

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

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA

3 CASE NO. 97-3924

4  
5 JERRY GREENBERG, individually,  
6 and IDAZ GREENBERG, individually,

ORIGINAL

7 Plaintiffs,

8 vs.

9 NATIONAL GEOGRAPHIC SOCIETY, a  
10 District of Columbia Corporation,  
11 NATIONAL GEOGRAPHIC ENTERPRISES, INC.,  
12 a corporation and MINDSCAPE, INC., a  
13 California corporation,

14 Defendants.

---

15 701 Brickell Avenue  
16 21st Floor  
17 Miami, Florida 33131  
18 Tuesday, July 30, 2002  
19 10:00 a.m.

20 CONTINUED DEPOSITION OF JERRY GREENBERG

21 Taken on behalf of the Defendants, before Debbie  
22 L. Oates, RPR, Notary Public in and for the State of  
23 Florida at Large, pursuant to Notice of Taking  
24 Deposition filed in the above cause.  
25

## 1 APPEARANCES:

2 STEEL, HECTOR & DAVIS  
3 BY: NORMAN DAVIS, ESQ.  
4 200 South Biscayne Boulevard  
5 Miami, Florida 33131  
6 on behalf of the Plaintiff.

7 WEIL, GOTSHAL  
8 BY: ROBERT G. SUGARMAN, ESQ.  
9 767 Fifth Avenue  
10 New York, NY 10153  
11 on behalf of the Defendant.

## 12 ALSO PRESENT:

13 Idaz Greenberg  
14  
15  
16  
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18  
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22  
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## 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.)

1 THEREUPON,

2 JERRY GREENBERG

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

5 DIRECT EXAMINATION

6 BY MR. SUGARMAN:

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

14 A. Yes. Yes.

15 Q. Did you recently receive --

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

1 something anymore.

2 MR. SUGARMAN: That's fine.

3 MR. DAVIS: Thank you.

4 BY MR. SUGARMAN:

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

8 A. Yes, sir.

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

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

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

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

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

25 So the categories that I saw there were

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

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

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

11           There were certain of your books produced in  
12 their entirety.

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

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

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

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

1 you from Mr. Ward.

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

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

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

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

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

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

16 BY MR. SUGARMAN:

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

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

1 available. You asked for the last five years and if  
2 indeed the action was 1997, I just went back to the  
3 five years. I had most of all 1990 there, but you  
4 only had requested the last five years starting from  
5 1997. I couldn't find the other journals that went  
6 beyond that.

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

10 A. 1998 to today. Yes.

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

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

16 MR. DAVIS: Go ahead.

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

20 BY MR. SUGARMAN:

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

25 A. Yes, sir.

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

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

6 A. No, sir.

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

10 A. What do you mean by cost information?

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

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

16 Q. So you would have copies of those invoices?

17 A. Yes.

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

20 A. No, sir.

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

24 A. No, sir.

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

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

3 A. Yes.

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

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

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

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

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

20 A. No, sir.

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

23 BY MR. SUGARMAN:

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



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

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

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

11 MR. DAVIS: Which tax returns?

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

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

17 BY MR. SUGARMAN:

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

22 A. Yes.

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

25 A. I believe our latest publication was

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

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

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

6 BY MR. SUGARMAN:

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

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

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

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

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

18 A. Published or reprinted?

19 Q. Initially published.

20 A. Pocket Guide to Corals and Fishes.

21 Q. And when was that?

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

1 publication.

2 Q. Right.

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

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

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

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

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

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

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

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

1 fingertips are what we're currently selling.

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

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

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

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

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

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

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

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

1 case on damages.

2 BY MR. SUGARMAN:

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

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

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

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

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

16 BY MR. SUGARMAN:

17 Q. Could you turn to Page 17. And on that page  
18 there is a statement in the middle of an answer. It's  
19 the end of line one that says, "The bulk of my  
20 livelihood and activity and my focus of my entire  
21 existence is with Seahawk Press selling our products  
22 as a product or licensing a specific product to  
23 certain customers for editorial use. I don't solicit  
24 much business; it comes to me."

25 My question is, is that statement still

1 accurate today?

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

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

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

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

13 A. Now I have to go into a time machine to go  
14 back 40 years. When I first started to become  
15 interested in underwater photography I did a lot of  
16 other things at the same time. Besides doing  
17 freelance photography for ~~Adventure Magazine~~  
18 editorial work.

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

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

1 with the National Geographic starting from 1960 until  
2 whatever.

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

8 And then there came a point in my life maybe  
9 in the late '60s -- well, even before that I started  
10 to publish my own books middle of 1956, the tail end  
11 of 1957. We started to publish our own books in black  
12 and white. And we had a line of four different titles  
13 and a Pennekamp park map and about the tail end of  
14 1960 we decided to go full-bore into publishing our  
15 own work and we created that book The Living Reef,  
16 which is an all-color book with corals and fishes of  
17 the Tropical Atlantic.

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

1 you mean?

2 A. The finished published book from Seahawk  
3 Press.

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

6 A. Yes, sir.

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

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

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

14 A. It's a good example, yes.

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

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

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

25 MR. DAVIS: As a percentage for each



1 activity?

2 MR. SUGARMAN: Sure. That would be fine.

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

15 BY MR. SUGARMAN:

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

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

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

1 A. Yes.

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

4 A. Yes, sir.

5 MR. DAVIS: Do you need to read this?

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

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

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

18 BY MR. SUGARMAN:

19 Q. And generally describe what happened  
20 thereafter.

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

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

1 A. My photographs. My images.

2 Q. Okay. How many of them?

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

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

10 A. Some did, some didn't.

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

14 A. From that collection, yes.

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

18 A. Yes.

19 Q. What was it?

20 A. It paid \$3500.

21 Q. And approximately what year was that?

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

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

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

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

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

8 Describe how it was that the amount of  
9 \$3500 was arrived at for the use of those images?

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

12 Q. And they accepted your offer or demand?

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

14 Q. Request.

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

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

21 A. It depended upon how many pages I thought  
22 they could or should use. And I came to that figure I  
23 felt with a good <sup>single</sup> ~~single~~ on my pocket. And I felt it was  
24 reasonable for the uniqueness of the material. No one  
25 else had stuff like it. And I felt the story should

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

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

6 A. I don't remember.

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

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

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

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

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

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

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

24 A. No additional licensing did take place.

25 Q. Did any other commercial activity take place

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

3 A. Not through us.

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

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

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

12 A. No.

13 Q. That's correct?

14 A. That's correct, yes.

15 Q. Would you look on Page 18 from Lines 17 to  
16 24 and read those to yourself.

17 A. Yes, sir.

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

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

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

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

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

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

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

13 I ask the reporter to mark as Jerry  
14 Greenberg Exhibit 20 two pages Bates stamped 5086 and  
15 5087.

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

18 BY MR. SUGARMAN:

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

21 A. Yes, sir.

22 Q. What is it?

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

1 Magazine.

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

6 A. Yes, sir.

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

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

17 Q. Okay. That's fine.

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

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



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

5 Q. And what did they say?

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

8 Q. Did they specify which images from the July  
9 1990 story in the Geographic that they wanted to use?

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

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

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

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

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

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

3 A. Boys' Life of course.

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

6 A. Excluding cover.

7 Q. Inside the magazine?

8 A. Yes.

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

11 A. You mean excluding the \$500 presentation  
12 fee.

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

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

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

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

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

1 would be factored in?

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

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

9 A. Yes.

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

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

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

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

25 Q. Do you recall it as you sit here?

1 A. No, sir, I don't.

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

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

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

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

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

18 MR. DAVIS: Object to the form.

19 THE WITNESS: I have no way of telling.

20 BY MR. SUGARMAN:

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

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

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

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

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

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

9 A. Yes, sir.

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

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

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

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

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

1 Jerry Greenberg Exhibit 22 a book entitled Sharks and  
2 Other Dangerous Sea Creatures Bates stamped 6018. And  
3 as 23 a book entitled the Coral Reef Bates stamped  
4 6019.

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

7 BY MR. SUGARMAN:

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

11 A. Currently available titles.

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

14 A. Currently available, yes.

15 Q. From Seahawk?

16 A. Yes, sir.

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

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

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

1 also are currently available for sale?

2 A. Plastic cards, yes. Calendars, no.

3 What were some of the other items you  
4 mentioned?

5 Posters.

6 Q. Posters and maps.

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

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

12 A. No, sir.

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

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

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

19 A. They go to our distributors.

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

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

25 Q. When you use the term master distributors,

1 is there a distinction between master distributors and  
2 other distributors?

3 A. Yes, sir.

4 Q. What's that distinction?

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

13 Q. Why did you do that?

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

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

22 A. To service all distributors.

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



1 A. To the trade.

2 Q. To the trade.

3 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

7 A. Yes, sir.

8 Q. Are they still a distributor?

9 A. They are out of business I believe.

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

12 A. Is that a distributor or a dealer?

13 Q. I don't know.

14 A. May I see the transaction, please.

15 Q. Sure. I ask the reporter to mark as Jerry  
16 Greenberg Exhibit 24 an invoice Bates stamped GJ/D  
17 129.

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

20 BY MR. SUGARMAN:

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

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

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

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

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

11 BY MR. SUGARMAN:

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

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

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

1 A. Yes, sir.

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

5 A. Yes.

6 Q. Which books were they?

7 A. Waterproof Guide to Corals and Fishes.  
8 Guide to Corals and Fishes. The Spanish language  
9 version of the same. The Spanish language version of  
10 the Waterproof Guide to Corals and Fishes. Waterproof  
11 Pocket Guide to Corals and Fishes, half size book.  
12 And Pocket Guide to Corals and Fishes.

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

16 A. Yes, sir.

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

20 A. Yes, sir.

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

24 A. No, sir.

25 Q. What about the last ten years, broadening it

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

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

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

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

15 Q. Off the record.

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

18 BY MR. SUGARMAN:

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

24 A. Yes, there are.

25 Q. And who prepares that?

1 A. I do at the end of the year.

2 MR. SUGARMAN: I ask for production of it.

3 MR. DAVIS: You have it.

4 MR. SUGARMAN: That's been produced?

5 MR. DAVIS: Uh-huh.

6 BY MR. SUGARMAN:

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

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

14 BY MR. SUGARMAN:

15 Q. Books published by Seahawk Press.

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

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

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

1 are currently now available.

2 Q. Currently not available?

3 A. Currently available.

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

6 BY MR. SUGARMAN:

7 Q. Yeah, let me retry to rephrase it.

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

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

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

23 A. No.

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

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

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

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

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

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

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

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



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

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

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

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

11 A. I have no way to --

12 Q. You have no way to?

13 A. Put it in perspective.

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

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

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

24 A. I have no idea.

25 Q. Are you aware of any instances where any of

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

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

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

13           Q. In general.

14           A. In general.

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

20           Q. Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 from the larger amount that have been produced and I'm  
2 going to mark some of them and go through them and ask  
3 some questions with respect to them, so let's mark as  
4 Jerry Greenberg Exhibit 25 a letter dated July 15,  
5 1964 Bates stamped JG/D 5006.

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

8 BY MR. SUGARMAN:

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

11 A. Yes, sir.

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

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

1 illustration in the book itself.

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

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

7 BY MR. SUGARMAN:

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

10 A. Yes, sir.

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

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

17 Q. You used the term double truck?

18 A. Double page.

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

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

1 truck use.

2 Q. Over and above the initial 3200?

3 A. That was taken out of the 3200.

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

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

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

20 A. Well, the photograph was N1 was a hammerhead  
21 shark came from my own personal collection. What I'm  
22 not positive is whether that \$400 was part of the  
23 \$3200 minimum guarantee or over and above that.

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

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

4 A. Yes, sir.

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

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

9 BY MR. SUGARMAN:

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

12 A. Yes, sir.

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

16 A. Yes, sir.

17 Q. Was that picture taken on an assignment?

18 A. Yes, it was.

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

22 A. That is correct.

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



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

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

5           A.    Yes, sir.

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

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

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

22          A.    Yes.

23          Q.    What was your understanding in that regard?

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

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

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

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

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

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

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

16 BY MR. SUGARMAN:

17 Q. Can you identify Jerry Greenberg Exhibit  
18 28?

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

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

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

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

15           A.     It was a photo agency.

16           Q.     Stock photo agency?

17           A.     Yes, sir.

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

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

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

25           A.     Yes, sir. Uh-huh.

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

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

4 BY MR. SUGARMAN:

5 Q. Please mark as Jerry Greenberg Exhibit 29 a  
6 two page -- two pages Bates stamped JG/D 3021 and  
7 3020, one a letter dated September 25, 1975 and on the  
8 same page there's a copy of an image, and the second  
9 of the two pages has two invoices.

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

12 BY MR. SUGARMAN:

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

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

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

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

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

22 A. Special publications.

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

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

3 BY MR. SUGARMAN:

4           Q.    Can you identify Jerry Greenberg Exhibit  
5 30?

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

15          Q.    Could you explain that?

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

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

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



1 there.

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

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

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

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

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

11 Did I answer your question?

12 Q. Who was the photo editor at the time?

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

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

25 A. Bob Gilka.

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

3 A. No, I took it and swallowed it.

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

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

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

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

13 Q. Okay. Let me rephrase the question.

14 A. Okay.

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

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

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

1 5036.

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

4 BY MR. SUGARMAN:

5 Q. Can you identify Jerry Greenberg Exhibit  
6 31?

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

13 Q. In the third paragraph there's a reference  
14 to the standard payment for promotional use of \$100,  
15 but -- and then I'll quote. "In this case, payment of  
16 200 would be made upon receipt of your permission."  
17 And my first question is there's some handwriting in  
18 the right-hand margin. Can you identify that?

19 A. Yes, that's mine.

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

22 A. That's right, sir.

23 Q. What does that mean?

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

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

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

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

9 Q. Do you know who decided that in this case  
10 there would be payment of \$200 instead of the standard  
11 \$100?

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

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

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

23 Q. Would you mark as Jerry Greenberg Exhibit  
24 32 a letter dated June 8, 1988 Bates stamped JG/D  
25 5040.

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

3 BY MR. SUGARMAN:

4           Q.    Can you identify Jerry Greenberg Exhibit  
5 32?

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

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

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

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

6 A. Yes, I honored it.

7 Q. It wasn't another use that was being made in  
8 1988, it was to pay for a use that had been made in  
9 1973?

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

12 Q. Okay. Do you have any --

13 A. Well, excuse me, now that I see the bottom  
14 portion. They were planning to do a Spanish language  
15 edition of this book before the end of the year in  
16 1988. Well, I owned the copyrights then so what do  
17 you do in a case like that? I accommodated them. Why  
18 not.

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

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

25 Q. Why don't we break for lunch.

1 (There was a lunch break taken at 12:30 p.m.  
2 after which the following proceedings were held at  
3 12:55 p.m.)

4 BY MR. SUGARMAN:

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

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

9 BY MR. SUGARMAN:

10 Q. Can you identify this exhibit?

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

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

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

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



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

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

8 BY MR. SUGARMAN:

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

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

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

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

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

3 A. Yes.

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

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

9 BY MR. SUGARMAN:

10 Q. Can you identify Jerry Greenberg Exhibit 34?

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

18 Q. Which publication, do you know?

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

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

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

1 and Fishes.

2 Q. Right.

3 How was the amount of \$5,000 determined?

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

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

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

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

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

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

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

22 BY MR. SUGARMAN:

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

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

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

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

5 BY MR. SUGARMAN:

6 Q. Would you mark as Jerry Greenberg Exhibit  
7 35 a letter dated November 1, 1989 which is Bates  
8 stamped JG/D 5048.

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

11 BY MR. SUGARMAN:

12 Q. Can you identify Jerry Greenberg Exhibit  
13 35?

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

18 Q. What was Treasures in the Sea?

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

25 MR. DAVIS: Don't guess.

1 THE WITNESS: Don't guess.

2 BY MR. SUGARMAN:

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

5 A. It's a book title.

6 Q. A book title.

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

11 A. No, I don't.

12 Q. Would you mark as Jerry Greenberg Exhibit 36  
13 a copy of a letter dated May 9, 1990, Bates stamped  
14 JG/D 3026 to which is attached an invoice Bates JG/D  
15 3027.

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

18 BY MR. SUGARMAN:

19 Q. Can you identify Jerry Greenberg Exhibit  
20 36?

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

23 Q. Sure.

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

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

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

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

9 BY MR. SUGARMAN:

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

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

12 Q. Take your time.

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

15 A. Yes, sir.

16 Okay.

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

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

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

3 And the other one for that three for that  
4 \$2500 figure was for two transparencies that were --  
5 yeah, two transparencies from the photograph that I  
6 took in 1983 five years earlier, whatever the time  
7 would have been of a section of Molasses Reef, so that  
8 \$2500 was payment for the one-time reproduction rights  
9 of two separate panorama illustrations.

10 Q. And what about the \$500?

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

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

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

25 The 2500 was for the two separate panorama

1 photograph pieces that also appeared in the article.

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

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

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

11 A. Yes.

12 Q. And those were the amounts that were paid?

13 A. Yes, sir.

14 Q. Would you mark as Jerry Greenberg Exhibit  
15 38 a document Bates stamped JG/D 3017 which seems to  
16 be a composite of two separate documents.

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

19 BY MR. SUGARMAN:

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

22 A. Yes.

23 Q. -- Jerry Greenberg Exhibit 38?

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



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

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

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

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

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

3 A. Yes.

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

6 What would that have come to?

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

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

14 A. I did.

15 Q. How did you come up with that number?

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

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

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

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

4 Q. Would you mark as Jerry Greenberg Exhibit  
5 39 a composite exhibit of a letter dated July 9, 1990  
6 and an invoice and it's Bates stamped JG/D 3018.

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

9 BY MR. SUGARMAN:

10 Q. Can you identify Jerry Greenberg Exhibit 39?

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

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

1 That was not the deal I made with them.

2 Q. Was the payment of \$1500 made?

3 A. Yes.

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

6 A. Yes, sir.

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

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

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

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

25 Q. Would you mark as Jerry Greenberg Exhibit 40

1 a group of pages of documents, the first one is a  
2 memorandum to Mr. Greenberg from Blake Lewin at Warner  
3 New Media dated May 15, 1992 that's Bates stamped  
4 3036. And the rest of the document -- the exhibit  
5 rather includes documents Bates stamped 3037, 3038,  
6 3040, 3050, 5065, 5061, and 5059.

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

9 BY MR. SUGARMAN:

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

12 A. Yes.

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

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

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

NASA

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

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

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

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

13          A.    No.

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

16          A.    I would assume so, yes.

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

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

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

1 of the document, the one that's Bates stamped JG/D  
2 3037.

3 A. Yes.

4 Q. There are royalty rates listed  
5 there including something called LD with a unit price  
6 of sixty-nine ninety-eight and the royalty per unit of  
7 four cents. Is that the same or different from the  
8 royalty rate that's reflected on the invoice which is  
9 3050?

10 A. It's different.

11 Q. Could you explain --

12 A. Yes.

13 Q. -- that?

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

16 Q. The four cents fee?

17 A. Yes.

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

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

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

1 A. Yes, sir.

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

4 A. Never acceptable, never agreed upon.

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

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

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

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

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

23 A. Yes.

24 Q. What are those?

25 A. Just quarterly statements as to what



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

5 Q. So looking at the last of the group which is  
6 5059 it's a statement dated February 8, '94 for the  
7 period ending 12/31/93. And I take it at this point  
8 the advance was unrecouped to the tune of \$395.62, is  
9 that right?

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

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

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

15 Q. Could you mark as Jerry Greenberg Exhibit  
16 41 an invoice dated November 29, 1992 Bates stamped  
17 JG/D 4139.

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

20 BY MR. SUGARMAN:

21 Q. Can you identify Jerry Greenberg Exhibit 41?

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

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

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

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

15 A. I have no idea.

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

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

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

22 A. I have no knowledge of any of it.

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

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

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

5           A.    No, I don't.

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

8           A.    No, I have no knowledge of it.

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

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

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

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

18          Q.    Would you mark as Jerry Greenberg Exhibit  
19 42 a series of documents.  The first of which is a  
20 document on a letterhead or invoice head of J. Walter  
21 Thompson Bates stamped JG/D 3047 and the remaining  
22 documents are 3046, 3043, 3045, 3047, 3048 and 3049.

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

25

1 BY MR. SUGARMAN:

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

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

8 A. Yes, you gave me a duplicate.

9 Okay. I'm ready.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 As opposed to an editorial use.

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

17 Q. I think I said editorial.

18 A. Yes, but you also mentioned --

19 MR. DAVIS: You said both.

20 MR. SUGARMAN: I said both.

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

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

8 BY MR. SUGARMAN:

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

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

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

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

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

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



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

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

6 A. No. No.

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

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

11 THE WITNESS: The enclosures aren't  
12 indicated.

13 MR. DAVIS: Just wait for a question.

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

15 BY MR. SUGARMAN:

16 Q. That's all right.

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

23 A. I did.

24 Q. And how did you determine that?

25 A. Not so much from the size of the photograph

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

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

9 A. Apparently if I have a --

10 MR. DAVIS: Don't guess.

11 THE WITNESS: I believe so.

12 BY MR. SUGARMAN:

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

16 A. No.

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

20 A. I had no knowledge of it.

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

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

1 edition, English language.

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

5 A. I took them at their word, yes.

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

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

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

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

16 THE WITNESS: Yes, sir.

17 BY MR. SUGARMAN:

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

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

1 Q. Did you respond to this memo or this letter?

2 A. I don't remember.

3 Q. Do you recall whether there ever was an  
4 authorization by you to use the image in this picture  
5 pack?

6 A. To the best of my knowledge they never  
7 responded to this.

8 Q. And so it just never went anywhere?

9 A. I would assume they would not use it without  
10 permission.

11 Q. Would you mark as Jerry Greenberg Exhibit 45  
12 a letter dated April 30, 1998 which is from a Howard  
13 Payne to Mr. Greenberg and then there's typed at the  
14 bottom right-hand corner some typing which also  
15 includes Mr. Greenberg's name and signature. It's  
16 Bates stamped JG/D 3028.

17 (The document was marked as Exhibit No. 45  
18 for identification.)

19 THE WITNESS: Yes, sir.

20 BY MR. SUGARMAN:

21 Q. Could you describe the circumstances which  
22 lead to your receipt of the top portion of Exhibit 45  
23 and your sending the bottom portion?

24 A. Yes. It was sent to me by -- I believe it  
25 came in through the mail. At that time it requested

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

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

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

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

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

22 A. No, sir.

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

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

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

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

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

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

15          A.  Okay.  Let me go back to the first one.  I'm  
16 getting a little confused.  They offered 75 and we  
17 multiplied it by the factor of ten and they took care  
18 of it through the proper way to take care of it  
19 through an attorney, our attorney.  Then a couple of  
20 years later this other thing came out.  It's a smaller  
21 thing and we caught them at it again and we figured  
22 \$5,000 would be appropriate for that small size used.

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

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

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

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

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

16          A.    Yes.

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

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

20          Q.    So it was a multiple of a hundred?

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

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

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

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

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

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

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

16 A. Yes.

17 Q. All right. This testimony deals with a  
18 copyright infringement suit against Stanley Michaels,  
19 Incorporated and it resulted as is indicated on Lines  
20 14 and 15 in a payment to you of \$108,000. Was that a  
21 judgment or a settlement?

22 A. It was a settlement.

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

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



1 don't have it in my head right now.

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

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

6 BY MR. SUGARMAN:

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

11 A. 108 Year.

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

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

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

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

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

1 mean?

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

5 Q. Have any such uses come to your attention?

6 A. Not to my attention.

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

10 A. Not that I'm aware of.

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

13 A. I'm sorry.

14 Q. Go ahead.

15 A. Statutory damages.

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

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

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

25

1 BY MR. SUGARMAN:

2 Q. Let me rephrase that.

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

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

10 I'm not sure what that means.

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

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

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

17 MR. SUGARMAN: Yes.

18 THE WITNESS: Only.

19 MR. SUGARMAN: Yes.

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

22 MR. SUGARMAN: Yes.

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

25 MR. DAVIS: Answer only the question he

1           asked you now.

2           THE WITNESS: Give me the question again,  
3           please.

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

6           MR. DAVIS: My objection stands.  
7           Do you understand it?

8           THE WITNESS: I'm confused now.  
9           I believe I --

10          MR. DAVIS: Don't guess.

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

13          BY MR. SUGARMAN:

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

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

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

24          BY MR. SUGARMAN:

25           Q. Okay. Have you retained an expert in this

1 case?

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

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

7 A. Not to my knowledge, no.

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

12 A. Yes.

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

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

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

21 A. Yes.

22 Q. On how many occasions?

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

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

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

8 BY MR. SUGARMAN:

9 Q. Can you identify Exhibit 46?

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

13 Q. Who actually prepared that, if you know?

14 A. This exhibit?

15 Q. Yes.

16 A. I did.

17 Q. And how did you go about doing that?

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

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

25 A. Fred Ward gave me the information based on

1 his search and search of others.

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

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

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

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

12 THE WITNESS: My attorney asked for the  
13 information.

14 BY MR. SUGARMAN:

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

18 MR. DAVIS: Same objection.

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

20 BY MR. SUGARMAN:

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

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

1 THE WITNESS: Yes.

2 BY MR. SUGARMAN:

3 Q. And what relevance does it have?

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

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

8 A. No.

9 Q. Do you have any understanding of that?

10 A. I believe there's more out there.

11 MR. DAVIS: Don't guess.

12 THE WITNESS: I don't know precisely.

13 BY MR. SUGARMAN:

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

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

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

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

24 BY MR. SUGARMAN:

25 Q. I don't have additional copies of that



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

4 Can you identify Exhibit 47?

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

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

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

11 BY MR. SUGARMAN:

12 Q. How did you receive it?

13 A. I beg your pardon?

14 Q. How did you come into possession of it?

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

16 Q. How did you find out that this was in the  
17 112 Year CD-ROM?

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

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

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

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

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

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

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

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

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

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

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

21 BY MR. SUGARMAN:

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

24 MR. DAVIS: Same objection.

25 THE WITNESS: I just don't know at this

1 time.

2 BY MR. SUGARMAN:

3 Q. Would you mark as Jerry Greenberg Exhibit  
4 48, a group of documents, the first one of which is  
5 stamped JG/D 6025 and as Exhibit 49, another group of  
6 pages, the first page of which is JG/D 6026.

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

9 THE WITNESS: I am all set.

10 BY MR. SUGARMAN:

11 Q. Can you identify Exhibits 48 and 49?

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

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

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

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

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

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

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

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

11 A. I never knew that was their official policy  
12 with a letter going to me directly. I got the  
13 information that it was in the works by comments that  
14 came through the pipeline and when the Stanton White  
15 paper document went out. I never got it, but Fred <sup>4/c</sup>  
16 Ward got it and Douglas Falkner and others. I became  
17 aware at that point what their policy and posture  
18 would be on this project.

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

21 A. Yes.

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

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

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

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

14 A. No, sir. Never.

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

19 A. It would be a fantasy.

20 MR. DAVIS: Yes or no?

21 THE WITNESS: No.

22 MR. SUGARMAN: I have no further  
23 questions.

24 MR. DAVIS: You're done.

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

1 (The reading, signing and notice of filing  
2 were not waived.)  
3  
4

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

10 \_\_\_\_\_  
11 DEPONENT

10 STATE OF FLORIDA )  
11 ) SS:  
11 COUNTY OF MIAMI-DADE )

12 Sworn and subscribed to before me this \_\_\_\_\_ day  
13 of \_\_\_\_\_, 2002.

14 PERSONALLY KNOWN \_\_\_\_\_ OR I.D. \_\_\_\_\_  
15

16 \_\_\_\_\_  
17 Notary Public in and for the  
18 State of Florida at Large.

19 My Commission Expires:  
20  
21  
22  
23  
24  
25

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

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

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

7 *Debbie L. Oates*

8  
9 Debbie L. Oates, RPR  
Notary Public - State of Florida  
My Commission # DD 077020  
Expires: July 25, 2004

10  
11 CERTIFICATE

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

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

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

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

22 *Debbie L. Oates*

23  
24 Debbie L. Oates, RPR



ERRATA SHEET

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

DO NOT WRITE ON TRANSCRIPT -- ENTER CHANGES HERE:

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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

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1 VERITEXT FLORIDA, LLC  
2 BENOWITZ - BERMAN - COOK - IVY - MATZ TRAKTMAN  
3 19 West Flagler Street  
4 Suite 1020  
5 Miami, Florida 33130  
6 (305) 371-1884  
7 (305) 377-1100 (Fax)

8 August 20, 2002

9 Jerry Greenberg  
10 c/o Norman Davis, Esq.  
11 200 South Biscayne Boulevard  
12 Miami, Florida 33131

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

17 Dear Mr. Greenberg,

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

21 Please make an appointment to come to our office at  
22 Suite 1020, 19 West Flagler Street, Miami, Florida, to  
23 read and sign the transcript. Our office hours are  
24 from 8:30 a.m. to 4:30 p.m. Monday through Friday.  
25 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

1 VERITEXT FLORIDA, LLC  
2 BENOWITZ - BERMAN - COOK - IVY - MATZ TRAKTMAN  
3 19 West Flagler Street  
4 Suite 1020  
5 Miami, Florida 33130  
6 (305) 371-1884  
7 (305) 377-1100 (Fax)

8 September 20, 2002

9 Weil, Gotshal  
10 Robert Sugarman, Esq.  
11 767 Fifth Avenue  
12 New York, New York 10153

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

17 Dear Mr. Sugarman,

18 The original transcript of the deposition listed above  
19 is enclosed for your file. The witness did not waive  
20 reading and signing and has been sent a letter  
21 notifying them to come in to read and sign their  
22 deposition transcript.

23 The witness will be provided a copy of their deposition  
24 for reading in our office should they come in to review  
25 the transcript, and we will forward to you any  
26 corrections made by the witness at that time, along  
27 with an original signature page to be attached to the  
28 original transcript.

29 Sincerely,

30 \_\_\_\_\_  
31 Debbie L. Oates