

DOCKET NO. 00-10510-C

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JERRY GREENBERG and IDAZ GREENBERG,
Plaintiffs/Appellants

vs.

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

Defendants/Appellees.

**AFFIDAVIT OF JERRY GREENBERG IN SUPPORT
OF APPELLANTS' OPPOSITION TO APPELLEES'
MOTION TO STRIKE ARGUMENTS NOT RAISED BELOW**

Jerry Greenberg affirms as follows, under penalty of perjury:

1. My name is Jerry Greenberg. The statements in this affidavit are based on my personal knowledge.
2. I reside at 6840 S.W. 92nd Street, Miami, Florida. With my wife, Idaz Greenberg, I have a small publishing business known as Seahawk Press.
3. On December 18, 1985, the National Geographic Society ("the Society") transferred, or assigned, to me all of its copyright interest in specified photographs

that appeared in the January 1962, February 1968, and May 1971 issues of the monthly National Geographic Magazine.

4. In 1989, the Society was preparing an article to be published in the monthly magazine concerning the underwater Pennekamp State Park in the Florida Keys. That article later appeared in the July 1990 issue of the Society's monthly magazine.

5. The Society asked my permission to include in the 1990 article a composite underwater photograph, showing a portion of the state park, that I had taken almost three decades earlier. The photograph had appeared originally in the January 1962 issue of the Society's monthly magazine. The Society's December 1985 transfer to me of "all right, title and interest, including copyright" in specified photographs that had previously been published in the magazine encompassed the photograph sought to be used in 1990.

6. In due course I gave permission for that specific use in the 1990 article, and I was paid an appropriate sum by the Society for the use.

7. As a condition of the use in the 1990 article, I specified that text giving notice of my copyright interest in the photograph must appear alongside the photograph in the 1990 article. The Society agreed to that request.

