UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
CASE NO. 97-3924-CIV-LENARD-TURNOFF

JERRY GREENBERG, individually,
and IDAZ GREENBERG, individually,

Plaintiffs,

vs.

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

Defendants.
_____/

PLAINTIFFS' MOTION FOR CONTINUANCE OF SETTLEMENT CONFERENCE

Plaintiffs, JERRY GREENBERG and IDAZ GREENBERG (collectively "Greenberg"), move for a continuance of the scheduled Settlement Conference, and say:

On February 19, 2002, the Court entered two orders that effectively closed out all potential liability issues. Pursuant to the mandate of the Eleventh Circuit, the next issue for resolution is damages. On February 25, 2002, Magistrate Judge Turnoff entered a notice setting a Settlement Conference for March 21, 2002 at 10:00 a.m. Because important matters relative to damages need to be resolved, as discussed below, before meaningful settlement discussions can occur, Greenberg requests a continuance of the Settlement Conference.

On November 13, 2001, Greenberg served and filed a demand for jury trial on damages. The Copyright Act provides in pertinent part as follows:

> [T]he copyright owner may elect . . . to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work . . . in a sum of not less than $500 or more than $20,000, as the court considers just.

17 U.S.C. § 504 (c) (1). Greenberg's action involves more than 60 photographs. The number of works, or photographs, that can enter into any damages calculation becomes a multiplier of the available damages as set forth in the statute above. Greenberg will ask the Court to make that determination in a motion now in preparation. That determination will be crucial to a trial on damages, or to any attempt to resolve the action in a settlement.

Additionally, Greenberg has a right to reasonable discovery on the question of willful infringement. The Copyright Act provides that a court may, in its discretion, increase an award of statutory damages "with respect to any one work" to a maximum of $100,000. 17 U.S.C. § 504 (c) (2). Thus, depending on the number of works that can be counted, the impact of willful infringement on potential damages could be profound. For more than two months Greenberg has attempted in discovery to obtain documents from the defendants that could reasonably lead to to the discovery of admissible evidence on that issue. The defendants have strongly resisted, and a motion by Greenberg seeking to compel discovery is in preparation.

Greenberg thus requests that the Settlement Conference be continued until the forthcoming motions can be resolved and until Greenberg can fairly explore the relevant damage issues in discovery. Otherwise, efforts toward resolving the dispute at such a conference are not likely to be productive.

Respectfully submitted,

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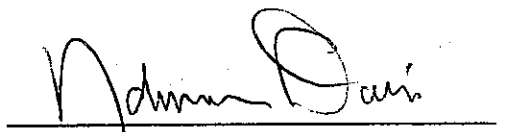
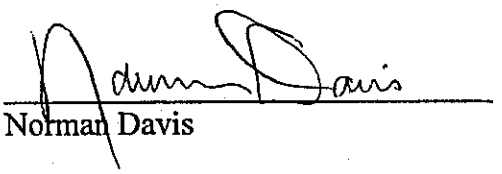


Norman Davis
Fla. Bar No. 475335

Certificate of Service

I hereby certify that a copy of the foregoing plaintiffs' motion was served by mail on Edward Soto, Weil, Gotshal & Manges, LLP, 701 Brickell Avenue Boulevard, Suite 2100, Miami, Florida 33131; and via facsimile and mail on Robert G. Sugarman, Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, New York 10153, this 1st day of March, 2002.



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