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JOHN MORROW

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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JOHN MORROW

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APPEARANCE OF COUNSEL:

For the Plaintiffs:

DAVID FLEISCHER, ESQ.  
Haynes and Boone, LLP  
1221 Avenue of the Americas  
New York, NY 10020

Also Present: ELI BARD,  
VP - Deputy General Counsel, Marvel

For the Defendants:

MARC TOBEROFF, ESQ.  
Toberoff & Associates  
2049 Century Park East  
Los Angeles, CA 90067

Also Present: DeANDRAE M. SHIVERS, Videographer

JOHN MORROW

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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.  
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2 interview in front of me to see, but I'm quite certain  
3 he said that in that interview, that he was not working  
4 from full script.

5 Q. At any point between '58 and '63?

6 A. I'm certain he would have said that in that  
7 interview, yes.

8 Q. Is there any other anecdotal evidence,  
9 other than what you've just described in the last  
10 couple of minutes, that would bear upon whether or not  
11 Mr. Kirby was working from scripts during the periods  
12 '58 through '63 at any time?

13 A. '58 to '63? Well, I would need to get in  
14 front of some of those actual pages and see what the  
15 margin notes are. There could be some anecdotal  
16 evidence in there. That's a pretty telltale sign, not  
17 the only one, but a very convincing sign when Mr. Kirby  
18 is putting margin notes around the panels, obviously,  
19 he is putting them there so that the writer, Stan Lee  
20 or Larry Lieber or whoever, would know what he's doing  
21 on the story. If you were provided a full script,  
22 there would be no need for those.

23 So, but I'd need to actually get some pages  
24 in front of me from that kind of example of margin  
25 notes on those.

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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?

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2 A. A lot of, I guess, you might call it  
3 anecdotal evidence. But there's -- I think I get into  
4 that elsewhere in the report. But there's a lot of  
5 rejected pages over the years that Kirby had in his  
6 collection. If they were -- you know, if they were  
7 paid for, Marvel would have kept the physical pages  
8 there at the office to use for, you know, inking  
9 sample, inking tryouts and things like that.

10 In addition to that, there was a lot of  
11 instances where Kirby had rejected pages that he might  
12 have repurposed for a different project, for a  
13 different company even, and, of course, if Marvel had  
14 paid for that, that doesn't seem like that would have  
15 happened.

16 I know there's -- we published some Hulk,  
17 some very early Hulk pages that actually, I think Larry  
18 Lieber provided through an art dealer that were  
19 rejected from one of the very early Hulk stories, which  
20 was a great find. We couldn't believe when that art  
21 dealer turned up those pages, he said Larry had them in  
22 his closet all these years and that Marvel had rejected  
23 them and Jack threw them in the trash and he rescued  
24 them from the trash, I think, something like that. And  
25 that would say to me that if they were rejected and

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2 Marvel paid for them, Jack wouldn't have had the  
3 opportunity to throw them in the garbage. Marvel would  
4 have done something with them.

5 Q. Am I correct that you don't have any  
6 firsthand knowledge about whether or not Jack was paid  
7 for the pages you're referring to in this sentence?

8 A. Well, by firsthand knowledge, was I there,  
9 for instance? No, of course not. I was much too young  
10 to be there. You know, I'm not privy to Marvel's  
11 books, so, no, I can't say definitively that it was on  
12 the books that he was paid.

13 I know when we did -- Marvel wanted to do a  
14 book called Fantastic Four Lost, which was -- I  
15 assembled an unused Fantastic Four story from various  
16 collector's collections. They had scattered pieces of  
17 this story that Marvel -- Jack had drawn in, I guess,  
18 1969 but Marvel never published.

19 Marvel read my article in the Kirby  
20 Collector and said oh, we should get that together and  
21 finish it and publish it.

22 So when they contacted me about doing all  
23 of that, I told them that, you know, unless there's  
24 some reason to believe that they paid for that  
25 originally that, you know, no, they're not going to get



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2 the article for free. They are going to have to pay  
3 the Kirbys for that and finally pay for the page use,  
4 which they did, and that's what this was. They finally  
5 paid the \$325 per page to use that unpublished story.

6 Q. Are you aware of testimony given by Stan  
7 Lee in this case to the effect that whether pages were  
8 rejected or not, if he had asked Jack to draw a story,  
9 he would pay for it? Do you have any reason to  
10 contradict a statement to that effect by Stan Lee?

11 MR. TOBEROFF: Asked and answered.

12 A. Yeah, I do, I mean, there's a lot of  
13 historical references to artists saying when their work  
14 got rejected, they didn't pay for it. I think I  
15 included one in here from John Romita talking about  
16 when Stan canceled a story on him, he didn't get paid  
17 for those.

18 But there's a lot of other instances  
19 throughout all the stuff I've read and published over  
20 the years, where people say things got rejected, we  
21 didn't get paid for it, or, you know, Stan was always  
22 asking me to make changes on things, and I didn't get  
23 paid for it.

24 So, yeah, I've got a major reason to  
25 dispute that.

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2 the public at large and to the then current Marvel  
3 Comics editorial department."

4 What is the factual basis -- well, first of  
5 all, let me ask you, is it intended by you to be a  
6 statement of fact that the then current Marvel  
7 editorial board was unaware of the unused story?

8 A. Yes.

9 Q. And that's a statement of fact?

10 A. Yes.

11 Q. And how -- what is the basis for that  
12 statement of fact?

13 A. The main basis for that is Tom Brevoort,  
14 who is an editor, or still is an editor up at Marvel,  
15 when he contacted me about reassembling that story, the  
16 sense I got from our discussion was that prior to my  
17 doing an article in 1996, they didn't even know about  
18 that story.

19 As far as the public at large, same thing,  
20 all of these letters of comment that we got to our  
21 publication, after we published that article or  
22 actually after I published that article, we said wow,  
23 we had no idea there was an unused Fantastic Four story  
24 out there. The fact that Marvel billed this  
25 publication as this lost Fantastic Four story further

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leads me to conclude that no one knew about this thing.

3

So, yes, I intend that as a statement of  
4 fact.

5

Q. Now, apart from Tom Brevoort, do you know  
6 who the other members of Marvel Comics were part of the  
7 editorial department at the time?

8

A. I'm sure I was familiar with a few of them,  
9 but Tom was one of the key people there and certainly  
10 if they knew what was going on, Tom would have known.

11

Q. That's a presumption on your part?

12

A. You could say that, sure.

13

Q. You don't know whether or not --

14

A. I did not speak to every member of Marvel's  
15 editorial department and get a sense from them whether  
16 they knew about this story. But Tom is the editor up  
17 there who has the most thorough knowledge of, you know,  
18 Marvel's history and comics history and what they  
19 published in the past, and I don't think it's any  
20 stretch to think that if Tom wasn't aware of this, that  
21 anyone else up there, who is much younger and less  
22 knowledgeable about it, would have.

23

MR. TOBEROFF: How do you spell his

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name?

25

THE WITNESS: Brevoort,

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2 Vassallo has done a lot. What are some of the other  
3 authors? I'm not coming up with the names off the top  
4 of my head, but Roy deals with a lot of different  
5 contributors.

6 Q. So when you include this statement in your  
7 report, you're basically reflecting information you  
8 derived from research done by Roy Thomas and the other  
9 individuals that you mentioned?

10 A. Yes, and stuff we published, stuff that has  
11 been published in various other history books as well.  
12 It's my overall sense of what I've absorbed over the  
13 years from my research.

14 Q. How would you determine whether Martin  
15 Goodman had a -- or confirmed the reliability of that  
16 statement that -- I assume what you mean by primarily  
17 is at least 51 percent of his business was publishing  
18 mens' magazines?

19 A. Um-hum.

20 Q. Do you know what other businesses he had?

21 A. Other than comics? He published paperback  
22 books as well. Let's see, what else did he do? I'm  
23 sorry, it's just not coming to me at this point, but.

24 Q. Okay. And a little ways down in that  
25 paragraph you say the comic book industry grew out of

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2 the great depression. What do you mean by that?

3 A. Well, people were looking for cheap,  
4 inexpensive entertainment. They had very little money  
5 to spend and along came comics at a dime apiece, in  
6 some cases a nickel apiece. You would get a very  
7 healthy dose of entertainment from those. They were  
8 done in very exciting and sometimes lurid ways. They  
9 appealed to the mass public pretty well.

10 So they grew out of the hard times. People  
11 could afford them and also the creators working on them  
12 could turn out a lot of work and for very little money,  
13 so the publishers could afford to do them.

14 Q. And you go on in that same sentence to say  
15 and was hardly an industry at all, referring to the  
16 comic book industry. What do you mean by that?

17 A. That it was done on a shoestring. It  
18 started out initially it wasn't even original stories.  
19 The first comic books were collections of newspaper  
20 comic strips that they would cut up and paste up on  
21 pages and print in booklets. That was just sort of an  
22 afterthought. Hey, I wonder if they would sell,  
23 because newspaper strips were very popular at that  
24 time. It was a very hodgepodge group of publishers.  
25 It wasn't like today. You would have Time,

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2 Incorporated that owns Warner Brothers that publishes  
3 an arm of comic books. Companies were springing up  
4 literally overnight. You would see them stick around  
5 sometimes for just a few months and then fade away. It  
6 was just not an organized industry in any way,  
7 particularly early on.

8 Q. Now, this section of the report, was this  
9 one of the sections of the report that you drafted  
10 primarily, or was this a section of the report that was  
11 drafted primarily by someone in Mr. Toberoff's office?

12 A. This was drafted primarily by them.

13 Q. And in the last sentence of that paragraph,  
14 you say: Comic books were considered the lowliest form  
15 of publishing in both cultural and business terms.

16 Considered by whom?

17 A. Oh, by pretty much anybody; the publishers  
18 themselves, because they used the absolutely cheapest  
19 stock they could get to print these books on and the  
20 general public. Even to today, comics still have sort  
21 of a negative connotation for more affluent people, for  
22 more educated people. They think comics are for the  
23 lowly educated to read.

24 Q. When you say in both cultural and business  
25 terms, when you use the term business there, are you

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2 referring to profitability?

3 A. Yes. In general, you are talking a low  
4 ticket item, and one that was returnable as well. So,  
5 you know, bang it out, don't worry about doing too much  
6 terribly original creative work and get onto the next  
7 month's release so you could make some more money.

8 Q. Were you intending to say it was the  
9 lowliest form of publishing in the sense that it wasn't  
10 as profitable as other publishing?

11 A. In many instances.

12 Q. In all instances?

13 A. No, of course not. When you have a big  
14 hit, then you'd make a lot of money. But the big hits  
15 were few and far between really until Superman came  
16 along.

17 Q. Now, the next sentence in the second  
18 paragraph of this section says, Goodman's relative  
19 Stanley Lieber, a/k/a Stan Lee, started in 1939 as an  
20 office assistant at Timely Comics, is that a statement  
21 of fact?

22 A. Oh, absolutely, yes.

23 Q. What is the basis for that specific fact?

24 A. Any number of historical documents. Stan's  
25 own words. He started working for Martin Goodman as an

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Q. So all this occurred in 1949?

A. Yes.

Q. And the next paragraph of your report jumps to 1954. What happened between '49 and '54 with regard to Timely or Mr. Goodman's publications?

A. Between '49 and '54, they started using up the surplus art that was in that closet. A lot of comic scholars have gone through and tried to compare the little job numbers that are printed in the art on the issues that it was published, to see which ones were done as "new" stories for this publication during that time period, and which ones were surplus stories that were just finally getting published.

So after some period of time, and we're not sure of the exact amount, the surplus art was used up and they resumed getting work from a lot of the same employees but on a freelance basis.

Q. Now, in this paragraph that begins in 1954, it looks like the third sentence says, most comic book companies shuttered, and those that remained, like Timely, fired nearly all of their employees and was barely afloat.

What employees are you talking there?

A. They were firing other employees, a lot of



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would call them when it was time for an assignment and

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try to round them back up. I think Dick Ayers, for

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instance, had taken a job working at the post office

5

and got a call from Stan Lee saying hey, we're taking

6

new assignments now.

7

Q. Were Ayers and the other freelancers you're

8

referring to here exclusive to Marvel at that time?

9

A. Well, no, at this point, they weren't with

10

Marvel at all. I mean, they were out of work.

11

Q. But when they got an assignment, did that

12

imply that they couldn't take assignments from other

13

publishers?

14

A. No, I don't think so. I'm certain not.

15

They were probably working where they could.

16

Q. And then in the next sentence you say,

17

however, it had no financial obligation to purchase

18

such freelance material and no ongoing financial

19

commitment to such freelancers.

20

With respect to your statement that it had

21

no financial obligation to purchase such freelance

22

material, is that a statement of fact or opinion?

23

A. Well, I mean, my entire report is opinion

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based on fact. So, I mean, we're kind of getting back

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to what I was saying earlier before the break. I mean,

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2 fact and opinion are intertwined here. I've read facts  
3 over the years, and I formed my opinions based on  
4 those. So that's my opinion based on fact.

5 Q. When you talk in terms of financial  
6 obligation, you are talking a legal financial  
7 obligation, correct?

8 A. Right. They weren't obligated to buy that  
9 work from freelancers when they hired them back to do  
10 news stories in the same way in the paragraph above in  
11 the report John Romita says he was in the middle of the  
12 story when Stan pulled the plug on it and he didn't get  
13 paid for it.

14 Q. My question is, your conclusion that there  
15 was no financial obligation to purchase is a legal  
16 conclusion, isn't it?

17 A. I guess you could consider that a legal  
18 conclusion, that's my opinion.

19 Q. But you are not qualified to give legal  
20 opinions, are you?

21 A. No, I'm not a lawyer. I'm not qualified to  
22 give legal advice. But I think just in layman's terms,  
23 Marvel at that point, they can say hey Dick Ayers, come  
24 back in and do a story, but they were not at that point  
25 committed to pay Dick Ayers to do that story until he

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2 called them back in to publish the story.

3 Q. That's a legal conclusion, isn't it?

4 A. That's my layman conclusion.

5 Q. But you're stating here an opinion that  
6 really constitutes a legal conclusion? It had no  
7 financial obligation.

8 MR. TOBEROFF: Objection,  
9 argumentative.

10 A. You may, well, I mean, you may characterize  
11 it as legal conclusion. I consider it my conclusion  
12 based on the historical record. So, no, I'm not trying  
13 to pass myself off as someone giving legal conclusions  
14 or legal advice.

15 Q. So it's your layman's conclusion that if I  
16 asked a freelancer to create a particular story or draw  
17 a particular piece of artwork and the freelancer  
18 brought it in, I had no obligation to pay them?

19 A. Not if it wasn't accepted, no. At that  
20 point, that was the standard there, was take an  
21 assignment, take a script from Stan Lee and take it  
22 home and draw it and bring it back in, and if it's  
23 accepted, they pay you for it.

24 Q. When you say if it's accepted, that's your  
25 opinion --

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1  
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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Q. Do you know whether or not he was paid for both the original version and the redone version?

A. My opinion is that no, he was not, because he had to rework the physical pages. They didn't keep the pages and say go back and redraw it or redo this. He actually had to butcher his original art to do it.

Q. What about that implies that he wasn't paid for both?

A. If they were paying for pages, they would have paid for the original pages and had him just go back and redraw the story generally.

Q. So do you know whether or not he was paid for the original pages?

A. I do not know conclusively, but it stands consistent with other instances of artists, including Mr. Kirby not getting paid, and it stands to reason that he did not get paid twice for that and only got paid for the published version that was submitted.

Q. You say it stands to reason, it's your conclusion --

A. It's my opinion, yes.

Q. Are you aware of any other instances in which you believe Mr. Kirby was not paid for work he submitted to Marvel?

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2 artists.

3 Q. Was it your understanding that there would  
4 be more time spent on a story conference between Stan  
5 and an artist at the outset of a new title than there  
6 would be on issue number 83 of an existing title?

7 MR. TOBEROFF: Lacks foundation.

8 A. I'm not sure how to answer that. It would  
9 stand to reason, if you are going to launch a new  
10 title, yes, you would sit down and have a lot longer  
11 brain session than you would if you were doing a  
12 continuing story of characters you already established  
13 and everything, so.

14 Q. On page eight of your report, in the second  
15 paragraph you say that -- in the second sentence of  
16 that paragraph, he, referring to Kirby, was extremely  
17 independent. He did not work from many written  
18 materials supplied by Marvel.

19 How do you know that?

20 A. We've seen no examples, other than that one  
21 synopsis from Fantastic Four number one, is the only  
22 example I've ever seen of written materials supplied to  
23 Kirby. I've seen an example of Kirby supplying written  
24 material back to Stan, an actual written script for an  
25 issue that he did while Stan was on vacation. He

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2 actually wrote the dialogue for it and sent a script  
3 back. But that is the only example I've ever seen.

4 Q. Well, do you know if it was Kirby's habit  
5 to retain written synopses he may have been provided?

6 A. Well, if it was, they are not in his files,  
7 or not the files I had access to.

8 Q. Do you know whether the Fantastic Four  
9 synopsis you referred to was in Kirby's files?

10 A. It was not in the files that I have seen.

11 Q. When did you go through Kirby's files?

12 A. Oh, what year? The family loaned me a lot  
13 of materials and got together. They had a storage unit  
14 out in California where they had a lot of stuff stored.  
15 I was allowed to kind of go through there, that was --

16 Q. Sometime after 1994, correct?

17 A. Oh, yes, yeah, while I was working on the  
18 Jack Kirby Collector.

19 Q. Do you know if there were any files that  
20 weren't among those files?

21 A. I have no way of knowing. I assume they  
22 had everything that they had in that storage unit.  
23 Again, I didn't go through every single box that was in  
24 there either, so.

25 Q. Do you have an understanding as to whether



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2 to do, in my opinion, is to credit Steve Ditko and Stan  
3 Lee as co-creators of that. Kirby certainly has some  
4 input into it, in my opinion, but I think the final  
5 result is far enough removed that the Kirby input,  
6 while it got the ball rolling, is not the end product.

7 Q. How do you know the Kirby input got the  
8 ball rolling?

9 A. Because the historical track record on that  
10 is that Kirby had, let's see, C.C. Beck did the Silver  
11 Spider strip that was not published. He published that  
12 in his autobiography. Kirby had an idea for Spider-Man  
13 that he brought in. He drew supposedly five pages, it  
14 was very similar to The Fly, which Archie Comics was  
15 coming out with, and from there, Stan brought Steve  
16 Ditko in, and Ditko evolved the character into what it  
17 is now.

18 Q. Is it your understanding that Jack Kirby  
19 did the five pages that he did draw supposedly before  
20 discussing the character with Stan Lee?

21 A. No. My understanding is that he brought  
22 the idea to Stan Lee and said Stan, I have this idea  
23 for a character. It's an orphan boy with a magic ring  
24 that gives him spider powers, and what amount Stan  
25 edited there, we're not sure. But then Jack went and

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2 drew some sample pages, brought them in and Stan said  
3 no. He rejected probably because it was too close to  
4 Archie Comics' Fly, and that's when Stan had Steve  
5 Ditko come in.

6 Q. Are you saying that Jack brought the pages  
7 without being given an assignment by Stan with respect  
8 to Spider-Man?

9 A. No, I think Jack brought in the concept,  
10 the idea to Stan as one that they had kind of kicked  
11 around at Mainline for doing, and Stan said sure, let's  
12 give it a try, and I don't know what level of input  
13 Stan gave Jack at that point.

14 Q. Do you have an opinion with regard to  
15 whether or not Jack Kirby was the sole creator of Sgt.  
16 Fury and the Howling Commandos?

17 A. Well, I put in my report -- a quote that  
18 really caught my attention when we interviewed John  
19 Severin for the Jack Kirby Collector. On page 12 and  
20 13 of my report, he talked about met over coffee with  
21 Jack Kirby, and Jack at that point was trying to get  
22 syndicated newspaper strips purchased to syndicates and  
23 he had this idea that he pitched to John Severin to get  
24 John to draw it, because John was very good at drawing  
25 war comics, and -- well, the quote is in the report.

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2 You can read it. But that one was very interesting to  
3 me. That's not an interview I actually conducted. Jim  
4 Amash conducted that actually.

5 Q. So returning to my question, do you have an  
6 opinion as to whether or not Jack Kirby was the sole  
7 creator of Sgt. Fury and the Howling Commandos?

8 A. Well, you have to define sole creator. Do  
9 I think Jack Kirby initiated the concept? Yes. That  
10 right there makes me think that Jack Kirby initiated  
11 the concept.

12 Did Stan Lee have input into the concept?  
13 I would think as editor, certainly. It could have been  
14 as simple as this is hypothetical. It could have been  
15 as simple as Stan saying Jack, we need a war book, and  
16 Jack said oh, I got this great idea I was kicking  
17 around, and then he presented it, and maybe Stan added  
18 some stuff, something like that.

19 It could have been that Jack walked in and  
20 said Stan, here's an idea. If you want to use it, we  
21 can do it. I, of course, wasn't there, so I don't  
22 know. But this leads me to believe that Jack initiated  
23 the concept outside of Marvel and through whatever  
24 process it was brought in. I'm sure Stan had some  
25 input into it. The question is how much?

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2 lessen that Stan didn't add to it, but it's -- Jack --

3 Q. When you say it's a Jack Kirby creation --

4 MR. TOBEROFF: He was still talking,  
5 he said but Jack.

6 BY MR. FLEISCHER:

7 Q. I thought you had finished your answer.

8 A. Well, just that it just screams that was a  
9 Jack Kirby creation.

10 Q. Screams that to you?

11 A. To me, yes.

12 Q. That is your opinion?

13 A. That is my opinion, yes.

14 Q. Now, do you know whether Jack Kirby put  
15 pencil to paper before discussing the Thor character or  
16 the concept of a Thor book with Stan Lee?

17 A. No, do not.

18 Q. So when you say it's your conclusion that  
19 it's the sole creation of Jack Kirby, you are saying it  
20 was his idea?

21 A. That is my opinion, yes. The idea to take  
22 Thor and use him as an ongoing superhero and cloak him  
23 into Norse mythology would have been Jack's idea.

24 Q. But he wouldn't have drawn anything until  
25 getting the go ahead of from Stan and having a story

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2 conference of some kind with Stan, is that correct?

3 MR. TOBEROFF: Assumes facts, lacks  
4 foundation.

5 A. Again, I wasn't there in 1961 and '62 when  
6 these books were being produced. I can give you my  
7 opinion, if that's what you'd like.

8 My opinion is that Jack came to Stan Lee  
9 and said hey, I got this idea for a superhero based on  
10 Thor. And Stan would say something along the lines of  
11 okay, we've got a dead magazine and a mystery with  
12 nothing going on. Our superheroes are starting to take  
13 off. Let's do it. At that point, they would kick  
14 around details of it. That's my opinion.

15 Q. Do you have an opinion with regard to who  
16 is the creator of Ant Man?

17 A. He is such a lesser known character, I  
18 don't think I actually included anything about Ant Man  
19 in there. I have not heard or read much historical  
20 data on Ant Man. What I do know about Ant Man is  
21 that --

22 Q. Just try to restrict yourself to my  
23 questions.

24 A. I'll say no, I have no opinion.

25 Q. I don't mean to cut you off, but we are

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2 identification.)

3 Q. Have you ever seen this before?

4 A. I've seen it in print, yes.

5 Q. Did you ever see any ribbon copy from the  
6 typewriter?

7 A. No, I have not seen a ribbon copy.

8 Q. Do you know what it is?

9 A. I do, yes. Roy Thomas ran this in Alter  
10 Ego Magazine. It's Stan Lee's two-page synopsis for  
11 Fantastic Four number one.

12 Q. Have you ever discussed this document with  
13 Roy Thomas?

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

15 Q. And do you know how Roy Thomas came to  
16 publish this?

17 A. How he came to publish it?

18 Q. How he came to put it into the Alter Ego?

19 A. I'm not sure where he got a copy of it, but  
20 he said he wanted to run that in, I forget. I think it  
21 was Alter Ego number one, I said great.

22 Q. Do you know whether or not this document  
23 was either physically delivered to Jack Kirby before he  
24 started drawing or communicated to him verbally before  
25 he started drawing Fantastic Four number one?

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2 A. I have no idea. Kirby has gone on record  
3 in an interview saying he did not get a synopsis for  
4 Fantastic Four number one.

5 Q. Do you credit that statement by Kirby?

6 A. Yes, I do. It's pretty definitive.

7 Q. And you discredit Stan Lee's statement  
8 under oath in this case that this synopsis was  
9 communicated to Jack Kirby before Mr. Kirby started  
10 work?

11 MR. TOBEROFF: Objection, lacks  
12 foundation, assumes facts.

13 A. Well, could I see Mr. Lee's statement  
14 before I answer that? Because I've not seen it.

15 Q. Let me ask you to assume that Stan Lee has  
16 testified under oath that this synopsis was  
17 communicated either verbally or in writing to Mr. Kirby  
18 before Mr. Kirby began work on Fantastic Four number  
19 one.

20 MR. TOBEROFF: Objection. You can  
21 answer.

22 A. I would give more credence to Mr. Kirby's  
23 account than to Stan Lee's account.

24 Q. Is it your testimony that that's an  
25 unbiased conclusion?

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2 to weigh an opinion between the two men's statements,  
3 and so that's always a possibility.

4 Q. Is it your understanding, forgive me if you  
5 have already answered this, when we were talking Thor  
6 earlier, that before Mr. Kirby started to draw Thor, he  
7 got the assignment to do so from Jack Kirby?

8 MR. BARD: You mean Stan Lee.

9 Q. Sorry, Stan Lee. Let me restate the  
10 question.

11 MR. TOBEROFF: Objection, vague.

12 BY MR. FLEISCHER:

13 Q. Is it your understanding that before Jack  
14 Kirby put pencil to paper with respect to the first  
15 Thor story, that he had been asked to write that story  
16 by Stan Lee?

17 MR. TOBEROFF: Objection, vague.

18 A. Well, it's my opinion that the Thor concept  
19 would have come from Jack, not from Stan. What the  
20 process was to get Jack beginning on drawing the  
21 physical story, obviously Jack was not the editor.  
22 Jack could not decide to publish a Thor comic book on  
23 his own. He brought the idea to Stan. Stan said sure,  
24 let's run with that in Journey into Mystery. It's not  
25 like they started a new Thor comic though. Jack was



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2 turning out work for Mystery books and Journey into  
3 Mystery was apparently not doing well and the  
4 superheros were, so they started to add a superhero to  
5 it.

6 All I can offer is my opinion there. My  
7 opinion was Jack came up with this idea, and at that  
8 point, Stan said yes, let's put that in Journey in  
9 Mystery, and they probably worked on it together,  
10 and --

11 Q. This is 15. Have you ever seen this  
12 document before?

13 A. Yes, I have.

14 Q. And what is it?

15 A. This is a typed transcript of a radio  
16 interview that Stan Lee and Jack Kirby gave in 1967.  
17 The year's audiotape recording for the story housed in  
18 Stan Lee's archives at the University of Wyoming. One  
19 of our authors Danny Fingerroth went to the University  
20 of Wyoming to go through Stan Lee's archives to give it  
21 to us for Stan Lee's book.

22 (The document referred to was marked  
23 Plaintiff's Morrow Exhibit Number 15 for  
24 identification.)

25 Q. Do you have any reason to believe that this

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2 went ahead and published Kirby's fill-in story.

3 Q. And the idea was that Kirby's story  
4 couldn't advance the plot at all, because that might  
5 affect what was already in the works with Steranko?

6 A. Right.

7 Q. I've placed before you what I have marked  
8 as Exhibit 24, and it appears to be a two-page document  
9 and it's entitled: Introduction by John Morrow.

10 (The document referred to was marked  
11 Plaintiff's Morrow Exhibit Number 24 for  
12 identification.)

13 Q. Is this a document that you wrote?

14 A. It is. With all these introductions,  
15 Marvel editorial staff had the ability to change  
16 things. I don't recall any major changes on any of  
17 them.

18 MR. TOBEROFF: I just want to note for  
19 the record it's a bit hard to read. It's  
20 very dark, at least for me.

21 MR. FLEISCHER: I agree that it's  
22 dark, but I also would submit that it's  
23 entirely legible.

24 Q. There's a statement in the third paragraph:  
25 As usual, for most new issues in the 1960s, Kirby was

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2 called in to work on the initial issues before handing  
3 it off to others to continue.

4 Did you have in mind the other new series  
5 that you were referring to there?

6 A. Ironman. For instance, Daredevil, Kirby  
7 was brought in in some capacity for his covers by him.  
8 There are some character concept drawings by Kirby.  
9 The character called the Plunderer, and I forget the  
10 other one that are in early Daredevil stories that are  
11 all -- it's Kirby giving a sketch of what it should  
12 look like and writing notes off to the side of the  
13 character's, you know, personality and his powers and  
14 things like that, that were submitted to the artist who  
15 was drawing that issue to go by.

16 Q. Do you know who wrote the first issue of  
17 Ironman?

18 A. I believe Larry Lieber scripted that,  
19 didn't he?

20 Q. Yes.

21 A. I believe so.

22 Q. I'm telling you. I'm asking you.

23 Is it your understanding that Larry Lieber  
24 did it?

25 A. I would say yes.

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2 Q. I don't want to testify.

3 And who drew that issue?

4 A. That's Don Heck, I believe.

5 Q. And is it your recollection that Jack Kirby  
6 was asked to do the cover?

7 A. Yes.

8 Q. Now, what was the -- this Exhibit 24 an  
9 introduction to?

10 A. Well, based on what I'm reading here, I'm  
11 assuming this was the one I did for the S.H.I.E.L.D.  
12 series, but let's see, since I'm talking about Shield  
13 here, it must have been for the Agent of Shield  
14 collection.

15 Q. Now, in the fifth paragraph, you say in the  
16 first sentence: While Stan scripted most of the issues  
17 presented here, Kirby was undoubtedly the guiding  
18 creative force.

19 What did you mean by Stan scripted most of  
20 the issues?

21 A. Scripted meaning dialogue, put the words in  
22 the balloons.

23 Q. You don't mean creating the scripts?

24 A. No, not working from the script, no.

25 Scripting and dialoguing are kind of used