

EXHIBIT D

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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.

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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

1 JOHN MORROW

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2 APPEARANCE OF COUNSEL:

3 For the Plaintiffs:

4 DAVID FLEISCHER, ESQ.

5 Haynes and Boone, LLP

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11 Also Present: ELI BARD,

VP - Deputy General Counsel, Marvel

12
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14 For the Defendants:

15 MARC TOBEROFF, ESQ.

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18 Los Angeles, CA 90067

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21
22 Also Present: DeANDRAE M. SHIVERS, Videographer

JOHN MORROW

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3 Video Deposition of JOHN MORROW, taken by
4 the Plaintiffs, at Smith Anderson, 2500 Wachovia
5 Capital Center, 150 Fayetteville Street, Raleigh, North
6 Carolina, on the 10th day of January, 2011 at 8:43
7 a.m., before Marisa Munoz-Vourakis, Registered Merit
8 Reporter, Certified Realtime Reporter
9 and Notary Public.
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2 because I thought it kind of wasn't pertinent, and then
3 you guys would think I'm some kind of expert on
4 work-for-hire, which I'm not. So that's why I took
5 that out.

6 Q. Did something prompt you to take it out?

7 A. No, just rereading back over it.

8 Q. So in a subsequent draft, this sentence was
9 modified or deleted?

10 A. I believe so. I don't have the -- I
11 thought this was the final version, but I guess it's
12 not.

13 Q. The last phrase of that sentence that I
14 just read, where it says Marvel finally paid Jack
15 Kirby's estate \$325, what did you mean by finally
16 there?

17 A. Because he had not been paid for it when it
18 was originally drawn.

19 Q. And you know that how?

20 A. Because rejected work, all the historical
21 data shows rejected and redrawn work or rejected work
22 wasn't paid for, and that redrawn work wasn't like, you
23 know, paid again for.

24 Q. And what historical data are you referring
25 to to support that statement?

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2 A. A lot of, I guess, you might call it
3 anecdotal evidence. But there's -- I think I get into
4 that elsewhere in the report. But there's a lot of
5 rejected pages over the years that Kirby had in his
6 collection. If they were -- you know, if they were
7 paid for, Marvel would have kept the physical pages
8 there at the office to use for, you know, inking
9 sample, inking tryouts and things like that.

10 In addition to that, there was a lot of
11 instances where Kirby had rejected pages that he might
12 have repurposed for a different project, for a
13 different company even, and, of course, if Marvel had
14 paid for that, that doesn't seem like that would have
15 happened.

16 I know there's -- we published some Hulk,
17 some very early Hulk pages that actually, I think Larry
18 Lieber provided through an art dealer that were
19 rejected from one of the very early Hulk stories, which
20 was a great find. We couldn't believe when that art
21 dealer turned up those pages, he said Larry had them in
22 his closet all these years and that Marvel had rejected
23 them and Jack threw them in the trash and he rescued
24 them from the trash, I think, something like that. And
25 that would say to me that if they were rejected and

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2 Marvel paid for them, Jack wouldn't have had the
3 opportunity to throw them in the garbage. Marvel would
4 have done something with them.

5 Q. Am I correct that you don't have any
6 firsthand knowledge about whether or not Jack was paid
7 for the pages you're referring to in this sentence?

8 A. Well, by firsthand knowledge, was I there,
9 for instance? No, of course not. I was much too young
10 to be there. You know, I'm not privy to Marvel's
11 books, so, no, I can't say definitively that it was on
12 the books that he was paid.

13 I know when we did -- Marvel wanted to do a
14 book called Fantastic Four Lost, which was -- I
15 assembled an unused Fantastic Four story from various
16 collector's collections. They had scattered pieces of
17 this story that Marvel -- Jack had drawn in, I guess,
18 1969 but Marvel never published.

19 Marvel read my article in the Kirby
20 Collector and said oh, we should get that together and
21 finish it and publish it.

22 So when they contacted me about doing all
23 of that, I told them that, you know, unless there's
24 some reason to believe that they paid for that
25 originally that, you know, no, they're not going to get

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2 the article for free. They are going to have to pay
3 the Kirbys for that and finally pay for the page use,
4 which they did, and that's what this was. They finally
5 paid the \$325 per page to use that unpublished story.

6 Q. Are you aware of testimony given by Stan
7 Lee in this case to the effect that whether pages were
8 rejected or not, if he had asked Jack to draw a story,
9 he would pay for it? Do you have any reason to
10 contradict a statement to that effect by Stan Lee?

11 MR. TOBEROFF: Asked and answered.

12 A. Yeah, I do, I mean, there's a lot of
13 historical references to artists saying when their work
14 got rejected, they didn't pay for it. I think I
15 included one in here from John Romita talking about
16 when Stan canceled a story on him, he didn't get paid
17 for those.

18 But there's a lot of other instances
19 throughout all the stuff I've read and published over
20 the years, where people say things got rejected, we
21 didn't get paid for it, or, you know, Stan was always
22 asking me to make changes on things, and I didn't get
23 paid for it.

24 So, yeah, I've got a major reason to
25 dispute that.

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2 the public at large and to the then current Marvel
3 Comics editorial department."

4 What is the factual basis -- well, first of
5 all, let me ask you, is it intended by you to be a
6 statement of fact that the then current Marvel
7 editorial board was unaware of the unused story?

8 A. Yes.

9 Q. And that's a statement of fact?

10 A. Yes.

11 Q. And how -- what is the basis for that
12 statement of fact?

13 A. The main basis for that is Tom Brevoort,
14 who is an editor, or still is an editor up at Marvel,
15 when he contacted me about reassembling that story, the
16 sense I got from our discussion was that prior to my
17 doing an article in 1996, they didn't even know about
18 that story.

19 As far as the public at large, same thing,
20 all of these letters of comment that we got to our
21 publication, after we published that article or
22 actually after I published that article, we said wow,
23 we had no idea there was an unused Fantastic Four story
24 out there. The fact that Marvel billed this
25 publication as this lost Fantastic Four story further

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2 leads me to conclude that no one knew about this thing.

3 So, yes, I intend that as a statement of
4 fact.

5 Q. Now, apart from Tom Brevoort, do you know
6 who the other members of Marvel Comics were part of the
7 editorial department at the time?

8 A. I'm sure I was familiar with a few of them,
9 but Tom was one of the key people there and certainly
10 if they knew what was going on, Tom would have known.

11 Q. That's a presumption on your part?

12 A. You could say that, sure.

13 Q. You don't know whether or not --

14 A. I did not speak to every member of Marvel's
15 editorial department and get a sense from them whether
16 they knew about this story. But Tom is the editor up
17 there who has the most thorough knowledge of, you know,
18 Marvel's history and comics history and what they
19 published in the past, and I don't think it's any
20 stretch to think that if Tom wasn't aware of this, that
21 anyone else up there, who is much younger and less
22 knowledgeable about it, would have.

23 MR. TOBEROFF: How do you spell his

24 name?

25 THE WITNESS: Brevoort,

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2 Vassallo has done a lot. What are some of the other
3 authors? I'm not coming up with the names off the top
4 of my head, but Roy deals with a lot of different
5 contributors.

6 Q. So when you include this statement in your
7 report, you're basically reflecting information you
8 derived from research done by Roy Thomas and the other
9 individuals that you mentioned?

10 A. Yes, and stuff we published, stuff that has
11 been published in various other history books as well.
12 It's my overall sense of what I've absorbed over the
13 years from my research.

14 Q. How would you determine whether Martin
15 Goodman had a -- or confirmed the reliability of that
16 statement that -- I assume what you mean by primarily
17 is at least 51 percent of his business was publishing
18 mens' magazines?

19 A. Um-hum.

20 Q. Do you know what other businesses he had?

21 A. Other than comics? He published paperback
22 books as well. Let's see, what else did he do? I'm
23 sorry, it's just not coming to me at this point, but.

24 Q. Okay. And a little ways down in that
25 paragraph you say the comic book industry grew out of

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1 the great depression. What do you mean by that?

2 A. Well, people were looking for cheap,
3 inexpensive entertainment. They had very little money
4 to spend and along came comics at a dime apiece, in
5 some cases a nickel apiece. You would get a very
6 healthy dose of entertainment from those. They were
7 done in very exciting and sometimes lurid ways. They
8 appealed to the mass public pretty well.

9 So they grew out of the hard times. People
10 could afford them and also the creators working on them
11 could turn out a lot of work and for very little money,
12 so the publishers could afford to do them.

13 Q. And you go on in that same sentence to say
14 and was hardly an industry at all, referring to the
15 comic book industry. What do you mean by that?

16 A. That it was done on a shoestring. It
17 started out initially it wasn't even original stories.
18 The first comic books were collections of newspaper
19 comic strips that they would cut up and paste up on
20 pages and print in booklets. That was just sort of an
21 afterthought. Hey, I wonder if they would sell,
22 because newspaper strips were very popular at that
23 time. It was a very hodgepodge group of publishers.
24 It wasn't like today. You would have Time,
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2 Incorporated that owns Warner Brothers that publishes
3 an arm of comic books. Companies were springing up
4 literally overnight. You would see them stick around
5 sometimes for just a few months and then fade away. It
6 was just not an organized industry in any way,
7 particularly early on.

8 Q. Now, this section of the report, was this
9 one of the sections of the report that you drafted
10 primarily, or was this a section of the report that was
11 drafted primarily by someone in Mr. Toberoff's office?

12 A. This was drafted primarily by them.

13 Q. And in the last sentence of that paragraph,
14 you say: Comic books were considered the lowliest form
15 of publishing in both cultural and business terms.

16 Considered by whom?

17 A. Oh, by pretty much anybody; the publishers
18 themselves, because they used the absolutely cheapest
19 stock they could get to print these books on and the
20 general public. Even to today, comics still have sort
21 of a negative connotation for more affluent people, for
22 more educated people. They think comics are for the
23 lowly educated to read.

24 Q. When you say in both cultural and business
25 terms, when you use the term business there, are you

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2 referring to profitability?

3 A. Yes. In general, you are talking a low
4 ticket item, and one that was returnable as well. So,
5 you know, bang it out, don't worry about doing too much
6 terribly original creative work and get onto the next
7 month's release so you could make some more money.

8 Q. Were you intending to say it was the
9 lowliest form of publishing in the sense that it wasn't
10 as profitable as other publishing?

11 A. In many instances.

12 Q. In all instances?

13 A. No, of course not. When you have a big
14 hit, then you'd make a lot of money. But the big hits
15 were few and far between really until Superman came
16 along.

17 Q. Now, the next sentence in the second
18 paragraph of this section says, Goodman's relative
19 Stanley Lieber, a/k/a Stan Lee, started in 1939 as an
20 office assistant at Timely Comics, is that a statement
21 of fact?

22 A. Oh, absolutely, yes.

23 Q. What is the basis for that specific fact?

24 A. Any number of historical documents. Stan's
25 own words. He started working for Martin Goodman as an

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2 Q. So all this occurred in 1949?

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3 A. Yes.

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4 Q. And the next paragraph of your report jumps
5 to 1954. What happened between '49 and '54 with regard
6 to Timely or Mr. Goodman's publications?

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7 A. Between '49 and '54, they started using up
8 the surplus art that was in that closet. A lot of
9 comic scholars have gone through and tried to compare
10 the little job numbers that are printed in the art on
11 the issues that it was published, to see which ones
12 were done as "new" stories for this publication during
13 that time period, and which ones were surplus stories
14 that were just finally getting published.

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15 So after some period of time, and we're not
16 sure of the exact amount, the surplus art was used up
17 and they resumed getting work from a lot of the same
18 employees but on a freelance basis.

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19 Q. Now, in this paragraph that begins in 1954,
20 it looks like the third sentence says, most comic book
21 companies shuttered, and those that remained, like
22 Timely, fired nearly all of their employees and was
23 barely afloat.

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24 What employees are you talking there?

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25 A. They were firing other employees, a lot of

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2 would call them when it was time for an assignment and
3 try to round them back up. I think Dick Ayers, for
4 instance, had taken a job working at the post office
5 and got a call from Stan Lee saying hey, we're taking
6 new assignments now.

7 Q. Were Ayers and the other freelancers you're
8 referring to here exclusive to Marvel at that time?

9 A. Well, no, at this point, they weren't with
10 Marvel at all. I mean, they were out of work.

11 Q. But when they got an assignment, did that
12 imply that they couldn't take assignments from other
13 publishers?

14 A. No, I don't think so. I'm certain not.
15 They were probably working where they could.

16 Q. And then in the next sentence you say,
17 however, it had no financial obligation to purchase
18 such freelance material and no ongoing financial
19 commitment to such freelancers.

20 With respect to your statement that it had
21 no financial obligation to purchase such freelance
22 material, is that a statement of fact or opinion?

23 A. Well, I mean, my entire report is opinion
24 based on fact. So, I mean, we're kind of getting back
25 to what I was saying earlier before the break. I mean,

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2 fact and opinion are intertwined here. I've read facts
3 over the years, and I formed my opinions based on
4 those. So that's my opinion based on fact.

5 Q. When you talk in terms of financial
6 obligation, you are talking a legal financial
7 obligation, correct?

8 A. Right. They weren't obligated to buy that
9 work from freelancers when they hired them back to do
10 news stories in the same way in the paragraph above in
11 the report John Romita says he was in the middle of the
12 story when Stan pulled the plug on it and he didn't get
13 paid for it.

14 Q. My question is, your conclusion that there
15 was no financial obligation to purchase is a legal
16 conclusion, isn't it?

17 A. I guess you could consider that a legal
18 conclusion, that's my opinion.

19 Q. But you are not qualified to give legal
20 opinions, are you?

21 A. No, I'm not a lawyer. I'm not qualified to
22 give legal advice. But I think just in layman's terms,
23 Marvel at that point, they can say hey Dick Ayers, come
24 back in and do a story, but they were not at that point
25 committed to pay Dick Ayers to do that story until he

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2 A. Based on stories from various creators who
3 were involved there.

4 Q. Are you aware of any instance in which Jack
5 Kirby complained to anyone at Marvel about not being
6 paid for pages he had prepared and submitted?

7 A. Well, what immediately springs to mind is
8 those three Hulk pages from whatever, 1962, I guess,
9 that ended up in the trash can at Marvel.

10 Apparently, as I understand the story, when
11 Kirby left the offices, he was very angry and like
12 either tore them up or just threw them in the trash and
13 stormed out.

14 So, I guess, you could consider that
15 complaining that he wasn't going to get paid for those
16 pages.

17 Q. Apart from that instance, are you aware of
18 any complaint by Mr. Kirby that he wasn't paid for work
19 he had submitted?

20 A. Let me think for a moment. Yes, I do know
21 another one.

22 In issue 13 of the Jack Kirby Collector, we
23 published an article about a -- it was actually one of
24 the final stories that Kirby created at Marvel before
25 he left to go to work for DC. It was called The

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2 Monster, and I think it was an eight or ten-page
3 mystery story. Mr. Kirby drew the entire story in
4 pencil, submitted it to Marvel. They rejected it. He
5 had to go back and completely redraw it. He chopped up
6 the original pages and rearranged them, in some
7 instances had to draw new pages, had to draw a lot of
8 new art and was, by all accounts I've written very,
9 very disappointed, because he felt that the original
10 story was really superior to what he ended up having to
11 turn in and get accepted. And --

12 Q. Sorry, I didn't mean to interrupt you.

13 A. Go ahead.

14 Q. What accounts are you referring to with
15 regard to this incident?

16 A. Accounts from Marie Severin, who sent us
17 photocopies of the original versions of the story as
18 Kirby submitted it before he had to make all the
19 changes. I believe I would have to reread the article
20 to see who else we had quoted in that article, but I
21 know Marie told us that yes, Jack was very upset about
22 that.

23 Q. Upset about?

24 A. The rejection and having to redo that
25 story.

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2 Q. Do you know whether or not he was paid for
3 both the original version and the redone version?

4 A. My opinion is that no, he was not, because
5 he had to rework the physical pages. They didn't keep
6 the pages and say go back and redraw it or redo this.
7 He actually had to butcher his original art to do it.

8 Q. What about that implies that he wasn't paid
9 for both?

10 A. If they were paying for pages, they would
11 have paid for the original pages and had him just go
12 back and redraw the story generally.

13 Q. So do you know whether or not he was paid
14 for the original pages?

15 A. I do not know conclusively, but it stands
16 consistent with other instances of artists, including
17 Mr. Kirby not getting paid, and it stands to reason
18 that he did not get paid twice for that and only got
19 paid for the published version that was submitted.

20 Q. You say it stands to reason, it's your
21 conclusion --

22 A. It's my opinion, yes.

23 Q. Are you aware of any other instances in
24 which you believe Mr. Kirby was not paid for work he
25 submitted to Marvel?