

EXHIBIT 10

JOHN MORROW

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARVEL WORLDWIDE, INC.,
MARVEL CHARACTERS, INC.,
and MLV RIGHTS, LLC,
Plaintiffs,

v.

Case No. 10-141-CMKF

LISA R. KIRBY, BARBARA J.
KIRBY, NEAL L. KIRBY and
SUSAN N. KIRBY,
Defendants.

-----x
Video Deposition of JOHN MORROW
(Taken by Plaintiffs)
Raleigh, North Carolina
January 10, 2011

Reported by: Marisa Munoz-Vourakis -
RMR, CRR and Notary Public

TSG JOB NO. 35702

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1 Q. And that continues today?

2 A. It does. I think we actually told them we
3 would be dropping it to just about 800 an issue now
4 because of the economy and all sales have kind of
5 declined.
6

7 Q. Do you have any understanding with
8 Mr. Toberoff with regard to any arrangement to publish
9 anything about this case in consideration of your
10 providing a report?

11 A. No. No. I hope after it's all said and
12 done that I can interview various parties involved, if
13 they're allowed to talk about it. But, no, we don't
14 have an arrangement or anything like that.

15 Q. Have you ever had any business dealings
16 with Mr. Toberoff prior to being contacted in
17 connection with this case?

18 A. No, other than my initial request to get an
19 interview from him, which never resulted in anything.

20 Q. How old are you?

21 A. About 48.

22 Q. And would you summarize your educational
23 background, beginning with high school?

24 A. Sure. Twelve years of high school diploma,
25 four-year college degree with a bachelor in fine arts.

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that Jack was going to be working on in the future?

A. I'm not sure. You would need to check with Mark. I just recall Mark said he was there when Stan and Jack were hashing out a story over the phone. So I know recall whether it was I think it was either for Fantastic Four or Thor, which were the two main books he was doing at the time, but I don't recall which one. And I recall the specifics of, you know, was it one that Jack had already halfway drawn and they were making changes to or it was one that Jack was about to begin, I'm not sure. That's why Mark would be able to answer.

Q. Do you have an understanding as to whether or not Stan Lee and Jack Kirby communicated with one another about the work that Jack was engaged in once he began this story and was somewhere between the beginning and the end?

A. Well, actually I can't say that I do, no. I've not heard any instances that I can recall right now of, for instance, Stan calling in the middle while Jack was drawing a story and changing anything. There are instances of the Marvel offices, for instance, if a book wasn't doing well, quite often, Stan would ask Jack Kirby to take it over. In doing so, Marvel

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2 offices would send Jack these little photostats of say
3 like the previous issue, so he could see where he's
4 kind of jumping off from. I have access to a lot of
5 those from the family. They kept those for years and
6 years and have loaned them to me for the magazine.

7 Those are interesting historically, because
8 you can kind of see well, first of all, why would --
9 for instance, why would Jack have a Steve Ditko set of
10 Hulk stats with a Steve Ditco Hulk story? You look and
11 see oh, the issue after that is one where Jack took it
12 over. Okay, that's why it's in Jack's files.

13 There's a lot of instances of that where
14 you would see some totally unrelated artist's work in
15 Jack's files. They were sending material to Jack so he
16 could see where he was taking over from.

17 But as far as -- back to the question as
18 far as knowledge of instances of Stan, for instance,
19 getting involved while Jack was doing something? I
20 don't really recall those. Everything I've seen, it's
21 a pretty straightforward thing. There would be some
22 kind of story conference, whatever that would entail,
23 and then Jack would go, do his work, he was drawing the
24 pages, plot them, write margins in the notes, in a lot
25 of instances, when he was done, bring them back in.

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2 Q. Is it your understanding that between '58
3 and '63, 1958 and 1963, all of the work that Jack Kirby
4 did that was published by Marvel was done utilizing the
5 so-called Marvel method?

6 A. Is it my understanding that all of it was?

7 Q. Yes.

8 A. No, that's not my understanding. My
9 understanding was that some was. There's, as far as
10 which ones were and which ones weren't, you know, my
11 understanding is that Larry Lieber has said that he
12 provided scripts on some stories to Jack, and Jack was
13 working from full script, but that has some pitfalls to
14 it too. Because if you go back to when Simon and Kirby
15 were working for DC in the '40s, they had writers that
16 would come in and work for them and provide scripts,
17 and there's famous stories of writers would bring in
18 their scripts to Joe Simon or Jack Kirby studio, and as
19 they were leaving, they would see pages floating out
20 the window where they would just look at them and go
21 well, we will just do it ourselves. They would
22 completely write their own scripts, even though they
23 commissioned somebody to do one.

24 So Kirby's history bears out that. It's
25 just he was a very creative person, and anything he

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2 worked on he put his stamp on, and most publishers were
3 wise enough to let him do it, because he was so
4 creative and would come up with such interesting work.

5 Q. Is it correct that on some occasions during
6 this period, from '58 to '63, you understand that Jack
7 was given conventional scripts for work?

8 A. I have heard Larry Lieber say that he
9 provided full scripts for some material. I've not seen
10 those scripts. I've not seen any scripts from Stan
11 from then, and I've not -- of all the interviews I've
12 read with Stan, I've not heard Stan say that they
13 weren't working Marvel method. Stan has always been
14 very proud about touting the Marvel method, because he
15 felt that was something they pioneered. I've not seen
16 him go on the record and say no, I wasn't giving Jack
17 scripts on all this stuff.

18 Q. Let's make sure our lexicon is the same.
19 Would you describe what you understand the
20 Marvel method to be?

21 A. Oh, sure. Marvel method, as I understand
22 it, is the, well, we'll use the term writer and artist,
23 even though some can be used different term. The
24 writer or scripter and the artist get together, discuss
25 an idea, then the artist will go back to his studio,

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2 wherever it is he does his work, and then based on that
3 initial story conference, break the story down into
4 panels, page by page, pace it the way the artist feels
5 it should be, add a lot of characterization and
6 possibly some new characters, things like that, and
7 then bring the finished story, finished pages back in
8 to submit for publication.

9 At that point, the writer would take the
10 pencil pages, in some cases they might actually type a
11 script for the letterer to go by. In some cases, they
12 might actually go and pencil things in margins or write
13 actual balloons on there. At that point, the art is
14 passed on to the letterer. They ink the lettering on
15 there and the balloons. It's passed on to the inker,
16 so it goes to the artist's pencil drawings, so that
17 they'll reproduce in blank ink, and, you know, I mean,
18 that's generally the Marvel method. They get together
19 for story conference. The artist goes and does his
20 work and then turns the work back in.

21 Q. Would you distinguish that from what I'll
22 call the conventional method, or the method that was
23 used prior to the introduction of the Marvel method?

24 A. Very different. The method that DC comics
25 had always used up through that period, the writer

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2 that point after Joe Simon and Jack Kirby left the
3 company.

4 Q. And what role, if any, did Mr. Goodman play
5 in the company at that time?

6 A. Oh, well, he was the publisher. I'm
7 assuming he handled all the money and also helped --
8 made publishing decisions about the company like any
9 publisher would.

10 Q. Did he direct Stan Lee in the type of
11 stories to publish?

12 A. Based on Stan's accounts of working with
13 Martin Goodman in the '60s, I would say, I would assume
14 definitely yes, because he was certainly involved, to
15 some extent, in the '60s.

16 So I -- there's no reason to think he
17 wouldn't have been involved with Stan in the '40s when
18 Stan was just starting out.

19 Q. When you say run, you're reflecting Stan's
20 position as an editor or as the editor?

21 A. Editor-in-chief, yes.

22 Q. Did he have that title in 1941?

23 A. I'm not sure he had the official title
24 editor-in-chief. I believe he had the title of editor.

25 Q. Turning to page five, the first sentence of

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2 Q. Do you have any information to the effect
3 that Stan -- that Jack Kirby began drawing Sgt. Fury
4 and the Howling Commandos before getting an assignment
5 from Stan to do so?

6 A. No, not that he began drawing it, no.

7 Q. Had Stan Lee ever done war comics for
8 Marvel before Nick Fury?

9 A. Yes, he had.

10 Q. Was there something unique about Sgt. Fury
11 and this Howling Commandos and the war of comic genre?

12 A. Yes, there was.

13 Q. What was unique about it?

14 A. Sgt. Fury was, for me, the first war comic
15 I actually could read. I never enjoyed war comics.
16 There was something about the feel and the tone of it
17 and the level of action in it that I really enjoyed.
18 At that point, I had never discovered Kirby's earlier
19 war comics. But when I first saw Sgt. Fury, it was
20 like, okay, this is almost like superhero comics, which
21 I like, but done as a war comic. It had a lot of the
22 same trademarks that the superhero comics had.

23 Q. It was unique in the sense that you liked
24 it?

25 A. It was unique in the sense that it was

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going to be here longer than we need to be if you are answering questions I haven't asked you.

With respect to the X-Men, are you aware of any X-Men characters that were the sole creation of Jack Kirby?

A. The sole creation of Jack Kirby? No, not sole creation.

Q. Do you have any information with regard to the -- Kirby's contribution to any of the X-Men characters?

A. No specific information I can add, no.

Q. Are you aware of whether Marvel ever made changes in artwork that Jack Kirby submitted and was paid for after submission?

A. That they made changes after Kirby was paid for the accepted artwork?

Q. Yes.

A. Yes, there were many instances.

Q. And is it true that the inker would typically be selected by the editor at Marvel, and in most cases during the period we're talking about, '58 to '63, Stan Lee?

A. Yes.

Q. And some inkers would do more modification

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2 to pencils than others?

3 A. Yes, stylistically speaking, their styles
4 were a little heavier, so more changes would be made.

5 Q. Apart from instances that you've already
6 described, are you aware of any instances in which Stan
7 asked Kirby to make corrections in work that he
8 submitted that Kirby did make and received payment for?

9 A. Any instances where he made changes and was
10 paid for making the changes?

11 Q. Was submitted. Let's just take an easy
12 example. Submitted a story and Stan asked him to make
13 changes on certain panels in the story right on the
14 spot in the office?

15 A. Yes, there were some instances of that.
16 There's no indication that he was paid additionally for
17 making those changes.

18 Q. Are you aware of any instance in which Jack
19 Kirby refused to make changes in accordance with
20 directions he received from Stan or any other editor at
21 Marvel?

22 A. I cannot think of one. Jack was a very
23 dedicated employee and had a good work ethic and
24 generally did what the editor told him. He may not
25 have always been happy about them, but.

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2 Q. I think you indicated earlier, I just want
3 to make sure I'm clear for the record, is it your
4 understanding that Marvel had the right to make changes
5 in the work submitted by Kirby?

6 A. Well, that's generally the job of an editor
7 in any publishing house. The editor accepts the work
8 and they edit it.

9 Q. So the answer would be --

10 A. Would be yes. Yes.

11 Q. Do you know whether Jack Kirby ever
12 received any vacation pay from Marvel?

13 A. No, none that I'm aware of.

14 Q. Well, are you aware that he didn't receive
15 vacation pay?

16 A. My understanding is that he did not, and
17 that's why he produced so many pages at such a faster
18 rate than most of the other artists, so that he could
19 keep up with his family finances and be able to take a
20 little time off once in a while.

21 Q. Am I correct that you cannot testify from
22 firsthand knowledge that throughout Mr. Kirby's career
23 with Marvel, he never received any form of vacation
24 pay?

25 A. From firsthand knowledge, no, I cannot.

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ring that gave him spider powers; whereas The Fly was an orphan boy that had a magic ring that gave him fly powers. That seemed too similar. But that's, again, just my assumption.

Q. Is there any other similarities, in your view, between The Fly and Spider-Man?

A. None that I can think of. When you say Spider-Man as he is today or Spider-Man as Jack Kirby would have presented it?

Q. Spider-Man as he was depicted in Amazing Fantasy number 15?

A. He was depicted by Steve Ditko in Amazing Fantasy 15. Oh, well, no, there's really not much similarity between the published version of Spider-Man, Amazing Fantasy 15 and The Fly.

Q. I've placed before you Exhibit 16, which is a copy of a document I pulled off the web site indicated on the bottom of the page a week or so ago.

(The document referred to was marked Plaintiff's Exhibit Number 16 for identification.)

Q. And on the third page of this document, there are some penciled drawings.

Are these the Ditko drawings that you

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2 referred to a minute ago, comparing Kirby's Spider-Man
3 with Ditko's Spider-Man?

4 A. Yes.

5 Q. And do you agree that Kirby's Spider-Man
6 looks like the Simon Kirby Captain America character?

7 A. There are similarities certainly, but there
8 are similarities among most superhero costumes. It's
9 kind of that's just the way superheroes are drawn. I
10 think the finished Spider-Man is obviously very
11 different from either of the other two.

12 Q. And in this document, there is a depiction
13 of The Fly, particularly on the second page on a couple
14 of covers, do you see those?

15 A. Yes.

16 Q. And would you agree that the look of The
17 Fly is substantially different than the look of
18 Spider-Man?

19 A. Yes, I would.

20 Q. I'd like to direct your attention again to
21 your report in Exhibit 9, the final version, and the
22 first sentence of your conclusion says, and I'm going
23 to quote it: "To recap, I believe that Kirby's work
24 for Marvel from 1958 to 1963 was not 'work for hire'".

25 I had understood you earlier to have

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2 called in to work on the initial issues before handing
3 it off to others to continue.

4 Did you have in mind the other new series
5 that you were referring to there?

6 A. Ironman. For instance, Daredevil, Kirby
7 was brought in in some capacity for his covers by him.
8 There are some character concept drawings by Kirby.
9 The character called the Plunderer, and I forget the
10 other one that are in early Daredevil stories that are
11 all -- it's Kirby giving a sketch of what it should
12 look like and writing notes off to the side of the
13 character's, you know, personality and his powers and
14 things like that, that were submitted to the artist who
15 was drawing that issue to go by.

16 Q. Do you know who wrote the first issue of
17 Ironman?

18 A. I believe Larry Lieber scripted that,
19 didn't he?

20 Q. Yes.

21 A. I believe so.

22 Q. I'm telling you. I'm asking you.
23 Is it your understanding that Larry Lieber
24 did it?

25 A. I would say yes.

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1 Q. I don't want to testify.

2 And who drew that issue?

3 A. That's Don Heck, I believe.

4 Q. And is it your recollection that Jack Kirby
5 was asked to do the cover?

6 A. Yes.

7 Q. Now, what was the -- this Exhibit 24 an
8 introduction to?

9 A. Well, based on what I'm reading here, I'm
10 assuming this was the one I did for the S.H.I.E.L.D.
11 series, but let's see, since I'm talking about Shield
12 here, it must have been for the Agent of Shield
13 collection.

14 Q. Now, in the fifth paragraph, you say in the
15 first sentence: While Stan scripted most of the issues
16 presented here, Kirby was undoubtedly the guiding
17 creative force.

18 What did you mean by Stan scripted most of
19 the issues?

20 A. Scripted meaning dialogue, put the words in
21 the balloons.

22 Q. You don't mean creating the scripts?

23 A. No, not working from the script, no.
24 Scripting and dialoguing are kind of used
25

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2 A. Yes. Well, with help from Shane Foley and
3 Sean Kleefeld.

4 Q. And it begins with the sentence: It wasn't
5 all that unusual for Jack Kirby to occasionally end up
6 with some unused pencil pages from his stories.

7 Were those pages -- were you referring to
8 pages that would not have been submitted by Jack to
9 Marvel?

10 A. Generally, yes.

11 Q. Do you recall Stan Lee ever altering any
12 concept for a story illustrated by Jack Kirby?

13 A. Altering it in what way?

14 Q. Changing character motivations, plot?

15 A. Yes.

16 Q. That was part of the normal editorial
17 process?

18 A. Yes.

19 MR. TOBEROFF: Calls for speculation.

20 BY MR. FLEISCHER:

21 Q. I've placed before you a document entitled
22 Apokolips, spelled A-P-O-K-O-L-I-P-S, Now, A Major
23 Production. Can you tell me what this is?

24 A. Yes, this is an article I wrote on
25 Mr. Kirby's original version of a 1984 story that he