

EXHIBIT A

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JOHN MORROW

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARVEL WORLDWIDE, INC.,
MARVEL CHARACTERS, INC.,
and MLV RIGHTS, LLC,
Plaintiffs,

v.

Case No. 10-141-CMKF

LISA R. KIRBY, BARBARA J.
KIRBY, NEAL L. KIRBY and
SUSAN N. KIRBY,
Defendants.

-----x

Video Deposition of JOHN MORROW
(Taken by Plaintiffs)
Raleigh, North Carolina
January 10, 2011

Reported by: Marisa Munoz-Vourakis -
RMR, CRR and Notary Public

TSG JOB NO. 35702

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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

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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 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 Q. What I'm getting to is this, if you had
3 written a scientific paper, where you set forth, take a
4 wild example, the proof of Fermat's last theorem.

5 A. Whatever that is.

6 Q. Which is A to the end, plus B to the end
7 equals C to the end, has no whole number solution
8 greater than two, and you published that paper, the
9 scientific mathematical community would be in a
10 position to test that by looking at your calculations.
11 And I'm trying to get to is there any way the reader of
12 your report could apply some methodology to testing the
13 reliability of your conclusions?

14 A. A methodology to test reliability? By, I
15 assume, by reading the rest of the testimony in this
16 case, other people's depositions, that could, you know,
17 support or reject some of the things I say in my
18 opinions. But, again, I'm not -- I don't really know
19 how to answer that question.

20 Q. Let me direct your attention to page three
21 of your report, not the final report, that's the one --
22 Exhibit 9, and specifically to the sentence appears to
23 be the third sentence in the second full paragraph,
24 which I'll read for the record, "Prior to my 1996
25 article, the unused Fantastic Four story was unknown to

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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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2 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
24 name?

25 THE WITNESS: Brevoort,

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2 mentioned it earlier.

3 Q. From that, don't you conclude, at least as
4 far as Mr. Goodman was concerned, Simon and Kirby were
5 not at that time free to submit work to others as
6 full-time workers of Marvel?

7 A. Well, you could. You could also consider
8 that as not that they weren't necessarily free, but he
9 just took that as a major sign of disloyalty, that they
10 were doing it behind his back, and that he wasn't happy
11 with their unhappiness over the financial arrangements
12 of Captain America, so to make things easier for him,
13 he just got rid of them.

14 Q. Are you familiar with the Challengers of
15 the Unknown story?

16 A. Yes.

17 Q. Who created Challengers of the Unknown?

18 A. To my knowledge, Jack Kirby created
19 Challengers of the Unknown.

20 Q. Is he the sole creator of it?

21 A. There's some dispute on that. Joe Simon
22 might have been involved in some respect, but I've yet
23 to see evidence to prove that.

24 We know that Kirby went to DC and did
25 Challengers of the Unknown. Simon wasn't involved at

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2 that point.

3 So you could ask Joe Simon on that, but to
4 my knowledge, Kirby was the creator of that.

5 Q. When was the first issue of Challengers of
6 the Unknown published?

7 A. Oh, I am going to have to ask your
8 forgiveness on that. I don't remember the exact date.
9 It was sometime in the mid-'50s, but I don't remember
10 the specific cover date. It was actually in Showcase
11 number -- it wasn't in Challengers of the Unknown, it
12 was in Showcase Comics number -- what number was that?
13 I don't recall, but DC had a tryout comic, where they'd
14 try out new ideas first, and it was called Showcase,
15 and it started in there, had about three or four
16 appearances there before it got its own comic.

17 Q. Do you know if Challengers of the Unknown
18 was created pursuant to an assignment by some editor at
19 DC?

20 A. No, I don't believe that was. I believe
21 that was something -- my understanding is that that
22 strip was probably created while Simon and Kirby were
23 doing their Mainline publishing company. And then when
24 things went bad with that, that was a left over
25 creation that they had done on their own at Mainline

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2 and brought over to DC.

3 Q. Do you know what arrangements with regard
4 to the copyright ownership of the work done on that
5 strip at DC were made between Mr. Kirby and/or
6 Mr. Simon and DC?

7 A. No, I'm not, sorry.

8 Q. Returning to the development of the Marvel
9 method, do you know what circumstances gave rise to the
10 development of the Marvel method by Mr. Lee?

11 A. Well, Mr. Lee has gone on the record saying
12 that it was a very expedient way to do things so that
13 he could keep more artists working at the same time to
14 produce more work.

15 So whereas prior to that, he had sat at his
16 typewriter all day, supposedly on yellow legal paper,
17 and typed out script after script after script, and
18 artists, whenever they walked in, would take whatever
19 script was on top of the stack and go home and draw it.
20 For expediency sake, so he can keep his entire staff of
21 artists -- I'm not going to say staff -- all of his
22 freelancers working, he developed that method, where
23 you had a big story conference, you go on your way and
24 start working, you're a good story teller, so you can
25 plot out the pages and all that, as you see fit, and

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2 A. I believe I saw the one for Captain
3 America. It's been a number of years though. I don't
4 remember -- I don't remember any terminology -- the
5 terminology work-for-hire in anything prior to -- I
6 know the first time I even heard that term was, as I
7 mentioned earlier, Neal Adams was mentioning getting
8 the original art back and stuff, that was in the late
9 '70s, is the first time I even heard the term
10 work-for-hire, so.

11 Q. So it's your testimony that when you
12 reviewed the copyright registration applications for
13 Captain America one through ten, there's no reference
14 to work-for-hire?

15 A. I don't recall any in there, no.

16 Q. And if it was Marvel's practice on all of
17 its copyright applications to identify the work as a
18 work made-for-hire, would that change the opinion that
19 you rendered here, to the effect that Marvel itself
20 understood that the freelance work was not work
21 made-for-hire?

22 MR. TOBEROFF: Lacks foundation,
23 assumes evidence, assumes facts.

24 A. Well, I think that's -- no, that's
25 irrelevant, because the creators involved, I don't

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2 no, I don't believe I relied on this for the report.

3 Q. I place before you Exhibit 19, which bears
4 production numbers JM282 through 285.

5 (The document referred to was marked
6 Plaintiff's Morrow Exhibit Number 19 for
7 identification.)

8 Q. Is this a document that you prepared?

9 A. Yes.

10 Q. And it's headed list of research materials
11 in possession of John Morrow.

12 What was the purpose for your preparation
13 of this document?

14 A. You had sent a request for documentation
15 from the expert report, people who were doing expert
16 reports, which Mr. Toberoff's office forwarded to me,
17 and if I'm remembering correct, I believe part of that
18 request was you guys were asking for this.

19 Q. Where are the documents that are identified
20 in Exhibit 19?

21 A. The items listed are all in my home about
22 20 miles from here.

23 MR. FLEISCHER: Let me make a request
24 for the record for copies of the Birnbaum
25 interview identified under item five. These

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2 are not questions. I just want to identify
3 things for the record that we would like to
4 have.

5 MR. TOBEROFF: Could I make a
6 suggestion that we had asked a long time ago
7 if there's anything on this list you want,
8 please let us know, and you didn't. The
9 best thing to do is just send me a letter.

10 MR. FLEISCHER: This is more for me,
11 Marc. I made note of them in preparation.

12 So the other ones on this document
13 that I'd like to see are the documents
14 under -- identified in number seven on
15 Exhibit 19, number 10 and number 11.

16 We'll take a break now. The tape
17 needs to be --

18 THE VIDEOGRAPHER: The time is
19 4:05 p.m. This is the end of tape number 6.
20 We're off the record.

21 (Recess.)

22 THE VIDEOGRAPHER: The time is
23 4:13 p.m. This is the beginning of tape
24 number seven. We're back on the record.

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2 A. No, I have no reason to think they would be
3 inaccurate.

4 Q. By any chance were you at the San Diego
5 Comic-Con in 1975?

6 A. No, I wish I were, but no, I was 13 then.
7 That would have been a lot of fun.

8 Q. I've placed before you a document
9 consisting of two pages. It appears to be an article
10 entitled Leave Them Wanting More, by John Morrow.

11 (The document referred to was marked
12 Plaintiff's Morrow Exhibit Number 23 for
13 identification.)

14 Q. Can you identify this document?

15 A. I believe I wrote this for a collection of
16 Marvel's Nick Fury Agent of S.H.I.E.L.D. series.

17 Q. The bottom of the first page there's a
18 sentence that begins: Legend has it, and runs over to
19 the next page that Jim was running late with the final
20 installment of the Tale and as an assurance against
21 missing the deadline, Stan called up Kirby and asked
22 him to pencil an issue that'd fill -- that's that,
23 apostrophe D -- 20 pages without actually advancing the
24 plot.

25 Well, first of all, let me ask you if you

1 JOHN MORROW

2 have any information with regard to whether these
3 fill-in pages were pages for which Kirby was paid?

4 A. Oh, I would assume, yes, they were actually
5 pages that were published.

6 Q. And they were intended as an assurance
7 against Jim Steranko not turning in his pages on time?

8 A. Not assurance exactly, they thought
9 Mr. Steranko wasn't going to turn in his pages in time
10 and had to get the issue out on time, so they turned to
11 Jack Kirby, knowing he could turn a story around in a
12 weekend. And said Jack, we need an issue of Captain
13 America and we need it by Monday, and you can't tell a
14 story with it. You just have to keep the story where
15 it is, because then the next issue we are going to
16 publish Steranko's conclusion to the story.

17 Jack drew the story, turned it in, it was
18 published, and then the following issue they ran part
19 three of Steranko's story.

20 Q. Was that the last one or the penultimate
21 one?

22 A. Which one?

23 Q. You said that Kirby's fill in was to -- was
24 restricted to the story line that was in the preceding
25 issue. And so that the final issue -- I thought I

1 JOHN MORROW 258

2 understood you to say so that the final issue would
3 also be consistent. Was the pages that Steranko was
4 doing was the issue -- same issue that Kirby did, same
5 story, right?

6 A. Well, Steranko had a three-part story in
7 the works. He got in the first issue on time. He got
8 in the second issue on time and they were published.
9 But it was obvious to the people of Marvel that he was
10 going to miss his deadline for part three of that
11 story. They still had to keep the printing presses
12 running and get an issue out on time. So they had to
13 come up with something to fill that until Steranko got
14 his story finished so that it could be in -- the third
15 part could be in the fourth issue.

16 So they just had an empty hole there, and
17 they had to fill it with something.

18 So they called in Jack Kirby, asked him to
19 create a story over the weekend, to print it in, that
20 was issue 112, I believe, of Captain America.
21 Otherwise they wouldn't have had an issue to ship that
22 month.

23 Q. And then they ultimately did publish the
24 third installment that Steranko did?

25 A. They did, but a month late, because they

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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 interchangeably, or at least our company does.

3 Q. Is it interchangeably anywhere else, other
4 than your company?

5 A. A lot of scholarly comics publications do.

6 Q. Is there such a thing as a scholarly comic
7 publication?

8 A. Well, ours are scholarly publications. I
9 consider them that.

10 Q. I've placed before you Exhibit 25, which
11 bears production numbers PHP3278 through -- oh, no,
12 right, it's an internal number. They are all labeled
13 PH3278.

14 In any event, it's a document entitled Joe
15 Sinnott Interview, Interviewed by John Morrow on
16 December 18, 1995.

17 (The document referred to was marked
18 Plaintiff's Exhibit Number 25 for
19 identification.)

20 Q. Is this document an interview that was
21 published that you did of Joe Sinnott?

22 A. Yeah, I believe it was published in Jack
23 Kirby Collection number nine, if I remember correctly.

24 Q. And is the transcription of the interview
25 set forth here an accurate transcription?

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2 A. Yes, I was doing all my own transcribing in
3 those days. I would do some editing as I transcribed,
4 so this is an edited version.

5 Q. I've placed before you Exhibit 26, which is
6 a document entitled: Journey into Mysteries Avenger.
7 Can you tell me what this is?

8 A. It's actually Avenger Reassembled, it's a
9 piece -- hang on a second.

10 (The document referred to was marked
11 Plaintiff's Morrow Exhibit Number 26 for
12 identification.)

13 Q. Oh, I see, the title goes over into the
14 next page?

15 A. Across. This is a, much like we did with
16 that Fantastic Four story that was not published, there
17 were a lot of these unused store pages that are all
18 from the same sequence. And we tried to put those back
19 together into the, what we perceived to have been
20 Mr. Kirby's original version of the story and tried to
21 from that deduce, you know, what happened, why the
22 pages got rejected and what the original story would
23 have been.

24 Q. And the article begins, I'm sorry, and
25 you're the author of this?