

SUPERMAN'S LAWYER

THE MASTERMIND BEHIND THE EPIC STRUGGLE TO WIN BACK THE RIGHTS TO THE MAN OF STEEL

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Marc Toberoff, a tightly wound man with thinning hair and an expansive grin, is an attorney who specializes in suing movie studios on behalf of artists and writers. For 11 years he has represented the heirs of the late Jerome Siegel and Joe Shuster, the creators of Superman, in a campaign to regain the rights to the original superhero from Warner Bros.

In 2008, Toberoff won an astounding victory for the Siegels, granting them 50 percent of Superman as he first appeared in Action Comics No. 1, meaning they would be entitled to a percentage of the U.S. profits from *Man of Steel*, which opens on June 14 and stars the pensive British actor Henry Cavill. The legal decision meant that the family had claims to much of the intellectual property defining Superman, including his blue tights, red cape, secret identity, and other traits.

Toberoff, who is charging the family a 30 percent contingency fee, was expecting a nice chunk of the profits. And he hoped to perform the same service for the Shusters. United, the families would have had the right to block any Superman movie after *Man of Steel*. But several months ago, Toberoff suffered some unanticipated reversals. He is shaken but insists the struggle isn't over, and he'll be watching the new big-budget movie to see how closely it adheres to Siegel and Shuster's original 1938 conception of the hero.

The battle over the rights to Superman has been going on for decades, and despite his recent setbacks, Toberoff is unusually qualified to cause trouble for movie studios. He won a court order halting the release of Warner Bros.' *The Dukes of Hazzard* starring Johnny Knoxville and Jessica Simpson in 2005, extracting a \$17.5 million settlement on behalf of producer

Robert Clark. The judge was unmoved by the studio's pleas that the movie had to open in a hurry because Simpson's allure might prove transitory.

Six years ago, Toberoff negotiated a settlement with Warner Bros. on behalf of *Get Smart* creators Mel Brooks and Buck Henry when the studio set out to make a movie based on the TV show. "It was a happy ending for us," says Henry. "Less so for Warner Brothers. We called him the bulldog, and it really fit. He's this aggressive, funny, angry little dog." Toberoff says he can't discuss the payouts in either case. Warner Bros. also declined to comment on the settlements.

Toberoff also represented Darryl Quarles, creator of *Big Momma's House*, the 2000 film starring Martin Lawrence, winning a confidential settlement from 20th Century-Fox in 2010 when he claimed that it tried to release a sequel that infringed on his rights. Quarles was impressed not only with Toberoff's legal chops but also his abs. "You should see this guy work out," says Quarles. "He's a little guy, but he's hard as a rock." Fox did not respond to requests for comment.

Toberoff remains most closely identified with Superman. After his 2008 victory, *Variety* christened him the "legal Man of Steel." On May 24, the day he turns 58, Toberoff lounges on a sofa in his high-ceilinged office overlooking the Pacific Ocean in Malibu, Calif., as he describes how Shuster and Siegel had been wronged, how he won the case for the Siegels, how he seems to have lost, and how he hopes eventually to prevail, even if it means taking Superman to the Supreme Court. "This case is by no means over," he says. "My clients and I are prepared to go the distance." ➔



Toberoff's role as Superman's avenger began in 2001, when he got a call from Mark Warren Peary, an aspiring screenwriter and author of *The Ten Biggest Diet Myths and Greatest Health Secrets Revealed*. Peary is the nephew of Joe Shuster, the co-creator of Superman. He had read about Toberoff and wondered if the attorney could help his family reclaim Superman. (Toberoff said Peary, his client, was unavailable to discuss the case.)

Toberoff was intrigued by Shuster and Siegel's tragic story. The two men met as teenagers in Glenville High School in Cleveland in 1932. They published a fanzine called *Science Fiction: The Advance Guard of Future Civilization*. Together they developed a character called Superman. Originally, he was a baldheaded mad villain. Then he morphed into a do-gooder along the lines of Flash Gordon or Tarzan, who were basically just quick-thinking strong guys. One night in 1934, Siegel came up with the idea that their Superman would be an escapee from a dying planet who could vault over tall buildings and run quicker than an express train. Bullets bounced off his skin. He had an alter ego, Clark Kent, a timid reporter at a big-city newspaper. Clark longed for fellow reporter Lois Lane. But Lois had eyes only for Superman, never realizing that he and Clark were one and the same.

Siegel and Shuster created four weeks of newspaper strips but couldn't sell them. They ended up cutting and pasting their material into comic book format and selling it in 1938, along with the rights to their creation, to Detective Comics, a precursor to Warner Bros.' DC Comics division. They were paid \$130. Superman became a phenomenon, spawning a radio show, an animated film series, and tons of merchandise. "That boy is growing rare who has no Superman dungarees in his wardrobe or no Superman Krypto-Raygun in his play chest," the *Saturday Evening Post* wrote in 1941.

Siegel and Shuster soon regretted parting with Superman for such a low price. In 1947 they sued DC to get Superman back. They didn't succeed, and couldn't find work for years in the comic book industry. "My father was blackballed," says Siegel's daughter, Laura Siegel Larson. DC eventually rehired Siegel as a Superman writer in the late 1950s. Shuster was less fortunate: His eyes failed, and he became legally blind.

In 1969, Siegel and Shuster sued DC again, seeking the return of Superman. They lost again. There was no more work for Siegel at DC. He became a clerk-typist for the Los Angeles Public Utilities Commission. On his lunch hours, he would go to a law library across the street and pore over books about copyright law, hoping to find ways to reclaim Superman. The stories about Shuster are sadder still. Toberoff tells one about how the illustrator was too broke around this time to go to the musical *It's a Bird... It's a Plane... It's Superman*. "He's standing out there in the snow, and the crowd's rushing in," he says indignantly.

In 1975, Siegel and Shuster went public with their complaints in an attempt to shame DC into giving them a better deal. "I've been waiting for Superman to crash in and do something about it all," Siegel told the *New York Times*. "Perhaps he would reveal a new super power. He might have a new ray which is capable of stimulating a corporation's conscience."

It worked, to an extent. DC, by then a division of Warner Bros., agreed to pay Siegel and Shuster an annual stipend of \$20,000. Warner Bros. says the amount was later raised to \$100,000. DC's charity didn't inspire

enduring gratitude from the two men's families. Shuster died in 1992, heavily in debt. Siegel passed away four years later, telling his wife and daughter on his deathbed to carry on the fight to reclaim Superman.

The Siegels had reason to think they might do better now. In 1976, Congress revised federal copyright law to allow artists and their heirs to reclaim their work decades after granting it to publishers and movie studios as long as it wasn't "work for hire" they had done as employees. That meant the Siegels had a claim to the Superman work created before the 1938 agreement.

Toberoff thought both families had worthy cases. He quickly agreed to help the Shusters get Superman back. The Siegels had already hired another lawyer, Kevin Marks. Warner Bros. was eager to work something out. On Oct. 19, 2001, Marks wrote Warner Bros. that the Siegels had accepted a deal that the studio says would have been worth more than \$20 million to the family over the next decade.

As far as Warner Bros. is concerned, the letter from Marks sealed the deal. Toberoff disagrees. He notes that Joanne Siegel, the comic book writer's wife and the model for Lois Lane, wrote to Time Warner, Warner Bros.' corporate parent, on May 9, 2002, accusing the studio of changing the terms of the deal. She compared Time Warner's tactics to those of the Gestapo. That September, the Siegels fired Marks and soon after hired Toberoff. Toberoff insists that he tried to get a better deal for the family, but nothing came of it. In 2004 he again sued Warner Bros. seeking Superman's return, this time on the Siegels' behalf.

A fierce legal battle ensued. Toberoff says it was tough for an underdog like him to fend off the two law firms Warner Bros. hired, Fross Zelnick Lehrman & Zissu and Weissman Wolff Bergman Coleman. He had personal setbacks, too. In 2007, his Malibu home burned down in a wildfire. He says he raced out of the building with his kids under his arms and threw them into a car. "There was fire all around," he says. "I thought the car was going to blow up." Toberoff lost all his possessions. He went to legal proceedings in a hoodie and sweats until he could buy a new lawyerly wardrobe.

The same year, he survived a near-fatal car accident on the way to a deposition in Philadelphia. "All of a sudden, this huge cast iron bin twice the size of a couch falls out of a truck in front of me," he says. "I hit it head-on. The entire car was crushed to my knees."

Not badly injured, Toberoff snacked on half a sandwich in his briefcase awaiting the police. He made the deposition on schedule.

Having walked out of a burning building and emerged unscathed from a car crash, Toberoff next defied the odds in the courtroom. In 2008, Stephen Larson, a U.S. District Court Judge in California, swept aside Warner Bros.' insistence that it had a deal with the Siegels and issued a 72-page decision that was very favorable to the family. "After seventy years," Larson wrote, "Jerome Siegel's heirs regain what he granted so long ago—the copyright to the Superman material that was published in Action Comics, Vol. 1."

The Siegels ended up with 50 percent of the U.S. rights to many valuable elements of the Man of Steel brand: the tights, cape, boots, and ability to leap tall buildings and repel bullets. It didn't get his flying powers, super hearing, or X-ray vision. The judge determined that those, along with such villains as Lex Luthor and Brainiac, and many other things, had been added later.

It might have been a good time to seek a settlement. Joanne Siegel was now in her early nineties. She wouldn't have

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much more time to enjoy the proceeds from her victory. Toberoff and his clients, however, pressed on.

Every superhero has a vulnerability. So do super lawyers. Not content as a successful showbiz attorney, Toberoff wanted to get into the business himself. The son of a prominent medical malpractice lawyer, he fell in love with movies as a child growing up in New York City during the '60s. His parents took him to art house theaters where he saw the works of Bernardo Bertolucci and François Truffaut. Toberoff went to Columbia Law School, where the only subject that really interested him was intellectual property.

After graduating, Toberoff got a job in New York with Elliott Kastner, producer of some 60 movies, many with stars like Marlon Brando and Paul Newman. In the early '90s he moved to Los Angeles, hoping to make it in Hollywood himself. "Nobody wanted to talk to me," he laments. "I was just another guy running around town."

Luckily, he had his law degree. One day in 1994, he was reading *Variety* on the treadmill and noticed a tiny classified ad placed by the family of the late Robert Pirosh, creator of the 1960s ABC-TV series *Combat!* Pirosh's son, Steve, wanted someone to cull through his dad's files and see if there was anything of value. "He came in with a box of papers with things sticking out in all directions, literally," Toberoff says.

Toberoff discovered that Pirosh controlled the movie rights to the show. Shortly thereafter, a movie studio announced that it had optioned the rights to make a *Combat!* movie starring Bruce Willis. Toberoff negotiated a settlement for the Piroshes.

His timing couldn't have been better. Studios increasingly wanted to make movies with built-in audiences. One formula was to bring old TV shows to the big screen. Toberoff says he'd get calls from aggrieved screenwriters when they'd been cut out of the adaptation. At times, Toberoff may have been more entrepreneurial. "He has this database where he keeps track of heirs and copyright termination windows, and he goes out and contacts them and tries to get their business," Hollywood attorney Bonnie Eskenazi told *IP*

Law & Business in 2008. "I had one widow calling me saying that Marc wouldn't leave her alone." Toberoff says Eskenazi doesn't know how he operates and is mad at him because he once beat her in a case.

Eventually, Toberoff couldn't resist buying rights for himself. He acquired old movies like *Grand Hotel* and TV shows like *Sanford and Son*. He produced a number of his own movies, too. One of the most recent was 2010's *Piranha*, about carnivorous fish that menace bikini-clad women. He optioned the rights to the 1978 Roger Corman film of the same name and remade it.

Toberoff's filmography wasn't in the same league as Truffaut's. But he became a player, doing business with guys like Ari Emanuel, co-CEO of William Morris Endeavor Entertainment. The two even created a partnership. Emanuel would provide the show business talent and funding. Toberoff would contribute the intellectual property.

What he hadn't foreseen was that his moviemaking activities could be his Kryptonite in the Superman struggle. After Warner Bros.' 2008 setback in district court, the studio dismissed its two law firms and hired Daniel Petrocelli, a Los Angeles attorney known for aggressive tactics. In 2010, Petrocelli filed a lawsuit against Toberoff accusing him of interfering with the studio's dealings with the Siegels and Shusters because he was scheming to get the rights to Superman for himself. Toberoff denies it. "This is all made up," he says.

Well, maybe not all. In 2001, Toberoff admits, he set up a joint venture with the Shusters that would have entitled Pacific Pic-

tures, a company of his, to half of their reclaimed Superman rights. And in 2002, he and Emanuel approached the Siegels with an offer to pay the family \$15 million to license their Superman rights. Toberoff says Emanuel would have been the buyer, not him. Emanuel wasn't available for comment. Toberoff is quick to point out that nothing came of his efforts. The Siegels didn't want to part with Superman. And he dissolved the joint venture with the Shusters when he realized it wouldn't hold up in court. "It was a mistake," he says.

Though Toberoff scoffs at Petrocelli's tactics, Warner Bros. used Toberoff's wheeling and dealing before the lawsuit to alter the story line in the case. "The narrative had been the classic little guy versus the big corporation story, David versus Goliath," says Jeff Trexler, an attorney who has written extensively about the Superman case. "Petrocelli comes in and says, this isn't David and Goliath. This is Goliath versus Goliath. And the little guys are the collateral damage."

In 2011, Toberoff lost Joanne Siegel, his marquee client, who passed away at the age of 93. "Joanne was in the process of settling with Time Warner, which would have made her a literal millionaire," says Larry Tye, author of *Superman: The High Flying History of America's Most Enduring Hero*. "That's when things got confusing: Warner Brothers says Toberoff interfered with the settlement. Toberoff says the studio wasn't negotiating in good faith and he got involved long after negotiations stalled. The bottom line is that Joanne died without ever seeing that money, which seems tragic."

Toberoff soon suffered the first of two major setbacks in the Superman case. In October 2012, U.S. District Court Judge Otis Wright ruled that the Shusters' attempt to reclaim their copyright was invalid because of a 1992 agreement where Warner Bros. agreed to cover the late artist's debts and make payments to his family. Toberoff is appealing the decision. In January, an appellate court overturned Toberoff's 2008 victory in the Siegel case, embracing the studio's argument that it had reached a deal years before with the family. Warner Bros. celebrated. "This is a great day for Superman, for his fans, for DC Entertainment, and for Warner Brothers," the studio said. Toberoff says he is exploring a number of legal remedies in both cases, including petitioning the Supreme Court. But that's a long shot.

Toberoff finally got some good news in April, when Judge Wright threw out Warner Bros.' interference claims against him. But it was hardly a vindication. The judge said Warner Bros. waited too long to pursue its charges. Petrocelli says the studio will appeal.

Back in Malibu, Toberoff is recovering from yet another contentious hearing in the Superman case. The doorbell rings. It's Laura Siegel Larson, Jerry Siegel's daughter. She wishes Toberoff happy birthday and gives him a plant. Larson is more serene about her family's legal odyssey than Toberoff. Perhaps she can afford to be. Toberoff has been covering all the expenses in the case. "He has not made a penny out of this," she says. "He works strictly on a contingency basis. I don't know of any lawyer that would stand by my family for 11 years without being paid at an hourly rate."

Toberoff won't say exactly how much he has spent, but it must be a lot. "We had a forensic accountant and we had to pay a couple hundred thousand dollars," he complains. "Every time you take a deposition, it's \$2,000 a pop." If he added it all up, he says, he would cry.

He says he feels like he is suffering from shell shock. He goes outside on a nice day. He sees other people drinking and laughing. He can't share their fun. "That's a normal life," Toberoff says. "I'm in something else."

The surf pounds on the rocks outside as he speaks. He has yet to see *Man of Steel*, but he believes it will be a darker film in which Superman will be more of an outcast or a vigilante, as he was when he first appeared 75 years ago. "It's amazing," Toberoff says. "You should read Action Comics No. 1." **6**

TOBEROFF AND EMANUEL APPROACHED THE SIEGELS IN 2002 OFFERING \$15 MILLION TO LICENSE THEIR SUPERMAN RIGHTS