

# EXHIBIT C

JOHN MORROW

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
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

1 JOHN MORROW

2

2 APPEARANCE OF COUNSEL:

3 For the Plaintiffs:

4 DAVID FLEISCHER, ESQ.

5 Haynes and Boone, LLP

6 1221 Avenue of the Americas

7 New York, NY 10020

8  
9  
10  
11 Also Present: ELI BARD,

VP - Deputy General Counsel, Marvel

12  
13  
14 For the Defendants:

15 MARC TOBEROFF, ESQ.

16 Toberoff & Associates

17 2049 Century Park East

18 Los Angeles, CA 90067

19  
20  
21  
22 Also Present: DeANDRAE M. SHIVERS, Videographer

JOHN MORROW

3

1  
2  
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.  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

JOHN MORROW

53

1  
2 Q. And I know we covered this a little bit  
3 generally, but I'd like to cover it more specifically,  
4 what you were asked to cover specifically in your  
5 report?

6 A. Well, the history of Timely and Marvel and  
7 kind of the history work practices at the time. Jack  
8 Kirby's history with the company dating all the way  
9 back to what his first work for them with Joe Simon in,  
10 what was it, 1939, 1940.

11 His -- Jack Kirby's career, how he left  
12 Marvel, went to work for DC in the '40s, his work in  
13 the '50s, how he ended up back at Marvel in the late  
14 '50s and then the working relationship between he and  
15 Stan Lee, as I understood it, in the '60s.

16 But, you know, a lot of the history of the  
17 company and, you know, what I knew about Jack Kirby's  
18 personal work habits, you know, where he worked, how he  
19 worked, I guess that's pretty much --

20 Q. Now, what you know about Jack Kirby and his  
21 work habits was not derived from personal observation  
22 of Jack Kirby working, is that correct?

23 A. Correct. Well, I've seen his studio in  
24 California, but that was after he had been deceased,  
25 and that's not where he was working when he was doing

JOHN MORROW

54

1  
2 the work in general.

3 Q. And so your knowledge of Jack Kirby's  
4 working habits and how he worked during the period from  
5 '58 to '63, which is the period relevant to this case,  
6 is based on what you've read about Mr. Kirby?

7 MR. TOBEROFF: Misstates testimony.

8 A. A lot of it is based on what I've read  
9 throughout the years. A lot of it is, I believe, I'm  
10 sure I talked to Roz Kirby about that, about what it  
11 was like living in New York and working in New York.

12 I know I've read -- Mark Evanier has  
13 written several times about visiting Jack's studio and  
14 what that was like.

15 I believe in the Neal Kirby interview, we  
16 talked about that they called their dad's work space  
17 the dungeon, I believe, because it was in the basement  
18 of their New York home.

19 I do recall he painted a very graphic  
20 picture of what it was like down there. I got a very  
21 good sense of what it looked like. It was this room  
22 with this one little basement window for light, which  
23 is why they called it the dungeon.

24 But also I read a lot over the years about  
25 how Kirby worked when he was working with Joe Simon as

JOHN MORROW

55

1  
2 well. How they had shared their across-the-street  
3 attic studios right after the war. They got, you know,  
4 veteran housing and built houses and worked across the  
5 street from each other, to the point Joe Simon even  
6 told me they lived in different cities, because the  
7 state was the dividing line, or different counties, I  
8 guess, between the two houses. Just picked up a lot  
9 over the years from various things I've read and  
10 talking to different people.

11 Q. Did you ever talk to Joe Simon about Jack  
12 Kirby and his work?

13 A. Yes, we have. I actually interviewed Joe  
14 Simon for the Jack Kirby Collector.

15 Q. And did Mr. Simon describe the nature of  
16 the working relationship between Jack Kirby and Marvel  
17 during the 1958 to '63 period?

18 A. I don't believe so, because I don't believe  
19 Simon and Kirby were particularly close at that point.  
20 Their company had dissolved shortly before that, which  
21 was the big reason Kirby ended up back in Marvel, and  
22 that seems to be kind of a dead area in the  
23 relationship. There's not been much written or said  
24 about it.

25 Q. Did Neal Kirby ever tell you that he had

JOHN MORROW

57

1  
2 that Jack was going to be working on in the future?

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

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

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



JOHN MORROW

58

1  
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 Ditko 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.

JOHN MORROW

59

1  
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

JOHN MORROW

60

1  
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,

JOHN MORROW

63

1  
2           There's a lot of sort of anecdotal evidence  
3 that it was. Kirby had a tendency to break his stories  
4 down in these chapters, and he used this certain kind  
5 of like chapter heading and say chapter one, and there  
6 would be a big circle, and he would instead of just  
7 doing a traditional story, like pretty much everybody  
8 else did, where you'd start on page one and end on page  
9 20 or however long it was, he would, after about five  
10 or six pages, you'd get another big splash page and it  
11 would say chapter two.

12           Those were the only artists that I'm aware  
13 of that did that, particularly during like the 1950,  
14 1958 era, that kind of thing. That's something he was  
15 doing before with like Challengers of the Unknown. He  
16 was still working at DC before he went to Marvel, and  
17 he carried that on over there, which leads me to  
18 believe that he had the same ability to pace things the  
19 way he wanted, that he's always had, because those  
20 chapter breaks are different from what anybody else was  
21 doing.

22           To me, if he were getting full scripts at  
23 that point, the writer would be designating, okay,  
24 we're going to just do a straight story straight  
25 through. You know, it's anecdotal evidence, but it

JOHN MORROW

71

1  
2 A. Oh, I probably spent seven, eight hours,  
3 something like that, probably total.

4 Q. And do you recall approximately when you  
5 began to actually write the report?

6 A. I don't recall the date. I think it was  
7 about -- Mr. Toberoff told me we needed to have  
8 something done in a couple of weeks, and so I didn't do  
9 like, you know, eight hours altogether. There were a  
10 couple of revisions on it, so, but, I mean, I think I  
11 started about two weeks before we submitted it,  
12 something like that.

13 Q. And did you input a draft on your own  
14 computer?

15 A. No, the initial draft actually came from  
16 Mr. Toberoff's office. We spoke over the phone. The  
17 problem is I've not done one of these before, so I had  
18 no idea like the format. I've never even seen one  
19 before. So I asked for their assistance with that. We  
20 kind of just sort of did an informal interview over the  
21 phone. They'd ask me questions about things, and I  
22 would give them my sense, and then they send over --  
23 they typed up kind of an initial draft of it and sent  
24 it over to me with the understanding that, you know,  
25 this is just our run through on it, make any changes

JOHN MORROW

72

1  
2 you want.

3           Once I had the basic, you know, format  
4 there in a Word document, it was very easy to go in and  
5 alter things, and I changed a considerable amount of  
6 what they sent over.

7           Q.       Do you recall over how long a period of  
8 time it was between your receipt of that initial draft,  
9 to the completion of the final report?

10          A.       No, I remember I was very busy at the time,  
11 and I think -- I'm going by memory here, but it seems  
12 like it was about a two-week process. It may have been  
13 a little more, a little less than that. But once I got  
14 the draft, I think it was -- I spent about two days or  
15 three days before I sent it back to them as my like  
16 final version.

17                 At that point, they looked it over, found a  
18 couple of typos, things like that. Somebody from his  
19 office called me up and said I think we got, you know,  
20 couple of typos. You might want to consider fixing.  
21 They told me I would go in, and they were, I'd change  
22 them and send them back, you know, the final, final  
23 draft.

24          Q.       And how long prior to the delivery of that  
25 initial draft that was prepared by Mr. Toberoff's

JOHN MORROW

88

1  
2 e-mail, just to make sure he knew it had been sent to  
3 his assistant.

4 Q. Did Mr. Toberoff respond to this e-mail?

5 A. I don't believe so. Again, it's possible  
6 there was an e-mail saying thanks, I got it or  
7 whatever. But I don't believe I got a response back  
8 from him.

9 Q. Do you recall any discussion about any  
10 substantive changes to the report, other than the  
11 correction of typos?

12 A. I don't recall right now, no.

13 Q. Let me direct your attention to page four  
14 of the draft, that's part of Exhibit 5, which is your  
15 signed version, and specifically the first sentence,  
16 full sentence at the top of page four that begins:  
17 Marvel required me to sign a work-for-hire agreement  
18 for the various work I produced for them, and in the  
19 course of this project, Marvel finally paid Jack  
20 Kirby's estate \$325 for the use of that unused Kirby  
21 story Kirby drew in 1970. Actually, it doesn't just  
22 begin, that's the whole sentence.

23 Did you have any discussion with someone  
24 from Mr. Toberoff's office about that sentence?

25 A. You know, I took that out of the final one,

JOHN MORROW

89

1  
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?