

# EXHIBIT 59

1  
2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE SOUTHERN DISTRICT OF NEW YORK  
4 Civil Action No. 10-141 (CM) (KF)

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

8 Plaintiffs, )

9 vs. )

10 LISA R. KIRBY, BARBARA J. )  
11 KIRBY, NEAL L. KIRBY and )  
12 SUSAN N. KIRBY, )

13 Defendants. )  
14 )  
15 )

16 VOLUME I

17 VIDEOTAPED DEPOSITION OF

18 ROY THOMAS

19 October 26, 2010

20 10:06 a.m.

21 Holiday Inn Express  
22 Orangeburg, South Carolina

23 ANNIE O'HARA, CCR-B-2340, SC Notary  
24  
25

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 10-141-CMKF  
4

5 MARVEL WORLDWIDE, INC.,  
6 MARVEL CHARACTERS, INC., and  
7 MVL RIGHTS, LLC,  
8 Plaintiffs,

9 VS.

10 LISA R. KIRBY, BARBARA J. KIRBY,  
11 NEAL L. KIRBY and SUSAN N. KIRBY,  
12 Defendants.  
13  
14

15 Volume II

16 Videotape Deposition of:

17 Roy Thomas

18 Wednesday, October 27, 2010

19 Orangeburg, South Carolina  
20  
21  
22  
23  
24  
25

1 Thomas

2 know, I hadn't had that on my teacher's checks. So  
3 I -- you know, and so I was curious until I  
4 understood. But I don't remember the particular  
5 discussions. It's just, you know -- they would  
6 explain to me what it meant, and then I just  
7 accepted that.

8 Q. How long after the submission of the  
9 finished writing did you typically -- you said you  
10 submitted the voucher for payment when you submitted  
11 the finished writing; right?

12 A. Yes.

13 Q. How long after you submitted the voucher  
14 typically would it be before you received your  
15 payment?

16 A. Well, it just depended on when the next  
17 pay period was. If it was a bi-weekly schedule, as  
18 I seem to recall, it might just be a few days after,  
19 if I turned it in very near the deadline. But if I  
20 had done maybe the week before and it was a bi-week  
21 schedule, it might be like, you know, 10 or 12 days.  
22 It was generally within a couple of weeks. But if  
23 you barely missed one pay period, you might have to  
24 wait another, you know, couple of weeks until the  
25 freelance pay period. But, you know, it would only

1 Thomas

2 have been about two weeks or so.

3 Q. You testified that there was a script that  
4 you wrote, I think it was on an Ironman script that  
5 Stan didn't like and revised significantly?

6 A. Yes.

7 Q. Is that right?

8 A. Yes. He rewrote about 50 percent of it.

9 Q. Were you paid for the pages that you  
10 submitted for that script?

11 A. That was one of the ones that I was doing  
12 as part of the staff writer thing during those first  
13 few weeks, so I wasn't paid separately. It was  
14 counted as part of my staff writer salary, so I was  
15 paid in that sense, for that and the Dr. Strange.  
16 But I think -- I think those. I know Ironman was  
17 and I think Dr. Strange's were all part of the  
18 staff's salary.

19 Q. Were there any materials that you  
20 submitted in your freelance capacity that were  
21 modified by Stan?

22 A. Yes.

23 Q. Were you still paid for the pages that you  
24 submitted?

25 A. Yes.

1 Thomas

2 said "8," it was a misspeaking or something.

3 Q. Was Kirby given the assignment to draw  
4 that issue of Fantastic Four?

5 MR. TOBEROFF: Leading; assumes facts.

6 THE WITNESS: Yes. He was.

7 BY MS. KLEINICK:

8 Q. How was Kirby given -- who gave Kirby the  
9 assignment to draw Fantastic Four No. 48?

10 A. Stan Lee did.

11 Q. Do you know who named the character Silver  
12 Surfer?

13 A. My memory, which I have told people very  
14 soon after it happened is that the actual name the  
15 Silver Surfer, with that full name was Stan's. And  
16 that the margin notes by Jack had simply referred to  
17 him as the surfer, with no word silver that I ever  
18 remember seeing there.

19 (Plaintiff's Exhibit 15 was marked for  
20 identification.)

21 BY MS. KLEINICK:

22 Q. I would like to mark for identification as  
23 Thomas Exhibit 15 a document bearing production  
24 numbers Thomas 2121 to 2129.

25 Mr. Thomas, is this a document that was

1 Thomas

2 maintained in your files?

3 A. I don't recognize it, so if it came from  
4 my files, it was on there because there's a young  
5 man who sends me a lot of Marvel-related material  
6 for possible use or reference to an Alter Ego. And  
7 I had it in there, but I don't always get a chance  
8 to go over them until I'm about to use them.

9 Q. Mr. Thomas, in the 1960s after you got to  
10 Marvel through the early '70s did Jack Kirby ever  
11 come into the Marvel offices?

12 A. Yes.

13 Q. How often would he come in?

14 A. It would vary. In the early days it seems  
15 as if he would come in once every week or two, quite  
16 often on Friday, but not necessarily. As time went  
17 on, it was less and less often. He was busy, and it  
18 just didn't seem necessary for him and Stan to  
19 confer anymore. And, of course, by 1970 or so he  
20 moved to California.

21 Q. To your knowledge from the time that you  
22 started working at Marvel in the 1960s through the  
23 early '70s, was Kirby doing work only for Marvel, or  
24 was he also doing work for other publishing  
25 companies?