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## Stan Lee Media Urges High Court To Revive Spider-Man Suit

Share us on: By **Kurt Orzeck**

Law360, Los Angeles (February 27, 2015, 6:40 PM ET) -- Stan Lee Media Inc. urged the U.S. Supreme Court in a filing made public Friday to revive its suit seeking profits and ownership rights to Spider-Man and other characters created by its ex-President Stan Lee, arguing that the Ninth Circuit's dismissal deviated from Twombly.

In a Feb. 12 petition for writ of certiorari, Stan Lee Media claimed the Ninth Circuit's **October decision** wrongly limited the pleading standings established by the high court's 2007 ruling in Bell Atlantic Corp. v. Twombly. That decision tightened the standard on a motion to dismiss from one of notice pleading to a requirement that plaintiffs' allegations state a claim to relief that is plausible on its face.

The Ninth Circuit had called Stan Lee Media's claim that it owned the valuable characters "simply implausible," since the plaintiff hadn't claimed it owned the rights to them or tried to license them between 1998, when the company says Stan Lee assigned the company rights to the characters, and 2007, when it filed suit.

Stan Lee Media contended to the Supreme Court earlier this month that the Ninth Circuit had ignored the Twombly pleading requirement and, by focusing on facts outside the complaint, had wrongly drawn negative inferences against the company.

"The Ninth Circuit violated almost every accepted precept of pleading under Rule 8 as this court has interpreted it," the petition said. "The Court of Appeals' error ... presents this court with a vehicle to reaffirm (or discard) the traditional precepts of notice pleading ... retain their vigor."

During his four decades at Marvel, Lee created or co-created Spider-Man, Iron Man, the X-Men and

the Fantastic Four, among other famed comic book characters.

Litigation over the rights to Lee's comic book characters dates to November 2002, when Lee sued Marvel, claiming the company failed to honor a contract promising him a share of revenues from characters he created. The deal was penned in November 1998, after Marvel had filed for bankruptcy and been bought by toy distributor Toy Biz Inc.

Stan Lee Media — a production and marketing company formerly known as Stan Lee Enterprises — claimed Lee had assigned it the rights to his characters in October 1998, before signing the deal with Marvel in November of that year.

After going public, Stan Lee Media failed amid the dot-com bust and filed for Chapter 11 protection in February 2001. Its bankruptcy case was dismissed in November 2006 after the company failed to pay U.S. trustee fees.

Beginning in 2007, Stan Lee Media initiated protracted litigation attempting to reclaim assets it says were stripped during its bankruptcy, including the rights to Lee's most popular creations. Stan Lee Media contended that Lee, then the company's president, didn't list his valuable, classic creations in the bankruptcy filing in order to hide the fact that he had signed the characters over to it a month before he signed them over to Marvel Enterprises Inc. — now a Walt Disney Co. unit.

In 2012, a California federal judge **dismissed the instant case** on grounds of res judicata. The Ninth Circuit affirmed that decision after finding that Stan Lee Media didn't satisfy the pleading requirements.

Stan Lee Media replied in its Supreme Court petition that the complaint easily established facial plausibility, because it pleaded the existence of Lee's characters, and described how he gained control of them and formed Stan Lee Media.

But rather than drawing reasonable inferences in favor of Stan Lee Media, according to the Rule 8 pleading standards, the Ninth Circuit “flatly ignored” the allegations and drew negative inferences, the petition claimed.

“Either discounting or ignoring the factual allegations as to why [Stan Lee Media] could not enforce its rights for years ... the Court of Appeals has donned the role of finder of fact,” it said. “This is the province of ... a civil jury.”

A response to Stan Lee Media's brief is due Mar. 26, according to the Supreme Court case docket.

Attorneys for Stan Lee Media declined immediate further comment beyond the petition on Friday. An attorney who represented Lee in the Ninth Circuit case didn't immediately respond to a request for comment late Friday.

Stan Lee Media is represented by Scott E. Diamond and Edward W. Millstein of Sacks Weston Millstein & Diamond LLC, and Charles Pearsall Goodwin of Law Offices of Charles P. Goodwin.

Counsel information for the defendants wasn't immediately available.

The case is Stan Lee Media Inc. v. Pow! Entertainment Inc. et al., case number 14-1033, in the