

EXHIBIT 63

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JOHN MORROW

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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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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?

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2 A. Those are the ones that come to mind
3 immediately. There may be others, but those are the
4 ones that immediately come to mind.

5 Q. And there may not be others, correct?

6 A. It's possible there's not others. If I had
7 time to think about it, I could possibly come up with
8 some more.

9 Q. Returning to the time when Jack Kirby and
10 Joe Simon were employed by Marvel in the early '40s
11 working on Captain America, is it your understanding
12 that Simon and Kirby's arrangement with Marvel, as
13 employees, left them free to submit work to other
14 publishers at that time?

15 A. As far as I am aware, there wasn't like an
16 actual statement, you know, you cannot freelance for
17 other companies. There could have been, but I'm not
18 aware of a strict rule, a regulation thereby Martin
19 Goodman telling them that they couldn't.

20 Q. You were aware of the story that
21 Mr. Goodman fired them when he found out they were
22 submitting work to DC, correct?

23 A. Yes, I've heard that story.

24 Q. Do you not credit that story?

25 A. Yes, I credit that story. I believe I

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2 BY MR. FLEISCHER:

3 Q. Mr. Morrow, I've placed before you a copy
4 of what's labeled Defendants' Responses and Objections
5 to Plaintiffs' First Set of Interrogatories.

6 (The document referred to was marked
7 Plaintiff's Exhibit Number 13 for
8 identification.)

9 Q. Have you ever seen this document before?

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

11 Q. Let me direct your attention to page six of
12 the document. With respect to the page from -- are you
13 aware of any page from Avengers number three for which
14 Jack Kirby submitted -- withdrawn.

15 Are you aware of whether a page from
16 Avengers number three was submitted by Mr. Kirby to
17 Marvel and rejected?

18 A. Yes, I'm aware of that page.

19 Q. What are you aware about the rejection of
20 that page?

21 A. I actually don't know anything about it.
22 I've just seen it in a publication.

23 Q. Do you know whether that was a page that
24 was actually submitted to Marvel?

25 A. Not conclusively, no, but I have no reason

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2 to think it wasn't.

3 Q. Well, is it possible that it was a page
4 that was prepared and self-rejected, if you will, by
5 Mr. Kirby and never submitted?

6 A. Certainly possible, but, again, I can't say
7 conclusively either way.

8 Q. Same question with respect to 14 pages to
9 the Black Rider Rides Again. Are you familiar with
10 those pages?

11 A. Are these unused pages, unpublished pages?

12 Q. Yes.

13 A. No, I'm not aware of those.

14 Q. With respect to Captain America, items
15 under Section C here, the cover of Captain America
16 number 105 and the character design for Captain America
17 Comic Book, which is indicated as dated 1965, do you
18 have any information with regard to the submission of
19 those pages by Mr. Kirby?

20 A. I'm not sure. I would really need to see
21 the Captain America cover to know which one you're
22 talking about. And then as far as the one, this other
23 one, the character design for Captain America Comic
24 Book recycled as Captain Glory, if that's the piece I'm
25 thinking of, which we ran on the cover of the Kirby

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2 Collector, I've always known that to be called Captain
3 Glory. So I'm not aware -- I'm not saying it wasn't
4 meant for Captain America. I'm just not aware of that
5 information.

6 Q. Do you know whether Mr. Kirby was paid for
7 that or not paid for that?

8 A. For Captain Glory?

9 Q. Yes, for the page that's referenced here?

10 A. You know, I have no idea. I always just
11 assumed it was a piece he did on his own. I wasn't
12 aware that he submitted that to Marvel, but, you know,
13 you have here that it was a character designed for
14 Captain America Comic Book. I'm not aware of that.

15 Q. Was Captain Glory a character, Marvel
16 character?

17 A. Captain Glory was a personal character
18 Kirby created that was eventually used at Topps Comics
19 in the 1990s.

20 Like I said, he may have had his genesis as
21 being for Captain America, but I have not heard that
22 story.

23 Q. Do you know whether it was ever submitted
24 to Marvel?

25 A. I have no idea.

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2 objected to that, because he felt like he was doing
3 three-fourths of the finished artist's work for them.
4 At that point, all you have to do is go in and add the
5 details, and he felt he should be getting a much higher
6 percentage of page rate for those.

7 So he asked him not to be made to do
8 layouts any longer.

9 Q. Was that request accommodated, as far as
10 you know?

11 A. As far as I know, Stan Lee stopped asking
12 Jack to do layouts for other people.

13 Q. Let's go to the Fantastic Four section
14 here.

15 Do you have any information with regard to
16 the -- any of the items listed under the Fantastic Four
17 heading, which begin on page six and go over to page
18 seven?

19 A. These are all -- let's see. I'm not sure
20 what the Fantastic Four 102 and 103 covers are. Those
21 spring to mind, but the earlier ones number 20, 64 and
22 71, those I do recall. And those all -- I think we
23 were the first to publish -- well, not for 64, but we
24 were the first to publish number 20 in the Jack Kirby
25 Collector. That came from a private collection.

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2 I believe 71 came from a private
3 collection, which lead me to believe that if Marvel had
4 purchased those pages, they would not have ended up in
5 the private collection or not the private collections
6 they were in.

7 So they would have gotten them as a gift
8 from Jack Kirby, because he got them back and they
9 weren't paid for, or Jack Kirby sold them at a
10 convention, because he got them back and they weren't
11 paid for.

12 Q. Do you know whether they were ever
13 submitted to Marvel?

14 A. Oh, yes, I have no doubt those are
15 submitted to Marvel. Those are finished covers, and
16 then there's another version very similar but different
17 in print. So, yes, there's absolutely, I believe, they
18 were submitted to Marvel.

19 Q. Do you know whether they were or not?

20 A. Do I know? Well, I don't have the
21 originals to look and see if like there's a Marvel
22 stamp on the back. That would be the way to know for
23 sure. But yes, I have no reason to think they weren't.
24 They were finished covers, and the finished -- the
25 final printed cover was a revised version of this

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cover.

Q. And do you have any information as to whether or not Mr. Kirby was paid for these covers?

A. As I was just saying, because they were in private collections, that leads me to form the opinion that they rejected them, gave them back to him and he sold them to private collectors or gave them to private collectors.

Q. Did any of the work that Jack Kirby did over the years for Marvel disappear from Marvel's warehouse from time to time?

A. Yes.

Q. And is it conceivable that these covers are among pages that were looted from the warehouse?

A. No, because -- no, I don't think that's conceivable. The work that's missing from Marvel warehouse over the years is finished, published work, inked work. These three covers we're talking about are all still in pencil form, so they never got accepted and inked and lettered completely.

Q. Do you have any information with regard to any of the items under section E on page seven?

A. The third item number 17, number 23, if those are the ones I'm recalling, there may have been

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2 Q. G is Ironman layout of page Tales of
3 Suspense number 70?

4 A. That one is not coming to mind.

5 Q. The five pages to Amazing Fantasy number
6 15, that's the famous pages that Jack Kirby supposedly
7 did and that Stan didn't like and reassigned the book
8 to Ditko?

9 A. Right.

10 Q. And do you know whether or not Jack was
11 paid for those pages?

12 A. We assume not, because they were rejected
13 and they have never been in print, as far as I know. I
14 don't know anyone who has ever seen them. I never
15 heard of anyone who has seen them. Obviously, Stan Lee
16 has seen them, and I believe Steve Ditko saw them,
17 because they were handed to Steve Ditko to see what
18 they weren't going to do with the news strip.

19 Q. Do you know if Jack was paid for those
20 pages?

21 A. I don't believe he was, because they were
22 rejected, and the standard at the time was not to pay
23 for rejected pages.

24 Q. Weren't they in Marvel's possession in
25 order for them to get to Ditko?

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2 A. They were. They would have had to have
3 been, of course.

4 Q. And can we infer anything from the fact
5 that Marvel had the pages to give to Ditko about
6 payment or nonpayment?

7 A. You can hypothesize, but that's not
8 anything conclusive, certainly.

9 Q. It's not conclusive, but it's a piece of
10 evidence that suggests that he was in fact paid for it,
11 yes or no?

12 A. Not necessarily, no.

13 Q. All things being equal, is it more likely
14 if Marvel had the pages in its possession, that they
15 were paid for than not?

16 A. Based on historic record, I think it's more
17 likely if they were rejected pages, they were not paid.
18 That's more consistent with history.

19 Q. But in any event, you have no direct
20 personal knowledge as to whether or not Jack was paid
21 for that?

22 A. Do not. Probably, I mean, I don't know who
23 would. Stan Lee wouldn't, because he said he didn't
24 deal with the bookkeeping and the accounting and the
25 payrolls and stuff. So I don't know how you could

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2 conclusively say that.

3 Q. If Stan Lee testified at his deposition in
4 this case that he did pay Jack for those pages, would
5 that change your assessment of the situation?

6 A. No, it wouldn't, because Stan has
7 repeatedly said over the years that he wasn't involved
8 in the accounting, the bookkeeping, going to bat for
9 people to get them raises.

10 So no, I don't know that Stan would know
11 short of what company policy was. If company policy
12 was yes, we always pay for rejected pages, then, yes,
13 Stan knew that was company policy, then I would expect
14 that. But that doesn't sound like that was the case,
15 because so many people were not paid for their rejected
16 pages.

17 Q. Again, that's all based on hearsay on
18 your --

19 A. Well, when John Romita tells me personally
20 he wasn't paid for a job, that's not hearsay, that's
21 first person, isn't it?

22 Q. No, unless you were there, it's hearsay.

23 A. Oh, okay.

24 Q. In other words, it's something John Romita
25 told you. It's not something that anyone was present

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2 at the time the pages were submitted and rejected and
3 not paid for you witnessed. That's the distinction I'm
4 drawing.

5 A. Okay. Then that would be hearsay, yes,
6 sir.

7 Q. The next one is two pages from Strange
8 Tales number 151?

9 MR. TOBEROFF: I should point out
10 there are hearsay exceptions to
11 admissibility. We are getting into legal --

12 MR. FLEISCHER: I'm not talking about
13 admissibility. I'm just talking about what
14 hearsay is.

15 A. Two pages from Strange Tales number 151.
16 Those are not ringing a bell with me. So I'm sorry, I
17 can't really comment on those.

18 Q. Do you have any information about any of
19 the pages listed under J, the Thor?

20 A. Well, a lot of these are -- fall under that
21 same area of Kirby retained possession of these
22 rejected covers and pages in his collection, and in
23 some instances used these for that -- I think I
24 mentioned the Marvel Mania portfolio that that company
25 licensed the rights for Marvel to publish.

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2 So a lot of these were unpublished pages
3 that appeared in there.

4 So he had possession of those, Marvel
5 didn't, which leads me to believe he was not paid for
6 them or Marvel would have kept possession of them.

7 Q. So there is some relevance about who
8 retains the pages?

9 A. I think so, but, again, there's, you know,
10 a certain amount of fluidity to the working
11 relationship there, particularly in the early days of
12 Marvel, when everybody is trying to please everybody
13 else.

14 Q. Would I be correct again in saying that you
15 have no firsthand knowledge as to whether or not Jack
16 Kirby was paid for these pages?

17 A. No, I do not.

18 Q. The next one, the last one I'll ask you
19 about is the X-Men. Do you have any information about
20 this?

21 A. The X-Men one is interesting, because it
22 was actually inked by Chick Stone. So that leads me to
23 believe that that one may have been paid for, because
24 it got to the inking stage. It was actually inked and
25 lettered and had a logo put on it, and apparently at

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1 the last minute, I assume Stan decided to change it.

2 So that would lead me to believe that the
3 unused cover of X-Men 10 was paid for, and certainly
4 they probably would have paid the inker for it as well,
5 Chick Stone.
6

7 Number 17, that's probably one of those I
8 mentioned before that was on the back of a published
9 page. That could have been one of the ones where Stan
10 was actually asking Jack to regularly do layouts for,
11 I'm not sure.

12 Q. So you don't know whether or not it was
13 actually --

14 A. No, I don't.

15 Q. In the early 1960s, was Jack Kirby the only
16 significant, creative force at Marvel?

17 A. He was the most significant, but he was not
18 the only significant.

19 Q. Who were the other significant, creative
20 forces in terms of artists?

21 A. Well, I would say up to about 1964 or '65,
22 Jack Kirby was the significant creative influence. The
23 company was really Kirby and people trying to do Kirby
24 in their own styles.

25 You had artists like Don Heck, who had been