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The Work

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Bam! Whap! Marty Garbus Joins the Tortured Legal History of Stan Lee; Marvel

Posted by Brian Baxter

Famed trial lawyer [Martin Garbus](#)--whose notable clients have included such high-profile humorists as Lenny Bruce and Don Imus--is back in court for a dispute with comics at its heart, only this time they're of the superhero, not the stand-up, variety.

On Monday, Garbus filed a derivative suit in [U.S. district court in Manhattan](#) on behalf of four shareholders of [Stan Lee Media, Inc.](#), (SLMI) against legendary comic book creator [Stan Lee](#), [Marvel Entertainment](#), and several other individuals.

In the suit, [Garbus claims the defendants](#) violated his clients' copyrights, ignored their rights as SLMI shareholders, and improperly pocketed \$750 million in proceeds from Marvel-owned franchises like [Spider-Man](#), [Iron Man](#), and the [X-Men](#). (The \$750 million figure represents a 50 percent ownership stake in Marvel and Lee-held properties.)

In his complaint, Garbus accuses Marvel, Lee, Lee business partner Arthur Lieberman, current [Marvel CEO Isaac Perlmutter](#), and [Avi Arad](#), a major Marvel shareholder, of colluding "to hide and misappropriate financial interests in Lee's creations assigned to Stan Lee Media in 1998 and reaffirmed in 1999."

"Marvel says they have those rights subsequent to an agreement between Stan Lee and [SLMI] signed on October 15, 1998," says Garbus. The problem, says Garbus, is that the same people who signed that agreement (including Lee and Lieberman) later put SLMI into bankruptcy. "At the same time [Lee and Lieberman] were preparing bankruptcy papers, they were taking assets out of the bankrupt estate."

Garbus gained some ammunition for his suit on Tuesday when, in a related case, [U.S. district court judge Stephen Wilson](#) in Los Angeles ruled that Stan Lee himself may have [violated U.S. bankruptcy laws](#).

Put it all together and you've got the latest installment in a tortured legal history--a tangled web of litigation over issues of ownership, royalties, management, licensing, and rights that has featured villainous figures such as [Ronald Perelman](#) and [Carl Icahn](#).

To recap quickly: Once owned by Perelman, Marvel was hit hard when the [comic book bubble](#)--yes, there was one--burst in the early nineties. The company was [forced into bankruptcy in 1996](#) as part of a dispute between Perelman and Icahn. Both were ousted when Perlmutter and Arad acquired Marvel in 1998 [as part of a reorganization plan](#).

[According to a 2008 Barron's story](#), Perlmutter used bankruptcy proceedings to reject Marvel's \$1 million-per-year lifetime contract with Lee, which voided the exclusive rights Lee had assigned to the company for his iconic characters. (Marvel emerged from Chapter 11 in October 1998.)

Lee responded by forming SLMI in 1998--along with Hollywood entrepreneur Peter Paul--as a Web-based production and marketing company to control his intellectual property. The new company itself filed for bankruptcy in 2001. ([Paul later pleaded guilty to securities fraud charges brought by the SEC.](#))

In 2002, [Lee sued Marvel](#) claiming that it had reneged on a November 1998 contract under which he was to get--in addition to the lifetime salary mentioned previously--a 10 percent cut of movie and television deals for characters that Lee created. A subsequent settlement was sealed, but Barron's reports that Marvel took a \$10 million charge in connection with it.

When SLMI emerged from bankruptcy in 2006 under the leadership of Wall Street trader James Nesfield--[a one-time whistle-blower](#) for former New York State AG Eliot Spitzer--it was eager to settle old scores with Lee and Marvel over ownership of Lee's characters.

No longer associated with SLMI, Lee struck first. Along with his new production company, [POW! Entertainment](#), Lee slapped SLMI and Nesfield with a [\\$50 million trademark infringement suit](#) in federal court in Los Angeles in January 2007. Lee accused SLMI of hijacking his name and image and preventing him from developing new characters via deals with Disney and Virgin Comics.

In March 2007, SLMI hit back, [suing Lee and Marvel in New York](#) in a case echoing many of the same claims filed by Garbus in federal court on Monday. (The March 2007 case was eventually dismissed without prejudice in September 2008; Garbus says he took over the matter for SLMI at that point from [King & Spalding](#) partner Ethan Horowitz.)

In July 2007, [SLMI filed yet another suit](#) in federal court in Los Angeles against Stan Lee and POW!, which SLMI claims took assets from its estate while it languished in bankruptcy.

Got all that? Now we're up to date.

The ruling by Wilson on Tuesday stayed the 2007 trademark infringement suit filed by Lee and POW!. Wilson also held that Lee and his POW! partner Lieberman--a former [Dickstein Shapiro](#) IP partner--had no legal basis for transferring copyrights and trademarks on superhero-related assets from then-bankrupt SLMI to Lee-controlled entities including POW!.

Garbus calls Wilson's ruling significant because it finds the same individuals guilty of wrongdoing that he's trying to prove improperly transferred assets out of SLMI years ago. Garbus describes what Lee and Marvel have done to SMLI as a "practice of looting."

"I think it's fairly well agreed that if [the 1998] agreement is still valid," he says, "it transfers all the rights to all Marvel characters by Stan Lee into SLMI."

That has SLMI claiming that it's entitled to recover as much as \$1 billion from Marvel and Lee as well as obtain a 50 percent interest in future profits.

Lawyers for Lee--[Sherman & Howard](#) partner Mark Williams--and POW!--[McGuireWoods](#) partner David Van Etten--were not immediately available for comment on Wilson's ruling. But POW! issued a press release decrying the "unfounded statements" being made by Garbus and SLMI.

POW! states that it's "impossible to conclude" that SLMI shareholders could reap \$1 billion in damages, as it

disputes that three of the four plaintiffs filing claims are even legitimate shareholders to begin with.

Wilson also noted in his ruling that further proceedings would be necessary in the case, POW! states, adding that when the matter is concluded "Stan Lee believes that justice and truth will prevail, and the illegal acts of those associated with the 'plaintiffs' in the New York suit will be exposed."

In the New York action filed by Garbus, Marvel has retained [Paul, Hastings, Janofsky & Walker](#) partners David Fleischer and Jodi Kleinick. The firm declined to comment on the latest litigation, but when The Associated Press contacted Lee's lawyer, Sherman's Williams, he said the most recent SLMI filing was filled with "ridiculous claims."

For lawyers looking to sort out the whole mess, it will likely take a superhuman effort.

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It might be interesting for people to read all of the SEC filings by Marvel and POW! Hmmm, what did they tell their shareholders?

And I hope this won't be removed. This is from the transcript of Jan. 9 in Judge Wilson's courtroom. He didn't seem very pleased.

THE COURT: Wasn't my original question, and correct me if I'm wrong, regarding what payments were made to the creditors?

MR. WILLIAMS: It was.

THE COURT: And so you didn't answer in a straight forward way.

MR. WILLIAMS: I apologize, Your Honor.

THE COURT: You know something, I must say this without sounding personal, but when this happens I think it's appropriate for the court to not let it slip by. I get the impression that you are somewhat deceptive with the court. That's my impression and I hope it's an erroneous impression, but on more than one occasion when we've had hearings you've done or said things which leave me with that impression. That doesn't help your client.

MR. WILLIAMS: I apologize, Your Honor.

THE COURT: Don't let those slip-ups happen again.

MR. WILLIAMS: Yes, Your Honor.

Comment By shareholder - [January 29, 2009 at 7:04 PM](#)

A 13D Report by Nesfield as a shareholder of Marvel Entertainment (MVL) in November, 2007, details the collusion between Perlmutter as Chairman and largest shareholder of Marvel, Lee and his "handler" partner/lawyer Arthur Lieberman. The unprecedented filing, detailing serial SEC and Federal criminal acts was immediately challenged by SEC officials because of the damning details of SEC frauds included, yet the SEC has allowed it to remain on the SEC site continuously since then. If the 13D is accurate, the Stan Lee Media claims will prevail and Perlmutter will be forced to relinquish his fiduciary duties for the company.

Comment By Richard Morgenthau - [January 29, 2009 at 7:20 PM](#)

Marvel's spokesman has responded to the claims of SLM shareholders described in a Barron's article in June 2008 by repeating Marvel's Mantra that Stan Lee never claimed ownership in his characters. Yet Marvel's lawyers, Chairman and others know Lee claimed in his 2002 law suit against Marvel in Manhattan Federal Court that he gave Marvel "a conditional assignment" of his "world famous creations" as part of his Nov 1998 Employment Agreement. When the Judge ruled that Lee was entitled to 10% of the profits earned by Marvel on his creations in January 2005, (and settled for \$14million in April 05) Lee's lawyers issued a press release describing Lee's November 1998 Employment Agreement as a "profit sharing venture" between Lee and Marvel. Would Marvel's ongoing publication of false and misleading statements to the investing public about Lee's claims to his characters, and the est.\$14million secret settlement Marvel gave Lee, constitute serial 10(b)5 violations by the company warranting classification of Marvel as a continuing criminal enterprise under RICO?

Comment By brandon van eyck - [January 30, 2009 at 8:49 AM](#)

Both Stan and his attorney(s) have claimed that Stan has never asserted ownership rights of his characters. Oh, really?

When Stan sued Marvel in 2002, here is what he said in his lawsuit:

“Defendants [Marvel] were given the right and assumed the obligation to commercially exploit Mr. Lee's characters.”

Defendants [Marvel] received a “conditional assignment of Mr. Lee's rights.”

Mr. Lee “permitted Defendants [Marvel] to exploit his superhero characters.”

It certainly sounds as if he was claiming ownership rights. And he got paid many millions of dollars in a settlement for those rights. Coincidentally, Marvel settled just before borrowing an enormous amount of money unsecured from Merrill Lynch.

Comment By shareholder - [January 30, 2009 at 8:14 PM](#)

