it by ten.

A. Yes.

Q. Was it 7500 or 750 for the first use?

A. They offered $75 I believe and we ended up getting $7500.

Q. So it was a multiple of a hundred?

A. Yes, whatever the math was it would be appropriate.

Q. Okay. If you don't recall this, then tell me but in answer to my question what you're saying is you just determined that a $5,000 number would be

appropriate. And my question is: What were the components which went into that determination that that was a fair amount?

A. Just a very small size of that specific image, plus the second time around with them.

Q. Looking now at Page 53, starting at Line 1. Actually I asked you at the bottom of Page 52 to identify an exhibit and at the top of Page 53 starting on Line 1 you described the exhibit. And would you read from Line 1 on that page to Line 22 -- Page 53, Line 1 to 22.

A. You want me to get into 54 as well?

Q. No, just end at Line 22 because then I think the questioning goes on to another subject, so it's just Page 53, Lines 1 to 22.

A. Yes.

Q. All right. This testimony deals with a copyright infringement suit against Stanley Michaels, Incorporated and it resulted as is indicated on Lines 14 and 15 in a payment to you of $108,000. Was that a judgment or a settlement?

A. It was a settlement.

Q. What was the basis on which $108,000 was arrived at?

A. It's been some time. I really can't -- I

don't have it in my head right now.

Q. Okay. Why don't we take a five-minute break.

(There was a break taken after which the following proceedings were held:)

BY MR. SUGARMAN:

Q. In the next series of questions I'm going to refer as I have to the Complete National Geographic as the CD-ROM product that was published in 1997 by the National Geographic.

A. 108 Year.

Q. Yes. Have you and/or Seahawk suffered any monetary damages as a result of the publication by the National Geographic of the 108 Years of Complete with National Geographic?

A. There's no way that I could possibly give you an answer to that. It's impossible to tell what the shrapnel effect of having it out there is.

Q. Well, can you identify any loss of revenue that you suffered or Seahawk suffered as a result of the publication of the Complete National Geographic?

A. There's no way I have any way of knowing what the effect is of having clip art out there that's available.

Q. When you say clip art out there, what do you

mean?

A. Photographs that are packaged in such a way that people can get into it, make reproductions off of it, modify it and publish it, utilize it.

Q. Have any such uses come to your attention?

A. Not to my attention.

Q. Have you heard of any such uses, whether they came to your attention or somebody else's attention?

A. Not that I'm aware of.

Q. What monetary claims are you making in this lawsuit, if any?

A. I'm sorry.

Q. Go ahead.

A. Statutory damages.

Q. Are you going to claim any monetary damages in terms of the use -- other than statutory damages, for the use of the images that you took that were published in the magazine by the National Geographic in the CD-ROM product?

MR. DAVIS: Could you read that back, please.

(The court reporter read back the last question as previously recorded.)

BY MR. SUGARMAN:

Q. Let me rephrase that.

Is part of your damages claim going to be any amount of money that you're going to claim you're entitled to because the National Geographic used the images that were originally published in the magazine when it published the CD-ROM?

MR. DAVIS: Could you read that one for me, please?

I'm not sure what that means.

(The court reporter read back the last question as previously recorded.)

MR. DAVIS: I object to the form of the question, but if you can answer it, go ahead.

THE WITNESS: Are we still talking about the 108 Year CD-ROM?

MR. SUGARMAN: Yes.

THE WITNESS: Only.

MR. SUGARMAN: Yes.

THE WITNESS: And the items that were peripheral to that.

MR. SUGARMAN: Yes.

THE WITNESS: I'm only looking for what's available.

MR. DAVIS: Answer only the question he

asked you now.

THE WITNESS: Give me the question again, please.

(The court reporter read back the last question as previously recorded.)

MR. DAVIS: My objection stands.

Do you understand it?

THE WITNESS: I'm confused now.

I believe I --

MR. DAVIS: Don't guess.

THE WITNESS: I can't answer it. I find it confusing.

BY MR. SUGARMAN:

Q. Are you going to claim in this case that you are owed anything by the National Geographic by virtue of the fact that the National Geographic published the images that you took in the CD-ROM product?

MR. DAVIS: I object to the form of the question. Go ahead. If you can answer it.

THE WITNESS: I'm not sure -- I've already mentioned we're looking for statutory damages. That's the extent I can say right now. My attorney will guide me in anything else.

BY MR. SUGARMAN:

Q. Okay. Have you retained an expert in this

case?

A. That's in the bailiwick of my attorney.

Q. But to your knowledge have you retained -- whether it was in the bailiwick of your attorney or not, to your knowledge have you retained an expert witness?

A. Not to my knowledge, no.

Q. Have you read any of the expert reports that have been prepared in connection with other cases that are pending against the National Geographic? For example, Mr. Ward's case.

A. Yes.

Q. Have you read the transcripts of any of the depositions of any of the experts that have been retained in the other cases that have been brought against the National Geographic?

A. No. To the best of my knowledge, no.

Q. Have you talked to Mr. Ward about the amounts of money that he is seeking in his case against the National Geographic?

A. Yes.

Q. On how many occasions?

A. I talked to Fred two or three times a week. He is on actual damages so it doesn't really pertain to our point of view what we are looking for.

Q. Would you mark as Jerry Greenberg Exhibit 46 a series of documents that are bound together with the Bates number on the first page of JG/D 6024 and there are seven other pages that are included in that exhibit.

(The document was marked as Exhibit No. 46 for identification.)

BY MR. SUGARMAN:

Q. Can you identify Exhibit 46?

A. Yes, it's an exhibit that has seven pages in there of items that have been deleted from the 112 Year National Geographic CD-ROM.

Q. Who actually prepared that, if you know?

A. This exhibit?

Q. Yes.

A. I did.

Q. And how did you go about doing that?

A. Once I became aware of the specific items that were deleted from the 112 Year I had printed them out from the 112 Year CD-ROM and I made a photocopy of it to show what has been deleted that I knew about in the 112 Year.

Q. How did you learn that the images on those pages had been deleted?

A. Fred Ward gave me the information based on

his search and search of others.

Q. As you understand it what is the relevance of those pages and the images that have been blacked out to this matter?

MR. DAVIS: Objection. It calls for a legal conclusion.

MR. SUGARMAN: I am not asking him as a conclusion as a lawyer. I am just asking him his understanding.

MR. DAVIS: Same objection. If you can answer.

THE WITNESS: My attorney asked for the information.

BY MR. SUGARMAN:

Q. So do you have any understanding as to why that information is relevant to the claims in this case, if it is?

MR. DAVIS: Same objection.

THE WITNESS: I'm not an attorney. No.

BY MR. SUGARMAN:

Q. So you don't have any understanding, whether you're an attorney or not. Either you have an understanding or you don't. You can have one even if you're not an attorney, and that's my question.

MR. DAVIS: It's either yes or no.

THE WITNESS: Yes.

BY MR. SUGARMAN:

Q. And what relevance does it have?

A. It's no longer complete. The presentation of the National Geographic.

Q. Do you know how many images from the 112 Years have been blacked out?

A. No.

Q. Do you have any understanding of that?

A. I believe there's more out there.

MR. DAVIS: Don't guess.

THE WITNESS: I don't know precisely.

BY MR. SUGARMAN:

Q. In order of magnitude do you think it's ten, a hundred, five hundred, five thousand or you have no understanding? I don't want you to guess.

A. No, I can't guess at that. All I have is what we have here.

Q. Okay. Would you mark as Jerry Greenberg Exhibit 47 a series of documents that are Bates stamped JG/D 6007 through 6016.

(The document was marked as Exhibit No. 47 for identification.)

BY MR. SUGARMAN:

Q. I don't have additional copies of that

because it was among the documents produced yesterday. Why don't you look at that and then after you do I'm going to ask if you can identify it.

Can you identify Exhibit 47?

A. It's a photocopy of the 112 Year CD-ROM installation disk.

(There was an interruption after which the following proceedings were held:)

(The court reporter read back the last question and answer as previously recorded.)

BY MR. SUGARMAN:

Q. How did you receive it?

A. I beg your pardon?

Q. How did you come into possession of it?

A. We have the 112 Year CD-ROM set.

Q. How did you find out that this was in the 112 Year CD-ROM?

A. Fred Ward told me about what was inside the disk itself.

Q. Did you have any discussions with Fred Ward about this document?

A. He mentioned to me what he found in it and he put it in an article in regards to editorial photography. I never saw the article and there was a problem there where the installation disk from the

National Geographic Society tells people that people are free to use, modify and publish the images as you wish.

Q. Are you aware of any action that has been taken by the National Geographic Society or any other entity after that was discovered?

A. Yes, I am under the impression that the distributor has sent out information to the holders of the product.

Q. Information in what regard? What kind of information?

A. To modify what the instructions are in this National Geographic disk.

Q. Is the information that is included in this exhibit relevant in your understanding to your damage claim in this case?

MR. DAVIS: Objection to the extent that it calls for a legal conclusion.

THE WITNESS: All I can say is about statutory damages on this I am looking for.

BY MR. SUGARMAN:

Q. I understand that. My question is whether this document has any relevance to that claim.

MR. DAVIS: Same objection.

THE WITNESS: I just don't know at this

time.

BY MR. SUGARMAN:

Q. Would you mark as Jerry Greenberg Exhibit 48, a group of documents, the first one of which is stamped JG/D 6025 and as Exhibit 49, another group of pages, the first page of which is JG/D 6026.

(The document was marked as Exhibit No. 48 and 49 for identification.)

THE WITNESS: I am all set.

BY MR. SUGARMAN:

Q. Can you identify Exhibits 48 and 49?

A. Yes. Exhibit 48 are the original art, are the artwork renditions pulled down to a smaller size to make it easy to hold of the -- when I solicited National Geographic to do assignments for them and out of the -- out of the four major articles that have appeared in the magazine three of those essays came from my suggestions for the story, my research on it and the artwork, the preliminary artwork I did to convince them that this is what the thing would look like, feel like and this is my expertise in this area of doing an article for them.

The one in color represents the artwork that I did in 1959 and 1960 for the most part in order to convince the National Geographic magazine to give me

an assignment on the new Pennekamp Park and it's also a national monument out there, a reef preserve and I politicked on that for a year's time and by the middle of 1960 I did get the assignment based on my nagging them all the time on it plus the artwork that I prepared, plus I was the best man for the job down there to do it. I knew the area, the best reefs, plus President Eisenhower designated that area to be a reef preserve area, so I got the assignment.

The tail end of this covers some illustrations that I did to solicit an assignment on plankton photography.

Of the four articles, major articles that I've done for the Geographic, three of them came from my own ideas, my own research, my own artwork and my own expertise in the field. They were the Pennekamp Park piece, the shark article, which I can't find the artwork to but I do have the outlines and the information on it, and the Bucket Island piece that I did with my family.

The only other piece of significant image in the magazine is the July 1990 piece and Fred Ward he solicited that from the editor and we would do it together, so these are the work that I did. They were my ideas for stories, did all the work, research on

it, did drawings on it, laid it out ahead of time, got the assignment on the basis of that plus it was dangerous work in many ways and I was down here and I had the know-how how to do it.

Q. In preparing for the damages phase of this case, have you or anyone on your behalf attempted to determine the amount of the payment that would have been made to you had there been a negotiation for payment before the Complete National Geographic was published?

A. I never knew that was their official policy with a letter going to me directly. I got the information that it was in the works by comments that came through the pipeline and when the Stanton White paper document went out. I never got it, but Fred Ward got it and Douglas Falkner and others. I became aware at that point what their policy and posture would be on this project.

Q. I am asking a different question. I am asking a question that after the lawsuit started.

A. Yes.

Q. And you were attempting to determine what your damages would be in the lawsuit, did you or did anyone on your behalf attempt to determine what an appropriate royalty payment would have been had there

been a negotiation between you and the Geographic before the complete Geographic was published for the use of your images?

A. It never came up, never was a fact of life, it was the will of the wisp, the water was spilled on the table and it was never a point of even getting in that area. They weren't going to pay.

Q. Okay, but, again, I'm not asking you whether there were such negotiations because obviously there weren't. I'm asking you whether after this lawsuit started there was an attempt made by you or anybody on your behalf to recreate what those negotiations would have been had they taken place?

A. No, sir. Never.

Q. And so there was no effort that you made to come up with a number that the Geographic would have hypothetically paid you had those negotiations taken place?

A. It would be a fantasy.

MR. DAVIS: Yes or no?

THE WITNESS: No.

MR. SUGARMAN: I have no further questions.

MR. DAVIS: You're done.

(The deposition was concluded at 2:50 p.m.)

(The reading, signing and notice of filing were not waived.)

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 MIAMI-DADE)

Sworn and subscribed to before me this _____ day of _____, 2002.

PERSONALLY KNOWN _____ OR I.D. _____

_____

Notary Public in and for the State of Florida at Large.

My Commission Expires:

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

I, Debbie L. Oates, RPR and Notary Public in and for the State of Florida at Large, do hereby certify that Jerry Greenberg was duly sworn by me.

Witness my hand and seal this 20th day of August, 2002, in the City of Miami, County of Miami-Dade, State of Florida.

Debbie L. Oates

Debbie L. Oates, RPR
Notary Public - State of Florida
My Commission # DD 077020
Expires: July 25, 2004

CERTIFICATE

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

I, Debbie L. Oates, RPR, do hereby certify that the foregoing deposition was taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed into this computer-assisted transcript under my supervision; that the reading, signing, and notice of filing of the deposition were not waived; and that the foregoing pages, numbered from 1 through 189, constitute a true record thereof.

I FURTHER CERTIFY that I am not of counsel; I am not related to nor employed by any attorney to this cause; and I am not financially interested in the outcome thereof.

DATED at Miami, Miami-Dade County, Florida, this 20th day of August, 2002.

Debbie L. Oates

Debbie L. Oates, RPR

ERRATA SHEET

In Re: Jerry Greenberg vs National Geographic
DEPO OF: Jerry Greenberg
TAKEN: 07/30/02

DO NOT WRITE ON TRANSCRIPT -- ENTER CHANGES HERE:

Page #	Line #	Change	Reason

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

Under penalties of perjury, I declare that I have read my deposition transcript, and it is true and correct subject to any changes in form or substance entered here.

Date

Signature

ERRATA SHEET

Page #	Line #	Change	Reason
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VERITEXT FLORIDA, LLC
BENOWITZ - BERMAN - COOK - IVY - MATZ TRAKTMAN
19 West Flagler Street
Suite 1020
Miami, Florida 33130
(305) 371-1884
(305) 377-1100 (Fax)

August 20, 2002

Jerry Greenberg
c/o Norman Davis, Esq.
200 South Biscayne Boulevard
Miami, Florida 33131

RE: Jerry Greenberg vs. National Geographic
DEPO OF: Jerry Greenberg
TAKEN: 07/30/02 Number of Pages: 190
Available for reading until: September 20, 2002

Dear Mr. Greenberg,

This letter is to advise you that the transcript of your deposition is completed in and is available for reading and signing.

Please make an appointment to come to our office at Suite 1020, 19 West Flagler Street, Miami, Florida, to read and sign the transcript. Our office hours are from 8:30 a.m. to 4:30 p.m. Monday through Friday. Depending on the length of the transcript, you should allow yourself sufficient time for review.

If the reading and signing has not been completed prior to The above-referenced date, we shall conclude that you have waived the reading and signing of the transcript.

Your prompt attention to this matter is appreciated.

Sincerely,

_____
Debbie L. Oates, RPR

CC: Robert Sugarman, Esq., 767 Fifth Avenue, New York, New York 10153
CC: Norman Davis, Esq., 200 S. Biscayne Boulevard, Miami, Florida 33131

VERITEXT FLORIDA, LLC
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September 20, 2002

Weil, Gotshal
Robert Sugarman, Esq.
767 Fifth Avenue
New York, New York 10153

RE: Jerry Greenberg vs. National Geographic
DEPO OF: Jerry Greenberg
TAKEN: 07/30/02 Number of Pages: 190
Available for reading until: September 20, 2002

Dear Mr. Sugarman,

The original transcript of the deposition listed above is enclosed for your file. The witness did not waive reading and signing and has been sent a letter notifying them to come in to read and sign their deposition transcript.
The witness will be provided a copy of their deposition for reading in our office should they come in to review the transcript, and we will forward to you any corrections made by the witness at that time, along with an original signature page to be attached to the original transcript.

Sincerely,

_____
Debbie L. Oates