

EXHIBIT F

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4

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

) No. 10-141-CMKF

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
17 CONFIDENTIAL VIDEOTAPED DEPOSITION OF
18 JOHN V. ROMITA
19 Garden City, New York
20 Thursday, October 21, 2010
21

22
23 Reported by:
24 KRISTIN KOCH, RPR, RMR, CRR, CLR
25 JOB NO. 34124

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October 21, 2010

9:32 a.m.

Confidential Videotaped Deposition
of JOHN V. ROMITA, held at The Garden City
Hotel, 45 7th Street, Garden City,
New York, before Kristin Koch, a Registered
Professional Reporter, Registered Merit
Reporter, Certified Realtime Reporter,
Certified Livenote Reporter and Notary
Public of the State of New York.

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

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BY: MARC TOBEROFF, ESQ.

ALSO PRESENT:

ELI BARD, Marvel Entertainment, LLC

HENRY MARTE, legal Video Specialist

VIRGINIA ROMITA

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2 A. For whatever I do. Freelance -- I
3 put in a freelance voucher and they pay me. I
4 also get royalties, some royalties.

5 Q. Can you estimate approximately how
6 much money you might get from Marvel in a year,
7 just a ballpark?

8 A. Sometimes --

9 MR. TOBEROFF: Vague as to time.

10 MS. SINGER: You can answer the
11 question.

12 A. Yeah, sometimes as little as 7 -- 6-
13 or \$7,000 in a year, sometimes as much as 11,
14 depending on what's selling in the reprint
15 department, and sometimes they take -- they
16 have made a series of collections and whenever
17 I am in a collection, I get a check, sometimes
18 \$20, sometimes \$200, and occasionally a bigger
19 check when it's a big project.

20 Q. Let's focus on when you were at
21 Marvel the first time while you were in the
22 service and you went up there in the early
23 1950s.

24 Would you consider yourself a
25 freelancer or an employee at that time?

1 Romita - Confidential

2 A. Freelancer. No -- flying without a
3 parachute. Absolutely no security. No
4 unemployment insurance, because I didn't have a
5 job. No perks, no medical insurance, no
6 nothing. Every year I would save 2- or \$300
7 and then the government would raise the
8 unemployed -- the -- I forget what the tax was.
9 There was a tax that was applicable to
10 freelance people, and that tax went up just
11 about whatever I had saved, so I generally
12 broke even every year.

13 Q. And how were you paid? What was the
14 basis for your compensation?

15 A. I would do a certain amount of pages
16 at a certain rate, \$25 a page, \$30 a page. I
17 would do ten pages, \$300. I would sign a
18 voucher for \$300 worth of work and they would
19 pay me two weeks later or something. And I
20 would be responsible for the taxes. I don't
21 believe they took the taxes out. I'm not sure.

22 Q. Where did you do your work? Did you
23 do it in the Marvel office?

24 A. No. I worked home.

25 Q. Did you ever go into the Marvel

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2 Q. Was there a form that you filled out
3 or was there a voucher?

4 A. It was a voucher, an actual small
5 slip with the name of the book, the number and
6 month of the book, how many pages, your rate,
7 and you sign it.

8 Q. And then what would happen after you
9 filled out the voucher?

10 A. I would submit it to the editor and
11 the editor would process it through the
12 bookkeeping department and they would send me a
13 check. Checks used to be like every two weeks
14 or something, once a month. I'm not even sure.
15 It varied. Especially with different
16 incarnations of conglomerates.

17 Q. Do you recall would there be
18 anything printed on the check?

19 A. There was a disclaimer on the back.
20 No disclaimer.

21 MR. TOBEROFF: Vague as to time.

22 MS. SINGER: You can answer the
23 question.

24 A. It was -- it was fairly clear. It
25 was saying that we were giving up the rights to

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2 anything that was done in the books, the future
3 rights to them, so we -- I wanted to cash the
4 check, so I signed it.

5 Q. I am going to show you something
6 that, for the record, has already been marked
7 as Plaintiff's Exhibit 2 at the deposition of
8 Stan Lee on May 13, 2010.

9 Mr. Romita, don't worry about the
10 front of this. I just would like you to turn
11 to the last page of Plaintiff's Exhibit 2.

12 A. The back of the old checks.

13 Q. Okay. I know this isn't your
14 signature. It's a little hard to read.

15 A. No, that's John D'Agostino.

16 MR. TOBEROFF: I would like to
17 object to this exhibit because the --
18 despite the inferences in the affidavit,
19 which I find somewhat misleading, the check
20 is actually, I believe, a 1987 check. If
21 you look at the markings on the back of the
22 check, it says City National, JE-87, so
23 it's a 1987 check we are talking about.

24 Q. So, Mr. Romita, I know it's a little
25 hard to read, so, for the record, of the back

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2 the book. The number on the bottom is 396 is
3 the bottom number there, if that's easier to
4 look at. Page 34 of the internal numbering.

5 A. I have it. "Super Slurpee."

6 Q. Yes. If you look on the left side
7 of the page there, it says "RT." Do you see
8 where it says that the first time? The first
9 little thing with the italics.

10 A. Roy Thomas, yes.

11 Q. Okay. So Roy Thomas asks you --
12 says: "He was one of the best guys around for
13 drawing animals in action. So how did things
14 go bad for you at Timely?"

15 And then it says "Romita," and
16 that's you, right, Romita?

17 A. Yes.

18 Q. "Around 1957 was when Stan and I
19 were at our lowest ebb in our relationship. In
20 the last year, he cut my rate every time I
21 turned in a story. He was not even talking to
22 me then. He was embarrassed, because he had
23 given me raises for two years every time I went
24 in, and then he took it all away. I went from
25 \$44 a page to \$24 a page in a year."

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2 Then Roy Thomas says: "As Gil was
3 fond of saying, "comics giveth and comics
4 taketh away."

5 And then Romita, that's you, says:
6 "Virginia kept saying, "well, how long are you
7 going to take the cuts until you go somewhere
8 else?" And I told her, "I'll hang on, I'll
9 hang on." Then, when it came time that he ran
10 out of money and had to shut down, or cut down
11 to the bone, I had done two or three days'
12 work, ruling up the pages, lettering the
13 balloons, and blocking in the figures on a
14 story -- and here comes a call from his
15 assistant -- she had beautiful bangs, beautiful
16 brown hair, I forget her name, but she was
17 adorable -- and she says, "John, I have to tell
18 you that Stan says to stop work on the Western
19 book because we're going to cut down on a lot
20 of titles." I said to her, "well, I spent
21 three days on it. I'd like to get \$100 for the
22 work, to tide me over." She said, "okay, I'll
23 mention it to Stan." I never heard another
24 word about the money, and I told Virginia, "if
25 Stan Lee ever calls, tell him to go to hell."

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2 And that was the last work I did for him until
3 1965."

4 Do you see that?

5 A. Yes.

6 Q. Is that consistent with your
7 recollection?

8 A. That's exactly my recollection. I
9 would never forget that.

10 Q. Is there anything in that statement
11 that you don't agree with today?

12 A. No.

13 Q. Let's turn a little later in that
14 book to page 160.

15 A. 160 or --

16 Q. 160.

17 A. We are in the 300s already.

18 Q. I'm sorry. 522.

19 A. Yeah, I have it, 522.

20 Q. Okay. Down towards the bottom of
21 the left column on page 160 or Romita 522 is
22 the Bates stamp on this, it says "JA." Do you
23 know who JA is?

24 A. Jim Amash.

25 Q. Okay. So this is a different

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2 bring the pages to him for him to ink and he
3 would pay me.

4 Q. Do you recall whether or not he
5 would pay you when he got paid or pay you when
6 you turned in your penciling?

7 A. I can't remember exactly. It might
8 have varied depending probably on how much his
9 bank balance was. It seems to me I got paid as
10 soon as I gave him the pages.

11 Q. Just, again, as a word of caution or
12 advice, I know you are trying to answer my
13 questions to the best of your ability, but if
14 you really don't know one way or another, I
15 don't want you to speculate.

16 A. Okay.

17 Q. So do you know one way or another
18 whether you were paid upon turning the
19 penciling in or when Mr. Zakarin was paid?

20 A. I can't remember.

21 Q. And Stan Lee was at Timely at this
22 time when you were doing work for Mr. Zakarin?

23 A. According to Mr. Zakarin, that's who
24 he was working for.

25 Q. But you didn't meet Stan?

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2 A. I didn't meet Stan until 1951.

3 Q. And at that time you began working
4 for Atlas Comics?

5 A. Timely was the company. It was
6 Atlas, but Timely was the company that my
7 checks were made out by. I think they were
8 subsidiaries. I don't know.

9 Q. So you were doing work by Atlas but
10 you got checks from Timely?

11 MS. SINGER: Objection.

12 A. All I knew is I was -- they were
13 Timely Comics when I went up there. That's the
14 only memory I have of it. In retrospect I
15 remember that the books used to have Atlas. I
16 think Atlas was the distributor. Atlas Comics
17 were distributing -- distributing Timely Comics
18 and other comics, I think.

19 Q. And you were --

20 A. Just a guess.

21 Q. And you were working freelance at
22 this time?

23 A. Yes.

24 Q. You were not a salaried employee?

25 A. No, sir.

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2 Q. At the time you were ghost penciling
3 for Mr. Zakarin, did you do work for any
4 other -- anyone else?

5 A. I believe I did. The time
6 relationship is vague and almost gone, but I
7 know I did a story for Famous Funnies, a
8 romance story, a twelve-page story, and I also
9 did some work for Avon Comics, which was
10 another publisher. Lester Zakarin had all of
11 these publishers in his book and he kept
12 leading me to work.

13 Q. What about Trojan Comics?

14 A. There was a Trojan Comics, believe
15 it or not. Yes, I did a couple of covers for
16 Trojan Comics. A western and a crime, a crime
17 cover. A little man with a cowboy hat. That's
18 all I remember.

19 Q. And this was prior to 1951?

20 A. Yes.

21 Q. Now, after you started working as a
22 freelancer with Atlas in 1951, did you do
23 freelance work for other comic book companies?

24 A. I did, yes.

25 Q. Do you remember some of the names of

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2 those companies?

3 A. The only company, I believe, was DC
4 Comics. I might have done some Avon past in
5 2001 or 2002. I'm not sure. I don't believe
6 so, because I was in the army and I didn't have
7 a lot of time. I think I was just doing work
8 for Stan Lee, but I did later on, after I got
9 out of the army I did some work for DC, romance
10 comics, while I was working with Stan.

11 Q. And when you were working with Atlas
12 you had no written agreement; correct?

13 A. Correct.

14 Q. And did you select and pay for your
15 own materials?

16 A. Yes, I did.

17 Q. And you worked out of your home?

18 A. Yes.

19 Q. Purchased your own paper and
20 pencils?

21 A. Yes.

22 Q. Where did you buy them?

23 A. There was two stores near -- Sam
24 Flax and Art Brown. When I worked at DC, I
25 used to go to Art Brown. When I worked at --

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2 for Stan I did -- I went to Sam Flax, I
3 believe.

4 Q. At what time did -- you mentioned, I
5 believe -- I'm not attempting to quote you, but
6 I believe you mentioned that work started to
7 slow down in the late 1950s. Is that correct?

8 A. Yes.

9 Q. Did the work start to slow down by
10 mid 1957?

11 MS. SINGER: Objection.

12 You can answer.

13 A. I believe it was in the period of
14 about 18 months, like late '56 to mid '58,
15 something like that, because my reference to
16 the fact that every time I went in, I got a
17 cut, every like once a month or once every two
18 months I would get a cut in rate, so it needed
19 a few months to accumulate to lose me \$20 plus
20 in my page rate.

21 Q. We looked up in the Grand Comic
22 Database -- are you familiar with that database
23 on the Internet?

24 A. No.

25 Q. It's a database that lists

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2 inaccuracies.

3 Q. Now, if you would turn to Bates
4 number 458. When I say "Bates numbers," those
5 are the little printed pages on the bottom. It
6 says ROM 458.

7 A. I have it.

8 Q. On the top right-hand -- towards the
9 top right-hand corner Mr. Amash asks you the
10 following question: "Why were you saving
11 pencil stubs?" And you answer: "When you're a
12 freelancer for 15 years, and you have to buy
13 your own materials, you don't waste anything.
14 I've still got some brushes from like 40 years
15 ago. And she would always reveal that kind of
16 stuff. She'd say, "this guy is crazy"."

17 A. Marie Severin.

18 Q. Do you see that?

19 A. Yes.

20 Q. Why don't you waste anything when
21 you are a freelancer?

22 A. Well, because if you are making a
23 small amount of money, every penny counts when
24 you are expending it. She used to make fun of
25 me all the time, make cartoons of me hoarding

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2 pencils and papers. She was a very funny
3 woman.

4 Q. In 1958 was Atlas experiencing
5 financial difficulties?

6 A. Absolutely.

7 Q. What was the reason for that; do you
8 know?

9 A. Two reasons. Well, this may be my
10 own -- first of all, the comic industry was
11 under fire because of an old crank who claimed
12 that comic books led to juvenile delinquency
13 and the comic companies pulled their horns in
14 and tried to defend themselves and stammered
15 their way through the congressional hearings
16 and it looked very bleak for comics. They
17 bailed themselves out by instituting a Comics
18 Code Authority which they all put money up to
19 create an impartial code authority which would
20 pass judgement on comics and make them family
21 friendly and child friendly. The other problem
22 was that all the companies were over-extended.
23 They had too many titles and each one of their
24 titles could only sell a certain amount because
25 they were in competition with themselves. They

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2 would put out fifty to sixty titles, mostly
3 garbage, because you can't get fifty or sixty
4 good books out, there aren't good enough --
5 enough good artists. I fought for thirty years
6 to have Marvel cut down on the amount of books
7 they put out, because it was always suicide to
8 over-produce. So between the over-production
9 and glutting the market with garbage and the
10 Senate hearings, comics was about to go under.
11 That's why in '58 Marvel -- Marvel Comics --
12 Timely Comics shut down to two books from fifty
13 titles.

14 Q. From fifty to two?

15 A. At least -- two may have been an
16 exaggeration, but they cut down to the bone.
17 There was only like two or three artists
18 working. Dick Ayers and -- I have forgotten
19 the other guy. Don Heck. These were the only
20 guys that Stan kept on. I was not one of them.

21 Q. Would you say they cut down by --

22 A. By just letting people go.

23 Q. By about 90 percent or more
24 possibly?

25 A. I don't know how many artists he

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2 had. Whatever it was, it was dozens down to
3 two, or a dozen artists down to two, whatever
4 it was, yes.

5 Q. So at that point you stopped selling
6 your work to Marvel and started doing business
7 with DC?

8 MS. SINGER: Objection.

9 You can answer.

10 A. I went to DC then, yes. Because I
11 had done romance with them I had an opening
12 there and I called them up and they had work
13 for me doing romance comics.

14 Q. I'd like you to turn to Bates number
15 374, turn back to it, please.

16 A. Got it.

17 Q. I believe this is an interview you
18 were questioned on previously entitled 50 Years
19 On the "A" List.

20 A. Correct.

21 Q. Do you recall giving this interview
22 with Roy Thomas?

23 A. Yes.

24 Q. Is there anything that you believe
25 is inaccurate in this interview?

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2 Mr. Amash that there was something inaccurate
3 about his quotes of your statements in this
4 interview?

5 A. Not that I remember.

6 Q. Turn to page, please, 428. In the
7 first column of the interview it says, if you
8 look at the second full paragraph on the left
9 side: "Timely publisher Martin Goodman used to
10 close shop at the drop of a hat. If expenses
11 got too high, he'd say "the hell with it," and
12 close shop. Nobody had any protection because
13 there were no pensions, no severance pay or
14 insurance plans, or saving plans. Everyone who
15 worked in comics were flying by the seat of
16 their pants."

17 A. True.

18 Q. Is that a true statement?

19 A. That was my impression.

20 Q. That's your understanding?

21 A. That was my impression of the way
22 the industry -- the way he ran his company. I
23 wasn't very bright.

24 Q. Does what you said about Marvel also
25 apply to your experience at DC after you left

1 Romita - Confidential

2 Marvel in 1958?

3 MS. SINGER: Objection.

4 A. You are asking did I think DC was
5 run better than Marvel?

6 Q. No, I am just saying does your
7 comment about everyone who worked in comics
8 were flying by the seat of their pants, did
9 that apply to your work at Marvel after you
10 left Marvel in --

11 A. I had no --

12 Q. Excuse me. Did that apply to your
13 work at DC after you left Marvel?

14 A. The same things applied. I had no
15 insurance, no security.

16 Q. You can turn to page -- just one
17 moment. Sorry. Turn to page Bates number 407.

18 A. Yes.

19 Q. On the left side towards the top of
20 the page in the interview Roy Thomas asks you:
21 "In other words, don't eat for six months and
22 maybe we'll give you work again? They did that
23 with young mystery writers in the late '60s
24 which is how we got Marv Wolfman, Gerry Conway,
25 Len Wein" --

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2 A. Len Wein.

3 Q. Len Wein, excuse me -- "and several
4 other guys over at Marvel." Do you see that?

5 A. Yes.

6 Q. And you respond: "DC didn't even
7 say that. When (editor) Jack Miller told me --
8 and of course he was on the frying pan
9 already -- I remember asking him, "could you
10 introduce me to some of the other editors?"
11 And he said, "nah, I don't think so -- they
12 aren't looking for anybody." He told me,
13 "listen, you're a freelancer. You're not on
14 contract. You're free to go and get work
15 anywhere."

16 MS. SINGER: I think you missed a
17 line there.

18 A. Yeah, the type on this book is
19 terribly small. That's probably why most
20 people don't read every line.

21 Q. Oh, excuse me. "And he said, "nah,
22 I don't think so -- they are looking for
23 anybody."

24 A. "They aren't looking."

25 Q. "They aren't looking for anybody."

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2 He never even got off his ass to introduce me
3 to anybody. He told me, "listen, you're a
4 freelancer. You're not on contract".

5 A. Yes.

6 Q. Does this comport with your
7 understanding of how things were back at those
8 days?

9 A. This was a shining example to
10 confirm my opinions. Yes. And he was a prize
11 package. He didn't last long.

12 Q. But as a freelancer you were free to
13 work for whoever you wanted to?

14 A. Sure, as long as they were not
15 putting you under kind of -- occasionally an
16 editor would tell you, "if you work exclusively
17 for me, I will give you first crack at the
18 scripts," which was a verbal promise that they
19 couldn't always keep, but some people fell for
20 it. I think Stan Lee said that to me when I
21 went and did romance stories for DC. He put me
22 in that spot.

23 Q. So Atlas was sometimes referred to
24 as Timely and vice versa?

25 A. Timely was one of the -- one of the

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2 out."

3 Is that correct that you worked at
4 home from 1949 to 1965?

5 A. Correct.

6 Q. And you did this work at home as a
7 freelancer?

8 A. Correct.

9 Q. And then in 1965 you were employed
10 by Marvel?

11 A. Right.

12 Q. To make sure I understand your
13 previous testimony, for the first few months at
14 Marvel you continued to work as a freelancer?

15 A. Yes. I worked at home.

16 Q. And then that changed and you began
17 working at Marvel as a salaried employee?

18 A. Yes. In 1966, January of 1966.

19 Q. How many months did you work as a
20 freelancer?

21 A. I believe it was from some part of
22 July, five months.

23 Q. So you started there in July 1965?

24 A. I believe, yes, i think. DC let me
25 go sometime in June or July.

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2 '58 when things started to wind down at Marvel,
3 then you went to DC in 1958. Between 1958 and
4 1963 --

5 A. '64. '65.

6 Q. Between 1958 and the time in mid '65
7 when you went back to Marvel, did you do any
8 work for Marvel?

9 A. No. I wouldn't even answer the
10 phone for the first couple of years.

11 Q. What does that mean?

12 A. Well, at first I didn't want to talk
13 to him. I was mad at him. Secondly, when I
14 did answer the phone, I would ask him how
15 much are you -- I was getting \$44 a page to do
16 love stories and I asked Stan -- he would call
17 up and say "come back to Marvel," and I would
18 say, "how much are you paying a page? He said,
19 "\$25 a page." I said, "Stan, I have got a kid
20 to raise. I'm not gonna do it," and that was
21 it. I had two kids at the time.

22 Q. So during that period you didn't do
23 any work with Marvel?

24 A. No, absolutely.

25 Q. Just to be clear, when you said

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2 "absolutely," "absolutely I did not"?

3 A. Not during that period.

4 Q. Did you work with Jack Kirby between
5 1958 and 1963?

6 A. No.

7 Q. And, again, when was the first time
8 you met Jack Kirby?

9 A. In '65. Sometime between July and
10 January he was in the office and I was
11 introduced to him.

12 Q. That was the story you recounted --

13 A. Where he was correcting someone's
14 art.

15 Q. Do you know what Jack Kirby was paid
16 per page during the years between 1958 and
17 1963?

18 A. I wouldn't have the slightest clue.

19 Q. Did you ever ask Jack Kirby what his
20 business relationship was with Marvel during
21 those years?

22 A. No. We never asked questions like
23 that of each other.

24 Q. I'd like you to turn to -- back to
25 Exhibit 6, which is the big one.