

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.

3
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:

WEIL, GOTSHAL & MANGES, LLP
Attorneys for the Plaintiffs
767 Fifth Avenue
New York, New York 10153

(Not Present)

-and-

HAYNES AND BOONE, LLP
Attorneys for the Plaintiffs
1221 Avenue of the Americas, 26th Floor
New York, New York 10020

BY: DAVID FLEISCHER, ESQ.

TOBEROFF & ASSOCIATES, P.C.
Attorneys for the Defendants
2049 Century Park East, Suite 2720
Los Angeles, California 90067

BY: MARC TOBEROFF, ESQ.

Also Present:

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

Videographer:

BRENT JORDAN

1 A I couldn't recall. Since we have grown up
2 so --

3 Q Do you recall when the last time you
4 discussed that topic with any of your sisters?

5 A I probably discussed it with Lisa within
6 the past year, I would think.

7 Q What do you recall saying to Lisa and what
8 do you recall her saying to you during the course of
9 that discussion?

10 A I believe I was just relating a certain
11 story, you know, we were just talking on the phone
12 and something jogged my memory about a certain story
13 and we just kind of discussed that for a few minutes.

14 Q What story were you talking about?

15 A I believe it was when he was creating Thor.

16 Q And what do you recall telling Lisa at that
17 time about Thor, its creation?

18 A Well, my father was always very interested,
19 he loved mythology, he loved studying religion and
20 history, just knew all about it, his bookshelves were
21 just loaded with that kind of stuff, so as a kid I
22 was always at that time more into history than I was
23 science but we would have long discussions about it.
24 But I kind of got into it, I guess you might say, on
25 a more practical basis and I remember kind of

1 standing by his drawing board as he was kind of doing
2 the Thor character and he had the big, if I remember
3 right, either Thor or one of the other characters
4 that had big horns coming out of the helmet and I
5 said a real Viking wouldn't have big horns coming out
6 of his helmet and we were laughing and that was about
7 it. I think my father kind of laughed and made some
8 statement that well, this isn't, you know, Viking
9 reality, it is a visual impact, so he gave me a
10 little art lesson there.

11 Q Do you know whether the drawing that your
12 father was working on that you witnessed was the
13 first iteration of the Thor character or some
14 iteration of the character after it was first
15 published?

16 MR. TOBEROFF: Compound.

17 A I believe it was the first.

18 Q And how did you, what is the basis for your
19 belief that it was the first?

20 A I recall his -- we were -- we were talking
21 about the -- about Thor's costume and he was doing it
22 for the first time and, again, there were other
23 things. I think I had made some comment about the
24 big circles on the front of the character and, you
25 know, again my father was, you know, jokingly,

1 jokingly referring to visual impact other than
2 possible reality of what a true Viking might have
3 worn.

4 Q What led you to believe it was the first
5 drawing your father was doing concerning the Thor?

6 MR. TOBEROFF: Asked and answered.

7 A Again, the same thing. The basic creation
8 of the costume.

9 Q Did your father tell you that this was the
10 first drawing he was making of Thor?

11 A He did refer to doing a new character, yes.

12 Q And was it the Thor character or some other
13 character that became part of the Thor comic book?

14 A No, it was the Thor character.

15 Q And your recollection is that part of the
16 costume that he was creating had a helmet with horns?

17 A I believe so, yes.

18 Q Do you know whether or not your father had
19 had discussions with anyone at Marvel before
20 undertaking the Thor project?

21 A No, I have no knowledge of that.

22 Q Did you have an understanding at the time
23 that you were witnessing your father drawing Thor for
24 the first time that was being drawn for Marvel as
25 opposed to some other publisher?

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 Q Did you have an understanding of whether he
2 was one of the most highly paid artists or in the
3 middle of the pack or in the bottom of the pack?

4 MR. TOBEROFF: Compound.

5 Q In the 1958-1963 timeframe.

6 MR. TOBEROFF: Compound.

7 A At that time, no, I would have no idea of
8 that.

9 Q Did you ever discuss with your father
10 specific contributions he made to characters or
11 stories that were published by Marvel?

12 MR. TOBEROFF: Assumes facts.

13 A We would have discussions or at least if I
14 was watching him work where he would be saying "I'm
15 doing a new character" or something to that effect,
16 yes.

17 Q Did he ever tell you what was triggering
18 his work on a new character?

19 MR. TOBEROFF: Vague.

20 A A specific character?

21 Q Yes.

22 A Well, I could -- in one instance I think
23 Sergeant Fury, I think it was called the Howling
24 Commandos if I remember correctly, that was based on
25 a comic he had done I believe in either late fifties,

1 I believe, called, I think it was called Combat, and,
2 of course, on his personal war experiences.

3 Q And how did that relate to the creation of
4 a new character for Howling Commandos?

5 A How did his previous experience relate to
6 that?

7 Q Yes.

8 A Just the fact that my father had been in
9 combat in World War II and the fact that he had done
10 a combat comic previously which I guess he enjoyed,
11 you know. I don't want to say expounding on combat,
12 but I think he wanted to express to people what
13 soldiers were going through.

14 MR. FLEISCHER: Do you want to take a few
15 minutes? We can go off the record.

16 THE VIDEOGRAPHER: Off video at 12:28 p.m.
17 (Recess)

18 THE VIDEOGRAPHER: Back on video at 12:36
19 p.m.

20 BY MR. FLEISCHER:

21 Q Mr. Kirby, do you know whether your father
22 had been asked by anyone at Marvel in connection with
23 the work that he was doing on the Nick Fury and the
24 Howling Commandos book to populate the story with new
25 characters?

1 or something like that.

2 Q Have you seen that interview or article
3 anytime within the past several years?

4 A No, I haven't.

5 Q Can you recall any other instances in --
6 withdrawn.

7 Do you recall any other instances in which
8 your father relayed discussions he had had with Stan
9 Lee about the work your father was doing at Marvel?

10 A Again, specific, you know, dates and times
11 I can't give you but I know in that period in the
12 early to mid-sixties before I went off to college on
13 a couple of occasions, I know we discussed more so as
14 I got a little bit older as a teenager, more so he
15 would just discuss his frustration with not getting
16 the credit he believed he should be getting, either
17 through some interview that Stan Lee gave or
18 whether -- again, whether it was on air or print I
19 couldn't be specific, but we did discuss that on a
20 few occasions.

21 Q Apart from the specific instance that you
22 recall with respect to Fantastic Four, can you recall
23 the specifics of any of those instances where your
24 father relayed to you statements made to him or
25 others by Stan Lee that were the subject of concern

1 to your father?

2 A I can remember one instance, again I do not
3 recall if it was a print interview or, you know,
4 on-the-air interview or what it might have been, but
5 I do recall one instance involving the creation of
6 Thor and I guess Stan had taken -- he had created
7 that and my father was very upset about that. He
8 said Thor was his idea, his creation.

9 Honestly, given my father's interest in
10 mythology and Norse mythology and, again, biblical
11 history and all kind of history, that kind of thing
12 just flowed out of his mind. I mean, to me just from
13 my knowledge of comic history, and I'm not a comic
14 historian by any means, but my knowledge of it and my
15 personal history, the thought of Stan Lee, honestly,
16 coming up with concepts of, you know, Thor, Loki and
17 Ragnarok, The Rainbow Bridge and every other part of
18 Norse mythology coming out of Stan Lee's mind is
19 relatively inconceivable.

20 Q Do you know for a fact that the original
21 concept that became Thor was not devised by Stan or
22 someone else at Marvel?

23 A Well, it was devised by my father, the
24 creation of Thor. I have no reason to believe that
25 my father would lie to me about something like that.

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 your father confided work-related issues in the
2 fifties or sixties at any time?

3 A No, I'm not aware of any. There might have
4 been but not that I can recall.

5 Q You were never present at a conversation
6 where you heard your father discussing work issues
7 with another non-family member; is that correct?

8 A Correct. That would be correct.

9 Q I want to go through a few specifics with
10 regard to some of the characters that are the subject
11 of the termination notices at issue in this and let
12 me start with Spider-Man.

13 Do you have any information with regard to
14 the circumstances under which the Spider-Man
15 character was created?

16 A I'm not -- I'm not aware of any specific
17 information as to the creation of Spider-Man.

18 Q Do you know if your father created the
19 Spider-Man character or co-created the Spider-Man
20 character?

21 A I'm aware that he had a hand in the
22 beginnings of the character and in the design of the
23 character. You know, again, as to meetings that
24 might have taken place, I wouldn't have been privy to
25 that.

1 Q When you say you are aware he had a hand in
2 the beginning of the character or the design of the
3 character, what do you mean?

4 A In terms of -- well, that would involve
5 creating the character, I would suppose, if you are
6 creating the design of the character.

7 Q Do you know whether your father did the
8 illustrations for the first published book in which
9 the Spider-Man character appeared?

10 A I believe he did the first cover. I don't
11 recall if he did the first book or part of the first
12 book. But I do know that he did at least the first
13 cover, possibly more.

14 Q Did you ever hear your, either of your
15 parents indicate in your presence that your father
16 did not create or co-create Spider-Man?

17 A Hear from my parents that he did not.

18 Q Yes.

19 A Not in my presence.

20 Q Did you ever hear your mother correcting
21 people if they suggested that he had co-created or
22 created Spider-Man?

23 A Again, I don't recall an instance of that
24 happening.

25 Q Have you ever discussed the issue of how

1 what I believe in just trying to come up with new
2 characters as he always did, you know, that I might
3 question as to being inaccurate. As to the style of
4 drawing, whether he didn't think my father suited the
5 character and Nick did, that I couldn't attest to. I
6 could just attest to what my father, you know, said
7 at the time which was that he was too busy to do the
8 script based on his other work.

9 Q Did your father tell you that the idea for
10 Spider-Man was his?

11 A I believe he did say that, and I can't
12 recall his exact words from that time ago, but, you
13 know, I do recall him saying that, you know, they had
14 discussed a new character with the powers of a spider
15 and so on. I remember him because if I remember, I
16 do remember there was a discussion, he was telling
17 me, you know, how he was going to get his powers,
18 might have a radioactive spider or something like
19 that, so I do remember that discussion.

20 Q Do you know whether those concepts that you
21 have just described were precipitated by Stan Lee or
22 your father or some other way?

23 A At the moment, you know, I don't recall,
24 you know, as to whether, you know, exactly how my
25 father worded that. I know in the future sometimes

1 Q Have you ever seen the interview your
2 father appears to have given to The Spirit creator
3 Will Eisner concerning the Spider-Man character?

4 MR. TOBEROFF: Assumes facts not in
5 evidence.

6 A No, I haven't seen that interview.

7 Q What information, if any, Mr. Kirby, do you
8 have concerning the circumstances of the creation of
9 the Iron Man character?

10 A I'm trying to recall. At this time I don't
11 have any recollection of Iron Man specifically, how
12 that came about.

13 Q Do you know what contribution, if any, your
14 father made to the Iron Man character?

15 A Again, I believe at the very least, I
16 believe he designed the costume. As to the initial
17 idea and creation of the character, I'm sure at the
18 very least he probably contributed to that.

19 Q Is that just sheer speculation on your
20 part?

21 A Well, I wouldn't call it speculation, I
22 would call it based on -- based on the knowledge of
23 that he pretty much had a hand in everything Marvel
24 did and based on my knowledge of his creativity.

25 Q Well, was he the artist assigned to draw

1 A He never mentioned to me that he worked off
2 a synopsis and usually he was penciling stories in
3 the margins of the comics. He usually, if I could
4 jump in there, he usually started, he always started
5 in the middle of a story and then he went back to the
6 beginning and then he would finish up and do the end,
7 that was just the way he worked. I would think if
8 you are working off a story or a synopsis that you
9 don't need to do that but --

10 Q As you have indicated, though, you don't
11 know what conversations may have occurred between
12 Stan and your father before you saw him working on a
13 drawing, correct?

14 A I wouldn't have been privy to those
15 conversations.

16 Q Right. And you don't know whether or not
17 your father had been given a synopsis or a script
18 before he began working on a particular story; is
19 that correct?

20 MR. TOBEROFF: Asked and answered.

21 A Yes. I never saw a script or synopsis by
22 his drawing board.

23 Q What information, if any, do you have
24 concerning the creation of The Fantastic Four?

25 A In discussions with my father The Fantastic

1 Four basically was a derivative of the, from what he
2 told me, basically he came up with the idea just as a
3 derivative from the Challengers of the Unknown that
4 he had done several years earlier.

5 Q So your father told you that The Fantastic
6 Four was his idea?

7 A Yes.

8 Q Did your father ever tell you about any
9 discussions that he had with Stan Lee concerning The
10 Fantastic Four?

11 A Any specific discussions, not that I can
12 recall.

13 Q Did your father ever discuss with you any
14 synopsis that Stan Lee had given to your father?

15 A No, he never discussed that with me and as
16 I said previously, I never saw him work on a
17 synopsis.

18 (Neal Kirby Exhibit 3, a document, Bates
19 Nos. MARVEL0014587 to MARVEL0014588, marked
20 for identification, as of this date.)

21 MR. FLEISCHER: Would you mark that as
22 three, please.

23 MR. TOBEROFF: I just want to clarify, any
24 document that you produce in this action will
25 have Bates stamps and if it is a document like

1 MR. TOBEROFF: He is not finished.

2 Q Did I interrupt you?

3 A That would be fine, yes.

4 Q What specific characters did your father
5 tell you that he had named?

6 A Specifically I could say The Fantastic
7 Four, I suppose you could say all the characters in
8 Thor although obviously they had been previously
9 created about a thousand years ago, Sergeant Fury.
10 That's what I could think of right now. There may
11 have been more but that's what my memory is coming up
12 with at the moment.

13 Q I think you indicated that Sergeant Fury
14 was a book that your father had worked on prior to
15 the resurrection of the title in the sixties; is that
16 correct?

17 A Well, he had done a comic book in the 1950s
18 which, if I remember correctly, was called Combat.
19 Whether the characters' names in that comic book were
20 the same as the characters in Sergeant Fury, I don't
21 recall that at the moment.

22 Q What specific names did your father tell
23 you that he had given to the various characters of
24 Combat or the later version which I think you said
25 was called Sergeant or Nick Fury and the Howling

1 Commandos?

2 A Right. Well --

3 MR. TOBEROFF: I don't think he said Nick
4 Fury, Sergeant Fury.

5 MR. FLEISCHER: The witness is perfectly
6 capable of --

7 MR. TOBEROFF: You are misstating his
8 testimony.

9 MR. FLEISCHER: It is not your role --

10 MR. TOBEROFF: I disagree.

11 MR. FLEISCHER: -- to interject what you
12 think is a misstatement of the testimony.

13 MR. TOBEROFF: I disagree.

14 A Well, I know that he did a Nick Fury. I
15 don't recall the names of the other characters in
16 that little ensemble group at the moment. The Combat
17 comic book was not a specific group, it was basically
18 war stories.

19 Q So what was the relationship, if any,
20 between the Combat series and the Sergeant Fury
21 series other than the fact that they both involve war
22 stories?

23 A I think it was just a progression going
24 back to the 1940s where he did Boy Commandos and that
25 was an ensemble group if you want to use that word.

1 And then the next opportunity for a war book being
2 the Combat book which was just really a compilation
3 of stories.

4 Q Now do you -- and the basis for your
5 statement that your father created the name Sergeant
6 Fury or Nick Fury, whichever is appropriate --

7 A Sergeant Nick Fury.

8 Q Sergeant Nick Fury is what?

9 A That he told me.

10 Q Any other information concerning the name
11 of that character that you have?

12 A Not that I can recall.

13 Q And am I correct that you have no knowledge
14 with regard to conversations that occurred between
15 your father and Stan Lee concerning Sergeant Nick
16 Fury prior to the introduction of that character? Is
17 that correct?

18 A It is correct in saying that my father
19 didn't -- in my discussions with my father that did
20 not come up.

21 Q And you weren't present at any
22 conversations as you have indicated between your
23 father and Stan Lee.

24 A That would be correct.

25 Q Do you recall who was the assigned writer

1 it over the weekend I promise but, no, I don't recall
2 that part of the deposition.

3 Q Do you have any information to suggest that
4 the idea and concept of Ant-Man was something other
5 than an idea of Stan's assigned by your father to
6 work on?

7 A Again, I would have no information to that
8 and I would have no recollection of it.

9 Q What information, if any, do you have
10 concerning the circumstances of the creation of the
11 X-Men comic book and character?

12 A I believe the X-Men my father came up with
13 and in doing something a little bit different rather
14 than the bitten by the atomic bug kind of thing,
15 actually having mutants born in that way and what
16 their kind of -- I think he wanted to tell a story
17 there that you had people that were different and
18 subjected to persecution. That was always -- that
19 was always my take on it.

20 Q Apart from your take which I take it is
21 inferential, what firsthand knowledge do you have
22 about the circumstances of the creation of X-Men?

23 A Well, my firsthand knowledge again comes
24 from standing around the drawing board and watching
25 him draw the X-Man and basically asking him what's

1 going on and him explaining the characters. Usually
2 he would say something to the effect of this is a new
3 story I've come up with, what do you think of this
4 and here is where I'm going with this. That's how
5 our discussions would go.

6 Q Specifically with regard to the X-Men did
7 your father say the concept and basic story of the
8 X-Men universe was solely his creation?

9 A I do recall him saying again along those
10 same lines this is the new characters and story, you
11 know, I've come up with.

12 Q You read Mr. Lee's testimony concerning the
13 creation of X-Men, correct?

14 A Yes, I did.

15 Q And Mr. Lee testified under oath that the
16 concept was his and that he assigned the book to your
17 father, correct?

18 A Uh-huh.

19 Q Do you have any reason to believe that that
20 testimony was not correct?

21 A Again, as I stated before, my reasons for
22 not believing Mr. Lee is that, you know, I have no
23 reason not to disbelieve my father and pretty much
24 every reason to disbelieve Mr. Lee. I just don't
25 believe in his deposition he was telling the truth or

1 maybe he just didn't recall the truth properly. I
2 will try to be somewhat respectful.

3 Q Are there -- apart from your own
4 recollections of what your father told you that you
5 have testified about with respect to X-Men, are you
6 aware of any evidence to corroborate your belief that
7 the X-Men story was a creation solely of your
8 father's?

9 A I am not aware if you are referring to like
10 some kind of written evidence or -- I'm not quite
11 sure exactly what you are referring to.

12 Q Any -- any evidence, whether it is written
13 or something you observed.

14 A Well, I observed him drawing X-Men, Number
15 1, and talking -- and talking to the -- talking about
16 the story with me so, again, that's where it is
17 coming from. I have no knowledge, I cannot recall
18 anything about there being any other type of written
19 evidence that might exist.

20 Q Well, if your father had been assigned the
21 story by Mr. Lee who had suggest an outline for the
22 story or a synopsis, whether verbally or in writing,
23 you would have still observed your father drawing the
24 first issue of X-Men, correct?

25 MR. TOBEROFF: Argumentative.

1 basis of my discussions with my father. If you are
2 asking me to make determinations of copyright law as
3 to who owns what creation, I certainly don't have the
4 game stance for that kind of question.

5 Q No, my question is very specific. My
6 question is what specific characters which are the
7 subject of those notices do you and your sisters
8 contend were created solely by your father.

9 A Well, I cannot speak for my sisters. I can
10 speak to myself from my knowledge of discussion with
11 my father and this would be The Fantastic Four and,
12 of course, Galactus and, of course, Silver Surfer,
13 Nick Fury, Thor. That's what I can recall right now.

14 Q Do you contend that Spider-Man was the sole
15 creation of your father?

16 A I would contend that my father had a hand
17 in the creation.

18 Q So the answer to my question is you don't
19 contend that Spider-Man was the sole creation of your
20 father?

21 A Well, I don't have -- it would be my
22 recollection at the moment that he had at the very
23 least a very large part in the creation.

24 Q And do you have any information as to who
25 had other parts in the creation?

1 denying that allegation.

2 A The factual basis is like we've discussed
3 over the past several hours; that it is our family's
4 contention that my father's contribution was much
5 more than just here is an idea, go draw it.

6 Q And I understand what you are contending.
7 I'm asking what the factual basis for that is given
8 the testimony that you have already given that you
9 don't know what preceded your father's work on the
10 drawings that he did for Marvel.

11 MR. TOBEROFF: Argumentative, misstates
12 prior testimony, asked and answered as to
13 "factual basis."

14 MR. FLEISCHER: This is the last
15 deposition, Marc, that you will get a away with
16 this at.

17 MR. TOBEROFF: Ask a proper question.

18 A My factual basis is like I have stated
19 several times previously and going on the basis of
20 what my father told me during our discussions.

21 Q You have indicated very clearly that your
22 father never did work for Marvel on spec, correct?

23 A In terms of -- maybe I need to qualify
24 that, okay? In terms of would my father have pitched
25 an idea, if you don't mind my using the word "pitch,"

1 you know, met with somebody else saying gee, I have
2 this good idea for a character, you know, would you
3 like to go for it, that he would have done it, you
4 know. Definitely I would consider that coming up
5 with an idea and speculation. There's no -- there's
6 no guarantee if you are going to come up with an idea
7 that they're going to say yea, nay or otherwise. I'm
8 sorry.

9 MR. TOBEROFF: Feel free to finish your
10 answer.

11 A In terms of would he, maybe this was a
12 little confusing before, what I was trying to get at.

13 In terms of would he sit down and spend
14 three days, four days, however long, actually
15 doing -- I don't recall how long comic books were at
16 the time, I think they were 22 pages, something like
17 that, would he sit down and do a 22-page comic book
18 and then bring that in to -- bring that in to Stan
19 Lee or anyone else and go, "Would you like to buy
20 this," probably not. Because if they said no he is
21 out five days worth of work and all those pages. So
22 in regards to just to clarify my statement as to, you
23 know, as to on spec.

24 Q So if I understand what you are saying, you
25 believe that he never sat down to draw a story until

1 difference between a trademark and a copyright?

2 A I really don't understand the difference
3 between the two. It is only conjecture.

4 Q Are you aware of any attempts by you or
5 your siblings to exploit any intellectual property
6 rights with respect to any of the characters or
7 stories your father created for Marvel?

8 A I am not aware of any.

9 Q Have you or your sisters ever attempted to
10 exploit any intellectual property rights with respect
11 to characters or stories your father created for
12 other publishers?

13 A I can only speak for myself. I haven't. I
14 have no idea about my sisters.

15 Q Are you aware of any attempts by Lisa or
16 any of your other sisters to exploit intellectual
17 property rights with respect to characters or stories
18 created by your father for publishers other than
19 Marvel?

20 A I don't -- I'm not aware of anything for
21 other publishers, no.

22 Q Are you aware of any attempts on their part
23 to exploit rights with respect to characters or
24 stories published by Marvel?

25 A No, I'm not aware of anything along those

1 to be worded, that's not my area of expertise.

2 Q You were willing to suggest that the credit
3 that was given to your father on the Hulk film was
4 inappropriate in some fashion.

5 A Yes. Because I would have preferred the
6 word "created" in it as I mentioned before.

7 Q Are you aware that Wolverine's first
8 appearance was in 1974 well after your father had
9 stopped work on X-Men?

10 MR. TOBEROFF: Assumes facts not in
11 evidence.

12 A No, I was not aware of that. No. I don't
13 recall that.

14 Q Did you do any research to determine
15 whether any of the characters that were the subject
16 of your notices were in fact created by your father
17 or co-created by him?

18 A I did some.

19 Q What research did you do?

20 A Oh, just some with books that I have or a
21 little talking with my sister and so on.

22 Q Which sister?

23 A Lisa.

24 Q And what books?

25 A Oh, just the coffee table history of comic

1 kind of books.

2 Q Can you be more specific? Are these books
3 that you have in your home?

4 A Yes, they are.

5 Q And do you still have them in your home?

6 A I do, yes.

7 Q And do you recall specifically what titles
8 and what authors?

9 A No, I can't at the moment. There's one
10 book by Mark Evanier which I guess is the newest
11 book. I think it is just titled "Jack Kirby, King of
12 Comics," I believe.

13 Q Did you ever inquire of Mr. Evanier as to
14 whether he had any direct knowledge of the
15 circumstances of the creation of the characters that
16 your father drew for Marvel?

17 A No, I haven't had any conversations with
18 Mark Evanier.

19 Q Do you know if Mark Evanier was privy to
20 any of the meetings or discussions at Marvel between
21 your father and Stan Lee?

22 A Mark Evanier, as far as I know, would not
23 have been around at that time.

24 Q Do you know what the basis for Mr.
25 Evanier's statements in the book that you relied on

1 litigation was commenced?

2 A No.

3 I'm mean, I'm sorry, yes, you are correct
4 in that.

5 Q Are you aware of any significance these
6 pages have to the issue of the circumstances of the
7 creation of any of the characters depicted in these
8 pages?

9 A That I honestly cannot say that I'm aware
10 of that.

11 Q Now a lot of the pages have either captions
12 or other handwritten notations other than the ones
13 that appear to be actually printed. Do you see that?

14 A Yes, I do.

15 Q Let's take an example, K 10. Can you
16 identify the handwriting at the foot of the pages
17 saying "Hunters say"?

18 A That would appear to be my father's.

19 Q And do you know what that notation was
20 intended to represent or be?

21 A My father used to add comments in the
22 margins. If sometimes he did not write dialogue
23 directly, from what I understand, he would add those
24 comments to guide the person adding the dialogue in
25 the balloons.

1 second page of the exhibit as that of your father's?

2 A It does appear to be his signature.

3 MR. FLEISCHER: I have no further
4 questions.

5 MR. TOBEROFF: A couple questions.

6

7 EXAMINATION

8 BY MR. TOBEROFF:

9 Q Just look at the camera.

10 A I'm sorry. I forgot about the camera.

11 MR. FLEISCHER: Do you want to switch
12 places?

13 A No, he is in my good ear so that's fine.

14 MR. TOBEROFF: Do you mind?

15 Q You had testified, and I'm not purporting
16 to quote you exactly, but you testified to the effect
17 that when -- on the issue of your father working on
18 spec that your father, you characterize your father
19 coming up with an idea on his own and then pitching
20 it to Marvel as being on spec. Once Marvel -- in the
21 instances where Marvel said that it liked the idea
22 and proceeded to do work, did you consider that work
23 to be on spec or not on spec?

24 MR. FLEISCHER: Objection.

25 A Well, in the report, in respect to even if

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