

FILED by *AW* D.C.
 NOV 16 2005
 CLARENCE MADDOX
 CLERK U.S. DIST. CT.
 S. D. OF FLA.

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF FLORIDA

CASE NO. 97-3924 CIV-LENARD/SIMONTON

CONSENT CASE

**CLOSED
 CIVIL
 CASE**

JERRY GREENBERG,

Plaintiff,

v.

NATIONAL GEOGRAPHIC SOCIETY,
 NATIONAL GEOGRAPHIC ENTERPRISES, INC.
 and MINDSCAPE, INC.

Defendants.

FINAL JUDGMENT

Based upon the verdict of the jury, and this Court's Order on Motions for Judgment as a Matter of Law, Motion for Reduction in Jury Award, or in the Alternative for Remittitur, pursuant to Fed. R. Civ. P. 5B, It is hereby

ORDERED AND ADJUDGED that JUDGMENT is hereby entered in favor of Plaintiff JERRY GREENBERG and against Defendants NATIONAL GEOGRAPHIC SOCIETY, NATIONAL GEOGRAPHIC ENTERPRISES and MINDSCAPE, INC., jointly and severally, in the amount of \$80,000.00, and against Defendants NATIONAL GEOGRAPHIC SOCIETY and NATIONAL GEOGRAPHIC ENTERPRISES, jointly and severally, in the additional amount of \$320,000.00, for a total judgment in the amount of \$400,000.00 as to Defendants NATIONAL GEOGRAPHIC SOCIETY and NATIONAL GEOGRAPHIC ENTERPRISES, INC. and \$80,000.00 as to Defendant MINDSCAPE, INC., for which sums let execution issue. The Court retains jurisdiction to consider a motion for attorneys' fees and costs.

DONE AND ORDERED in Miami, Florida, this 16th day of November, 2005.

Andrea M. Simonton
 ANDREA M. SIMONTON
 UNITED STATES MAGISTRATE JUDGE

ND

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 97-3924 CIV-LENARD/SIMONTON

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CONSENT CASE

JERRY GREENBERG,

Plaintiff,

v.

NATIONAL GEOGRAPHIC SOCIETY, et al.

Defendants.

ORDER GRANTING MOTION FOR ENTRY OF JUDGMENT

This matter is before the Court on Plaintiff's Motion for Entry of Judgment (DE # 314). Defendants have filed a Limited Opposition (DE # 317), and Plaintiff has replied (DE # 318). The parties have filed a joint status report which advises the Court that the issue of injunctive relief is moot (DE # 316).

In the initial motion, Plaintiff requested the Court to retain jurisdiction to consider motions for attorneys' fees, costs and prejudgment interest. Although motions for attorneys' fees and costs are collateral issues, and do not preclude the entry of a final judgment under Fed. R. Civ. Pr. 58(c), it appears that there is not a final appealable judgment if the Court retains jurisdiction to award prejudgment interest or there is an unresolved motion for prejudgment interest must be resolved before a final appealable judgment is entered. See *Osternack v. Ernst & Whitney*, 489 U.S. 169, 175-77 (1989) cited by the Eleventh Circuit Court of Appeals in *Burger King Corp. v. Ashland Equities* (Order of Dismissal of Appeal for lack of jurisdiction attached). Neither the Response nor the Reply addresses the issue of prejudgment interest. Therefore, the undersigned has

determined that the appropriate course of action is to enter a Final Judgment, and permit Plaintiff to file, within the time specified under Rule 59(e), a Motion to Alter or Amend the Judgment to include Prejudgment Interest if he seeks such an award. If necessary, Plaintiff may seek an extension of the time to file his accompanying memorandum of law.

Defendants seek to stay the issue of attorneys' fees during the appellate process; Plaintiff does not oppose the stay during the pendency of an appeal to the Eleventh Circuit Court of Appeals, although he requests that a supersedeas bond be imposed pursuant to the provisions of Fed. R. Civ. P. 62(d). The undersigned assumes this refers to a bond to secure the underlying judgment since the attorneys' fees issues will not be resolved if they are stayed. Under the circumstances of this case, it appears appropriate to defer the issue of attorneys' fees until the issuance of a mandate by the Eleventh Circuit Court of Appeals, assuming that a notice of appeal is timely filed. Therefore, under these circumstances, the deadline for Plaintiff to timely file his motion for attorneys' fees and costs is extended to the later of (a) thirty days from the expiration of the time for filing a notice of appeal if no notice of appeal is filed, or (b) thirty days from the date of entry of the mandate of the Eleventh Circuit, if a notice of appeal is filed.

Therefore, based upon a review of the record as a whole, it is hereby

ORDERED AND ADJUDGED that the Motion for Entry of Judgment is **GRANTED**, as stated in the body of this Order.

DONE AND ORDERED in Miami, Florida, this 16th day of November, 2005.


ANDREA M. SIMONTON
UNITED STATES MAGISTRATE JUDGE

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