

EXHIBIT G

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3

4 MARVEL WORLDWIDE, INC.,)
MARVEL CHARACTERS, INC. and)
5 MVL RIGHTS, LLC,)
)
6 PLAINTIFFS,)

7 vs.) No. 10-141-CMKF

8 LISA R. KIRBY, BARBARA J. KIRBY,)
NEAL L. KIRBY and SUSAN N. KIRBY,)
9)
DEFENDANTS.)

10 _____)
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14 VIDEOTAPED DEPOSITION OF NEAL KIRBY
15 Los Angeles, California
16 Wednesday, June 30, 2010
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23 Reported by:
24 SUSAN A. SULLIVAN, CSR #3522, RPR, CRR
25 JOB NO. 31595

1 June 30, 2010

2 10:17 a.m.

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4 VIDEOTAPED DEPOSITION OF NEAL KIRBY,
5 taken by Plaintiffs, at the offices
6 of Paul Hastings, 515 South Flower
7 Street, Los Angeles, California, before
8 Susan A. Sullivan, CSR, RPR, CRR, State
9 of California.

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

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-and-

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BY: MARC TOBEROFF, ESQ.

Also Present:

ELI BARD, Vice President, Deputy General
Counsel, Marvel Entertainment, Inc.

Videographer:

BRENT JORDAN

1 New York, gave it to them; they looked at it, they
2 bought it or didn't and on he went.

3 Q Did you have any understanding at the time
4 that part of the function of the meetings was to
5 discuss future assignments or work?

6 MR. TOBEROFF: Assumes facts.

7 A No, I didn't.

8 Q Am I correct then that you have no
9 knowledge whatsoever of any discussions between your
10 father and Stan Lee concerning your father's work for
11 Marvel?

12 A I was never a party to any discussion.

13 Q Did your father ever tell you anything Mr.
14 Lee had said to him?

15 A He never -- I don't recall. I don't recall
16 anything specific where my father said something like
17 Stan said this or anything, no.

18 Q Do you have any recollection of your father
19 bringing in artwork that Marvel did not pay for?

20 A Yes, I do because, I know from time to time
21 it was kind of a topic of discussion at the dinner
22 table where my father would be upset, he might have
23 brought in some pages and whatever might have been
24 something that they didn't like with the pages and
25 they had to redo them and I would know he and my

1 mother would discuss he would get upset because, from
2 what I understand, he didn't get paid for those
3 pages.

4 Q And how did you come to the understanding
5 that he wasn't paid for those pages?

6 A I believe he mentioned it and I believe my
7 mother mentioned it as well.

8 Q Do you have any specific recollection with
9 regard to any particular pages that you recall your
10 father saying he had not been paid for?

11 A Well, I do recall, I know it was one page
12 in particular but I don't know specifically the page,
13 it was a Thor cover. I could not tell you what issue
14 or anything. But I believe they said it was too
15 detailed for the inker and they sent it back to him.
16 I know about that one particular page because several
17 years later in the early seventies he gave it to a
18 very good friend for a Chanukah present.

19 Q And that was a drawing in pencil for a Thor
20 cover?

21 A Yes, in pencil.

22 Q Do you have a recollection of who the
23 friend was who received the drawing?

24 A Yes, I do.

25 Q Who?

1 year. Just not that often because of the business.

2 Q How does he spell his last name?

3 A F-o-l-k-m-a-n.

4 Q And he lives in Thousand Oaks?

5 A Yes.

6 Q Do you know whether your father ever
7 attempted to sell the Thor drawing that we're talking
8 about, the one that was too detailed for the inkers?

9 A Prior to giving it to Mr. Folkman?

10 Q Yes.

11 A Not to my recollection.

12 Q Do you recall any other occasion in which
13 your father was not paid for work that he brought in
14 for Marvel?

15 A Other than like I mentioned previously,
16 having, him having a discussion with my mother,
17 something to that topic, on a couple of occasions and
18 that one page specifically, no.

19 Q Can you be more specific about what you
20 recall being said between your mother and father on
21 this topic of not being paid?

22 A I don't recall specifically, I just recall,
23 you know, my father and my mother being upset about
24 some, from time, very, very -- it was rare, but just
25 being upset about doing some pages that he had to --

1 he didn't accept and he wasn't getting paid for it.

2 Q Do you remember when those discussions
3 occurred?

4 A We are talking timeframe of years?

5 Q Yes, years.

6 A I am guessing early sixties.

7 MR. TOBEROFF: I just want to make it clear
8 that you are entitled to estimate and sometimes
9 people when they're estimating say they're
10 guessing but I don't want you to guess.

11 A Okay.

12 MR. TOBEROFF: If you have a basis; for
13 example, sitting in this room you can estimate
14 the length of this table but if you never came
15 into the room you would be guessing.

16 Q Is it your best recollection that this
17 discussion between your mother and father that you
18 were privy to occurred in the early 1960s?

19 A In the early 1960s, yes.

20 Q And you would have been somewhere between
21 12 and 15 at the time?

22 A Yes, about that.

23 Q Were any of the other members of the family
24 present at those discussions or that discussion?

25 A At that particular discussion I really, I

1 Marc.

2 Q Do you recall ever being aware that your
3 father was compensated other than on a page rate
4 basis by DC Comics?

5 A Not that I'm aware of. I know that on many
6 occasions I would go with my mother or my father or
7 both to the art supply store to buy his supplies and
8 my mother would write a check for whatever they
9 purchased. Neither she nor my father ever mentioned
10 to my recollection about ever getting reimbursed for
11 that.

12 Q Did they ever say they weren't being
13 reimbursed for that?

14 A I know on occasion I believe my mother said
15 something to the effect of, you know, how expensive
16 the paper was, you know; something to the -- you
17 know, effect that they had to pay for it. In other
18 words, I do not recall my mother saying -- well, I
19 probably should say I don't recall but --

20 Q I don't want you to guess. Your counsel
21 cautioned you about that.

22 A Right.

23 Q But if you have a recollection, whether it
24 is vague or specific, we specifically want it.

25 A I know that, I do recall, you know, my

1 specific area.

2 Q Are you aware of whether Stan Lee has ever
3 asserted ownership rights with respect to any of the
4 work that he did for Marvel over the years?

5 A I am not aware. I really don't know one
6 way or the other.

7 Q Did your father ever discuss with you any
8 agreement or understanding that he had with any comic
9 book publisher as to who would own the rights to the
10 work that he did for that publisher?

11 A Not that I can recall.

12 Q You testified that while living in East
13 Williston you recalled witnessing your father at work
14 in his studio.

15 A Uh-huh.

16 Q Which I think I've seen referred to as the
17 dungeon.

18 A The dungeon, correct.

19 Q And you have described or mentioned the
20 character Thor that you saw him working on.

21 A Uh-huh.

22 Q Do you recall any other specific characters
23 that your father was working on in his studio that
24 you watched him draw?

25 A Probably every one of them. I mean, from

1 the course of, I don't know from, maybe when I was
2 eight years old onward, maybe even younger, up until
3 I left for college it was kind of my daily habit. I
4 would come home from school, go downstairs, you know,
5 say hi to my father, see what he was working on, you
6 know. He would kind of tell me what he was drawing,
7 what he was doing.

8 I would go upstairs, get a snack, get my
9 books and I would go back down in the basement to do
10 my homework because I kind of liked being in
11 proximity. And I was doing homework, go into the
12 studio and watch, go back out and do homework. And
13 eventually we would get my homework done and we would
14 watch T.V. together. At least I watched T.V. while
15 he worked.

16 Q Now did your father ever discuss with you
17 any deadlines he had in connection with the work that
18 he was doing for Marvel?

19 A He would occasionally say that, you know,
20 that he had to get a certain story in by a certain
21 day or something to that effect.

22 Q And I think you said that at certain points
23 in time your father often worked into the -- worked
24 16- to 18-hour days.

25 A Yes.

1 Q If I recall your testimony earlier.

2 A Uh-huh.

3 Q Do you know why he worked those long hours?

4 A He worked those long hours because he was
5 getting paid by the page. The more pages he could
6 do, the more money he earned.

7 Q Do you recall whether those hours had
8 anything to do with his effort to meet specific
9 deadlines?

10 A Specifically, I couldn't say. Those long
11 hours were consistent over the years. It wasn't like
12 a deadline coming up, I'm going to work long hours.
13 Those were his consistent hours.

14 Q Would you say those were his consistent
15 hours between 1958 and 1963?

16 A I would say at least in the period of my
17 good memory, if you wanted to do that, at least in
18 the -- through, say, early sixties through when I
19 went off to college, yes.

20 Q Just to set the context for how old you
21 were at the time, in 1958 you would have been 10,
22 correct?

23 A 10, yes.

24 Q And when would you put the point at which
25 your recollection is its best with regard to the

1 events concerning your father's work?

2 A Probably from that point to when I went,
3 left for college in September of '66, and my
4 recollection during those years was that he always
5 kept very long work hours. He would start working
6 around lunchtime usually and would work until usually
7 3:00 or 4:00 in the morning. Sometimes -- sometimes
8 he had to start earlier and sometimes he would go
9 later. But always put in a lot of hours, usually
10 six, seven days a week. There wasn't any weekend he
11 didn't work.

12 Q Did you have any sense at the time, at any
13 point between the time that you were 10 and you went
14 off to college as to where in the spectrum of comic
15 book artists' compensation your father stood?

16 A At that time, no.

17 Q Did you later come to have an understanding
18 about where he stood in the spectrum from low to high
19 of compensation during those years?

20 A I never had an understanding or I never
21 knew where he stood let's say in relation to a
22 specific artist and I never knew exactly how much he
23 got paid for, you know, per page. I mean, however,
24 obviously I -- they had a house and we all ate every
25 day so I assume he made enough money.

1 they liked the idea and you would go back and let's
2 say pencil, come up with either character concepts or
3 full pages, I believe he had the understanding that
4 they still might not purchase that work, he would
5 still be out the time.

6 Q And you had given an example of I believe
7 of a Thor cover that was given to a friend of yours
8 as a Chanukah present as an example of an instance
9 where he had done the work and they did not pay him
10 for the work.

11 A Correct.

12 Q Can you think of any other examples?

13 A Yes, I can. I don't know if I mentioned
14 earlier, I did recall it, there was one instance, I
15 do remember coming home from school and there being
16 some, I believe there were a couple of Thor pages on
17 the kitchen table. That's normally where family
18 things happened, on the kitchen table. I just
19 remember my father being upset that -- he was getting
20 ready to go back downstairs into the dungeon but that
21 he had gone into the city that day and Marvel didn't
22 like those pages so he was upset that he would have
23 to again redo them at his time and expense. I don't
24 know if he use those words exactly, but that was the
25 gist of that.

1 Q Was it your understanding that he was paid
2 for those drawings on the kitchen table or not paid?

3 A It was my understanding that he wasn't
4 paid. If they didn't like the work they wouldn't pay
5 him.

6 Q Are there any other examples that you
7 recall where he had done work and was not paid for
8 his work?

9 A Yes. I recall another time after we went
10 into, one time I went into the city with him and
11 afterwards we went to -- I believe we went to, we
12 were going to go to the Central Park Zoo and he sat
13 down on a bench and I could tell, obviously a kid can
14 tell when their parent is upset and he just -- he
15 always carried this big black leather portfolio,
16 that's what he used to take work into the city, and,
17 you know, just kind of looking through that, looking
18 at the pages, and it was kind of the same thing. He
19 just said that he was upset. He had some pages. I
20 think they were Fantastic Four. I don't know how
21 many pages or what issue or any of the details but it
22 was kind of the same situation that he had those
23 pages that he had brought in but he needed to redo
24 new pages. So, again, same thing. That he was upset
25 that he would have to take the time to do it and so

1 on and not be paid for it.

2 MR. TOBEROFF: I have no further questions.

3

4 FURTHER EXAMINATION

5 BY MR. FLEISCHER:

6 Q Did something happen between --

7 MR. TOBEROFF: Just a second. I would like
8 a time count on the time.

9 THE VIDEOGRAPHER: Right now we're at six
10 hours and 51 minutes.

11 MR. TOBEROFF: You've got nine minutes not
12 counting my time.

13 Q Did anything happen to refresh your
14 recollection about the zoo incident and the Thor
15 incident that you just described between the time you
16 testified earlier today about those questions and
17 your testimony a minute ago?

18 A I wouldn't say anything in particular
19 happened but I just happened to think of them.

20 Q Did Mr. Toberoff do anything to refresh
21 your recollection with regard to those issues?

22 A No, on the contrary. I told Mr. Toberoff
23 that I had thought of a couple more instances.

24 Q And with respect to the Thor pages, do you
25 know if your father made any changes on those pages