

EXHIBIT H

1 SUSAN MERYL KIRBY

2 A P P E A R A N C E S :

3 Representing the Plaintiff:

4 David Fleischer, Esq.

Haynes and Boone, LLP

5 1221 Avenue of the Americas, 26th Floor

New York, New York 10020

6 david.fleischer@haynesboone.com

7
8 Representing the Defendants:

Marc Toberoff, Esq.

Toberoff & Associates, PC

9 2049 Century Park East, Suite 2720

Los Angeles, California 90067

10 mtoberoff@ipwla.com

11
12
13 Also Present:

14 Peter CoFrancesco

15

16

17

18

19

20

21

22

23

24

25

1 SUSAN MERYL KIRBY

2 you?

3 A. She was in California. I don't remember her
4 residence address. She had an apartment there in, I
5 don't remember what town, somewhere near Ventura.

6 Q. Do you know how long she had been in
7 California before moving back?

8 A. Several years, because she had lived with my
9 parents before she got her own place.

10 Q. Would you tell me when your birth date was?

11 A. 12/6/45.

12 Q. You are the daughter or one of the daughters
13 of Jack Kirby, right?

14 A. Yes, the eldest.

15 Q. Do you have any memory of being present while
16 your father worked on projects involving Marvel
17 characters?

18 A. Yes.

19 Q. Do you have any recollection of discussing
20 with your father the work he was doing for Marvel?

21 A. Yes. I was in his office a lot, because he
22 had a vast library of books, because he was into
23 everything. And I used to go down there and read, so
24 I used to read his books, and stuff, and one day I was
25 upstairs, and mom told me to go downstairs because Dad

1 SUSAN MERYL KIRBY

2 was creating some new super heroes. So I went
3 downstairs, and he said, "I want you to see this." He
4 said, I named the female super hero after you, her
5 name is Sue," Sue Storm he was talking about, it was
6 the Fantastic Four.

7 Q. Do you remember what year that was?

8 A. Oh, gosh, I was a teenager, that is all I
9 remember, maybe 15 or 16, so 1961, '62.

10 Q. And when you went downstairs did you discuss
11 with your father what he was doing?

12 A. Yes.

13 Q. What did you say to him? What did he say to
14 you?

15 A. I said it looked great. There were three
16 characters on the board, three of the four. And I
17 asked about who they are, and he told me who each one
18 was. And I said, "It looks great, they look great".

19 Q. Do you recall anything else being said
20 between the two of you at that time?

21 A. Not at that particular conversation, no.

22 Q. How long would you say you had that
23 conversation with your father?

24 A. Oh, about an hour or so.

25 Q. And do you know what conversations, if any,

1 SUSAN MERYL KIRBY

2 siblings about acquiring the rights to any works your
3 father contributed to, published by someone other than
4 Marvel?

5 A. No, I have never had that conversation.

6 Q. Did you have an understanding when you were
7 living in East Williston about the economic terms of
8 your father's relationship with any publisher?

9 A. Well, I knew that Marvel paid him by the
10 page, and that he and mom used to argue about it,
11 because he would be up all night doing pages, and
12 Marvel would say, "Well, we don't want to buy this."
13 Then they would go ahead and make him do the whole
14 thing over again, and he would just get paid for the
15 artwork that he did over again. So he was doing
16 things twice, and getting half the money.

17 Q. When do you recall hearing a conversation to
18 that effect?

19 A. Early '60's, late '50's.

20 Q. Do you know what character or characters were
21 involved in those discussions?

22 A. No.

23 Q. Was there any mention of who it was that was
24 asking your father to redo pages or correct pages?

25 A. From what I recall Stan Lee.

1 SUSAN MERYL KIRBY

2 A. Everyone knows my Dad. I have talked to a
3 lot of people about him. They would come up, and say,
4 "we know your Dad's work, he is really fantastic."
5 And I would say, "Thank you, I appreciate that."

6 Q. Did your father ever discuss with you the
7 contributions of any other people to the characters
8 that he worked on for Marvel?

9 A. Absolutely not.

10 Q. Did your mother ever discuss with you, or in
11 your presence, the contribution of anyone else to
12 characters your father worked on while at Marvel?

13 A. No.

14 Q. Have you ever become aware of any gifts made
15 by Marvel to your mother?

16 A. No, I am not aware of any.

17 Q. Are you aware of any money paid to your
18 mother after your father's death?

19 A. No, I am not aware of it.

20 Q. Money paid by Marvel?

21 A. I don't believe so, no.

22 Q. Did you ever hear your father complain that
23 he didn't own anything that he had worked on published
24 by Marvel?

25 A. Just the stuff that Marvel bought from him

1 SUSAN MERYL KIRBY

2 that they obtained the rights to it. And he was upset
3 about that.

4 Q. What did he say about that?

5 A. Just that, you know, he didn't have the
6 rights to his work, and he was upset in case something
7 happened in the future. I know they were having
8 trouble with the checks Marvel sent them, because they
9 had a lot of writing on the back that they said --
10 where they said they owned -- that they bought and
11 owned Dad's work, and Mom didn't understand it. So
12 she went around the block, one of my friend's father
13 was a lawyer. And I went to see him. So she called
14 his father and said, "Can I talk to you?" And she
15 went and showed him the checks. And he said, "Well,
16 this just says that they own the rights of the
17 characters they bought from Dad." That is all I
18 remember about that.

19 Q. Did you ever see any of the writing on the
20 back of the checks?

21 A. No, I don't remember. Mom never discussed
22 finances with me. She just showed me the checks,
23 because she said they were confusing.

24 Q. Well, did you look at the writing on the back
25 of the check?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUSAN MERYL KIRBY

A. I looked at it. It was confusing to me, too. I said you better talk to Bernie Flegal about that.

Q. Approximately what year was this?

A. I can't remember that. I was a teenager, maybe 1960.

Q. Do you remember becoming aware of any action taken with respect to the writing on the back of the checks by your father?

A. No, I don't.

Q. Are you aware of any complaint that your father made to Marvel with regard to the writing on the back of the checks?

A. I am not aware. I am just aware of the fact that the lawyer told, Mr. Flegal told my mother, that it was an unusual thing to do.

Q. How did you come to know that?

A. Mom told me.

Q. Are you aware of any advice your mother gave your father with regard to the checks?

A. No. I know he had to sign them, because he had to feed his family. That is the only way to do it.

Q. Were you aware of any written agreements, other than what may have been on the checks, between