THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 97-3924

JERRY GREENBERG, individually, and
IDAZ GREENBERG, individually,

Plaintiffs,

vs.

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

Defendants.

- x

COPY

701 Brickell Avenue
Suite 2100
Miami, Florida
Wednesday, July 31, 2002
10:00 a.m. - 10:35 a.m.

DEPOSITION OF IDAZ GREENBERG
(Volume 2 - Pages 28 to 52)

Taken before Donald W. McKay, RMR, CRR, a Notary Public for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above-styled cause.

PRESENT:

NORMAN DAVIS, ESQ., of the firm of Steel Hector & Davis, LLP, on behalf of the Plaintiffs.

ROBERT G. SUGARMAN, ESQ., of the firm of Weil Gotshal & Manges, LLP, on behalf of the Defendants.

ALSO PRESENT:

Jerry Greenberg

I N D E X

IDAZ GREENBERG

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Thereupon,

IDAZ GREENBERG

was called as a witness by the Defendants, and having been first duly sworn, testified as follows:

THE WITNESS: Yes, I do.

DIRECT EXAMINATION

BY MR. SUGARMAN:

Q. Ms. Greenberg, as I said when we started the last session, or as Naomi said, if you don't understand any of the questions I'm going to ask you, please tell me and I'll rephrase them. And if you don't ask me, I'll assume you do understand the question. Is that fair?

A. Yes. Thank you.

MR. DAVIS: May I put that same objection on the record, before we start?

MR. SUGARMAN: Yes.

MR. DAVIS: I'd like to object, and have it as a standing objection, to the use of any of the testimony or other information for the purposes of dealing with the issue of the number of works that should be counted in the calculation of statutory damages. We had objected to that in prior filings with the Court, and I want to state it briefly here at

the outset. Thank you.

BY MR. SUGARMAN:

Q. Did you create any of the images or the text which were published in the National Geographic magazine and which are the subject of this lawsuit?

A. Yes.

Q. Which of the images, if you can remember them, did you create?

A. In the sense of creating -- if you mean taking the photographs, no. I did appear in the article, the Buck Island article. This is a family story.

Q. Did you write any of the text of any of the articles?

A. I am credited as being the writer on the Buck Island story, because I took notes while we were shooting it. And they sent a writer from National Geographic who stayed at our home with us for three days or four days, and I told him about the trip and he then wrote it in Geographic-ese.

Q. Did you personally suffer any damages as a result of the publication of The Complete National Geographic on CD-ROM? When I say "personally," I'm distinguishing you, Idaz Greenberg, from Jerry Greenberg and from Seahawk.

A. Well, first of all, I would have to object to that distinction, because my husband and I work together. We have been married for 47 years. We have been in business together the entire time. So it's hard to make a distinction.

Q. What I'm trying to get at is whether you as a person, as opposed to you as part of Seahawk Productions, which is the proprietorship, suffered any personal damages as a result of the publication of The Complete National Geographic on CD-ROM?

A. I'm not a proprietor of Seahawk Products. It's a sole proprietorship. It's my husband's. I consider it damage, the fact that work that was created by us was not paid for and used in that product.

Q. Have you made any attempt to calculate the amount of those damages?

A. No.

Q. Do you as a plaintiff in this lawsuit intend, at the damage trial, to attempt to quantify the amount of those damages?

A. I don't understand what you --

Q. Yesterday, at Mr. Greenberg's deposition, he said that he was seeking statutory damages.

A. Yes. We are.

Q. Is that your understanding of what the plaintiffs in this lawsuit are going to seek at the trial, statutory damages?

A. Yes. As of now.

Q. Has there been any discussion of changing that? Just answer yes or no.

A. No.

Q. Have you or, to your knowledge, has anyone else consulted with any experts to attempt to determine an amount of money that the Geographic would have paid had they negotiated with you and/or Mr. Greenberg prior to publication of The Complete National Geographic?

A. No.

Q. Have you made any calculation of the amount that the National Geographic would have paid if negotiations had taken place with you and/or your husband before the publication of The Complete National Geographic?

A. No.

Q. As of today, do you intend, at the damage trial, to offer evidence of the amount of money that National Geographic would have paid had there been a negotiation between the Geographic and you and/or your husband before publication?

MR. DAVIS: I'll object to the extent that it calls for a legal conclusion.

THE WITNESS: I was going to say the same thing. Basically, I don't do that, because it's not my milieu.

BY MR. SUGARMAN:

Q. I understand that. But I'm asking you whether it's your -- let me phrase it differently.

Is it your understanding, as we sit here today, that the plaintiffs will offer any testimony or evidence at the trial concerning the amount of money that the Geographic would have paid had there been a negotiation between you and/or your husband and the Geographic prior to the publication of the CD-ROM?

MR. DAVIS: Same objection.

THE WITNESS: It's so speculative, I couldn't even guess at anything like that.

BY MR. SUGARMAN:

Q. What is speculative?

A. Your whole -- first of all, how could we have evaluated anything before the product was out, when we found out about it when the barn door was open? No way to go back in history.

Q. My question isn't how you would do it. My

question is whether you intend to attempt to quantify that amount or to estimate that amount at the trial.

MR. DAVIS: Same objection.

THE WITNESS: That wouldn't be what I would do.

BY MR. SUGARMAN:

Q. Let me show you three books that were marked at yesterday's deposition. They are Jerry Greenberg Exhibits 21, 22, and 23.

A. Thank you.

Q. In his testimony, Mr. Greenberg testified that those were the only books presently available to distributors of the many books that have been published over the years by Seahawk Press. Is that accurate, to your understanding?

A. To my understanding. I should tell you that my husband is the one who markets the books and does all of that, so I have no knowledge of any of that.

Q. To your knowledge, have any new books been published by Seahawk since 1995?

A. I believe we did a -- I'm not sure of the date -- I believe we did a mini version of my book, Guide to Corals and Fishes. We also did a mangrove

book, but I don't know the date on that.

Q. The same question as to any other materials. Mr. Greenberg yesterday mentioned calendars, posters, and two others that I don't recall as I sit here. And the question is whether any of those were published anew, as opposed to reprints of older materials, since 1995?

A. Again, I'm not sure of the date. But we produced some mini cards of my work, which are new. I think you would call them new. They're not -- slightly different format. It's the same stuff. We have things in the works. Nothing produced that comes to mind at this moment.

Q. I take it from your last answer that you are today, as your husband testified he was when he testified yesterday, still active in your business.

A. Oh, yes.

Q. Would you describe, as of today, what that activity is.

A. My husband and I decide on projects to work on. And I do illustrations and write, and he does photography and also does some writing. I also do some photography. I mean we all do a little bit of everything. But generally speaking, all the photographs are my husband's or my son's; all the

illustrations are mine, with exceptions there, also.

Q. Who does the writing when that is required or desired?

A. Originally, my husband did all the writing, and slowly I took over. And now I do all the writing, along with my daughter, Mimi, my youngest daughter, who is a very good editor and works with me.

Q. In the period since 1995, have sales of Seahawk's products, whether they be books or materials, changed in any way or remained at about the same levels?

A. I'm independent of any of the business parts. I like the work that I do. I don't like the work that my husband does, and thank goodness he does it. Bookkeeping, that is.

Q. Yesterday, in his testimony, Mr. Greenberg mentioned events that have an impact on sales, such as hurricanes. Are there any events that have taken place over the last seven or eight years, since 1995, which stand out in your mind as to an event which actually had an effect on the sales performance of Seahawk?

A. I really couldn't speculate on that, because basically -- I mean if the economy goes

down, our sales go down like every other company there is. But I have no knowledge of anything special right now.

Q. Are you aware of any instance in which one of the images that Mr. Greenberg took and which was published in the National Geographic CD-ROM was copied by somebody else?

A. By "copied," do you mean used without permission?

Q. I'll take that, sure.

A. Are you giving me a context of years?

Q. Well, The Complete National Geographic was published in 1997. So it would be anytime since then, as to whether you're aware that anyone has used one of Mr. Greenberg's images without authorization.

A. Not that I'm aware of.

Q. Are you aware of any instance in which someone used any image or text that was published in The Complete National Geographic on CD-ROM without authorization, whether it's Mr. Greenberg's, yours, or anybody else's?

A. No, I'm not.

Q. Has the publication of The Complete National Geographic on CD-ROM had any effect, to

your knowledge, on the sales of the books of materials that are published by Seahawk?

A. Again, I'm not involved in that.

Q. Well, whether you're involved or not, do you have any information that the publication of The Complete National Geographic on CD-ROM has affected the sales of the books and materials that are published by Seahawk?

A. Neither one way or the other. I have no knowledge.

MR. SUGARMAN: Thank you. I don't have any further questions. I told you it would be short.

MR. DAVIS: Let me ask a couple.

CROSS-EXAMINATION

BY MR. DAVIS:

Q. You have said that you left business and sales matters to your husband with respect to Seahawk Products, and you said that you did not know whether anyone had used any of his images from the CD-ROM product without his knowledge. You said you didn't know that. If you wanted to find out, would it be feasible to find out?

A. It would be almost impossible to find out.

Q. Why?

A. First of all, we'd have to come across something somewhere. We'd have to -- there is no way -- you couldn't just -- I have no idea of how you could find that out, and yet I know that it must be -- there must be people out there using the material, copying it and using it improperly. But until we actually see a product with those images on it, we'll never know.

Q. What makes you believe there are people out there, copying and using his images?

A. For the simple reason that most people don't have access to the sorts of images that we have access to. Both his work and my work are very distinct and very -- what is the word -- very focused on underwater subjects, marine subjects, not even freshwater subjects. So that anyone who is interested in that would find it very useful -- people like designers, art directors, decorators -- to use this material as source. And very often, in using them as source, they actually copy it. We've had this happen many times. Instead of simply using it to see, well, this fish is red or this fish is blue, they actually copy the fish.

Q. To your knowledge, over whatever span of years you want to consider, have you been aware that

various individuals have copied, without authorization, any of Mr. Greenberg's photographs or any of your illustrations?

A. Yes. Many times.

Q. What do you mean by "many"?

A. Well, when we find something that we believe to be an infringement of our work, we always notify the person who is using the work and try to get them to cease and desist and accept the fact that they're using it improperly and must not do that; and in cases where people won't cooperate with us, we have filed suit against them.

We are very avid about protecting our copyrights. They are our estate, they are what we leave to our children. This is our life's work. My husband and I don't do anything but what we are doing. We produce books and things on underwater subjects for the diving trade, the cruise trade, for book stores, whoever wishes to buy our products. And we have been in other businesses related to that as well, including T-shirts and things like that. And we wish to protect that.

MR. DAVIS: I have no further questions.

MR. SUGARMAN: Just a couple.

REDIRECT EXAMINATION

BY MR. SUGARMAN:

Q. You said that it was impossible to find out whether people were using or had used images taken by Mr. Greenberg which had been published in the CD-ROM version without authorization. Is it equally impossible to find out whether people used images taken by Mr. Greenberg which were published in the paper version of the magazine without authorization?

A. It's the same problem. Basically -- we don't look for infringements, but we find them everywhere. We went on a trip together to Key West for three days, for rest and recreation, and we found our art images on the walls of the aquarium, in a guide book for the aquarium. We found our images on the side of -- beautiful angelfish photograph of my husband's, full-size, on the side of a building. We didn't seek this out, but we found these things. We found about five infringements on that trip, major things.

Q. Could you identify from what publications these five infringements had been copied.

A. Yes.

Q. Were any of them copied, to your knowledge, from the CD-ROM product, the National Geographic?

A. This is before the CD-ROM. Right.

Q. Were any of them copied from the paper version of the National Geographic magazine?

A. No.

Q. You said that you were certain that there are people out there who are using images published in the CD-ROM version of the National Geographic magazine. Are you equally certain that there are people out there who have used images published in the paper version of the magazine over the years?

A. Oh, yes.

MR. SUGARMAN: I don't have anything further.

MR. DAVIS: Let me follow up on that.

RECROSS-EXAMINATION

BY MR. DAVIS:

Q. Mr. Sugarman has asked you several questions regarding improper use of images in the CD-ROM product and what he calls the paper version of the monthly magazine. Do you have any distinction, in your mind, as to the ability to copy from those two kinds of products?

A. Oh, yes.

Q. What distinction is that?

A. A great distinction. I have the product.

I access --

Q. Which product?

A. The 108 years. I accessed it on my computer. I found that not only did I not have to enter the program to get the images, but I could go straight to the image file and print out any image that I wanted to from that whole collection. It was easy. It was four steps of selections on the computer.

In other words, independent of the program that runs it -- I don't know what you call it -- the software that runs it, you can simply open a file called "Images" and click on it. You then have the choice of images. You can choose any image and print it out.

Q. Given the distinction you've just made, how do you regard, if you do, the potential for injury to your husband's images, in terms of improper use through the CD-ROM product?

MR. SUGARMAN: Object to the form.

THE WITNESS: It's so easy to access things on that -- in your mind, think of 108 years of National Geographic magazines in a bookcase. Your chance of figuring out which issue to go to, to find a specific thing, are practically

nil. So you get the 108 years product, which is The Complete National Geographic, and you want a picture of a fish. So you go to the search engine that comes with it and you type in, "Fish." You could do bullion searches. You could do all kinds of searches to find any subject, and it will narrow it down immediately.

Just for fun, I typed in our name. It immediately gave me a listing of all of our articles or Jerry's articles, and I was able to choose any one of them and go to it immediately and print out anything I wanted from it. And there are several ways to do it.

MR. DAVIS: I have nothing further.

MR. SUGARMAN: That prompts a couple more questions.

FURTHER REDIRECT EXAMINATION

BY MR. SUGARMAN:

Q. Have you done any comparison between the quality of a copy printed out from the CD-ROM version of the magazine and the quality of a copy printed from the paper version?

A. Yes.

Q. What did you determine?

A. I bought an under-$200 color copier,

because I didn't have one. I have a laser copier that I use, black and white. I bought an inexpensive, in any store, copier. And I printed up several photographs from it, from the 108 years product. And I found the quality was very much dependent on the paper that you printed on, which surprised me; that if you took good-quality, photographic-quality paper, and put it in that $169 printer, you got a really beautiful print.

Now, the body copy was not good, because the product is made to give you high definition on the images and poor definition on the text, because otherwise it would be a very slow program to use. It would be too much to get into. So, to speed things up, they made the text secondary to the pictures.

Everyone knows people very rarely read the Geographic. They really look through the pictures. The pictures were excellent. I have prints that I made that show the quality that they are. I printed out advertisements. I printed out articles. I printed out the moving picture sequence. I got excellent results.

Q. Have you compared those prints that you made with prints that are made on a color copier

from the print version of the magazine?

A. Prints from a color copier, directly from the magazine, are not as good as the prints that you get from this 108 years product.

Q. How do you know that? Have you actually compared them?

A. Yes. I did both.

Q. Have you compared the index or the search engine that is included in the CD-ROM product with the National Geographic index that has been published in paper?

A. I'm aware of the index. However, the index is printed once a year. And I know that we kept every issue of Geographic. We have a lifetime subscription to geographic. We, at one time, had every issue from the time -- from 1958 on -- no, 1960 something on. And there was no way, with that row of yellow spines, that you're going to be able to pick out any of the indices. I mean it's almost impossible.

Q. That wasn't my question. My question was whether you compared the index that is included in the CD-ROM product with the paper index, in terms of what you could search for.

A. I didn't compare it, per se. But I did --

I have used both. I have experience with it. And as far as the paper one, it's difficult to use. There is no interaction. With the 108 years product, there is interaction. The screen comes up and prompts you what you're looking for, what is the subject. It prompts you to the search. Very easy. Anyone can do it. There is a thing that moves or pulses, and you know that that's the window that you have to answer in. It's very accessible. You can type in anything and find it. And it will even tell you how many things it found. If you type in a very general subject, like fishes, it will say -- there is like, I don't know, a couple hundred -- you have to narrow it down. But it allows you to do that. It leads you through it. It really is a self-explanatory way of doing it, because it's interactive. You don't get that on print.

Q. You had mentioned, in one of your answers before, the ability to find images that were taken by Mr. Greenberg. Is there a difference between the ability to find a list of images taken by Mr. Greenberg when you do it on the CD-ROM index as opposed to the paper index?

A. I'm sorry. Could you repeat that.

MR. DAVIS: I didn't understand you.

BY MR. SUGARMAN:

Q. If you were looking and wanted to look for the list of pictures, images that have been taken in various issues of the National Geographic magazine or printed in various issues of the National Geographic magazine that were taken by Jerry Greenberg, would there be a difference in the ease of doing that?

A. Oh, yes.

Q. Between the CD-ROM index and the paper index?

A. Oh, yes.

Q. Explain why that is.

A. Well, yes. The printed index is printed, I believe, once a year. I don't know if it still is. I don't follow it any more. But it was, at one time, printed at the end of the year. It only deals with the things that were printed then. Whereas when you are using the search engine and the CD-ROM, it's the entire 108 years it's searching through.

Q. When you say the paper index only deals with things that were printed then, what do you mean by that?

A. As I recall -- I may be wrong -- but as I recall, it is an index of that year's issues.

Q. I see.

A. And is limited to that. I may be wrong. They may have changed it since then. However, the 108 years is an index of 108 years of National Geographic, by subject, by author, by title, by almost any information you want. You could take something as general as a country and it will give you listings of things about that country. You could choose to search it in almost any way you want and you will get results.

Q. As you understand it, are there any categories of information that you could get from the index of the CD-ROM that you could not get from the paper index?

A. Oh, yes. I believe so, yes.

Q. Can you tell me what those are.

A. I don't think, on the printed index -- it's hard for me to remember, but I don't think on the printed index you could put in, for instance, the species of fish. You can do that on the search engine.

Q. Anything else that occurs to you?

A. Well, things of that nature. Homing in on something in a very focused way.

MR. SUGARMAN: I have no further questions.

MR. DAVIS: No further questions. That's it.

(Thereupon the taking of the deposition was adjourned.)

EXCEPT FOR ANY CORRECTIONS MADE ON THE ERRATA SHEET BY ME, I CERTIFY THIS IS A TRUE AND ACCURATE TRANSCRIPT.

FURTHER DEPONENT SAYETH NOT.

IDAZ GREENBERG

Sworn to and subscribed 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:

C E R T I F I C A T E

STATE OF FLORIDA:
COUNTY OF DADE:

I, the undersigned authority, certify that IDAZ GREENBERG personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 6th day of August 2002.

Donald W. McKay, RMR, CRR
Notary Public - State of Florida
My Commission No.: CC890407
Expires: December 19, 2003

STATE OF FLORIDA:
COUNTY OF DADE:

I, DONALD W. McKAY, RMR, CRR, a Notary Public for the State of Florida at Large, hereby certify that I reported the deposition of IDAZ GREENBERG; and that the foregoing pages, numbered from 1 to 51, inclusive, constitute a true and correct transcription of my shorthand report of the deposition by said witness on this date.

I further certify that I am not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action nor financially interested in the action.

WITNESS my hand and official seal in the City of Miami, County of Dade, State of Florida, this 6th day of August 2002.

Donald W. McKay, RMR, CRR
Notary Public - State of Florida
My Commission No.: CC890407
Expires: December 19, 2003

VERITEXT FLORIDA, LLC
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August 7, 2002
Idaz Greenberg
c/o Norman Davis, Esq.
Steel Hector & Davis, LLP
200 South Biscayne Blvd., Ste. 4000
Miami, FL 33131
RE: Greenberg v National Geographic
DEPO OF: Idaz Greenberg
TAKEN: July 31, 2002
Number of pages: 25 pages
Available for reading until: 30 days
Dear Ms. Greenberg:
This letter is to advise you that the transcript of your deposition 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 8:30 a.m. to 4:30 p.m., Monday through Friday. In the event other arrangements are made, please send us a notarized list of any and all corrections and/or changes, noting page and line numbers, and the reason for such changes, so that we can furnish respective counsel with a copy.
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 deposition transcript.

Your prompt attention to this matter is appreciated.

Sincerely,

Donald W. McKay, RMR, CRR
cc: (Copy to all counsel)

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August 7, 2002

Robert G. Sugarman, Esq.
Weil Gotshal & Manges, LLP
767 Fifth Avenue
New York, NY 10153

RE: Greenberg v National Geographic
DEPO OF: Idaz Greenberg
TAKEN: July 31, 2002
Number of pages: 25 pages
Available for reading until: 30 days

Dear Counsel:

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,

Donald W. McKay, RMR, CRR

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97-3924 28:2

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 97-3924

JERRY GREENBERG, individually, and
IDAZ GREENBERG, individually,

Plaintiffs,

vs.

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

Defendants.

- x

COPY

701 Brickell Avenue
Suite 2100
Miami, Florida
Wednesday, July 31, 2002
10:00 a.m. - 10:35 a.m.

DEPOSITION OF IDAZ GREENBERG
(Volume 2 - Pages 28 to 52)

Taken before Donald W. McKay, RMR, CRR, a Notary Public for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above-styled cause.

PRESENT:

NORMAN DAVIS, ESQ., of the firm of Steel Hector & Davis, LLP, on behalf of the Plaintiffs.

ROBERT G. SUGARMAN, ESQ., of the firm of Weil Gotshal & Manges, LLP, on behalf of the Defendants.

ALSO PRESENT:

Jerry Greenberg

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Thereupon,

IDAZ GREENBERG

was called as a witness by the Defendants, and having been first duly sworn, testified as follows:

THE WITNESS: Yes, I do.

DIRECT EXAMINATION

BY MR. SUGARMAN:

Q. Ms. Greenberg, as I said when we started the last session, or as Naomi said, if you don't understand any of the questions I'm going to ask you, please tell me and I'll rephrase them. And if you don't ask me, I'll assume you do understand the question. Is that fair?

A. Yes. Thank you.

MR. DAVIS: May I put that same objection on the record, before we start?

MR. SUGARMAN: Yes.

MR. DAVIS: I'd like to object, and have it as a standing objection, to the use of any of the testimony or other information for the purposes of dealing with the issue of the number of works that should be counted in the calculation of statutory damages. We had objected to that in prior filings with the Court, and I want to state it briefly here at

the outset. Thank you.

BY MR. SUGARMAN:

Q. Did you create any of the images or the text which were published in the National Geographic magazine and which are the subject of this lawsuit?

A. Yes.

Q. Which of the images, if you can remember them, did you create?

A. In the sense of creating -- if you mean taking the photographs, no. I did appear in the article, the Buck Island article. This is a family story.

Q. Did you write any of the text of any of the articles?

A. I am credited as being the writer on the Buck Island story, because I took notes while we were shooting it. And they sent a writer from National Geographic who stayed at our home with us for three days or four days, and I told him about the trip and he then wrote it in Geographic-ese.

Q. Did you personally suffer any damages as a result of the publication of The Complete National Geographic on CD-ROM? When I say "personally," I'm distinguishing you, Idaz Greenberg, from Jerry Greenberg and from Seahawk.

A. Well, first of all, I would have to object to that distinction, because my husband and I work together. We have been married for 47 years. We have been in business together the entire time. So it's hard to make a distinction.

Q. What I'm trying to get at is whether you as a person, as opposed to you as part of Seahawk Productions, which is the proprietorship, suffered any personal damages as a result of the publication of The Complete National Geographic on CD-ROM?

A. I'm not a proprietor of Seahawk Products. It's a sole proprietorship. It's my husband's. I consider it damage, the fact that work that was created by us was not paid for and used in that product.

Q. Have you made any attempt to calculate the amount of those damages?

A. No.

Q. Do you as a plaintiff in this lawsuit intend, at the damage trial, to attempt to quantify the amount of those damages?

A. I don't understand what you --

Q. Yesterday, at Mr. Greenberg's deposition, he said that he was seeking statutory damages.

A. Yes. We are.

Q. Is that your understanding of what the plaintiffs in this lawsuit are going to seek at the trial, statutory damages?

A. Yes. As of now.

Q. Has there been any discussion of changing that? Just answer yes or no.

A. No.

Q. Have you or, to your knowledge, has anyone else consulted with any experts to attempt to determine an amount of money that the Geographic would have paid had they negotiated with you and/or Mr. Greenberg prior to publication of The Complete National Geographic?

A. No.

Q. Have you made any calculation of the amount that the National Geographic would have paid if negotiations had taken place with you and/or your husband before the publication of The Complete National Geographic?

A. No.

Q. As of today, do you intend, at the damage trial, to offer evidence of the amount of money that National Geographic would have paid had there been a negotiation between the Geographic and you and/or your husband before publication?

MR. DAVIS: I'll object to the extent that it calls for a legal conclusion.

THE WITNESS: I was going to say the same thing. Basically, I don't do that, because it's not my milieu.

BY MR. SUGARMAN:

Q. I understand that. But I'm asking you whether it's your -- let me phrase it differently.

Is it your understanding, as we sit here today, that the plaintiffs will offer any testimony or evidence at the trial concerning the amount of money that the Geographic would have paid had there been a negotiation between you and/or your husband and the Geographic prior to the publication of the CD-ROM?

MR. DAVIS: Same objection.

THE WITNESS: It's so speculative, I couldn't even guess at anything like that.

BY MR. SUGARMAN:

Q. What is speculative?

A. Your whole -- first of all, how could we have evaluated anything before the product was out, when we found out about it when the barn door was open? No way to go back in history.

Q. My question isn't how you would do it. My

question is whether you intend to attempt to quantify that amount or to estimate that amount at the trial.

MR. DAVIS: Same objection.

THE WITNESS: That wouldn't be what I would do.

BY MR. SUGARMAN:

Q. Let me show you three books that were marked at yesterday's deposition. They are Jerry Greenberg Exhibits 21, 22, and 23.

A. Thank you.

Q. In his testimony, Mr. Greenberg testified that those were the only books presently available to distributors of the many books that have been published over the years by Seahawk Press. Is that accurate, to your understanding?

A. To my understanding. I should tell you that my husband is the one who markets the books and does all of that, so I have no knowledge of any of that.

Q. To your knowledge, have any new books been published by Seahawk since 1995?

A. I believe we did a -- I'm not sure of the date -- I believe we did a mini version of my book, Guide to Corals and Fishes. We also did a mangrove

book, but I don't know the date on that.

Q. The same question as to any other materials. Mr. Greenberg yesterday mentioned calendars, posters, and two others that I don't recall as I sit here. And the question is whether any of those were published anew, as opposed to reprints of older materials, since 1995?

A. Again, I'm not sure of the date. But we produced some mini cards of my work, which are new. I think you would call them new. They're not -- slightly different format. It's the same stuff. We have things in the works. Nothing produced that comes to mind at this moment.

Q. I take it from your last answer that you are today, as your husband testified he was when he testified yesterday, still active in your business.

A. Oh, yes.

Q. Would you describe, as of today, what that activity is.

A. My husband and I decide on projects to work on. And I do illustrations and write, and he does photography and also does some writing. I also do some photography. I mean we all do a little bit of everything. But generally speaking, all the photographs are my husband's or my son's; all the

illustrations are mine, with exceptions there, also.

Q. Who does the writing when that is required or desired?

A. Originally, my husband did all the writing, and slowly I took over. And now I do all the writing, along with my daughter, Mimi, my youngest daughter, who is a very good editor and works with me.

Q. In the period since 1995, have sales of Seahawk's products, whether they be books or materials, changed in any way or remained at about the same levels?

A. I'm independent of any of the business parts. I like the work that I do. I don't like the work that my husband does, and thank goodness he does it. Bookkeeping, that is.

Q. Yesterday, in his testimony, Mr. Greenberg mentioned events that have an impact on sales, such as hurricanes. Are there any events that have taken place over the last seven or eight years, since 1995, which stand out in your mind as to an event which actually had an effect on the sales performance of Seahawk?

A. I really couldn't speculate on that, because basically -- I mean if the economy goes

down, our sales go down like every other company there is. But I have no knowledge of anything special right now.

Q. Are you aware of any instance in which one of the images that Mr. Greenberg took and which was published in the National Geographic CD-ROM was copied by somebody else?

A. By "copied," do you mean used without permission?

Q. I'll take that, sure.

A. Are you giving me a context of years?

Q. Well, The Complete National Geographic was published in 1997. So it would be anytime since then, as to whether you're aware that anyone has used one of Mr. Greenberg's images without authorization.

A. Not that I'm aware of.

Q. Are you aware of any instance in which someone used any image or text that was published in The Complete National Geographic on CD-ROM without authorization, whether it's Mr. Greenberg's, yours, or anybody else's?

A. No, I'm not.

Q. Has the publication of The Complete National Geographic on CD-ROM had any effect, to

your knowledge, on the sales of the books of materials that are published by Seahawk?

A. Again, I'm not involved in that.

Q. Well, whether you're involved or not, do you have any information that the publication of The Complete National Geographic on CD-ROM has affected the sales of the books and materials that are published by Seahawk?

A. Neither one way or the other. I have no knowledge.

MR. SUGARMAN: Thank you. I don't have any further questions. I told you it would be short.

MR. DAVIS: Let me ask a couple.

CROSS-EXAMINATION

BY MR. DAVIS:

Q. You have said that you left business and sales matters to your husband with respect to Seahawk Products, and you said that you did not know whether anyone had used any of his images from the CD-ROM product without his knowledge. You said you didn't know that. If you wanted to find out, would it be feasible to find out?

A. It would be almost impossible to find out.

Q. Why?

A. First of all, we'd have to come across something somewhere. We'd have to -- there is no way -- you couldn't just -- I have no idea of how you could find that out, and yet I know that it must be -- there must be people out there using the material, copying it and using it improperly. But until we actually see a product with those images on it, we'll never know.

Q. What makes you believe there are people out there, copying and using his images?

A. For the simple reason that most people don't have access to the sorts of images that we have access to. Both his work and my work are very distinct and very -- what is the word -- very focused on underwater subjects, marine subjects, not even freshwater subjects. So that anyone who is interested in that would find it very useful -- people like designers, art directors, decorators -- to use this material as source. And very often, in using them as source, they actually copy it. We've had this happen many times. Instead of simply using it to see, well, this fish is red or this fish is blue, they actually copy the fish.

Q. To your knowledge, over whatever span of years you want to consider, have you been aware that

various individuals have copied, without authorization, any of Mr. Greenberg's photographs or any of your illustrations?

A. Yes. Many times.

Q. What do you mean by "many"?

A. Well, when we find something that we believe to be an infringement of our work, we always notify the person who is using the work and try to get them to cease and desist and accept the fact that they're using it improperly and must not do that; and in cases where people won't cooperate with us, we have filed suit against them.

We are very avid about protecting our copyrights. They are our estate, they are what we leave to our children. This is our life's work. My husband and I don't do anything but what we are doing. We produce books and things on underwater subjects for the diving trade, the cruise trade, for book stores, whoever wishes to buy our products. And we have been in other businesses related to that as well, including T-shirts and things like that. And we wish to protect that.

MR. DAVIS: I have no further questions.

MR. SUGARMAN: Just a couple.

REDIRECT EXAMINATION

BY MR. SUGARMAN:

Q. You said that it was impossible to find out whether people were using or had used images taken by Mr. Greenberg which had been published in the CD-ROM version without authorization. Is it equally impossible to find out whether people used images taken by Mr. Greenberg which were published in the paper version of the magazine without authorization?

A. It's the same problem. Basically -- we don't look for infringements, but we find them everywhere. We went on a trip together to Key West for three days, for rest and recreation, and we found our art images on the walls of the aquarium, in a guide book for the aquarium. We found our images on the side of -- beautiful angelfish photograph of my husband's, full-size, on the side of a building. We didn't seek this out, but we found these things. We found about five infringements on that trip, major things.

Q. Could you identify from what publications these five infringements had been copied.

A. Yes.

Q. Were any of them copied, to your knowledge, from the CD-ROM product, the National Geographic?

A. This is before the CD-ROM. Right.

Q. Were any of them copied from the paper version of the National Geographic magazine?

A. No.

Q. You said that you were certain that there are people out there who are using images published in the CD-ROM version of the National Geographic magazine. Are you equally certain that there are people out there who have used images published in the paper version of the magazine over the years?

A. Oh, yes.

MR. SUGARMAN: I don't have anything further.

MR. DAVIS: Let me follow up on that.

RECROSS-EXAMINATION

BY MR. DAVIS:

Q. Mr. Sugarman has asked you several questions regarding improper use of images in the CD-ROM product and what he calls the paper version of the monthly magazine. Do you have any distinction, in your mind, as to the ability to copy from those two kinds of products?

A. Oh, yes.

Q. What distinction is that?

A. A great distinction. I have the product.

I access --

Q. Which product?

A. The 108 years. I accessed it on my computer. I found that not only did I not have to enter the program to get the images, but I could go straight to the image file and print out any image that I wanted to from that whole collection. It was easy. It was four steps of selections on the computer.

In other words, independent of the program that runs it -- I don't know what you call it -- the software that runs it, you can simply open a file called "Images" and click on it. You then have the choice of images. You can choose any image and print it out.

Q. Given the distinction you've just made, how do you regard, if you do, the potential for injury to your husband's images, in terms of improper use through the CD-ROM product?

MR. SUGARMAN: Object to the form.

THE WITNESS: It's so easy to access things on that -- in your mind, think of 108 years of National Geographic magazines in a bookcase. Your chance of figuring out which issue to go to, to find a specific thing, are practically

nil. So you get the 108 years product, which is The Complete National Geographic, and you want a picture of a fish. So you go to the search engine that comes with it and you type in, "Fish." You could do bullion searches. You could do all kinds of searches to find any subject, and it will narrow it down immediately.

Just for fun, I typed in our name. It immediately gave me a listing of all of our articles or Jerry's articles, and I was able to choose any one of them and go to it immediately and print out anything I wanted from it. And there are several ways to do it.

MR. DAVIS: I have nothing further.

MR. SUGARMAN: That prompts a couple more questions.

FURTHER REDIRECT EXAMINATION

BY MR. SUGARMAN:

Q. Have you done any comparison between the quality of a copy printed out from the CD-ROM version of the magazine and the quality of a copy printed from the paper version?

A. Yes.

Q. What did you determine?

A. I bought an under-$200 color copier,

because I didn't have one. I have a laser copier that I use, black and white. I bought an inexpensive, in any store, copier. And I printed up several photographs from it, from the 108 years product. And I found the quality was very much dependent on the paper that you printed on, which surprised me; that if you took good-quality, photographic-quality paper, and put it in that $169 printer, you got a really beautiful print.

Now, the body copy was not good, because the product is made to give you high definition on the images and poor definition on the text, because otherwise it would be a very slow program to use. It would be too much to get into. So, to speed things up, they made the text secondary to the pictures.

Everyone knows people very rarely read the Geographic. They really look through the pictures. The pictures were excellent. I have prints that I made that show the quality that they are. I printed out advertisements. I printed out articles. I printed out the moving picture sequence. I got excellent results.

Q. Have you compared those prints that you made with prints that are made on a color copier

from the print version of the magazine?

A. Prints from a color copier, directly from the magazine, are not as good as the prints that you get from this 108 years product.

Q. How do you know that? Have you actually compared them?

A. Yes. I did both.

Q. Have you compared the index or the search engine that is included in the CD-ROM product with the National Geographic index that has been published in paper?

A. I'm aware of the index. However, the index is printed once a year. And I know that we kept every issue of Geographic. We have a lifetime subscription to geographic. We, at one time, had every issue from the time -- from 1958 on -- no, 1960 something on. And there was no way, with that row of yellow spines, that you're going to be able to pick out any of the indices. I mean it's almost impossible.

Q. That wasn't my question. My question was whether you compared the index that is included in the CD-ROM product with the paper index, in terms of what you could search for.

A. I didn't compare it, per se. But I did --

I have used both. I have experience with it. And as far as the paper one, it's difficult to use. There is no interaction. With the 108 years product, there is interaction. The screen comes up and prompts you what you're looking for, what is the subject. It prompts you to the search. Very easy. Anyone can do it. There is a thing that moves or pulses, and you know that that's the window that you have to answer in. It's very accessible. You can type in anything and find it. And it will even tell you how many things it found. If you type in a very general subject, like fishes, it will say -- there is like, I don't know, a couple hundred -- you have to narrow it down. But it allows you to do that. It leads you through it. It really is a self-explanatory way of doing it, because it's interactive. You don't get that on print.

Q. You had mentioned, in one of your answers before, the ability to find images that were taken by Mr. Greenberg. Is there a difference between the ability to find a list of images taken by Mr. Greenberg when you do it on the CD-ROM index as opposed to the paper index?

A. I'm sorry. Could you repeat that.

MR. DAVIS: I didn't understand you.

BY MR. SUGARMAN:

Q. If you were looking and wanted to look for the list of pictures, images that have been taken in various issues of the National Geographic magazine or printed in various issues of the National Geographic magazine that were taken by Jerry Greenberg, would there be a difference in the ease of doing that?

A. Oh, yes.

Q. Between the CD-ROM index and the paper index?

A. Oh, yes.

Q. Explain why that is.

A. Well, yes. The printed index is printed, I believe, once a year. I don't know if it still is. I don't follow it any more. But it was, at one time, printed at the end of the year. It only deals with the things that were printed then. Whereas when you are using the search engine and the CD-ROM, it's the entire 108 years it's searching through.

Q. When you say the paper index only deals with things that were printed then, what do you mean by that?

A. As I recall -- I may be wrong -- but as I recall, it is an index of that year's issues.

Q. I see.

A. And is limited to that. I may be wrong. They may have changed it since then. However, the 108 years is an index of 108 years of National Geographic, by subject, by author, by title, by almost any information you want. You could take something as general as a country and it will give you listings of things about that country. You could choose to search it in almost any way you want and you will get results.

Q. As you understand it, are there any categories of information that you could get from the index of the CD-ROM that you could not get from the paper index?

A. Oh, yes. I believe so, yes.

Q. Can you tell me what those are.

A. I don't think, on the printed index -- it's hard for me to remember, but I don't think on the printed index you could put in, for instance, the species of fish. You can do that on the search engine.

Q. Anything else that occurs to you?

A. Well, things of that nature. Homing in on something in a very focused way.

MR. SUGARMAN: I have no further questions.

MR. DAVIS: No further questions. That's it.

(Thereupon the taking of the deposition was adjourned.)

EXCEPT FOR ANY CORRECTIONS MADE ON THE ERRATA SHEET BY ME, I CERTIFY THIS IS A TRUE AND ACCURATE TRANSCRIPT.

FURTHER DEPONENT SAYETH NOT.

IDAZ GREENBERG

Sworn to and subscribed 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:

C E R T I F I C A T E

STATE OF FLORIDA:
COUNTY OF DADE:

I, the undersigned authority, certify that IDAZ GREENBERG personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 6th day of August 2002.

Donald W. McKay, RMR, CRR
Notary Public - State of Florida
My Commission No.: CC890407
Expires: December 19, 2003

STATE OF FLORIDA:
COUNTY OF DADE:

I, DONALD W. McKAY, RMR, CRR, a Notary Public for the State of Florida at Large, hereby certify that I reported the deposition of IDAZ GREENBERG; and that the foregoing pages, numbered from 1 to 51, inclusive, constitute a true and correct transcription of my shorthand report of the deposition by said witness on this date.

I further certify that I am not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action nor financially interested in the action.

WITNESS my hand and official seal in the City of Miami, County of Dade, State of Florida, this 6th day of August 2002.

Donald W. McKay, RMR, CRR
Notary Public - State of Florida
My Commission No.: CC890407
Expires: December 19, 2003

VERITEXT FLORIDA, LLC
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August 7, 2002
Idaz Greenberg
c/o Norman Davis, Esq.
Steel Hector & Davis, LLP
200 South Biscayne Blvd., Ste. 4000
Miami, FL 33131
RE: Greenberg v National Geographic
DEPO OF: Idaz Greenberg
TAKEN: July 31, 2002
Number of pages: 25 pages
Available for reading until: 30 days
Dear Ms. Greenberg:
This letter is to advise you that the transcript of your deposition 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 8:30 a.m. to 4:30 p.m., Monday through Friday. In the event other arrangements are made, please send us a notarized list of any and all corrections and/or changes, noting page and line numbers, and the reason for such changes, so that we can furnish respective counsel with a copy.
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 deposition transcript.

Your prompt attention to this matter is appreciated.

Sincerely,

Donald W. McKay, RMR, CRR
cc: (Copy to all counsel)

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August 7, 2002

Robert G. Sugarman, Esq.
Weil Gotshal & Manges, LLP
767 Fifth Avenue
New York, NY 10153

RE: Greenberg v National Geographic
DEPO OF: Idaz Greenberg
TAKEN: July 31, 2002
Number of pages: 25 pages
Available for reading until: 30 days

Dear Counsel:

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,

Donald W. McKay, RMR, CRR

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