

MILWAUKEE COUNTY

CIRCUIT COURT
BRANCH 01

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BRANCH 01

IN THE ESTATE OF:

ERNEST GARY GYGAX, SR.

Case No. 2020PR000058

COURT TRIAL

April 19, 2023

Hon. Phillip A. Koss
Presiding

Presiding

APPEARANCES

Jennifer Gorn, Attorney at Law, appeared on behalf of Lucion Gygax.

Theodore Johnson, Attorney at Law, appeared on behalf of Gail Gygax.

Steven Koch, Attorney at Law, appeared as personal representative.

(This proceeding was digitally recorded)

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1 P R O C E E D I N G S

2 THE COURT: In the Estate of Ernest
3 Gary Gygax, Senior. Appearances starting with
4 the petitioner.

5 ATTORNEY GORN: Good morning, Your
6 Honor. Attorney Jennifer Gorn appears on behalf
7 of the Petitioner, Lucion Gygax, who also appears
8 in person.

9 ATTORNEY JOHNSON: Good morning, Your
10 Honor. The surviving spouse, Gail Gygax and
11 Respondent in this matter, appears in person with
12 her attorneys, Godfrey Law Office by Ted Johnson.

13 ATTORNEY KOCH: Good morning, Your
14 Honor. Appearing as personal representative is
15 Attorney Steven A. Koch.

16 THE COURT: Okay. Welcome everybody.
17 We're here for trial. A couple housekeeping or
18 scheduling issues. We have a full day today.
19 Tomorrow I do have the 8:30 calendar call. I
20 assume we'll be done around 9:00. And then
21 Friday we have final pretrials at 10:00? 10:30.
22 So we'll have to work around that. And I think I
23 have a 4:30 appointment with computer people
24 tomorrow afternoon. But otherwise the rest of
25 the time is yours. With that then, is the

1 Petitioner ready to proceed?

2 ATTORNEY GORN: Sorry, Your Honor.
3 Still unloading.

4 THE COURT: Okay. Are we proceeding
5 to trial though? There's no resolution, true?

6 ATTORNEY GORN: Correct. Yes, Your
7 Honor.

8 THE COURT: Okay. Mr. Johnson, are
9 you ready today?

10 ATTORNEY JOHNSON: Yes, Your Honor.

11 THE COURT: Mr. Koch?

12 ATTORNEY KOCH: Yes, Your Honor.

13 THE COURT: All right. Miss Gorn,
14 are you ready with your first witness?

15 ATTORNEY GORN: Yes, Your Honor. The
16 Petitioner would like to begin by calling
17 Mrs. Gail Gygax adversely.

18 THE COURT: All right. Miss Gygax,
19 you have to come up here.

20 THE CLERK: Ma'am, before you sit
21 down, can you raise your right hand for me?
22 Please state and spell your name for the record.

23 THE WITNESS: Gail Carpenter Gygax.
24 The last name is G-Y-G-A-X.

25 THE CLERK: Do you solemnly swear

1 that the testimony you shall give in this matter
2 shall be the truth, the whole truth, and nothing
3 but truth, so help you God?

4 THE WITNESS: Yes.

5 THE CLERK: Thank you. Be seated.

6 THE COURT: And make sure all your
7 phones are on silent. Obviously we can't record
8 anything either. There can only be one official
9 recording. And with that, Miss Gorn, you may
10 begin.

11 ATTORNEY GORN: Thank you, Your
12 Honor.

13 DIRECT EXAMINATION

14 BY ATTORNEY GORN:

15 Q Miss Gygax, can you please state your full name
16 for the record?

17 A Gail Carpenter Gygax.

18 Q And what is your current residence address?

19 A 316 Madison Street, Lake Geneva, Wisconsin.

20 Q And how long have you lived at that residence?

21 A Since June of 1990.

22 ATTORNEY JOHNSON: Gail, can I ask
23 that you move the microphone right closer to you?

24 THE WITNESS: That's what I was
25 wondering.

1 ATTORNEY JOHNSON: Yeah.
2 THE WITNESS: Okay.
3 ATTORNEY JOHNSON: And speak into it
4 so we can all hear.
5 THE WITNESS: Okay.
6 ATTORNEY JOHNSON: Thank you.
7 BY ATTORNEY GORN:
8 Q Have you always lived in Lake Geneva, Miss
9 Gygax -- Mrs. Gygax?
10 A No.
11 Q And where -- where did you grow up?
12 A I was born in Utica, New York. Then my parents
13 divorced and I moved to Mayfield, Kentucky. And
14 I spent my summers in Saratoga, New York;
15 Ballston Spa, New York; Albany, New York; and
16 Mayfield again with my mom.
17 Q When did you end up in Wisconsin?
18 A In the early 1980s. I lived in Lemont, Illinois.
19 I left that out.
20 Q And when did you meet Gary -- Ernest Gary Gygax?
21 A In probably July of '83. Somewhere around then.
22 Q And you were working as a secretary for his
23 company; is that correct?
24 A Yes. Administrative assistant, uh-huh.
25 Q What was your educational background?

1 A I have a bachelor of science. I've got a
2 business degree with area in accounting from
3 Murray State University in Murray, Kentucky.

4 Q At the time you met Ernest Gary Gygax, he was
5 married to his first wife, Mary Jo Gygax; is that
6 correct?

7 A Yes. They were, I think, legally separated at
8 that point.

9 Q So you met Mr. Gygax in roughly July '83. You
10 started living together in approximately November
11 of '83. Is that accurate?

12 A I believe that's correct.

13 Q When did Gary's marriage to Mary Jo Gygax end?

14 A I think in 1987, I think. I would have to look
15 at the exact time that they signed their final
16 documents.

17 Q So roughly 1987 to the best of your recollection?

18 A Yes. As to the best of my recollection. Late
19 '86, early '87. It's one of those.

20 Q And in October of 1986, you and Mr. Gygax had a
21 child, Alexander Gygax; is that correct?

22 A That's correct.

23 Q And what was Alexander's date of birth?

24 A 10/2/86.

25 Q And is Alexander Gygax the only child born to you

1 and Mr. Gygax?

2 A Yes.

3 Q And at the time that you met Gary, did he have

4 children from a prior marriage?

5 A Yes.

6 Q And who are those children?

7 A Ernie, Elise, Heidi, Cindy, and Luke.

8 Q You and Mr. Gygax eventually got married; is that

9 accurate?

10 A That's correct.

11 Q And what was the date of your marriage?

12 A August 15th, 1987.

13 Q And you remained married until Mr. Gygax passed

14 away; is that correct?

15 A That's correct.

16 Q And what was his date of death?

17 A March 3rd -- or 4th, it was actually on the cusp,

18 4th, 2008.

19 Q And to the extent you know, what was the cause of

20 Mr. Gygax's death?

21 A He had an inoperable aneurysm.

22 Q Is that something that happened suddenly or was

23 he ill for a period of time?

24 A He was ill for a period of time.

25 Q When did that illness start?

1 A Sometime in 2004. He had it -- He had strokes
2 and heart attacks and they finally diagnosed him
3 with the aneurism.

4 Q Is that, and pardon me for being unfamiliar, is
5 that an illness that gets progressively worse
6 over time in any way?

7 A Yeah. Well, it was inoperable so it -- the
8 handwriting was on the wall. He could die any
9 minute. From 2006 on, he could have died at any
10 minute. The doctor just said you have a month or
11 maybe two years at best. We got two years out of
12 it.

13 Q Is that an illness that affected his cognitive
14 abilities in any way?

15 A I'm not capable of -- I'm not a professional so
16 I wouldn't be able to answer that.

17 Q Could you tell me if he continued to answer your
18 questions appropriately when you asked him
19 things?

20 A I would have to go back and look at what we were
21 talking about. He had had several strokes, many
22 strokes. So I just -- I'm not a professional and
23 I cannot answer that. I just don't -- you
24 know --

25 Q Could you have regular conversations with him?

1 A Oh, yes. Definitely. I went to all of his
2 doctors appointments.
3 Q Did he know his name?
4 A Yes.
5 Q Did he know who the president was?
6 A I believe so.
7 Q Did -- Did he have any trouble recognizing his
8 family or friends?
9 A His family, no. I don't know about the friends.
10 Q Did he remember who his children are?
11 A Yes.
12 Q Did he recall who he was?
13 A Yes.
14 Q So is there anything specifically that you can
15 point to that would make you wonder if he was
16 having difficulty with his thinking or memory?
17 A As I said, he had many, many strokes. So I am
18 not a professional, but I know when you have a
19 stroke, it does impair your reasoning and that.
20 But I'm no professional so I can't -- but I do
21 know that I went to the doctor with him and they
22 took a scan x-ray of his brain and they said you
23 have had many, many, many strokes. And he did
24 have a definite change in his awareness and
25 personality, yes, after that.

1 Q And when was that?

2 A Those started in I think 2004. He was

3 hospitalized a couple of times and --

4 Q Okay. Thank you. When you met Gary in

5 nineteen -- roughly July 1983, is it accurate to

6 say that you owned a car, some furniture, and

7 limited jewelry?

8 A Yes.

9 Q You did not have any property or real estate?

10 A No.

11 Q You didn't have any stocks or bonds?

12 A No.

13 Q Did you have any significant amount in savings?

14 A No.

15 Q Did you own anything else of significant -- what

16 would you consider significant value?

17 A At that time?

18 Q Correct.

19 A No.

20 Q Can you tell me what property Mr. Gygax had at

21 the time that you met him?

22 A Can you ask that again?

23 Q Can you tell me what property Mr. Gygax had at

24 the time that you met in roughly July 1983?

25 A Oh, boy. I'd have to go back and look at his --

1 what was going on. I mean, he had real estate
2 with his ex-wife and they had a horse farm and he
3 had businesses with -- for buildings with
4 different people. But I don't know if I can
5 remember all of them.

6 Q Is it fair to say he had a rather substantial
7 amount of assets?

8 A He did at the time. Yes, he did.

9 Q And your position throughout this action has been
10 that at the time your husband died he owned
11 virtually no property. Is --

12 A That is correct, uh-huh.

13 Q And it's your position that that is because
14 everything of value had been transferred to you;
15 is that correct?

16 A Yes. Or his ex-wife.

17 Q So I want to talk about some of the different
18 things that we believe may have been owned by
19 Mr. Gygax at the time of his death. One of those
20 things would be the use of your husband's name.
21 Would you agree with me that the name Ernest Gary
22 Gygax, E. Gary Gygax, Gary Gygax, or any
23 pseudonym thereof constitutes a famous name?

24 A Yes.

25 Q Would you agree that that name has value?

1 A Yes.

2 Q And it's true that in 2005 a man by the name of

3 Jay Martin wanted to develop a major theatrical

4 motion picture based on the life of Gary Gygax;

5 isn't that true?

6 A Yes. I worked on that as well.

7 Q What would the cost -- And understanding that

8 you worked on it as well, can you tell me what

9 the cost of something like that would have been

10 to develop?

11 A I didn't have any part of the recordings or

12 anything so I don't know what they paid for that.

13 I was just part of the meeting in the -- and

14 partook in the actual story line. So I was in

15 there as well.

16 Q Did you anticipate that there would be a value to

17 that -- to that movie if produced?

18 A Oh, yes.

19 Q Do you have any approximation of what the value

20 of a project like that would be?

21 A Absolutely none.

22 Q Do you believe that a value on a movie based on

23 the life of Gary Gygax would be valued at in

24 excess of at least \$50,000?

25 A From what I'm seeing in Hollywood, no. I -- I'm

1 not an expert. I can't say that. But for my
2 dealings, you'd think that you're going to get a
3 lot of money, and you don't. So for my
4 experience out there with other producers is that
5 no, there's not going to be a lot of money. You
6 think there is, but it's the rare occasion where
7 someone makes a lot of money in this position.
8 But again, I am no expert and you'd have to ask
9 someone that really deals with more biographies
10 and things.

11 Q Do you claim ownership of the right to use the
12 famous name?

13 A Yes.

14 Q And how is it that that ownership was transferred
15 to you?

16 A It was transferred to me in a couple of ways.
17 First, we had a premarital will. He transferred
18 it to me there. Then we had our business
19 arrangement, Trigea, and he transferred it to me.
20 And then in 2006 we were working on something and
21 he made it clear all --

22 Gary's name was very important to
23 him, and he wanted to make sure that it got the
24 correct use. And he wanted me to always be in
25 control of his name because I had worked with him

1 for over 20 years on the rights of the name of a
2 famous person and how you handle those rights.

3 Q Miss Gygax, you mentioned a premarital will.

4 A Yes.

5 Q And -- And it's your position that the -- the
6 premarital will transferred to you the rights of
7 the -- an ownership to the famous name, correct?

8 A I would have to take a look at the premarital
9 will right now to read through it to -- to
10 actually see. I haven't read through that in
11 some time, so I would want to answer that
12 correctly. So I would have to be reading through
13 that.

14 Q Your attorney filed that premarital will with the
15 court in roughly May of 2020 after this action
16 was started; is that accurate?

17 A I believe so.

18 (Attorney Gorn has off-the-record
19 discussion with opposing counsel.)

20 ATTORNEY GORN: Could we mark this,
21 Your Honor, as Exhibit 14?

22 THE CLERK: No. 15.

23 ATTORNEY GORN: Exhibit 15?

24 THE COURT: Yes.

25 ATTORNEY GORN: May the record

1 reflect I'm showing it to opposing counsel and
2 Attorney Koch. Your Honor, may I approach the
3 witness?

4 THE COURT: Yes. And is that
5 electrically filed as well?

6 ATTORNEY GORN: It is. It would
7 be -- It was filed in several places. I know --
8 I believe the first place it appears is the
9 filing of Attorney Koch on May 20th or May 8th,
10 2020? May 5th, 2020.

11 THE COURT: All right. Thank you.

12 ATTORNEY GORN: Document number --

13 THE COURT: Attorney Johnson.

14 ATTORNEY GORN: Sorry. Attorney
15 Johnson?

16 ATTORNEY JOHNSON: (inaudible).

17 BY ATTORNEY GORN:

18 Q And is this -- do you recognize this document?

19 A I would have to see what I gave to Ted and
20 compare the two. It should have been a will
21 drafted by Mark Alm -- I mean, Terry Race. And I
22 don't see them on here.

23 Q So is it your position, Mrs. Gygax, that that is
24 not the premarital will?

25 A No. I'm just saying I would have to see the one

1 that was drafted by Alm & Race to make sure that
2 it is, because Alm & Race's name is not on here.

3 So I had remembered, I thought, that
4 Alm & Race's name was on here. But if it matches
5 what was filed with the court, then that's what
6 it is. Because that's what Ted filed with the
7 court, then that's what it is. I just remember
8 seeing Alm & Race's name on here, but I could be
9 wrong.

10 Q Do you recall giving a deposition in this case?

11 A Pardon?

12 Q Do you recall giving a deposition earlier in this
13 case?

14 A Oh, yes.

15 Q And do you remember in that case identifying the
16 premarital wills?

17 A To tell you the truth, no, I don't. But I
18 probably did.

19 THE COURT: Can I see what you have
20 here? I can tell if it matches.

21 THE WITNESS: Oh, sure. Thank you.

22 THE COURT: It's the same as --

23 ATTORNEY GORN: Take judicial notice,
24 Your Honor, that it's the same as the one filed
25 by Attorney Johnson.

1 THE COURT: Number 18. Any objection
2 to that?

3 ATTORNEY JOHNSON: Yeah, I -- I -- I
4 don't know what the question is. I don't --
5 This is what we filed, this document.

6 THE COURT: So you agree this is the
7 authentic will from May 28 of 1990?

8 ATTORNEY JOHNSON: I guess that's
9 what we filed as one of the wills in this case on
10 May 5, 2020; that's correct. We referred to it
11 as a premarital will. I know that's what my
12 client's testimony was. But she also just
13 testified that she got married in 1987 so --

14 THE COURT: Right.

15 ATTORNEY JOHNSON: -- I don't -- I'm
16 not sure --

17 THE COURT: I wondered that too. So
18 is there -- You got married in '87. This was
19 drafted in '90. Is there a will before '87?

20 THE WITNESS: No. What happened was
21 we had the premarital agreement that was drawn
22 up. In the premarital agreement, which was filed
23 here in Walworth County calls for a premarital
24 will. And it just -- the time just got busy and
25 we just didn't get to it. And then we finally

1 said we've got to sit down and get these wills
2 done. So that's the reason that the time is kind
3 of off on that.

4 ATTORNEY GORN: And -- Thank you
5 all.

6 BY ATTORNEY GORN:

7 Q Because that was actually my other question is I
8 was confused because based on your testimony that
9 this was the premarital will, which is consistent
10 with your deposition testimony, you -- the dates
11 didn't make sense to me.

12 Isn't it true that you also testified
13 that with respect to your premarital agreement it
14 should have had attached to it, those premarital
15 wills, that they were incorporated in your
16 premarital agreement?

17 A I'm not a lawyer so I wouldn't know the answer to
18 that. I'm just testifying to what I know
19 happened at the time and the reasoning why the
20 difference of the dates.

21 ATTORNEY GORN: Your Honor, I'm going
22 to show opposing counsel what we have marked as
23 Exhibit 3 for identification. May I approach,
24 Your Honor?

25 THE COURT: Yes. You don't have to

1 ask for permission anymore.

2 BY ATTORNEY GORN:

3 Q Gail, I'm handing you what's been marked as

4 Exhibit 3 for identification.

5 A Uh-huh.

6 Q Can you tell me what this document is?

7 A This is a premarital agreement.

8 Q So with respect to this document, do you know who

9 drafted this document?

10 A Alm & Race, I believe.

11 Q And going back to the Exhibit 15, the premarital

12 will --

13 A Uh-huh.

14 Q -- who drafted that document?

15 A For Gary, Terry Race. For me, Mark Alm drafted

16 mine. Terry Race drafted Gary's.

17 Q And with respect to Exhibit 3, is it your

18 signature that appears on the last page of that

19 document?

20 A Yes.

21 Q And is this document in the same condition now as

22 when you received it?

23 THE COURT: I'm not sure what you're

24 asking. I mean, it's clearly a photocopy --

25 ATTORNEY GORN: Excuse me. Same

1 condition as now as when you signed it. I'm
2 sorry.

3 THE COURT: I mean, like as an exact
4 duplicate?

5 ATTORNEY GORN: Correct.

6 THE COURT: Is that better?

7 THE WITNESS: I had nothing to
8 compare it to so it appears to be, but I can't
9 say for sure unless I had it compared to the
10 original as filed with Walworth or Rock County.
11 But it appears to be the same one.

12 ATTORNEY GORN: Your Honor, at this
13 time I would ask that Exhibit 3, the premarital
14 agreement, be entered into evidence.

15 ATTORNEY JOHNSON: No objection.

16 ATTORNEY KOCH: No objection, Your
17 Honor.

18 THE COURT: All right. It's
19 received.

20 BY ATTORNEY GORN:

21 Q With respect to Exhibit 15, is that your
22 husband's signature that appears on that
23 document?

24 A Yes. It appears so.

25 Q And you are familiar with your husband's

1 signature; is that correct?

2 A Yes.

3 Q And how many times would you say you have seen
4 your husband's signature?

5 A Many times, which it did kind of variate over the
6 years as he grew sicker. It changed somewhat.

7 ATTORNEY GORN: Your Honor, I would
8 ask at this time that the premarital will, the
9 1990 will, Exhibit 15, be moved into evidence.

10 THE COURT: Any objection?

11 ATTORNEY JOHNSON: I have no
12 objection.

13 ATTORNEY KOCH: No objection, Your
14 Honor.

15 THE COURT: All right. It's
16 received.

17 BY ATTORNEY GORN:

18 Q So, Miss Gygax, I want to talk a little bit about
19 these two agreements that you say transferred
20 ownership to you --

21 A I did not say the premarital transferred
22 ownership to me. That I did not say.

23 Q Right. Right. You said they transferred
24 ownership. So the --

25 THE COURT: No. She just said the

1 premarital -- Do you mean the premarital will or
2 the premarital agreement?

3 THE WITNESS: The premarital
4 agreement did not transfer use of his name and
5 likeness to him. We separated out our
6 properties. And what he had was his and what I
7 had was mine. And so that is the purpose of the
8 premarital agreement. And he did not, under the
9 premarital agreement, he did not transfer the
10 name -- use of the name of his name and likeness.

11 Q Okay. So under the premarital will he
12 transferred the use of his name and likeness.

13 A I believe so. That was the purpose. He
14 transferred everything to me that he had left.

15 THE COURT: Can we just call it the
16 1990 will?

17 ATTORNEY GORN: Yeah.

18 ATTORNEY JOHNSON: Or Exhibit 15.

19 THE COURT: Right. Does that work,
20 ma'am? You understand what I'm talking about?

21 THE WITNESS: That's fine. All these
22 years I've been calling it the premarital will,
23 but that's fine if we want to call it the 1990
24 will. That's fine.

25 BY ATTORNEY GORN:

1 Q And looking at Exhibit 3, Exhibit 3 was the
2 premarital agreement entered into in 1988; is
3 that correct?

4 A Whatever the date is, yes. That would be -- If
5 that's what the date says and this is a copy of
6 what was filed with the county, then that would
7 be correct.

8 Q I want you to look at page two of this agreement.

9 A Uh-huh.

10 Q Exhibit 3. And we are looking at -- Let's look
11 at the first paragraph here. It says that it --
12 Tell me if I'm reading this accurately. I'm
13 looking at the top of the page, the second line
14 starting with "it being the intention of both
15 parties to retain their separate and individual
16 property and income for their own benefit" --

17 THE WITNESS: I'm not following you
18 where you're starting.

19 THE COURT: Start over. Tell her
20 where you're reading from.

21 THE WITNESS: Are you going down
22 where the where is the intention of both parties
23 that each of their --

24 ATTORNEY JOHNSON: Second line from
25 the top of page two, the very top.

1 BY ATTORNEY GORN:

2 Q So --

3 A Okay. Yes.

4 Q The agreement states that it is the intention of
5 both parties to retain their separate and
6 individual property and income for their own
7 benefit and/or the benefit of the aforementioned
8 children. Did I read that correctly?

9 A Yes. That's correct.

10 Q And was that your understanding of the agreement?

11 A Yes. That's -- We separated our properties.
12 What he had -- He had been through a divorce and
13 he had been through basically the loss of his
14 company, TSR, and Dungeons & Dragons. And we
15 wanted to make sure he was comfortable that I
16 would not marry him and then try to come after
17 what little he did have left, because he had lost
18 the majority of his assets before this time.

19 ATTORNEY GORN: Your Honor, if the
20 witness could limit her answers to -- to the
21 questions, would we be able to instruct her to do
22 so?

23 THE COURT: I think she explained.
24 But yes, if it's a yes or no, all you gotta do is
25 answer yes or no.

1 THE WITNESS: All right.

2 BY ATTORNEY GORN:

3 Q And looking at the third paragraph starting with
4 whereas, it is the intention of both parties that
5 their respective rights in each other's property
6 acquire -- acquiring by law or otherwise, upon
7 termination of their marriage, or by divorce,
8 annulment or legal separation, or by death, or
9 one or both of the parties shall be determined --
10 excuse me. Of one or both of the parties shall
11 be determined and fixed solely and entirely by
12 this agreement. Is that accurate?

13 A That's correct, yes.

14 Q Miss Gygax, this document refers to an Exhibit A
15 and B which identifies the property that you were
16 each claiming as individual. Where are those
17 exhibits?

18 A I don't think they were ever drafted.

19 Q You don't think they were ever drafted or they
20 were not drafted?

21 A I do not believe they were ever drafted.
22 That's -- I do not remember them ever being
23 drafted.

24 Q How then did each of you know what property the
25 other was retaining as individual?

1 A How did we know? Well, let's see. Before this
2 date Gary had already given me some property.
3 And we discussed that. So I already had that. I
4 knew that and he knew that. And so that property
5 that he had given me before our marriage was
6 mine, and he understood that.

7 And I guess we -- And what he did
8 was -- And what we did was he formed a company
9 namely Infinities. I formed a company named
10 Trigee. And I understood that that was his
11 company and that was fine if we got divorced and
12 we retained sole ownership of that. And if we
13 got divorced, I retained sole ownership in Trigee
14 and any other assets I had such as jewelry, my
15 cars, and things like that was very understood.

16 Q Okay. And we'll come back to that issue. You
17 had said that the 1990 will gave you everything.

18 A I believe -- That is my belief.

19 Q The premarital agreement in page -- Excuse me.
20 Paragraph nine, page 13, lists the testamentary
21 provisions that each of you were to include in
22 your last will and testament; is that accurate?

23 A Can you tell me where you're reading from again,
24 please?

25 Q Page 13, paragraph nine.

1 A All right. Hold on. I was on page nine. Okay.

2 Q So in this 1988 document that you both signed,

3 Gary was to leave to his children from the

4 previous marriage all of his household

5 possessions acquired prior to 1983; is that

6 accurate?

7 A Whatever it says. That was changed later, but

8 yes.

9 Q And so it's your position that it was changed --

10 that the testamentary provisions agreed to in

11 this premarital agreement were changed.

12 A Yes.

13 Q And is that in the 1990 will?

14 A That is in -- I'd have to read through this to

15 see, but it is pursuant to his name and use of

16 his name is pursuant to his contract with Trigee,

17 which changed in 1994. A lot of things changed

18 in 1994. So I would have to read this all the

19 way through. But it is -- was my understanding

20 at the time that he was leaving me everything.

21 Q So you signed an agreement in 1988 whereby he --

22 he agrees to leave certain things to his -- his

23 children, correct?

24 A And I also believe it says -- That is correct.

25 I also believe it says he can give me any other

1 things that he wishes to. So -- During the
2 marriage.

3 Q The 1990 will that is part of what you are
4 relying on regarding the transfer of the use of
5 the name, did you ever submit that will for
6 probate?

7 A I thought Ted did.

8 Q Did you ever submit that will for probate prior
9 to -- to Lucion Gygax's filing for this probate?

10 A No.

11 Q Why not?

12 A Because his -- the assets that he had at the time
13 were not worth \$50,000.

14 Q How do you know that?

15 A Well, at the time he had no real estate, no car,
16 no business. He had --

17 ATTORNEY JOHNSON: You're talking
18 about at the time of his death?

19 THE WITNESS: Yeah. He had some
20 jewelry, and he had some guns. And it just
21 didn't add up to \$50,000, I didn't think. I
22 don't know how to say that otherwise.

23 BY ATTORNEY GORN:

24 Q Did he have --

25 A He was in debt to the State of Wisconsin for

1 \$186,000, so I guess I was balancing that out as
2 well. He had debt going on and he had made
3 promises to me under the premarital that he had
4 not paid. So to me he was in a hole.

5 Q Do you understand that part of the probate
6 process is to identify and prioritize different
7 creditors?

8 A Yes.

9 Q So sounds like you took it upon yourself to
10 determine that the net value was under \$50,000
11 based on these debts. Is that --

12 A No. I spoke with Ted -- Attorney Ted --
13 Attorney Ted Johnson. I'm sorry. At the advice
14 of counsel.

15 Q Did you ever attempt to value the famous name?

16 A No.

17 Q You mentioned another document that transferred
18 property to you. That was in September of 2006;
19 is that accurate.

20 A No. That was before we were married, and I
21 believe that was a 1986.

22 Q I apologize. I'm speaking about -- We're
23 going -- We got a little off track. I want to
24 maintain our focus on the use of the famous name.
25 And you stated that there was another document he

1 signed in 2006. That is the transfer of
2 ownership rights dated 22 September, 2006?

3 A I would have to see which document you're
4 speaking about.

5 ATTORNEY GORN: Your Honor, showing
6 opposing counsel Exhibit 5.

7 BY ATTORNEY GORN:

8 Q I'm showing you what's been marked as Exhibit 5.
9 This was produced by you during the case. You
10 recognize this document?

11 A Uh-huh.

12 Q And can you tell us --

13 THE COURT: Is that a yes, ma'am?
14 You can't say uh-huh or uh-uh for the court
15 reporter.

16 THE WITNESS: Oh, I'm sorry. Yes,
17 ma'am.

18 THE COURT: All right. So yes. Go
19 ahead. Your next question.

20 BY ATTORNEY GORN:

21 Q What is this document?

22 A It tran -- It was making sure that it was clear
23 to everyone that I had the rights thereunder.

24 And that's the way he -- that's why he did that.

25 Q Is this document signed?

1 A I think what he did was send it to me through via
2 e-mail.

3 Q Did you two live together?

4 A Yes.

5 Q So it's your testimony that he decided to e-mail
6 you this document instead of sign it and -- and
7 give you a copy. Is that accurate?

8 A Yes. Uh-huh. We did that on a lot of
9 transactions. We use e-mail. I was selling real
10 estate I believe at this time, and I wasn't home
11 all the time. And so we would go back and forth
12 during the day. And, you know, it was done by
13 e-mail. That's the best I can remember, and that
14 would be why.

15 Q Is there any other evidence outside of your
16 testimony here today that Mr. Gygax executed this
17 document?

18 ATTORNEY JOHNSON: I guess that calls
19 for speculation but --

20 THE COURT: If she knows. Do you
21 know anything that corroborates this?

22 THE WITNESS: That changes this exact
23 document?

24 THE COURT: Corroborates --

25 THE WITNESS: That corroborates it?

1 Other than getting on his computer and seeing it
2 written on there, that would be the place I would
3 look for it, which it was on there. So that's
4 why I printed it out and gave it to the court.
5 But the way to corroborate it is to look at his
6 computer and see was it on his computer at the
7 time. And it was.

8 BY ATTORNEY GORN:

9 Q So I just want to make sure I have everything
10 correct. Your claim to the use of the famous
11 name comes from this agreement marked as Exhibit
12 5 and the pre-1990 will marked as Exhibit 15 and
13 what you have referred to the Trigee agreement;
14 is that accurate?

15 A Yes. Under the Trigee agreement, it makes it
16 very clear that upon his death that I'll have the
17 rights to that so. Gary was very particular
18 about the use of his name and likeness.

19 ATTORNEY GORN: Looking at Exhibit 5,
20 Your Honor, I would ask that that be moved into
21 evidence.

22 THE COURT: Any objection?

23 ATTORNEY JOHNSON: No objection.

24 THE COURT: Mr. Koch?

25 ATTORNEY KOCH: Your Honor, I don't

1 know that it's been properly authenticated so I'm
2 gonna object that there's no authentication.

3 THE COURT: Well, I think she
4 authenticated it the way it is for the court and
5 for agreement. I'll receive it for the record.
6 I'm not saying -- I'm not making any
7 determination that it's valid or not. Just
8 received.

9 ATTORNEY KOCH: Thank you.

10 ATTORNEY GORN: All right. Thank
11 you. And that was my intention as well.

12 THE COURT: That's fine.

13 BY ATTORNEY GORN:

14 Q The Trigee agreement that you are reference
15 something that the 1994 Trigee agreement --

16 A Yes.

17 Q -- between Trigee Enterprises Corp. and E. Gary
18 Gygax?

19 A That's correct.

20 ATTORNEY GORN: Showing counsel.

21 ATTORNEY JOHNSON: Got it.

22 BY ATTORNEY GORN:

23 Q Miss Gygax, I am showing you Exhibit 4, which is
24 the 1994 agreement between Trigee Enterprises
25 Corp. and E. Gary Gygax. Do you recognize this

1 document?

2 A Yes.

3 Q And this is a true and accurate copy of the

4 agreement entered into between Trigee and

5 Mr. Gygax?

6 A I couldn't say without comparing it to the

7 original, but appears to be.

8 Q You are the owner of Trigee; isn't that correct?

9 A That's correct.

10 Q And you are -- It's accurate to say that you are

11 intimately familiar with the terms of this

12 agreement; isn't that correct?

13 A I'm pretty familiar with the terms of this

14 agreement, yes.

15 Q And in fact, you use those -- the terms of that

16 agreement to support your claim to the name --

17 the famous name as you've stated here --

18 A Uh-huh.

19 Q -- and also your claim to ownership of all of the

20 intellectual property created by Ernest Gary

21 Gygax; isn't that accurate?

22 A I would have to have you repeat that question

23 again.

24 Q Do you also rely on this Trigee agreement to

25 support your claim that you own all of the

1 intellectual property of Ernest Gary Gygax?

2 A Well, I want to make sure that I'm answering this
3 correctly. He gave me ownership of property in
4 1986 so I already owned that by 1994. In 1994 is
5 discussing anything other than what he had given
6 me in 1986 and that I helped develop. So that's
7 what -- this is what's -- that's referring for.
8 But anything that he gave me prior to that I
9 already owned.

10 Q And it's your position that assuming you owned
11 the tangible personal property that you also --
12 the 1986 agreement also gave you all of the
13 intellectual property associated with those
14 items. Am I getting this correct?

15 A Yes. That is correct.

16 Q So looking at this Trigeer agreement -- I guess
17 I'll have to ask you again, Miss Gygax. Is this
18 a true and accurate copy of the agreement between
19 Trigeer Enterprises Corporation and E. Gary Gygax?

20 A I have to make one caveat. I think that the --
21 some of this has been cut off at the bottom
22 because I see Gary's initials down there, and we
23 always initialed at the bottom of every single
24 page of our contracts to make sure they were
25 valid. And it appears that my signature has been

1 removed.

2 Q Does it appear that any of the substance of the
3 document has been removed?

4 A I would have to read through the entire thing.
5 I -- Just looking at it, I don't believe so.

6 Q Is it your signature that appears on the bottom
7 of page six?

8 A Yes.

9 Q And is it your husband's signature that also
10 appears on the bottom of page six?

11 A Yes.

12 ATTORNEY GORN: Your Honor, I would
13 ask that the court admit Exhibit 4 into evidence.

14 THE COURT: Any objection?

15 ATTORNEY JOHNSON: No objection.

16 ATTORNEY KOCH: No, Your Honor.

17 THE COURT: All right. Received.

18 BY ATTORNEY GORN:

19 Q So, Mrs. Gygax, I want you to look at page three,
20 paragraph F, as in Frank, and tell me if I'm
21 reading this correctly. Are you there?

22 A Yes. Correct. I am.

23 Q Trigee shall have the right to use the name Gary
24 Gygax, E. Gary Gygax, or any variation thereof at
25 the sole discretion of E. Gary Gygax. Trigee

1 shall have the right to use the likeness of Gary
2 Gygax upon the approval of Gygax. And as such
3 approval shall be at the sole -- Excuse me. At
4 Gygax's sole discretion. Trigeer is not acquiring
5 the name of any variation thereof or the likeness
6 of Gygax. Did I read that correctly?

7 A That is correct.

8 Q Thank you. So again, back to your bases for your
9 ownership in the famous name. Your position is
10 that it's based on the 1990 will, the 1994 Trigeer
11 agreement, the 2006 transfer of ownership, and
12 now you are stating as well that it is based on
13 the 1986 agreement. Am I -- Am I understanding
14 that?

15 A The property was transferred to me in 1986, yes.
16 I guess I lost you along --

17 Q But -- But that -- Does the 1986 agreement have
18 anything to do with the transfer of his famous
19 name?

20 A No, I don't believe so.

21 Q Okay. So as far as the famous name, it's the
22 pre -- the 1990 will, the Trigeer agreement, and
23 the 2006 transfer, exhibit -- Exhibit 5. Are
24 those -- Is that everything that you are using
25 to support your claim of ownership of use of the

1 famous name?

2 A I believe that's it. I would have to go through
3 all the documents again and see if there's any
4 other document that came into play here. Gary
5 wanted to make sure that he maintained that. And
6 then once he passed, it went to me.

7 So however he transferred it, that's
8 what he did. Because he thought very strongly
9 about anyone just having the name -- the use of
10 his name and likeness. And we had worked
11 together for over 20 years, and he knew I would
12 be the one that would be in charge of it. And
13 recognize how to use the approval rights under
14 some of these intellectual property contracts.
15 So it's very important that -- to him.

16 And, well, he had just been through
17 losing Dungeons & Dragons and TSR, and they took
18 his name off their products. So he did want to
19 maintain the control which he lost control with
20 his agreement with TSR, Inc. that published
21 Dungeons & Dragons. And so he felt very strongly
22 about having control over the use of his name and
23 likeness.

24 Q So I believe that was a long answer to -- to what
25 I intended to be a short question. Are there any

1 other documents as we sit here today that you
2 believe support transfer of ownership of the
3 famous name to you other than Exhibits 4, 5, and
4 15?

5 A The 1986 one --

6 Q That would be a yes or no.

7 A Well, I can't -- I can't answer that because I
8 would have to have a legal opinion on what
9 actually happened in -- under the 1986 transfer
10 of rights to me. I don't have a legal opinion on
11 that so I can't answer that properly.

12 I'm just not trying to be, you
13 know -- But I think this covers the majority of
14 it, yes. But I think I would need legal advice
15 as to did he also transfer that -- the rights to
16 use it in 1986 when he transferred the right to
17 certain intellectual properties to me. Those
18 were given to me. So I would need to get an
19 intellectual property attorney to answer that
20 question for --

21 I just don't know the answer to it.
22 I was assuming, I guess, maybe that I did have
23 the rights under that, but maybe I am wrong. I'm
24 just -- I'm trying to give you what happened
25 during our marriage.

1 Q And if there was a chance that you were wrong,
2 that you did not own the use of the famous name,
3 then why did you not have that conclusively
4 determined by an attorney when -- when your
5 husband died?

6 A Because we had \$400 in the joint bank account at
7 the time, and I really couldn't afford it. I had
8 to borrow against my house to bury my husband,
9 and that is why I didn't. There was no money
10 there to do this.

11 Q So the next thing I want to discuss then is the
12 rights to the -- Actually let's -- let's talk
13 about the personal property first. The
14 personal -- When I'm talking about the personal
15 property, for our purposes right now I'm talking
16 about the tangible personal property so the
17 things that you can touch and feel. So the
18 things like books and games and guns and those
19 things. So --

20 A Well, games he had already given me so that would
21 be not part of that. His gun collection, what
22 Gary and I discussed at length was what he wanted
23 his children to have. And I gave all those items
24 to his children. I -- I don't know how any
25 other way to say that.

1 I mean, I sat down with him and said,
2 Gary, you're gonna die at any minute. We know
3 you're gonna die at any minute. Let's make sure
4 that I have it clear in my mind what you want the
5 children to have, and that's that. And that's
6 what I did. Within, I think, three months of his
7 passing, I gave those items to the children.

8 Q I'm handing you what's been marked as Exhibit 2.

9 A Uh-huh.

10 Q Can you tell us what this document is?

11 A This is the document that transferred a lot of
12 items, specifically all his game collection and
13 some intellectual -- I would say manuscripts that
14 he had that weren't published yet. So he thought
15 that that would be the way that I could take care
16 of myself should he die, you know, and not me
17 being taken care of. So it did include a very
18 large collection. That was his form of life
19 insurance policy to me, which he did not have one
20 for me.

21 Q So the purpose of the agreement was to make sure
22 that you and your -- your child had financial
23 security moving forward is that --

24 A I would say --

25 Q If he -- Excuse me. If he were to die; is that

1 correct?

2 A This is a gift. This transfer was a gift. It
3 was not an agreement. There was no -- There's
4 nothing that I had to do on the other side. This
5 was a gift from him to me at his sole discretion.

6 Q With the purpose of being in the event that you
7 had something in the event of his death, correct?

8 A Pardon?

9 Q With the purpose being that you had something in
10 the event of his death.

11 ATTORNEY JOHNSON: Are you asking her
12 intention of what the gift of Mr. Gygax's
13 intention was --

14 ATTORNEY GORN: Yes.

15 ATTORNEY JOHNSON: -- or --

16 ATTORNEY GORN: I'm just repeating
17 what -- what she had said. I'm making sure that
18 I understand her testimony.

19 THE WITNESS: Gary had, pursuant to
20 his divorce agreement with his ex-wife, had a
21 very large life insurance policy he had to have
22 for her. And it cost quite a bit of money every
23 month.

24 And like I said, by this time most of
25 his money was gone. And so he had no way of

1 giving me a life insurance policy. So he said
2 this is what's going to take care of you. I want
3 you to know that. This is the life insurance
4 policy for you. And so that is my under -- this
5 was a gift from him prior to our marriage so I
6 could take care of my son in the event of his
7 death.

8 BY ATTORNEY GORN:

9 Q And so this agreement signed in June of 1986, is
10 that your signature that appear -- Excuse me.
11 That's Gary's signature that appears on this
12 document; is that correct?

13 A Yes. That -- So I did not sign that --

14 Q And --

15 A -- like I said, this was a gift.

16 Q And who drafted this document?

17 A Gary did, as far as I know.

18 Q And as far as you know, is this a true and
19 accurate copy of the document?

20 A I believe it is.

21 Q And can you point to where -- Can you tell me
22 where in this document it says the word
23 "copyright"?

24 A No. He gave me the property, which would include
25 the copyright. That he specifically didn't say

1 that, I didn't draft this. Did I understood what
2 he was talking about? Yes, because he told me
3 what it meant. That -- Certain intelligent --
4 certain properties that could be developed that I
5 would have the copyright, ownership, and I would
6 maintain them. And that would take care of me in
7 my latter years.

8 And that was the intent that he went
9 with this specifically. But because he had -- he
10 couldn't afford a life insurance policy for me at
11 that time. He had to keep one in place for his
12 ex-wife. And so that -- that's what I did
13 understand from this. And we discussed this at
14 length.

15 Q So is it your position that this transferred
16 everything Mr. Gygax owned except for those
17 specifically things included in this document
18 which would be the Mathey-Tissot, I'm sure I said
19 that wrong, wristwatch; the gold signet ring; and
20 his clothing.

21 Is it your position that everything
22 else he owned was transferred to you by this
23 agreement?

24 A If that's what it says, yes. All the jewelry
25 wanted to go to the boys, and I decided not to

1 sell it to pay for his funeral. So I went ahead
2 and gave it to the children instead of selling
3 it. Or the gun collection.

4 Q I want you to look back, Mrs. Gygax, at Exhibit
5 3, the premarital agreement. It says that --
6 Would you agree with me that in multiple places
7 in this document it says that the intention is
8 for Gary and you to retain your separate
9 property; is that accurate?

10 A That is correct because he had a divorce
11 agreement with his first wife and wanted to make
12 sure that my assets did not get included in his
13 assets so that she could come after my assets.

14 Q So in terms of this premarital agreement
15 protecting Mr. Gygax's individual property, what
16 individual property do you believe was his?

17 A At this time? During this premarital? His --
18 The gun collection, the jewelry. And I would
19 have to sit down and think about what the time
20 period was and everything. At that time, he
21 retained the rights to his things that he
22 authored and I did not.

23 I retained publishing rights, rights
24 to license under Trigee. So he, under this, he
25 had that. But he was like -- I think the

1 purpose was that my assets didn't get mixed up
2 with his and that his ex-wife couldn't come after
3 me for my assets. And he -- You know, we
4 separated those out.

5 All -- For example, if all of a
6 sudden tried to divorce him or something, he
7 wanted to make sure that whatever he had at the
8 time -- At this time he had just lost everything
9 he owned --

10 Q My question is if he -- if it's your position
11 that he transferred everything to you already in
12 1986, I don't understand what he had that he was
13 protecting then in 1988.

14 A Well, again, I said -- So in 1988 -- So between
15 1986 and 1988 Gary, wrote additional properties.
16 I had the right to license and -- I didn't have
17 the rights to publish. I licensed the property
18 to publishers. So he kept the money from the
19 publishing company and I kept the money for
20 licensing the rights out.

21 And so during this time, he was
22 creating other intellectual property that
23 happened after 1986. And it -- During this time
24 I did not have the rights to those properties. I
25 had the rights to license them but I didn't have

1 the rights to ownership of them.

2 Q And --

3 A Nor does it claim that here.

4 Q I want to bring you back to page 13, number nine,
5 under those testamentary provisions.

6 A Wait a minute. What document are you on --

7 THE COURT: Which exhibit?

8 BY ATTORNEY GORN:

9 Q Still in the premarital agreement.

10 A Okay.

11 Q Page 13.

12 A All right.

13 Q Paragraph nine. And that's Exhibit 3.

14 A I'm sorry. I've gone to the wrong page again.

15 Okay. Paragraph nine. Okay.

16 Q Paragraph nine, subsection A. To Gary's children
17 from his previous marriage, all of his household
18 possessions acquired prior to November 1st, 1983.
19 Did I read that correctly?

20 A Yes.

21 Q How is -- How is it that you both agreed to that
22 provision when you entered into this agreement if
23 he had given everything he owned to you in 1986?
24 What --

25 A I did not ever claim that he gave me all of his

1 personal property in 1986. What I did say, he
2 gave me the collection of manuscripts and game
3 collection. At that time not the furniture.

4 After we got married and per our
5 premarital, it does state that he can give me any
6 other assets that -- that aren't -- that are
7 mentioned in the premarital that he wants to give
8 to me, and I retain those rights. So that is
9 also in this premarital agreement.

10 Q I want you to look at Exhibit 2.

11 A Okay.

12 Q The second paragraph, third line, starting with
13 "all other personal property". All other
14 personal property, including household goods.
15 Did I read that correctly?

16 A Yes. And as I said, at the time -- at this time,
17 he was talking about -- And when he talks
18 about --

19 ATTORNEY JOHNSON: She just asked if
20 she read it correctly.

21 THE WITNESS: Yeah. I guess -- Yes,
22 she read it correctly.

23 ATTORNEY GORN: Your Honor, at this
24 time I would ask that Exhibit 2 be moved into
25 evidence.

1 ATTORNEY JOHNSON: No objection.
2 ATTORNEY KOCH: No objection.
3 THE COURT: All right. Received.
4 BY ATTORNEY GORN:
5 Q Mrs. Gygax, looking at Exhibit 3, the premarital
6 agreement dated 1988 --
7 A Uh-huh.
8 Q -- page 17, paragraph 19, it says this
9 agreement -- Are you there? I want to make sure
10 you're there.
11 A On page --
12 Q Page 17.
13 A All right. Hold on. Now I am.
14 Q Okay. Paragraph 19.
15 A Okay.
16 Q This agreement represents the entire agreement of
17 the parties with regard to the subject matter
18 hereof. Can you tell me what is meant -- First
19 of all, did I read that correctly?
20 A Yes.
21 Q What is the subject matter hereof as you
22 understand it?
23 A What rights that he retained and what rights I
24 retained. I suppose that's what it meant.
25 Q So going on from there, all agreements,

1 representations, and warranties, whether
2 expressed or implied, or oral or written, are
3 contained herein. Did I read that accurately?

4 A That's what it says, yes.

5 Q And going on from there, no other agreements,
6 representations, or warranties, whether express
7 or implied, or oral or written, have been made by
8 either party to the other with respect to the
9 subject matter of this agreement. Did I read
10 that correctly?

11 A You read it correctly, except that it should
12 have --

13 Q I --

14 A -- that it excluded the 1986 because that was not
15 an agreement. That was a gift of property to me.
16 So that is a misinterpretation of this and it's
17 misleading.

18 If you read it that way, this was
19 just a boiler plate you know -- something that
20 the lawyers put in there. And that's what that
21 was put in there for. But it was always known
22 that what he gave me in 1986 was mine.

23 And this did not put it back into his
24 property. It just didn't do it. And this was
25 some kind of boiler plate thing. At the end of

1 every contract, there's always boiler plate
2 things. And they -- the lawyers should have been
3 more careful about how they drafted it. But I --
4 We knew what it meant.

5 And then this -- does not include
6 what he gave me in 1986 nor did it include any of
7 my jewelry he gave me, for example, in 1985. It
8 didn't include any of that, any of those things,
9 any gifts that he gave me. It did not include
10 those. Those were my property coming into the
11 marriage, and that's what this document says.

12 All the things he gave me prior to
13 that are my property, including the jewelry,
14 including the transfer of the property as a gift.
15 All the gifts that he gave me were mine.

16 ATTORNEY KOCH: I'm gonna object.
17 The question was whether Miss Gorn read the line
18 correctly.

19 THE COURT: Yes. You did go far
20 beyond that, ma'am.

21 THE WITNESS: Oh.

22 THE COURT: Your attorney,
23 Mr. Johnson, he'll be able to ask you questions.
24 I'm not sure --

25 THE WITNESS: Okay.

1 THE COURT: -- if you knew that.

2 Okay.

3 BY ATTORNEY GORN:

4 Q So going on from there. All prior and
5 contemporaneous conversations, negotiations,
6 agreements, representations, and warranties with
7 respect to the subject matter hereof are waived,
8 merged herein, and superceded hereby. Did I read
9 that correctly --

10 A Yes.

11 Q -- or no? Sorry. Yes or no?

12 THE COURT: She said yes.

13 THE WITNESS: Yes.

14 BY ATTORNEY GORN:

15 Q To be clear, this -- still looking at the Exhibit
16 4 -- Excuse me. Exhibit 3, the premarital
17 agreement from 1988, this agreement also set
18 forth the intention of you and Mr. Gygax to keep
19 your income separate, including any income
20 derived from things like intellectual properties;
21 is that correct?

22 A Partially. But derived from intellectual
23 property, I had the rights in the Trigea
24 agreement to derive income off of that property.
25 I held those rights, and he understood that.

1 He had the publishing company. I had
2 Trigee, the licensing right company. And I had
3 rights to receive monies and the royalties off of
4 that. So the royalties -- the publishing company
5 would pay my company the royalties and then Gary
6 and I would split that money thereunder so.

7 Q But any -- And we'll get to the provisions of
8 those in time. But any income that was due to
9 him based on his inventiveness or intellectual
10 skill or creativity was his to keep. So any
11 money that was due under those agreements to him
12 remained his individual property; is that
13 correct?

14 A Yes.

15 Q And looking at page five, the very first line,
16 are you on page five?

17 A Yes.

18 Q Starting with "any". Any and all sums which
19 are -- Excuse me. Which may be payable now or
20 in the future to either party shall remain the
21 property of that individual. Did I read that
22 correctly?

23 A Yes.

24 Q I want to shift quickly, while we're still
25 looking at this agreement, to debts. Because I

1 know that debts has come up in the context of
2 today's testimony and in a prior summary
3 judgment.

4 You testified that -- in your
5 deposition that you were owed money for child
6 support; is that correct?

7 A That's what I believe because it's under the
8 premarital agreement, yes.

9 Q And a little while ago, do I have it correct that
10 when you determined whether or not there was
11 \$50,000 worth of value required in probate, you
12 went through and looked at the debts that
13 Mr. Gygax owed to determine if probate was
14 necessary? Do I have that correct?

15 A I went through this with Attorney Ted Johnson to
16 come up to that determination because I'm not
17 qualified to do that, I don't think.

18 Q Do you understand that in the premarital
19 agreement you had a limit on when you could bring
20 a claim for child support due to you?

21 A It could be in there. And I don't know where
22 you're looking at, but it --

23 Q I am looking at page four --

24 A All right.

25 Q -- paragraph A-1. Towards the bottom of

1 paragraph A-1, it would be six lines up from the
2 bottom there is a sentence that starts with "if
3 she fails". Do you see where I am?

4 A Yes.

5 Q If she fails to commence an action within 60 days
6 of the end of the calendar year, and Gary has not
7 paid Gail for the prior calendar year, then Gail
8 shall waive her right to compensation for that
9 year. By this provision, it is the parties'
10 intent that these funds shall not accrue one year
11 after the other, unless agreed to by both parties
12 in writing. Did I read that correctly?

13 A Yes.

14 Q Do you have any writings whereby you and
15 Mr. Gygax agreed that your claim to unpaid child
16 support would continue?

17 A I would have to go through --

18 Q To the best of your recollection, do you have any
19 agreements stating that your claim to unpaid
20 child support would continue?

21 A Did we discuss it? Yes.

22 Q When did Alexander turn 18?

23 A It was in 2007, was it?

24 Q He was born in 1986, correct?

25 A Correct.

1 Q October --
2 A October 2nd. Uh-huh.
3 Q He would have turned 18 in October of 2005; is
4 that correct?
5 A It could be. Whatever the numbers come up to be.
6 ATTORNEY KOCH: 2004 --
7 THE COURT: Wouldn't that be four?
8 ATTORNEY JOHNSON: -- I believe --
9 ATTORNEY GORN: 2004?
10 THE COURT: Right.
11 THE WITNESS: Right.
12 ATTORNEY GORN: Really? I was born
13 in '85.
14 THE COURT: 86 plus 18.
15 ATTORNEY GORN: Your Honor, I went to
16 law school because I can't do math.
17 BY ATTORNEY GORN:
18 Q So okay. 2004 October, Alex turned 18; is that
19 correct?
20 A That would be correct. Uh-huh.
21 Q All right. And did you bring a claim within 60
22 days of DeSanto 31st, 2004?
23 A No.
24 Q The marital property agreement was dated March
25 17th, 1988; is that accurate?

1 A I'm sorry. Which agreement are you looking at?

2 Q Exhibit 3, the premarital agreement dated March
3 17th, 1988. Do I have that date, correct?

4 THE COURT: You don't have to ask
5 her. It's been received.

6 ATTORNEY KOCH: We'll stipulate to --

7 THE COURT: Right.

8 THE WITNESS: Right.

9 ATTORNEY KOCH: -- the date on the
10 agreement.

11 BY ATTORNEY GORN:

12 Q So it -- it was your testimony that you and
13 Mr. Gygax were married in 1987; is that correct?

14 A That's correct.

15 Q What was the reason for the delay in -- in the
16 premarital agreement?

17 A Just business opportunities. He was trying to
18 start a new company and just delays. Just --
19 Just simple business delays. We were moving
20 during that time and just, we had a lot on our
21 plate.

22 Q The 1988 premarital agreement, it's fair to say
23 that this agreement made provisions that would
24 provide for you in the event of Mr. Gygax's
25 death. Is that fair?

1 A You would have to point that out to me to see
2 which paragraph you were discussing.

3 Q Page 13, paragraph nine, subsection C.

4 A All right.

5 Q To Gail --

6 A Uh-huh.

7 Q -- if she survives Gary, all of Gary's household
8 possessions acquired on or after November 1st,
9 1983?

10 A Uh-huh.

11 Q As part of this agreement you were also given
12 real estate; is that correct?

13 A Yes.

14 Q And you were given stocks; is that correct?

15 A I was given, yes, stocks in one of his publishing
16 companies. Yes.

17 Q One final point on this agreement, the 1988
18 premarital agreement. Looking at page two, the
19 first paragraph --

20 A Uh-huh.

21 Q -- where it states second line starting with "it
22 being"?

23 THE COURT: I'm sorry. Which one now
24 are you referring to?

25 ATTORNEY GORN: The 1998 (sic)

1 premarital agreement?

2 THE WITNESS: Exhibit --

3 ATTORNEY JOHNSON: '88.

4 THE COURT: '88.

5 ATTORNEY JOHNSON: 1988, Exhibit 3.

6 ATTORNEY KOCH: Exhibit 3.

7 THE WITNESS: Page two.

8 BY ATTORNEY GORN:

9 Q Page two?

10 A Uh-huh.

11 Q The first paragraph, second line.

12 A All right. "Provisions"?

13 Q Yes.

14 A Uh-huh.

15 Q Provisions hereinafter specified, it being the
16 intention of both parties to retain their
17 separate and individual property and income for
18 their own benefit and/or the benefit of the
19 aforementioned children.

20 A Uh-huh.

21 Q Did I read that correctly?

22 A Yes.

23 Q And the aforementioned children would include
24 Alex as well as Gary's children from his marriage
25 with Miss Gygax; is that correct?

1 A Yes. And then --

2 Q So is there -- We talked about the Exhibit 3,
3 the premarital agreement dated in 1988. And
4 we've talked about Exhibit 2, the transfer of
5 ownership of personal property. Are there any
6 other documents that you rely on to support your
7 claim of ownership of Mr. Gygax's tangible
8 personal property?

9 A I would have to specifically look at the Trigee
10 agreement and see what it talks about. And then
11 again in the premarital agreement, I said I
12 believe it does say that during our marriage he
13 can give me whatever he wants to and it doesn't
14 have to be in formal writing. And I --

15 THE COURT: Let me put it this way.
16 Besides the documents we have already, are there
17 any other documents --

18 THE WITNESS: Not that I know of.

19 THE COURT: Okay.

20 BY ATTORNEY GORN:

21 Q Let's move then to intellectual property. What
22 documents do you use to support your claim of
23 ownership of Mr. Gygax's intellectual property?

24 A The 1986 gift that he gave me. And then our
25 Trigee agreement where we had -- Well, the 1994

1 TSR -- I mean, Trigeer agreement.

2 Q And tell me, what is Trigeer?

3 A Trigeer was a -- it began as a licensing company
4 to license out the works -- the intellectual
5 properties of Gary Gygax. He had just lost TSR
6 where he was both publisher and creator. And I
7 said, Gary, never again do you want to have a
8 publisher own any of your property -- your --
9 your intellectual rights. Keep those separate.

10 And he was going -- He wanted to
11 start a publishing company. And I said that --
12 that needs to be separate from the publishing
13 company. And I have the rights to market your
14 property and so forth. And that developed over
15 the years and got -- went more and more.

16 In 1994 we reached an agreement
17 because of other things we had happened to us
18 that all the intellectual property was my
19 property. And he signed to that. And there was
20 a reason for all of that.

21 Q Okay. When was Trigeer formed?

22 A In 1986.

23 Q And where was that company formed?

24 A Originally it was formed in the state of
25 California.

1 Q Did you ever form a Trigee Enterprises
2 Corporation in Wisconsin or register in the state
3 of Wisconsin, I should say?

4 A No. I think I just -- We did it on the income
5 tax schedule C. It was on there for years.

6 Q When did Trigee dissolve in the state of
7 California?

8 A I do not know. I would have to look on the
9 records, formal records to remember that. It's
10 been a long time ago.

11 Q If I said it was February 2nd of 1998, would you
12 have any reason to disagree with me?

13 A I would just have to see the documents. I would
14 have no reason to disagree with you if that's
15 what you're reading correctly.

16 ATTORNEY GORN: Your Honor, can I
17 approach opposing counsel?

18 THE COURT: Yes.

19 (Attorney Gorn has off-the-record
20 discussion with opposing counsel.)

21 ATTORNEY GORN: Your Honor, may I --

22 (Attorney Gorn has off-the-record
23 discussion with opposing counsel.)

24 ATTORNEY GORN: Your Honor, I would
25 just ask if the court can take judicial notice of

1 the information provided by the California
2 Secretary of State on their website readily
3 accessible, which lists the filing date for the
4 corporation as well as the inactive date and the
5 current status.

6 THE COURT: Any objection to me doing
7 that?

8 ATTORNEY JOHNSON: I don't know as
9 though you can take judicial notice of something
10 you haven't seen or haven't seen. But she
11 testified that she has no objection -- or doesn't
12 disagree with the date. So no, I have no
13 objection to that.

14 THE COURT: Accepted then. So what
15 date did you say?

16 ATTORNEY GORN: The date would be
17 February 2nd of 1998.

18 THE COURT: All right.

19 BY ATTORNEY GORN:

20 Q So, Mrs. Gygax, after 1998, did Trigee continue
21 to operate as a business?

22 A Yes. The filing fees had just kept going up in
23 the state of California, and we simply couldn't
24 afford the filing fees. So we had it -- You
25 know, it was still active and we still had our

1 agreement and we were still operating under the
2 agreement.

3 Q So who owned the assets of Trigee after 1998?

4 A I'd always been the majority owner of Trigee.
5 When it was dissolved, I was full owner of
6 Trigee.

7 Q And you said that you had always been majority
8 owner, and then you said you were full owner. So
9 who else had ownership at any point in Trigee?

10 A Gary had 10 percent at first and then he gifted
11 his shares to Alexander of 10 percent of Trigee.

12 Q What happened to Alexander's 10 percent?

13 A They just got dissolved when the corporation
14 dissolved.

15 Q But you just stated that you were the full owner
16 at the time --

17 A I was sole owner, uh-huh.

18 Q So what happened to Alex's 10 percent?

19 A Well, I guess I'm confused by -- I'm not sure
20 what you're asking because we did it as a sub --
21 on our regular individual tax -- our regular tax
22 returns. And so there was no place to put with
23 Alex at 10 percent ownership or not. It just
24 kind of dissolved, I guess. I don't know how
25 formally or -- I didn't ask an attorney how that

1 should be handled, but that's just what happened.

2 Q When was the last time Trigee participated in
3 developing or licensing -- I'm gonna refer to it
4 as Gary's intellectual property with the
5 understanding that there's a dispute as to
6 ownership. But so that we're clear what I'm
7 talking about. Because I know that you developed
8 intellectual properties for other authors and
9 creators.

10 So with respect to Gary's
11 intellectual property, when was the last time
12 Trigee participated in developing or licensing
13 that?

14 A Right up until the day he died.

15 Q And can you tell me what project was ongoing at
16 the time that he died? Projects?

17 A We were -- Let's see. We were developing a
18 product line, a publish right to Troll Lord
19 Games. And then we were looking at, let's see,
20 doing books. Vin Diesel had made a contact
21 through someone that we knew. And he was asking
22 Gary about -- You know, once Gary announced that
23 he got sick, all kinds of people started coming
24 forward asking for work and stuff. So -- But
25 Trigee kept on with its participation this whole

1 time.

2 Q So go over for me one more time. You just
3 mentioned several things that were looking to be
4 developed or could be developed or were being
5 developed right around the time Mr. Gygax died.
6 Can you restate what that was?

7 A Can I restate what that was? Vin Diesel wanted
8 life rights. And Jay Martin wanted certain time
9 period. And that had expired, I believe.

10 And then we were -- For Troll Lord
11 Games, if Gary did something solely, then that
12 would answer your question. He mostly in the
13 latter part of his life had co-authors on all of
14 his products for -- for the Troll Lord Games.

15 So --

16 Q So was -- was Gary -- was Troll Lord Games
17 publishing works related to Gary's intellectual
18 property up until the time of Gary's death?

19 A Related to intellectual property that Gary worked
20 on with other authors as to what Trigeer owned,
21 yes. Gary was working with other authors under
22 Trigeer's agreement. And he did continue to work
23 until the day he died just about.

24 Q So was Trigeer being paid royalties for works
25 authored by Gary or co-authored by Gary and

1 published by Troll Lord Games?

2 A Yes.

3 Q And when were royalties -- when was the last time
4 royalties were received from Troll Lord Games
5 relative to works authored or co-authored by
6 Gary?

7 A I would have to look. I think there was one
8 payment after Gary died and that would be about
9 it.

10 Q How about in the years preceding? Were there
11 royalty payments --

12 A Yes. To Trigea on a quarterly basis.

13 Q Quarterly?

14 A Yes.

15 Q And that's from Troll Lord Games?

16 A That's correct.

17 Q Do you recall what those payments were?

18 A The amounts?

19 Q Correct.

20 A I do not record the exact amounts. But let's
21 say, for example, it wasn't a lot of money
22 because their opening market wasn't doing well.
23 So I would say that no check was over \$5,000.
24 And then out of that \$5,000 came authors' rights
25 to receive royalties and some of them who were 60

1 percent of that money. And then Gary and I split
2 the rest of the money pursuant to the Trigee
3 agreement.

4 But most of his author splits were
5 50/50. So any of that \$5,000 that came in,
6 \$2,500 was going right out the front door. So it
7 was not a lot of money.

8 Q Did Trigee file tax returns in 2007?

9 A Yep, I believe so.

10 Q Trigee file tax returns in 2008?

11 A Yes. I believe so.

12 Q How about in 2009?

13 A I believe so.

14 Q You were served with a subpoena for your
15 appearance today; is that correct?

16 A Uh-huh.

17 THE COURT: Yes?

18 BY ATTORNEY GORN:

19 Q And does that subpoena include --

20 THE COURT: Is that a yes, ma'am?

21 THE WITNESS: I'm sorry?

22 THE COURT: Yes, it was --

23 THE WITNESS: Yes. I was served a
24 subpoena, yes.

25 BY ATTORNEY GORN:

1 Q And did that subpoena include with it a request
2 for you to bring with you the taxes of Trigee and
3 your personal taxes?
4 A Yes.
5 Q And did you do that?
6 A I do not know where they are at this point all
7 these years later.
8 Q But it's your position that the checks from
9 Troll Lord Games did not exceed \$5,000 quarterly
10 in the years proceeding Gary's death?
11 A I do believe that is correct.
12 Q And after Gary's death, you also did not receive
13 a check over \$5,000. Is that --
14 A No. It was very little. The market was
15 declining and it -- it just was -- that's -- that
16 was the year 2008 real estate collapse. The same
17 thing happened with role-playing games. It
18 virtually collapsed. They weren't doing well.
19 Q But people were approaching you to purchase life
20 rights; is that accurate?
21 A That's correct. Uh-huh.
22 Q Gary was an independent contractor for Trigee; is
23 that accurate?
24 A Legally I don't know how we would say that.
25 Q Let's look at Exhibit 4, the 1994 agreement of

1 Trigeer?

2 A All right.

3 Q I'm looking at page two, the very top line.

4 Whereas Gygax is an independent contractor --

5 A Uh-huh.

6 Q -- in the business of developing, creating and

7 writing games, novels, and other intellectual

8 properties. The following sets forth the

9 agreement between the parties pursuant to all

10 terms and conditions hereunder. Did I read

11 that --

12 A That's correct.

13 Q -- correctly? Please look at page three,

14 paragraph D, as in dog?

15 A Uh-huh.

16 Q All Gygax's work performed under this contract

17 will be on a work-for-hire basis. Gygax will be

18 an independent contractor. Did I read that

19 correctly?

20 A Yes. Correct.

21 Q I want to look at the last line of that

22 paragraph, paragraph D, where it says it is

23 under -- the last sentence. Excuse me. It is

24 understood by Gygax that Trigeer may be hiring,

25 collaborating, co-developing the new properties

1 with others regarding the creation, co-creation,
2 development, co-development, writing, co-writing,
3 play testing of the new properties. And that
4 Gygax may be working with other outside
5 contractors on various new properties.

6 So can you explain to me under the
7 Trigeer agreement, did Gary have the right to work
8 on his intellectual property with other people or
9 publishers outside of the Trigeer agreement?

10 A No.

11 Q So would this be considered an exclusive
12 agreement?

13 A Yes.

14 Q Who drafted this agreement?

15 A I did.

16 Q And this is a licensing agreement, is it not?

17 A Well, this is -- I don't know. It says
18 agreement between Trigeer and E. Gary Gygax. We
19 had just come out of some lawsuits and I wanted
20 to make sure -- It references that on the first
21 page, that we would continue to work together. I
22 would own the properties, and then he would work
23 with other co-authors that Trigeer would hire.
24 And then we would publish through various
25 publishers. It wasn't just Troll Lords. It

1 could be somebody else. So that was the purpose
2 of this.

3 And the purpose was also to protect
4 Trigee against the large amount of legal bills
5 Trigee mounted and had to co-sign on for these
6 other companies, Gary's ex-company, TSR, and
7 Dungeons & Dragons had sued us over. And it was
8 monumental. I mean, the cost was very, very
9 substantial.

10 And I just said at that point, Gary,
11 everything's gotta be owned by Trigee. This
12 is -- You can work with other people but I
13 cannot continue this way when people -- he --
14 trying to keep you off the market and we keep
15 getting sued over and over and over.

16 And so I wanted to make it sure that
17 Gary was happy with that situation, he understood
18 that all the legal bills that I had paid in any
19 future legal bills pertaining to his property or
20 him -- or -- like this -- this whole thing would
21 be covered under here because of what I had been
22 through for a number of years with him. And
23 stayed with him during this time. It was very,
24 very -- We didn't have the money. It was very,
25 very difficult. And so --

1 THE COURT: You've answered the
2 questions.

3 THE WITNESS: Okay.

4 BY ATTORNEY GORN:

5 Q When was the last time that Gary was paid
6 pursuant to the Trigee agreement?

7 A I would have to go back. I don't have the
8 statements from the bank accounts. But we would
9 put his money in our joint bank account at I
10 think it was Bank One then. So we had a joint
11 bank account at Bank One, and we would put the
12 money together in that joint bank account to pay
13 our bills.

14 Q I want you to look at page five, paragraph
15 nine --

16 A Hold on.

17 Q -- the very last sentence of paragraph nine --

18 A Are we talking about Exhibit 4?

19 Q We are -- I have not moved out of the -- Yes,
20 Exhibit 4.

21 A All right.

22 Q The Trigee agreement.

23 A Okay.

24 Q So page five, paragraph 9-A, the very last
25 sentence. All payments due under this agreement

1 shall go to the estate of E. Gary Gygax; is that
2 correct?

3 A That is correct.

4 Q Have you made any payments for royalties due to
5 Gary under this contract to the estate of E. Gary
6 Gygax?

7 A No, because I -- publishing soon thereafter, so
8 there was no money coming in. So I may have --
9 The last royalty check from Troll Lord Games I
10 may have put that in our joint bank account. But
11 other than that, no. There's been no money
12 received. So there's been no money to put
13 anywhere.

14 Q I want to look at paragraph five on page three.

15 A Okay.

16 Q That lays out the payment arrangement under which
17 Gary was to be paid.

18 A Uh-huh.

19 Q And I want to look at page two -- Sorry. That's
20 correct that that says how he was supposed to be
21 paid, correct?

22 A Yes. That's correct.

23 Q And I want to look at page two under term 3-A.
24 Says that the Trigeer agreement terminates based
25 on any breach of those following paragraphs that

1 are listed there. And you see paragraph five is
2 one of those -- those paragraphs listed in 3-A,
3 correct?

4 A Correct.

5 Q And termination would also occur under 3-B for
6 any breach of paragraph 9-A; is that correct?

7 A That's what it says. No, it says terms and
8 conditions that survive would be paragraphs 9-A.

9 Q That survived termination. So --

10 A That will not terminate, yes.

11 Q Okay.

12 THE COURT: Miss Gorn, you thought
13 you'd be done by 10:30 for a break. I'm not
14 sure --

15 ATTORNEY GORN: We can take a break.
16 We can absolutely take a break.

17 THE COURT: Okay.

18 ATTORNEY GORN: There are more
19 questions, but that would be --

20 THE COURT: Why don't we take a 15-
21 minute break right now.

22 (A recess was taken.)

23 THE COURT: You may continue direct
24 examination.

25 ATTORNEY GORN: Thank you, Your

1 Honor.

2 BY ATTORNEY GORN:

3 Q Gail, so before our break, we were looking at
4 exhibit -- Exhibit 4, the 1994 agreement of
5 Trigee Enterprises and E. Gary Gygax. I want to
6 continue asking you questions about that
7 agreement.

8 I want to start with a question about
9 the term under paragraph one on page two. It
10 says -- Are you there?

11 A Yes, I am.

12 Q It says this agreement will remain in effect for
13 five years. Thereafter, renewable annually by
14 mutual consent. Did I read that correctly?

15 A That's correct.

16 Q Do you have any written documents that renew this
17 agreement?

18 A Not other than the fact that he continued writing
19 for me under Trigee.

20 Q But there is no written document that renews this
21 agreement, correct?

22 A No. We didn't think it was necessary. But no.
23 So the answer would be no.

24 Q On page two under paragraph E, it says upon
25 termination under paragraph one, Gygax shall have

1 the right to purchase the copyrights and
2 trademarks under this contract. Did I read that
3 correctly?

4 A That is correct.

5 Q What are the copyrights and trademarks under this
6 contract?

7 A The rights that Trigeer would own. So if he
8 wanted to purchase them back after all the
9 expenses. And I said that he could purchase them
10 back. But he -- they -- didn't have to go
11 through all the billings and fees and us -- all
12 the fees that were associated with the business.

13 Q So I want to look at page three, paragraph C, the
14 very last sentence. If Trigeer decides not to
15 market the new property because in its best
16 judgment marketing -- such marketing would
17 violate the past agreements, then the new
18 property in question shall revert to Gygax,
19 including all copyrights and trademarks. Did I
20 read that correctly?

21 A That's correct.

22 Q I want to look at page three, paragraph E. Any
23 new property developed, created, or written by
24 Gygax that has not been published, marketed, or
25 developed at the expiration of the term of this

1 agreement shall revert to Gygax. Did I read that
2 correctly?

3 A Yes, you did.

4 Q What property specifically was developed,
5 created, or written by Gygax and published,
6 marketed or developed during the term of this
7 agreement?

8 A Oh. I would have to have some -- make up a list.
9 There were many, many projects that were
10 developed and being in development and working
11 on. We had different product lines through the
12 Troll Lord Games, novels. We had, you know, game
13 scenarios. We, you know, were working on a
14 number of different projects. So that wouldn't
15 take probably my associate, Paul Stornberg, a day
16 to put that together for me. Because I can't say
17 it off the top of my tongue right now. But there
18 were many, many being developed. Because again,
19 we had co-authors that worked with Gary so I had
20 co-authors. So --

21 Q What properties -- What intellectual properties
22 of Mr. Gygax were not published, marketed or
23 developed during the term of this agreement?

24 A Again, I would have to go research through all
25 the years and come up with an answer for that.

1 Like I said, most of the things towards his death
2 were being in development with co-authors. And I
3 can't name any specific one off the top of my
4 head. I'd really have to spend a day or so to go
5 through the list with my associate and see if we
6 could come up with any.

7 Because, you know, at the time of his
8 death we were working on things and I had rights.
9 And, you know, this contract survived his death.
10 And it just -- like -- So I could continue on if
11 I wanted to with the publishing end of it. And I
12 did continue on trying to get properties done.
13 So I would have to sit down and really think
14 about that answer to that and give some thought
15 to it. And have to go through each project to
16 tell you the truth.

17 Q What trademarks specifically does the Trigeer
18 agreement trans -- Scratch that.

19 Can you show me where in the Trigeer
20 agreement specific trademarks are given ownership
21 rights of -- specific trademarks are given from
22 Gygax to Trigeer?

23 A I would have to sit and read through this. When
24 able, Trigeer shall own and control all trademarks
25 and copyrights developed under this contract.

1 Q But you can't tell me as we sit here today what
2 trademarks and copyrights were developed under
3 this contract and were not developed under this
4 contract; is that correct?

5 A No. It's not that I cannot tell you. I can name
6 part of them. I just can't name all of them.
7 There were many. So I really would like to --
8 It just -- I can't do it off the top of my head.
9 We had a whole other product line going besides
10 the Troll Lords. So I would have to sit down
11 with my associate and go through product by
12 product at that time and give you a list. I just
13 can't do it off the top of my head. There were
14 many.

15 Q Are there any -- Is there anywhere in this
16 agreement that states what specific copyrights
17 were transferred? Ownership of products
18 transferred.

19 A Everything that was published was published under
20 the copyright Trigea. Every single one.

21 Q Have you ever created a list of the intellectual
22 property authored or co-authored by your husband?

23 A I have created a -- Gary had created like a
24 biography list. I don't know where that is right
25 now. And then I had created a product line that

1 I was starting on after his death and put certain
2 properties under that. So I do have the list of
3 those.

4 Q Have you produced that in this case?

5 A I have not and I cannot. I will tell you, I
6 cannot until I can get them off of my thumb drive
7 and get a new computer where I can print them
8 out, because I can't do that. But yes, I did do
9 that and Tom DeSanto did look at that. So that
10 was --

11 I had developed a whole new product
12 line and that he was looking at. So -- And
13 there was other products underneath there. But
14 again, I would have to go look because it would
15 be an extensive list that I just can't give you
16 off the top of my head.

17 Q You mentioned Tom DeSanto. Since Gary's death,
18 have you attempted to use the intellectual
19 property authored or created by Gary to secure a
20 deal with Tom DeSanto?

21 A I have tried to work a deal with Tom DeSanto
22 where he was interested in the use of Gary's
23 name, which I have control over. And I had
24 developed a screen script that he said he was
25 interested in and put together a product line.

1 And we were -- I thought we were working on the
2 development of that property line. But it's
3 Hollywood, so you never know.

4 But I have -- one -- and some of the
5 property was mine, again, that he gifted me and
6 one of them was that his original dungeon, which
7 was my property. And I would have to hire a
8 co-writer to finish that up. And then we were
9 gonna make it a part of -- I was gonna --
10 Trigee was gonna make it a part of the product
11 line again with other developers as well because
12 it would be a multimedia situation. And I have
13 continued to work on that so -- and do continue
14 to work on that.

15 Q You mentioned the original dungeon that he gifted
16 to you.

17 A Yes.

18 Q Tell me more about that.

19 A Well, I think it's being referred to as the play
20 test. It's a series of dungeons and levels that
21 some were published by original TSR and some were
22 not. Those that were not published by original
23 TSR, I have the rights to publish those and
24 develop those. They need development still.
25 They're not quite finished. So in order to make

1 a story line out of them, they would have to be
2 co-authors to put together with them to do that.
3 And there's some other manuscripts as well. I
4 would again have to go through those as well.

5 Q And --

6 A But I have continued to do that --

7 Q And those --

8 A -- invention.

9 Q And those are unpublished; is that correct?

10 A Pardon?

11 Q Those items are unpublished; is that correct?

12 A Yes. I did not go forward with the publishing of
13 the dungeon. The market had turned, severe down
14 turning, was holding it for a better times.

15 Q Was that dungeon kind of the basis of the
16 intellectual property that you and Tom were
17 looking to develop?

18 A You would have to ask him that question. It
19 was -- My story about Gary Gygax I thought was
20 the main thing we were developing. So Tom is not
21 able to develop role-playing games but he is to
22 develop a movie. And what he told me he was
23 interested in was the script I had written for
24 three movies and then to attach a whole product
25 line with it.

1 So then you would have novels, you
2 had -- could have computer games, you could have
3 this and that. So he didn't have the rights to
4 all of those but he did have the rights to the
5 treatment. And that's what he led me to believe
6 we were working on. And that was written by me.

7 Q Did you give to Tom DeSanto, you said that -- I
8 asked you about making an itemized list of the
9 intellectual property. And you said that you
10 just did a -- the only itemization you had done
11 is a list of the product line that you created;
12 is that correct?

13 A It's a list of product line of products that I
14 either created, could be created, Gary may have
15 worked on some of them. It's a combination of
16 all of those. Some things we could republish.
17 Some things we would you know -- it's -- It's
18 very complex. So that -- that would take a whole
19 flow chart to put all these projects down. It
20 gets very complex. And I did do a product line
21 spreadsheet for him of that with just I thought
22 we were kind of working on --

23 Q And --

24 A -- for a movie.

25 Q And had you produced that in this case?

1 A Have I produced that in this case? I have not
2 been asked to produce it, as far as I am aware.

3 Q The debate in this case all along has been what
4 intellectual properties exist. And you have been
5 asked to identify what intellectual properties
6 exist?

7 A That I own or Trigee owns? I am -- I don't --
8 You're confusing I think and keep saying Gary.
9 But at some point you have to make the
10 distinction what did Gary give me. And Gary gave
11 me the dungeon. So the dungeon is mine. And
12 right now there's no physical way he could have
13 any further development on it because he has
14 passed. I would have to hire a co-writer to
15 finish that project up. So it gets a little
16 confusing.

17 Are there other some of unpublished
18 Gary's manuscripts? Yes. There are some out
19 there. Again, I'd have to sit with my associate
20 Paul and we'd have to sit and go through each one
21 by one and make a list of that. I have not done
22 that. But those all come under Trigee, and it's
23 what Trigee would want to focus on. And that's
24 what I was focusing on after he died.

25 Q Is the dungeon part of Gary's library?

1 A No. Again, to make it clear, the dungeon is what
2 he gave to me in 1986 as a gift. So to be very
3 clear, that dungeon is my property.

4 Q To be very clear, there are two parts to that
5 dungeon, correct? The copyright and the tangible
6 item, correct?

7 A The copyright would be mine. He gave that to me.

8 Q Where is --

9 A Just -- Just like he gave his ex-wife
10 Greyhawk --

11 Q What document --

12 A -- and she sold that.

13 Q -- says that you got the copyright to the
14 dungeon?

15 A Well, the gift basically says that. And that was
16 his understanding and my understanding so. And
17 had he survived, he would have -- we would have
18 worked on that jointly as a joint project with
19 another writer. But Gary just became too sick,
20 and he was unable to do any extensive work on the
21 dungeon.

22 So I did -- I have hired a co-author
23 to start on developing that dungeon. That hasn't
24 been started. I own that property, and that
25 property has been started to be developed for

1 role-playing games, tabletop role-playing games.

2 Q So it's your testimony that -- Because -- Let
3 me ask you this again. What is a part of Gary's
4 library?

5 A I don't know what you're talk -- referring to
6 when you refer to library? You'd have to define
7 what your definition of library is in order for
8 me to be able to answer that.

9 Q Well, let's --

10 A Basically all the -- All of his manuscripts and
11 everything in the intellectual property world,
12 you can call that a library. That's different
13 than having a reference book and things like that
14 which, again, Gary gave me all of that library.
15 So I actually own both libraries.

16 So at home we have an extensive
17 collection of books that were not written by
18 Gary. Research book, dictionaries. I mean, the
19 list goes on and on and on. And so that is a
20 library I do own.

21 Q So let's look at what you have stated is a part
22 of Gary's library. Did you send an e-mail to Tom
23 DeSanto on October 34th that says that this is a
24 rough draft of Gary's library. I will need to
25 walk you through it. To which you attached an

1 Excel spreadsheet outlining numerous pieces of
2 Gary's intellectual property and works.

3 A That is a term used as an overall marketing term
4 now. He has passed. So what we would do would
5 be to banner Gary's name. And then it would be
6 different authors all under him --

7 THE COURT: All she asked you, did
8 you send that e-mail --

9 THE WITNESS: I would have to take --

10 THE COURT: -- saying that --

11 THE WITNESS: I would have to look at
12 it.

13 ATTORNEY GORN: Your Honor, we're
14 gonna mark this as Exhibit 16. And I
15 unfortunately do not have copies. Just received
16 this.

17 BY ATTORNEY GORN:

18 Q Miss Gygax, I'm going to hand you what we've
19 marked as Exhibit 16. About midway down the page
20 here, can you identify if that is your e-mail
21 address?

22 A Gail Gygax at Icloud dot com, yes.

23 Q And do you now recognize this as an e-mail that
24 you sent to Tom DeSanto in October of 2014?

25 A Yes. And again, the draft of Gary's library

1 means a marketing term is how the product line
2 would be marketed in. Because, for example, I
3 wrote part of these things and I own part of
4 these things that Gary worked on. So this is a
5 spreadsheet I did give to him, yes.

6 But you have to go through one by
7 one. Gary didn't write all of these. And again,
8 we use the overall umbrella Gary Gygax for
9 marketing purposes. So it would be Gary Gygax, I
10 wrote the treatment, somebody will help develop
11 the dungeon, someone will write some of these
12 other projects in here, so on and so on and so
13 forth.

14 But is that the term that I used?
15 Yes, that is the term that I use. It's just the
16 generic term we would use to say this is what we
17 can attach Gary's name to.

18 Q Understood. And is this the attachment that you
19 created and included in that e-mail to Tom?

20 A This looks like it, uh-huh.

21 ATTORNEY GORN: Your Honor, I'm gonna
22 ask that we admit Exhibit 16 into evidence.

23 THE COURT: Any objection?

24 ATTORNEY JOHNSON: No objection.

25 ATTORNEY KOCH: No, Your Honor.

1 THE COURT: Received.

2 BY ATTORNEY GORN:

3 Q Miss Gygax, did you approve a press release in
4 2016 where you approved for the release to read
5 that Tom was, quote, the guardian of the library?

6 A Oh, I -- I don't -- Tom -- Tom wrote all kinds of
7 marketing things. Legally you have to get a
8 lawyer to say -- legally is that what you should
9 have said. Did Tom want to spin it that way?

10 That may have been. Did I approve it? I can't
11 remember. It's been a long time ago. But he
12 wanted everyone to believe that he had control
13 over Gary Gygax's step -- intellectual property
14 when indeed he didn't. I did.

15 But you don't say -- It doesn't sell
16 as well if you say Gail Gygax's library because
17 Gary was the famous one that we would be adding
18 on to some of his unfinished works and projects
19 and other things and use his name in that
20 marketing sense. So that's -- Tom would make up
21 these marketing things. And you would have to
22 get a legal opinion on that. I wasn't gonna sit
23 there and argue with him about everything he
24 wanted to release.

25 Q And you're saying that it wouldn't have the same

1 value if it was attached to your name as it would
2 being attached to his name because his name has
3 value; is that correct?

4 A He -- He is a known author. I am not a known
5 author. And I wrote a script that was dealing
6 with his life, and so it would eventually come
7 out and maybe it would be not as popular. But
8 Gary was a very, very successful man. And I
9 don't think I could ever have the aspiration of
10 doing what he did.

11 But can I develop properties? I did.
12 I recommended property lines and he developed
13 those property lines. So I was very part --
14 aware of creating some of these property lines
15 throughout the years, including his time at TSR.
16 So I worked very closely with him on all of these
17 projects, most of them. Except those that I
18 wanted to create new out of -- coming out of the
19 manuscript and we could turn them into Gary Gygax
20 product line, putting Gary Gygax -- Gary's name
21 on it.

22 Q So again --

23 A It would be akin to L. Ron Hubbard. They use L.
24 Ron Hubbard as an overall marketing tool. Did he
25 write everything? No.

1 Q And again, just to go back to my original
2 question, which was when you -- did you approve a
3 press release wherein you referred to Tom DeSanto
4 as a guardian of the library?

5 A I do not remember that press release. I would
6 have to see it in writing if I approved that. I
7 just don't remember that at all.

8 Q I am handing you what is Exhibit 17. Again, can
9 you please confirm the front e-mail address as
10 being your e-mail address?

11 A Uh-huh.

12 THE COURT: Yes?

13 THE WITNESS: Yes.

14 BY ATTORNEY GORN:

15 Q And that e-mail was to Tom DeSanto?

16 A Yes.

17 Q And what was the date of that e-mail?

18 A July 19th, 2016.

19 Q Okay. And just under there is a press release
20 that was drafted by somebody, not you. And above
21 that in about the middle of the first page there
22 is your reply approving of that press release and
23 actually correcting the quote that he is the
24 guardian of the library, correct?

25 A I would even have to see where you're talking

1 about. I don't see that on here. Oh. If that's
2 what it says, then that's probably what I did at
3 the time. I just don't remember it. You know,
4 that could be.

5 ATTORNEY GORN: Your Honor, at this
6 time I would ask that Exhibit 17 be moved into
7 evidence.

8 THE COURT: Any objection to receive
9 that?

10 ATTORNEY JOHNSON: I guess I --
11 Well, I -- I don't object to the entry of the
12 exhibit but the -- the relevance of this entire
13 line of questioning. I don't know what we're
14 trying to establish here.

15 ATTORNEY GORN: We'll get there.

16 ATTORNEY JOHNSON: Well, it's -- You
17 know, we've had three years to do discovery on
18 this case, and we spent the last two and a half
19 hours doing more. And, you know, the e-mail up
20 above I -- and that you have highlighted
21 indicates DeSanto says he doesn't even know where
22 it comes from.

23 ATTORNEY GORN: He said he didn't
24 know where the quote came from --

25 ATTORNEY JOHNSON: Exactly.

1 ATTORNEY GORN: -- that she approved
2 it.

3 ATTORNEY JOHNSON: Exactly. So to
4 the extent that it shows that she approved the
5 press release, sure, I have no objection to that.

6 THE COURT: All right. It's
7 received. Mr. Koch, are you objecting?

8 ATTORNEY KOCH: No, Your Honor.

9 THE COURT: Thank you.

10 ATTORNEY GORN: Thank you.

11 BY ATTORNEY GORN:

12 Q All right. So your deal that you were trying to
13 make with Tom DeSanto, what -- did that
14 develop -- did that project go through?

15 A Tom never developed anything.

16 Q And --

17 A Did we sign a contract? Yes. But he, to my
18 knowledge, he never did anything.

19 Q At one point Tom came to visit you in Lake
20 Geneva, correct?

21 A That's correct.

22 Q And he retrieved a hard drive from a computer
23 that had been in your home; is that correct?

24 A That is not correct. If he did, he took property
25 that wasn't his. So I would never give someone

1 a -- a -- You look at everything I have on this
2 hard drive, there would be no way. If he said he
3 got that hard drive, then he did -- he took more
4 liberties than he should have. As I say -- He
5 actually could take -- proper -- a thing of
6 this -- this project, fine. This project, fine.
7 But if anything else, he did not have my consent
8 to do.

9 Q Did he have your consent to look through your
10 computer?

11 A No. Not for every -- No, he did not. I
12 specifically told him to the files that contain
13 intellectual property that we could consider for
14 development. There were a lot of other things on
15 my computer hard drive, and he did not have
16 permission to do that.

17 Q So was one of those things the 2006 will --

18 A That was not --

19 Q -- that was signed by your husband?

20 A -- included in what he was able to -- was given
21 permission to -- to take. I --

22 Q What was the purpose of his looking through the
23 properties? What was -- Why was he given access
24 to anything?

25 ATTORNEY JOHNSON: Objection. Calls

1 for speculation as to what Mr. DeSanto's purpose
2 was. But if you can answer, go ahead.

3 THE COURT: If you know.

4 THE WITNESS: Well, we were going
5 through the list that I had in a specific folder.
6 And I said look in this -- let's look at this
7 specific folder for different items. And that's
8 what we looked for. If he copied any other part
9 of my hard drive, it was -- he was stealing,
10 because I have a lot of other information on that
11 hard drive that simply is confidential. And that
12 will would have been one of them.

13 Q Why was the will confidential?

14 A Why was the will confidential? Why are a lot of
15 things confidential? He never asked for it.

16 THE COURT: Just answer the question,
17 please.

18 BY ATTORNEY GORN:

19 Q Was part of the purpose for Mr. DeSanto looking
20 through the files to help establish chain of
21 ownership for the intellectual property?

22 A No.

23 Q Tom ultimately sued you for breach of contract;
24 isn't that correct?

25 A That's correct.

1 Q And that was in part based on your failure to
2 provide chain of title to the intellectual
3 property; is that true?

4 A I at this point don't remember. He dropped the
5 lawsuit pretty quickly so I really don't -- it
6 happened so quick, I just don't -- don't remember
7 everything he was accusing me of. But it was
8 quite extensive.

9 Q And in recent years, have you worked with a
10 company called Gear Box to -- in pursuit of
11 developing a video game based on works authored
12 by Gary Gygax?

13 A Yes. We spoke to Gear Box about a Gygax line,
14 yes.

15 Q And they were interested in doing a video game;
16 is that correct?

17 A That's correct.

18 Q And they projected the game to be worth in the
19 millions of dollars; is that correct?

20 A They -- That would be a conversation that the
21 president of the company had with Paul Stornberg.
22 So did I have a direct conversation like that
23 with them? No, I did not. I think Paul did.
24 Paul would have to testify to that.

25 Q Speaking of Paul Stornberg, who is Paul

1 Stornberg?

2 A He's an associate of mine through the role-
3 playing game industry. He has a business selling
4 collect -- gaming collections. And then he's
5 helped me like -- things on my product line. So
6 he's -- You know, he does very -- He has
7 various different hats he wears.

8 Now, you're gonna have to ask him all
9 about that. But with me, he's helped me with the
10 sale of my collection. And he's helped me
11 with -- on this product line that I want to
12 develop that I created. So that's basically --

13 And then he is president of -- we
14 have a Gygax Memorial Fund, which is a 501(c)(3)
15 corp that I'm chairman of dedicated to getting a
16 statute for Gary made. We just got a bench for
17 him down in Library Park. We got the museum
18 project going. We got him in the Strong Museum.
19 We're looking at the Smithsonian. Something in
20 the library here. And so Paul works as president
21 for the GMF and is spearheading that project for
22 me, which is -- he's doing a wonderful job.

23 Q So you said that Paul sold items from your
24 collection.

25 A That would be correct.

1 Q Are those items that you allege were the property
2 of Gary Gygax that were transferred to you based
3 on the agreements we've talked about today?

4 A They were given to me as a gift. Transfer
5 pursuant to agreement is not the proper way to
6 term that. That was given as a gift to me just
7 like my engagement ring was given as a gift to
8 me. So that was given to a gift to me so I would
9 have a means of taking care of myself when he
10 passed. And that was the whole purpose of all of
11 that.

12 Q And those items that were sold from -- from the
13 collection --

14 A Uh-huh.

15 Q -- Paul has in fact sold over \$280,000 worth of
16 items; isn't that correct?

17 A Whatever he's given you, I mean, I don't have
18 that in front of me. But I think that's what he
19 said.

20 Q And what is your arrangement with Paul in terms
21 of how he is paid?

22 A He gets 18 percent of the sales amount.

23 Q And those sales all took place between 2008 and
24 2020; is that correct?

25 A I would have to look at the specific timing of

1 these sales to see if, you know, which dates he
2 had sales on.

3 Q Did you ever sell anything related to your
4 husband outside of Paul Stornberg's services?

5 A To my husband, no.

6 Q You didn't sell any pieces of work associated
7 with your husband to a gentleman by the name of
8 Matt Koder (phonetic)?

9 A I sold some pieces of artwork that were not
10 Gary's that were mine to a Matthew Koder, yes.

11 Q Were they always yours or were they Gary's at
12 some point?

13 A They were, again, given to me in 1986, as I have
14 said repeatedly.

15 Q And so you sold paintings to mat Koder. Were any
16 of those original works created by your husband?

17 A No.

18 Q What were they?

19 A They were other pieces of art that were not
20 created by my husband.

21 Q And you sold a piece of property for in excess of
22 \$100,000 to mat Koder; isn't that true?

23 A Yes.

24 Q And what exactly was that?

25 A I would have to go back and look at what the sale

1 sheet says to tell you the truth. That was years
2 and years ago, so --

3 Q And when was that?

4 A I would have to look back at the dates even.
5 This happened, well, 15 -- I don't know how many
6 years ago, but it's been a long time.

7 Q Was it after Gary's death?

8 A It was after Gary's death.

9 Q So we talked a little bit about -- it was just
10 mentioned, the 2006 will. I'm showing you what's
11 been marked as Exhibit 1. What is this document,
12 Miss Gygax?

13 A This is a -- I would say an invalid reflection of
14 how that will was. It's not the proper -- You'd
15 have to go look at the original document to see
16 what it was, because this is not it.

17 Q Who has the original document?

18 A I think the court does. I don't.

19 Q So in what ways is the original document
20 different than this document?

21 A The writing contained in red. So it should be a
22 red and black version of that. And I do not have
23 a copy of that. I have a copy of the unsigned
24 one on my computer, but I do not have the
25 original signed.

1 So this is a copy of something that
2 wipes out what was in there. But it is a copy of
3 a will that he was working on. I wanted to
4 include Gary's children, and anyhow this was what
5 he was working on. And he was very sick at the
6 time.

7 Q And is it his signature that appears on page four
8 of this document?

9 A I believe so. I did not witness it. But yes,
10 that would appear to be his signature.

11 Q Okay. So looking at Exhibit 1, page four, I want
12 to read the paragraph here. It says, this
13 document consisting of four printed pages.
14 Including this page, each page bearing the
15 signature of the testator was signed and
16 published by the testator at his last will in the
17 presence of each other having signed our names as
18 witnesses. We each certify that at the time of
19 execution of this will, the testator was mentally
20 competent and acting voluntarily.

21 Is it your signature on the last line
22 following that paragraph?

23 A Yes. And this was supposed to be initialed at
24 the bottom --

25 THE COURT: Just --

1 THE WITNESS: -- of each and every
2 page to be valid. That is one of the things it
3 says --

4 THE COURT: Ma'am, all she asked you
5 was is that your signature?

6 THE WITNESS: Yes, that is my
7 signature.

8 THE COURT: Thank you.

9 BY ATTORNEY GORN:

10 Q And your signature is dated 7/11/06; is that
11 correct?

12 A That is correct.

13 Q And is that the signature of your son, Alexander
14 Gygax, right above you?

15 A I assume so.

16 Q And his signature is also dated 7/11/06; is that
17 correct?

18 A Yes. Correct.

19 Q Did you ever, prior to this action, file this
20 with the court?

21 A I gave this to the -- Luke was suing me in
22 federal court over the trademark Gygax, and that
23 was given to him as part of document discovery.

24 ATTORNEY JOHNSON: That's not the
25 question. Did you file it with the court prior

1 to this action being commenced.

2 THE WITNESS: To the probate court?

3 ATTORNEY JOHNSON: Yes.

4 THE WITNESS: Oh, no.

5 BY ATTORNEY GORN:

6 Q Were you present when -- when your son,
7 Alexander, signed this document?

8 A No.

9 Q Were you present when your son -- Excuse me.

10 When your husband discussed the will with

11 Alexander Gygax?

12 A No. I mean, I was in the other room. I don't --

13 I don't remember what was said during the time.

14 I think may -- may what would have been said

15 is --

16 THE COURT: If you're guessing, we
17 don't really need that.

18 THE WITNESS: Yeah, we don't want to
19 know then.

20 BY ATTORNEY GORN:

21 Q Do you agree with me that based on the terms of
22 this 2006 will that you would stand to inherit
23 less than you do under the nine -- terms of the
24 1990 will?

25 A I would have to get a professional opinion on

1 that. I had my rights under the Trigee. So
2 again, I would have to look under that and --
3 and -- and see.

4 Q You stated that under the 1990 will you got
5 everything, correct?

6 A Uh-huh.

7 THE COURT: Yes?

8 THE WITNESS: Yes.

9 BY ATTORNEY GORN:

10 Q Under the 2006 will, do you get everything?

11 A I would again have to look at this. It was my
12 understanding that I did get everything. So
13 everything that he had left in the estate, which
14 was very little. So that is my understanding,
15 and that's what I can give you.

16 Q So I want to look at a few specific pieces. Now,
17 you were -- it's your testimony that you were
18 working with Gary on this will, correct?

19 A I had asked Gary to -- I had asked him to come
20 up with some kind of agreement whereby I could
21 include the children into Trigee and have the
22 boys work with me after he passed. Because I am
23 not a gamer. I don't play role-playing games.
24 And I thought it would be very important to
25 include his children.

1 The whole reason this was done was my
2 request of Gary to include his children at the
3 time that refused to work with him. So it was my
4 suggestion. And that is why the other -- the
5 original will is in red and black, because he
6 changed what I asked for.

7 And it is still my contention that I
8 wanted the help of the boys because they loved
9 their father and that would -- Yes, that would
10 probably change some things. But I thought it
11 was very -- a very family thing to do and the
12 right thing to do that -- for all of us. We'd
13 work together as a family and continue with
14 Gary's works. That's the whole purpose of
15 this --

16 Q Was --

17 A -- it was finished.

18 Q Was --

19 A It really wasn't finished.

20 Q Was the copy that you signed on July 11th 2006 in
21 red and black ink?

22 A The copy that I signed was in red and black ink,
23 yes.

24 Q So was the copy that Gary signed in red and blank
25 ink?

1 A Yes.

2 Q And the copy that Alex witnessed was also in red
3 and black ink?

4 A Yes.

5 Q And you did in fact sign your name on July 11th,
6 2006, correct?

7 A No.

8 Q Well, when did you sign your name?

9 A Thereafter.

10 Q When thereafter?

11 A I'm not sure. I know I gave this to Luke within
12 I think three months of Gary's death, so it had
13 to be within some -- some time during that I gave
14 Luke both copies -- both copies of the original
15 premarital will -- or the 1990 will, as we're
16 calling it now, and this. Luke received both of
17 these copies in nine -- in 2008, within three
18 months I think of Gary's death.

19 Q So I want to direct your attention to page two of
20 the will, paragraph three, sub-point A. Are you
21 with me?

22 A Yes I am.

23 Q It says I direct my personal representative.
24 That's you. That was you in this will, right?

25 A That's correct.

1 Q To maintain my personal library as an intact
2 collection --

3 A Uh-huh.

4 Q -- to be given to such decedent of mine?

5 A Uh-huh.

6 Q As is following a career writing about history
7 and/or imaginative fiction. Did I read that
8 correctly?

9 A Yes.

10 Q And then skipping down to the bottom, the last
11 sentence of that same paragraph, it says this
12 does not apply to duplicate books or duplicate
13 game materials, those being part of my disposable
14 estate. Did I read that correctly?

15 A Yes. However, he had already made other promises
16 to me where I would need --

17 THE COURT: Excuse me. Ma'am, I'm
18 sorry. We're gonna be here -- you're gonna be on
19 the stand for three days if you just --

20 THE WITNESS: Okay.

21 THE COURT: -- feel the need to add
22 and explain every single question.

23 THE WITNESS: Yeah.

24 THE COURT: Just answer the
25 questions --

1 THE WITNESS: So ask me the question
2 again.

3 BY ATTORNEY GORN:

4 Q Well, I think you answered that one so I'll move
5 on to my next one.

6 Paragraph four on this same page, it
7 says all the rest, residue and remainder of the
8 property which I own at my death I give to my
9 wife, Gail Carpenter Gygax, save for any and all
10 intellectual property I own, as well as interest
11 in the use of my famous name (Gary Gygax, E. Gary
12 Gygax, or Ernest Gary Gygax), along with any pen
13 names of anagrams based on -- based on my name
14 such as, I'm guessing, it's Yerg and Gygag or
15 Gygig which property I bequeath to her for her
16 use and enjoyment during her lifetime.

17 Upon the death of Gail Carpenter
18 Gygax, the aforesaid intellectual property shall
19 become the property of my six children.

20 Did I read that correctly?

21 A Yes.

22 Q Okay. So I will reask my question from earlier
23 then. Under this 2006 will, did you get
24 everything?

25 A I got what I owned under Trigee. And I got the

1 gifts that he gave me. So I -- This will cannot
2 change what had been given to me and what I --

3 THE COURT: That's not what she asked
4 you, ma'am.

5 THE WITNESS: -- my personal
6 property. So --

7 THE COURT: Ask your question again.

8 ATTORNEY GORN: I forgot it, Your
9 Honor.

10 ATTORNEY JOHNSON: Your Honor, I
11 mean --

12 ATTORNEY GORN: Did --

13 ATTORNEY JOHNSON: The question
14 asked --

15 ATTORNEY GORN: Did --

16 ATTORNEY JOHNSON: -- if she got
17 everything.

18 BY ATTORNEY GORN:

19 Q Did the -- Did the 2006 will provide you
20 everything?

21 A I would have to look at this. Did it provide
22 everything I owned, I kept. And he provided me
23 with everything he had left, I guess. What was
24 in his estate he gave to me.

25 THE COURT: And, Miss Gorn, that's

1 some of the legal decision is going to be made
2 so --

3 ATTORNEY GORN: Understood.

4 THE COURT: -- it's hard for her to
5 answer that.

6 BY ATTORNEY GORN:

7 Q Aside from those documents that we've discussed
8 here today, are there any other documents that
9 you claim support transfer of ownership rights of
10 property from Mr. Gygax to you?

11 A The only other thing I can think of is his
12 previous will in 1984, I think it was done, that
13 he gave everything to me. So that has been
14 produced as well.

15 ATTORNEY GORN: Your Honor, I would
16 ask that Exhibit 1 be moved into evidence.

17 THE COURT: Any objection?

18 ATTORNEY JOHNSON: Your Honor, I
19 guess does the court have the original with the
20 red and black on it?

21 THE COURT: I have the electronic
22 version. I looked at it. I don't remember
23 color, but let me look again. There's no color.
24 Given electronic filings though, I'm not sure
25 where -- Okay. So we'll go off the record for a

1 second.

2 (Discussion off the record.)

3 THE COURT: Miss Gorn, you filed
4 electronically filed number three?

5 ATTORNEY GORN: That one was not in
6 red and black.

7 THE COURT: So we don't have, that I
8 know of, an original --

9 ATTORNEY GORN: Right. And I don't
10 have --

11 ATTORNEY JOHNSON: Well, Your Honor,
12 by letter dated May 5, 2020, I hand delivered to
13 Bridget Lobionka (phonetic) at the probate court
14 original last will and testament of Gary Gygax
15 dated 11th with no -- because it's not -- doesn't
16 have a month by his signature line, 2006, an
17 original last will and testament dated March 28,
18 1990. So those were the originals per the
19 statutes were filed with the court.

20 THE COURT: What day was that,
21 Mr. Johnson?

22 ATTORNEY JOHNSON: May 5, 2020. And
23 I know that it shows up on CCAP as filed, you
24 know. And so from our perspective, what we do is
25 we -- you know, we have that letter but the

1 original is kept here. So it's somewhere here, I
2 believe.

3 THE COURT: It should be and that's
4 not in color either.

5 (Discussion off the record.)

6 THE COURT: All right. We'll check
7 with register in probate. Most items are when
8 scanned, they don't keep originals anymore.
9 That's the purpose of e-filing.

10 ATTORNEY JOHNSON: Well, and I guess
11 to the extent --

12 THE COURT: But we'll check with
13 probate by the way.

14 ATTORNEY JOHNSON: That's fine. I
15 think that there are just -- from other dealings
16 in the case, there are copies of it with the red
17 and black. I know one was produced during the
18 deposition of Alexander Gygax because there's
19 test -- I wasn't at that deposition but he --
20 there is questions from him that ask, well,
21 what's the significance of the color?

22 So you know where that is, I guess,
23 and the significance of it. But to the extent
24 that we're entering it as evidence in the
25 language, it's just inaccurate because it doesn't

1 have the color on it if it's not -- if the
2 original that you have is not -- and certainly
3 the exhibit, save for the color changes -- it
4 says the same thing but it says in red print and
5 black print.

6 ATTORNEY GORN: I think if I'm
7 recalling correctly, Your Honor, if you look
8 closely at the electronically filed document that
9 was attached to Ted's May of 2020 correspondence,
10 I think there's a portion of the text in that
11 electronically filing -- electronically filed
12 document that shows a lighter verse darker. My
13 understanding is that that is probably the red
14 portions verse the black portions.

15 THE COURT: Yes. Some looks lighter
16 and darker than others. They're not all the
17 same.

18 ATTORNEY JOHNSON: And if the court
19 would like to see it, I have -- I mean, the --
20 the copy that I'm looking at now is just from our
21 file. So it's a two-sided document that's just
22 part of our file copy.

23 ATTORNEY GORN: I don't have a
24 problem if we want to introduce that as, you
25 know, exhibit --

1 ATTORNEY JOHNSON: Well, the problem
2 is it's got other information, namely the back
3 page of the 1990 will on one page and then the
4 front page of the 2006 --

5 ATTORNEY GORN: Do you --

6 THE COURT: Can I ask this? Does it
7 change what's written?

8 ATTORNEY JOHNSON: It does not. The
9 words are written the same. It doesn't change
10 that they're -- I'm just saying that it's not in
11 red and black what you're looking at. So if the
12 court wants to see it to corroborate what she's
13 saying that it was a draft in her mind, that's
14 fine. And that she didn't sign it at the time.
15 Those are all questions for the court, whether
16 that will get accepted --

17 THE COURT: Right.

18 ATTORNEY JOHNSON: -- and is valid.
19 And so to the extent that the language doesn't
20 change, no, it does not.

21 THE COURT: All right.

22 ATTORNEY JOHNSON: None of the
23 language changes.

24 THE COURT: We can move ahead and we
25 are.

1 ATTORNEY JOHNSON: Okay. And if the
2 court wants to see that, I can make an extra
3 copy --

4 THE COURT: I can see --

5 ATTORNEY JOHNSON: -- on break or --

6 THE COURT: -- that there's red and
7 black from here, Mr. Johnson.

8 ATTORNEY JOHNSON: Sure.

9 THE COURT: So I'll assume that
10 that's true.

11 ATTORNEY JOHNSON: Thank you.

12 ATTORNEY KOCH: I have no objection
13 to the admission of Exhibit 1, Your Honor.

14 THE COURT: Thank you.

15 ATTORNEY GORN: And I think I may be
16 done, Your Honor. I just want to look to make
17 sure I don't miss anything.

18 THE COURT: And for the record, I
19 received Exhibit 1. I believe all your exhibits
20 have now been received.

21 ATTORNEY GORN: Your Honor, I will --
22 I will be done with Miss Gygax.

23 THE COURT: All right. So no more
24 questions. True?

25 ATTORNEY GORN: True.

1 THE COURT: All right. Mr. Koch, do
2 you have some questions?

3 ATTORNEY KOCH: I go next?

4 THE COURT: I would let Mr. Johnson
5 wrap things up given that it's naturally his
6 witness.

7 ATTORNEY JOHNSON: I'm not offended.

8 THE COURT: I just think this way
9 Mr. Johnson can address both questioners.

10 ATTORNEY KOCH: No worries, Your
11 Honor.

12 CROSS-EXAMINATION

13 BY ATTORNEY KOCH:

14 Q Good morning, Miss Gygax.

15 A Good morning.

16 Q Just so I'm clear, the order of the documents,
17 the first document was the 1986 agreement marked
18 as trial Exhibit Number 2?

19 ATTORNEY JOHNSON: Objection to the
20 extent that it calls -- it says agreement. It's
21 not titled that. It's not signed by both
22 parties. It's a transfer of ownership of
23 personal property.

24 ATTORNEY KOCH: I'll rephrase the
25 question.

1 THE COURT: Thank you.

2 BY ATTORNEY KOCH:

3 Q Just so I understand the order of the documents
4 in this case, the first document is Exhibit
5 Number 2, transfer of ownership of personal
6 property, correct?

7 A Yes. That's correct. It's a transfer of
8 property --

9 Q Okay.

10 A -- to me.

11 Q And that trans -- that document states that all
12 other personal property other than the Mathey-
13 Tissot wristwatch and the gold signet ring, and
14 the clothing was transferred to you, correct?

15 A Everything was transferred to me is what I
16 understood.

17 Q And then there's the 1988 marital property
18 agreement, correct?

19 A Yes. What exhibit was that?

20 Q That's Exhibit 3. You call it a premarital
21 agreement. I'm sorry. I called it a marital
22 property agreement. It's exhibit --

23 A Right.

24 Q -- three.

25 A Yes. I have a copy of that here.

1 Q And -- And that agreement provides that on page
2 13, paragraph nine, that Gary -- I'm gonna call
3 your husband, the decedent, Gary. Is that okay,
4 Miss Gygax? So we know who I'm talking about?

5 A Yes. What page are you on again?

6 Q Page 13, ma'am.

7 A Okay.

8 Q Paragraph nine.

9 A Uh-huh.

10 Q It provides that Gary is to leave to Gary's
11 children from his previous marriage all of his
12 household possessions acquired prior to November
13 1, 1983, correct?

14 A Yes. That he --

15 THE COURT: That's all you're gonna
16 do is say --

17 THE WITNESS: Yes.

18 BY ATTORNEY KOCH:

19 Q Okay. So if he gave you all of his personal
20 property in 1986 with the transfer document, why
21 would there be a provision set forth in 1988 that
22 is leaving all of his personal property prior to
23 November 1, 1983 to his children from his first
24 marriage?

25 A The transfer of property, as I understand it, was

1 the collection and the dungeon and not
2 specifically household goods and -- at the time.
3 He wanted all of the collection and the dungeon
4 to go to me as a life insurance policy.

5 Under the premarital, it did make the
6 provisions for the children to get certain items.
7 And it also says that he can change that during
8 the marriage, which he did. And so that's my
9 answer. So this transfer of ownership, this
10 gift, was all of his collection, all of his
11 collectibles, all of his manuscripts, and all
12 of -- and -- and the original dungeon. That's
13 what this transfer covered.

14 This premarital covers other
15 properties which again we could commingle during
16 our marriage, in which we did. We commingled a
17 lot of them. Most of them, as a matter of fact.
18 So things change over time, and that's what
19 happened.

20 Q Correct. Things change over time. Then there's
21 the 1990 will, correct, as you called it? The
22 premarital will?

23 A Yes.

24 Q Okay. And then there's the 1994 Trigee agreement
25 marked as trial exhibit four, correct?

1 A Yes.

2 Q Okay. Now, page two, section one, under term,
3 provides that the agreement will remain in effect
4 for five years, correct?

5 A That is correct, which we agreed to verbally to
6 extend.

7 Q And it says thereafter renewable annually by
8 mutual consent, correct?

9 A Yes. And we continued working together until the
10 day he died.

11 Q Well, but Trigee was dissolved then?

12 A No --

13 Q And -- Try -- Trigee was dissolved in 1988,
14 correct?

15 A Trigee Enterprises Corporation was dissolved but
16 we continued --

17 Q Right.

18 A -- as Trigee --

19 Q Got it --

20 THE COURT: That's all he asked.

21 BY ATTORNEY KOCH:

22 Q That's all I asked for. And you don't have here
23 today any written documentation indicating that
24 Exhibit 4 was renewed annually; is that correct?

25 A I guess the proof is -- the fact that we --

1 Q (Inaudible)

2 A -- continued doing books --

3 THE COURT: He just said do you have

4 anything in writing, yes or no?

5 THE WITNESS: No.

6 THE COURT: Okay.

7 BY ATTORNEY KOCH:

8 Q Okay. So then the next thing we have is --

9 A And not with me today. I may have things --

10 THE COURT: Just --

11 THE WITNESS: -- at work at home that

12 would document it.

13 THE COURT: You don't have anything

14 for the court today.

15 THE WITNESS: No.

16 THE COURT: Okay.

17 BY ATTORNEY KOCH:

18 Q Then we have Exhibit 1, the 2006 will, correct?

19 A Yes.

20 Q Okay. And that's the will in section four where

21 the decedent, Gary, provided that the

22 intellectual property has an interest in his name

23 and pen names is bequeathed to you for your use

24 and enjoyment during your lifetime. But upon

25 your death, those items become the property of

1 all of Gary's children, correct?

2 A That's what it says there, yes.

3 Q Okay. And that is the last signed document that
4 exists regarding the disposition of Gary's
5 assets; is that correct? Yes or no? Yes or no?

6 A That's the last signed doc -- I would have to go
7 back and look and see if there were any other
8 communications thereafter, so I cannot say a
9 definite yes or no.

10 THE COURT: You don't have any other
11 with you in court today?

12 THE WITNESS: No. I've never been
13 asked for anything more.

14 BY ATTORNEY KOCH:

15 Q And that is the document, that being Exhibit 1,
16 the last signed document we have, that was not
17 provided to the probate court until Attorney
18 Johnson filed it in March -- I'm sorry. In May
19 of 2020; is that correct?

20 A I believe that's correct.

21 Q Okay. And that's the document that was not
22 provided to Mr. DeSanto because it was
23 confidential, correct?

24 A I did not provide that to Tom DeSanto.

25 Q And -- Because you believed it was confidential,

1 correct?

2 A Yes. I --

3 Q Okay.

4 A -- it was confidential. I know it's

5 confidential, yes. Did I provide Luke copies of

6 it --

7 ATTORNEY KOCH: Your Honor?

8 THE COURT: Miss --

9 ATTORNEY KOCH: Thank you.

10 BY ATTORNEY KOCH:

11 Q And as we sit here today, you cannot provide us,

12 ma'am, with a list of what was -- what you claim

13 was transferred to you back in 1986; is that

14 correct?

15 A Can I give you a list right now? Paul Stornberg

16 probably gave you that list.

17 Q Okay.

18 A I did not take an itemization of it all. He did.

19 Q And just briefly going back to Exhibit 3, the

20 premarital agreement, I just want to be clear.

21 No financial disclosure statements were attached

22 to that agreement; is that correct?

23 A That's correct.

24 ATTORNEY KOCH: I have nothing

25 further.

1 THE COURT: Mr. Johnson?

2 CROSS-EXAMINATION

3 BY ATTORNEY JOHNSON:

4 Q Miss Gygax, the -- you had some questions
5 regarding Trigee and when it was dissolved. The
6 corporation we acknowledge was dissolved --

7 A Yes.

8 Q -- in California in 1998, correct?

9 A Yes. Whatever the year was, it was the year -- I
10 don't remember the exact year.

11 Q Did Trigee continue operations --

12 A Yes.

13 Q -- after nine --

14 THE COURT: Just wait until he
15 finishes.

16 BY ATTORNEY JOHNSON:

17 Q After 1998?

18 A Yes.

19 Q Did you formalize the formation of an entity
20 corporation LLC any other -- in any other state
21 or again in California after 1998?

22 A No.

23 Q And so is it fair to characterize Trigee
24 Enterprises as a sole proprietorship at this
25 point?

1 A That's correct.

2 Q And during the time period of nine -- Well,
3 after it was dissolved, when Trigee files an
4 income tax return, how is that accomplished? Is
5 that through a separate tax return or is there a
6 schedule on your personal --

7 A Schedule C on the personal.

8 Q Okay. And both attorneys here asked you
9 questions about the term -- term of the document
10 being five years. You saw that. Did you and
11 Gary mutually consent to agree to continue that
12 agreement after the five-year term?

13 A Yes.

14 Q Does the agreement that you were asked questions
15 about, Exhibit Number 4, on page two, paragraph
16 one, does that require a written consent to
17 continue operations?

18 A No.

19 Q And so how -- how did that happen between you and
20 your husband?

21 A We just continued working on projects and
22 automatically extended it. And you can see that
23 there were projects in Trigee's name after that
24 five-year period, and it continued until -- you
25 know, in Trigee's name. So it was just, you

1 know, a mutual thing among us. I mean, it was --

2 Q The Exhibit Number 2, the transfer of ownership

3 of personal property --

4 A Uh-huh. Yes.

5 Q -- did you sign that agreement?

6 A No.

7 Q So it's not an agreement. It's just a document

8 signed by Gary and somebody named Karen Murphy.

9 A Yes.

10 Q And that document states that -- the first line

11 states I, Ernest Gary Gygax, do hereby make this

12 transfer of ownership of my personal property as

13 of 16 June, 1986, to Gail Carpenter. Did I read

14 that right?

15 A That's correct.

16 Q Okay. And as you characterized it, you believed

17 this was a gift.

18 A Oh, yes.

19 Q In 1986, you and Gary were not married?

20 A That is correct.

21 Q You were pregnant with his child, however.

22 A That is correct.

23 Q And you were living together.

24 A That is correct.

25 Q And this transfer of personal property included

1 all of the items that you now refer to as your
2 collection?

3 A Yes. That is correct.

4 Q And those are the items that were sold under the
5 questions from Miss Gorn since Gary's death that
6 produced these \$280,000 --

7 A Yes. That's correct.

8 Q Okay. And so those were your items in your -- in
9 your mind of your personal property.

10 A That is correct.

11 Q Did Gary have any real estate in his name at the
12 time of his death?

13 A No.

14 Q Did Gary have -- You mentioned a joint bank
15 account with you as his spouse. So there was a
16 bank account that he held jointly with you.

17 A Yes.

18 Q Did he have any other accounts that you're aware
19 of, bank accounts, financial accounts, investment
20 accounts --

21 A I think he had --

22 Q -- in his name at the time of his death?

23 A I think he had some kind of penny stock thing,
24 and that was about it.

25 Q Okay.

1 A It wasn't --

2 Q Did he have an IRA?

3 A No.

4 Q Did he have any life insurance that wasn't

5 already talked about that was required to go to

6 his late -- his ex-wife?

7 A No.

8 Q Any other life insurance?

9 A No.

10 Q Any other bank accounts or vehicles titled in his

11 name at the time of his death?

12 A Not that I'm aware of, no.

13 Q Okay. And so anything that would have been

14 contained in the joint bank account which, I

15 believe you said you thought was Chase Bank, that

16 went directly to you as a joint owner of that

17 account.

18 A Yes.

19 Q Okay. And in terms of personal property between

20 1986 and the date of Gary's death, you indicated

21 there was some items of personal property that he

22 had -- still had --

23 A Yes.

24 Q -- that were either obtained after 1986 or

25 created --

1 A Uh-huh.

2 Q -- that were given to his children after he
3 passed away?

4 A There were some -- Yeah. There was a list that
5 I gave -- gave him, the items that -- and Gary
6 and I discussed right before he passed. And I
7 gave all of those to his children within three
8 months.

9 Q And so any household belongings after 1986 --
10 Because you resided continuously with Gary --

11 A That's correct.

12 Q -- until his death --

13 A Yes.

14 Q -- in 2008. So if you had a chair in your house,
15 would that have been considered a household
16 belonging that would have been owned by both of
17 you?

18 A That would have been owned by me.

19 Q Okay. He had some specific items he called out
20 in this Exhibit Number 2 that he wanted to see go
21 to -- you know, that he -- that he held back from
22 the transfer of ownership to you.

23 A Uh-huh.

24 Q A watch?

25 A Uh-huh.

1 Q And his clothing and some rings that he received
2 from his father.

3 A Uh-huh.

4 Q And -- Yes?

5 A Yes.

6 Q And were those items given -- And were they
7 still in existence at the time of his death?

8 A Some of them were. Some items had been stolen.

9 Q Okay. The -- After Gary died, there's some
10 items of personal property that are -- in Exhibit
11 Number 1, this 2006 document, that are
12 specifically bequeathed to the children and
13 others on pages one and two. Do you see where
14 I'm referring to those under paragraph two?

15 A All right. Hold on.

16 Q It's paragraphs one through eight on -- under --

17 A One through eight? Yes. Okay.

18 Q Okay. Did those items exist at the time of
19 Gary's death?

20 A Oh. Well, I'd have to go through each one of
21 them. This first wooden chessboard I gave to
22 them, yes. The gray black tote plastic set I
23 think I gave to them. My father's -- I think
24 the showy board, I have no idea where the showy
25 board went. I think I gave that to them.

1 Q But those items if they existed, any of those,
2 would those have been given to the children
3 after --

4 A After Gary died, yes. Yes, I gave them two
5 separate pickups of items that he and I
6 specifically talked about right before he died.
7 So it would have been in like 2008 --

8 Q So save -- save for those items that are listed
9 in paragraphs one through eight --

10 A Uh-huh.

11 Q -- paragraph four of that document indicates
12 everything else went to you.

13 A Yes.

14 Q Including any and all intellectual property that
15 he may have had except --

16 A Right.

17 Q -- to the extent that he was reserving or giving
18 you only a life estate in what intellectual
19 property that he had.

20 A Well, to his name, yes. And -- Which you'd have
21 to go back to the Trigee agreement. Trigee --

22 Q But -- But -- But to the extent that the
23 document says that he was giving that to you as a
24 life estate --

25 A Yes.

1 Q -- under -- However, under the Trigee agreement
2 you already had the rights to the name --
3 A That's correct.
4 Q -- as of 1994.
5 A That is correct.
6 Q And so as of a result of the Trigee agreement,
7 this provision, although it exists on the
8 document, he didn't have it to give at the time
9 of his death --
10 A That is correct.
11 Q -- because it was already --
12 ATTORNEY KOCH: Object. Calls for a
13 legal conclusion.
14 THE COURT: That's your view of it at
15 least. Right, ma'am?
16 BY ATTORNEY JOHNSON:
17 Q That's how you saw the -- the rights to his name.
18 A That's correct.
19 Q Okay. And the same would be true for any
20 intellectual property as the term is used here.
21 It's -- It was assigned, according to your
22 agreement with Trigee, to Trigee.
23 A That is correct.
24 Q We talked a lot about the dungeon, this play test
25 castle, in your earlier questioning. Describe

1 for the court what -- what actually is that
2 physical -- what is it?

3 A It is a manuscript containing drawings of dungeon
4 levels and in keys, that's part a gaming term.
5 So I'm trying to make that -- where you
6 understand it. Keys to what goes on in the
7 dungeon.

8 But there's no story line that he
9 finished and developed. So it's just the base,
10 raw material that needs to be developed and a
11 story line put around it, end -- for any kind of
12 development. It's just the base raw --

13 Q It's paper --

14 A -- manuscript.

15 Q It's in paper form --

16 A It's piece -- It's pieces of paper.

17 Q Is it handwritten? Is it typed? Which is it?

18 A It's -- It's handwritten drawings of maps.

19 Q And how -- give us an estimate of how many pages
20 that would be.

21 A I think there were somewhere around 50 levels.

22 Q So under 100 pages?

23 A Yes.

24 Q Okay. But it's all -- And is it all
25 handwritten?

1 A Yes. The keys are handwritten. It's all
2 handwritten.

3 Q Okay. And it's unpublished.

4 A Some of it was published by his former company,
5 TSR.

6 Q Okay.

7 A So I do not have the rights to publish those
8 particular pieces.

9 Q And how do you distinguish between what was
10 published -- or -- or how was that done? That
11 was under a prior agreement that Mr. Gygax had
12 with his former company?

13 A Yes.

14 Q And TSR, the company that you're referring to,
15 was an entity that eventually was sold to Hasbro?

16 A That is correct.

17 Q And Hasbro is the company that developed the
18 original game Dungeons & Dragons?

19 A That would be correct.

20 Q Okay. And so there's parts of this dungeon,
21 these papers --

22 A Yes.

23 Q -- that were already -- or somehow they're
24 designated as already published.

25 A That is correct.

1 Q Okay. The rest of them, however, are not
2 published. And so there's no copyright, there's
3 no intellectual property that's -- that exists
4 right now with -- It's just a punch of papers.

5 A That's correct.

6 ATTORNEY GORN: I'm gonna object that
7 that calls for a legal conclusion.

8 THE COURT: I understand your
9 objection. She's answered the question. I'll
10 again take that into account myself.

11 BY ATTORNEY JOHNSON:

12 Q Am I correct? None of the unpublished pieces of
13 paper have a copyright attached to them.

14 A No.

15 Q They don't have a trademark attached to them.

16 A No.

17 Q They don't have a patent, a trade attributed to
18 them.

19 A No.

20 Q And those papers, that dungeon, along with all of
21 the remainder of his miscellaneous personal
22 property were transferred to you in 1986.

23 A Yes.

24 ATTORNEY JOHNSON: Your Honor, to the
25 extent that I think that that concludes my

1 questions related to the things presented on
2 direct examination, I'll -- I'll end my questions
3 there. But I want to reserve the right to recall
4 her as part of my own case.

5 THE COURT: All right. I understand
6 that. It's lunchtime. Do you have anymore
7 redirect for her?

8 ATTORNEY GORN: No.

9 THE COURT: Will you have anymore --

10 ATTORNEY KOCH: Very briefly.

11 THE COURT: If you can do it quickly,
12 let's get her done.

13 ATTORNEY KOCH: I can do it quickly.

14 THE COURT: Okay.

15 RECROSS-EXAMINATION

16 BY ATTORNEY KOCH:

17 Q Miss Gygax, when you received the gift you claim
18 you received in 1986, from Exhibit Number 2, did
19 you file an income tax return?

20 A Did I file a tax return saying I received gifts?

21 Q Yes.

22 A No. I don't remember including it on a tax
23 return, no.

24 Q Okay. And --

25 A I don't know that I would have known to do that.

1 Q When were you married?

2 A In 1987.

3 Q 1987. With regards to the Trigee agreement which

4 is marked as Exhibit Number 4 --

5 A Yes.

6 Q -- we talked about the term. It talks about it's

7 in effect for five years and thereafter renewable

8 annually by mutual consent, correct?

9 A That's correct.

10 Q But yet in the 2006 will, Mr. Gygax only gave you

11 a life estate and the intellectual property and

12 his name and anagrams, correct? And that is

13 Exhibit 1, correct?

14 A You would have to repeat the question for me to

15 answer that, please.

16 Q I apologize. I'll repeat it. In Exhibit 1 on --

17 in section four, Gary Gygax gave you what we

18 call -- what we're calling is a life estate, an

19 intellectual property, his name and anagrams,

20 correct?

21 A That's what it states, yes.

22 Q Okay. And the declarant -- Exhibit 1 would be

23 his last will and testament, correct?

24 ATTORNEY JOHNSON: Objection to the

25 extent calls for a legal conclusion.

1 THE WITNESS: I don't have a legal
2 conclusion. Yeah, no.

3 BY ATTORNEY KOCH:

4 Q Well, let's look at -- let's look at the first
5 paragraph of Exhibit 1. It states I, Ernest Gary
6 Gygax, Senior, of Lake Geneva, Walworth County,
7 Wisconsin, hereby revoke any and all former wills
8 or past wills and declare this to be my last will
9 and testament, correct?

10 A Correct.

11 Q Okay. So that would be revoking consent under
12 section one of Exhibit Number 4, wouldn't it?

13 ATTORNEY JOHNSON: Objection to
14 the --

15 THE WITNESS: No.

16 ATTORNEY JOHNSON: -- you know --

17 THE COURT: Again, that's it --

18 ATTORNEY JOHNSON: -- calls for a
19 legal conclusion again --

20 THE COURT I: Agree, Mr. Johnson.

21 ATTORNEY JOHNSON: I don't know how
22 she can answer that.

23 ATTORNEY KOCH: I have nothing else.

24 THE COURT: Okay. Do you have a
25 question as a result of that, Mr. Johnson?

1 ATTORNEY JOHNSON: No, Your Honor.

2 THE COURT: All right. We'll break
3 for the morning for our lunch. We can go off the
4 record for scheduling.

5 (Off the record.)

6 (A lunch recess was taken.)

7 THE COURT: On the record then for
8 our afternoon session on 20PR58. The appearances
9 remain the same. We're still in the Petitioner's
10 case. And the next witness I believe is
11 appearing by Zoom, and that's Tom DeSanto. Am I
12 right?

13 ATTORNEY GORN: Yes, Your Honor.

14 THE COURT: All right. We'll try to
15 bring him in.

16 (Off the record.)

17 THE COURT: Are you Tom DeSanto?

18 THE WITNESS: Yes, I am.

19 THE COURT: Okay. All right. And he
20 can -- we can hear him as well. Miss Gorn, you
21 are calling him as a witness?

22 ATTORNEY GORN: Yes, Your Honor.

23 THE COURT: Mr. DeSanto, if you could
24 raise your right hand, my clerk will administer
25 an oath to you.

1 THE CLERK: Please state and spell
2 your name for the record.

3 THE WITNESS: My name is Thomas
4 DeSanto. And it's T-H-O-M-A-S. D-E-S-A-N-T-O.

5 THE CLERK: Do you solemnly swear
6 that the testimony you shall give in it matter
7 shall be the truth, the whole truth, and nothing
8 but the truth, so help you God?

9 THE WITNESS: Yes.

10 THE CLERK: Thank you.

11 THE WITNESS: I do.

12 THE CLERK: Thank you.

13 THE COURT: All right. First, Miss
14 Gorn will ask you some questions. Go ahead.

15 ATTORNEY GORN: Thank you, Your
16 Honor.

17 DIRECT EXAMINATION

18 BY ATTORNEY GORN:

19 Q Tom, can you tell us where you currently reside?

20 A I reside in Los Angeles, California.

21 Q And what do you do out there in Los Angeles,
22 California, sir?

23 A I am a film maker, I'm a writer and producer.

24 Q And is there a certain area of works that you
25 specialize in?

1 A Yeah. I'm primarily known as a world builder. I
2 did the films X-Men, then pulled Battlestar
3 Gallactica out of moth balls for Universal, and
4 then Transformers.

5 Q And how many years have you been -- been working
6 as a producer?

7 A 25.

8 Q And what kind of revenue have been derived from
9 the projects that you just mentioned?

10 ATTORNEY JOHNSON: Objection.
11 Relevance.

12 THE COURT: How is it relevant?

13 ATTORNEY GORN: Goes to his ability
14 to generate revenue from intellectual property to
15 the extent that he had to deal with Gail to do
16 the same.

17 THE COURT: All right.

18 ATTORNEY JOHNSON: To the extent that
19 this witness is a fact witness and not an expert
20 witness, I don't know what relevance the revenue
21 from past films has anything to do with the
22 issues in the estate of Gary Gygax.

23 ATTORNEY GORN: Because they would
24 have discussed projected value together of the
25 projects that they intended to produce.

1 THE COURT: I -- I agree.

2 Objection's overruled.

3 BY ATTORNEY GORN:

4 Q Sorry, Mr. DeSanto. I believe the question was
5 what kind of profits or revenue have you seen
6 from the works that you have produced?

7 A The films box office have been approximately six
8 million dollars. And the revenue derived from
9 licensing and merchandising is probably in the
10 neighborhood of triple that.

11 Q So can you tell me, sir, about how your job
12 works. What your role is in bringing
13 intellectual property from sort of an intangible
14 state into production.

15 A Sure. So for -- for me, I'm a creative producer,
16 so I will be the person who's sort of first one
17 there. In a way I'm in charge of assembling the
18 team, getting a director on board, coming up with
19 the written works, and then going to a studio or
20 network and putting that all together in a
21 package to sell.

22 Q And how did you -- Excuse me. Did you know Gary
23 Gygax?

24 A I did not. I had only known him from playing the
25 game when I was younger. I knew his name.

1 Q And what kind of impact or what impression did
2 you have, if any, from the name of Gary Gygax?

3 A For me and a lot of kids in my generation, Gary
4 was a mythic sort of figure. You know, we had
5 played this game and his name was on the creation
6 of it and on the books and on the modules. It
7 was the first time I ever read of a place called
8 Lake Geneva, Wisconsin, which seemed very Mount
9 Olympus when you're a 10, 12-year-old kid in New
10 Jersey. So for me Gary was a very important
11 figure in my childhood and adolescence, much like
12 Stan Lee was.

13 Q And is it that -- is it that effect that the name
14 had on you that made you want to develop the
15 intellectual property of Gary Gygax?

16 A Yeah. I think for me it was, you know, the world
17 that Gary had created was so, you know, vital in
18 my sort of creative DNA and growing up as a
19 person, so much so that I named my company
20 Paladin Entertainment after one of the character
21 classes in the game.

22 So yeah, when, you know, I would hear
23 the name Gary Gygax, it was always in terms of
24 positive connotations of imagination and world
25 building and Dungeons & Dragons.

1 Q And how did you come to know Gail Gygax?

2 A I met Gail through a mutual friend, Cindy
3 Wrights. And she made an introduction. And
4 actually went back through my e-mails last night
5 to see when that first contact was, and that was
6 back in 2011 where she had -- there was an
7 introductory e-mail that was made.

8 Q And can you tell me how that relationship
9 developed?

10 A You know, it was -- I really took to Gail, you
11 know. I loved hearing her stories about Gary and
12 Lake Geneva and their times together. And, you
13 know, Gail has a very special place in my heart.
14 It felt very sort of organic in forming a
15 friendship. We would talk often on the phone or
16 through texting or e-mails over the next several
17 years.

18 And she became more and more, I
19 think, comfortable with me and my abilities to
20 bring Gary's works and her -- his life story to
21 the screen. And that was Gail's initial focus.
22 What she really wanted to see Gary's life made
23 into a film, and I thought it was a really
24 beautiful story that needed to be told.

25 Q Did you have any reservations about working with

1 Gail to develop this intellectual property?

2 A I had a few just because I had heard from people
3 that she could be difficult. But I had worked
4 with difficult people before and I did not at the
5 time think it was gonna be problematic to working
6 together and creating, you know, a Gygax
7 universe, which eventually is what it turned into
8 a discussion on.

9 Q And so can you tell me, I guess, what -- At some
10 point did you two decide that you were going to
11 work together on a project or on projects?

12 A Yes. She had -- We were e-mailing back and
13 forth. And then in October of, I believe it was,
14 2016, again, I was going through the time line
15 last night, she had stated that she would want to
16 work with me to take on entire library of Gary's
17 IP and Gary's works.

18 ATTORNEY JOHNSON: Your Honor, if I
19 could interject. I don't know if Mr. DeSanto
20 is -- He's looking off to the side. If he's
21 referring to some other documents and things like
22 that, we don't have those. And I would prefer
23 that we not have him looking -- You know, I'm
24 sorry, mister --

25 I don't know if that's what you're

1 looking at. But with this, if you're referring
2 to documents, then you -- I guess I would ask
3 that you not unless they're gonna be shared.

4 THE COURT: I agree. That's the
5 problem with Zoom is we need to know he's not
6 referring to other documents. So if you need --

7 THE WITNESS: Okay.

8 THE COURT: -- specifically refer to
9 something to refresh your memory, ask for
10 permission and we'll see if that --

11 THE WITNESS: Okay.

12 THE COURT: -- can be done or not.

13 THE WITNESS: Understood, Your Honor.

14 Thank you.

15 ATTORNEY GORN: Thank you, Tom.

16 BY ATTORNEY GORN:

17 Q And so in approximately 2016, you --

18 THE WITNESS: And just a question.
19 Would the court like me to send those e-mails
20 where she discusses that?

21 THE COURT: If you're going to rely
22 on it, yes, we all should see that. So yes.

23 THE WITNESS: Okay. I can do that as
24 well. Just so you guys have -- Do you want me
25 to take a second to send some e-mails to Miss

1 Gorn?

2 ATTORNEY JOHNSON: To what -- To
3 what point?

4 ATTORNEY GORN: I think --

5 THE COURT: Just so you know what
6 he's relied upon so you could --

7 ATTORNEY JOHNSON: Well, I know. But
8 what we're here to talk about the estate and
9 assets that existed in the estate --

10 THE COURT: All right.

11 ATTORNEY JOHNSON: -- and you know
12 things like that --

13 THE COURT: Mr. Johnson, stop.

14 ATTORNEY JOHNSON: -- and so --

15 THE COURT: -- you're the one that
16 objected saying I don't want him to look at
17 things, which is an appropriate objection. But
18 when he says, well, I'll offer to send you the
19 things I'm looking at --

20 ATTORNEY JOHNSON: -- I under --

21 THE COURT: -- that's all he's doing.

22 ATTORNEY JOHNSON: But Miss Gorn is
23 asking questions. If there's gonna be exhibits
24 that we're gonna rely on those e-mails, then
25 fine, send them. But otherwise, let's move on

1 with the testimony. And if there aren't
2 documents now, then don't refer to any.

3 THE COURT: All right.

4 ATTORNEY JOHNSON: That's my point.

5 THE COURT: So don't refer to them.
6 If you need to ask my permission, then we'll talk
7 about whether they need to be sent.

8 ATTORNEY GORN: Thank you --

9 THE COURT: Go ahead.

10 BY ATTORNEY GORN:

11 Q So in October of 2016, you and Gail had decided
12 to -- come to an understanding that you would be
13 developing Gary's entire library of works. Did I
14 state that correctly?

15 A Yes.

16 Q Okay. And so please continue with sort of how
17 things transpired from -- from that point.

18 A So from that point, we started a larger
19 discussion on what the deal would look like.
20 What were each of our goals and objectives, you
21 know, there were stipulations that I had required
22 and stipulations Gail had required. And then
23 that turned into a legal document which we had
24 executed by our lawyers.

25 Q And when you say that you were working to develop

1 the entire library, can you tell me what from
2 your understanding that included?

3 A That included all of Gary's works that he had
4 owned outside of Dungeons & Dragons because there
5 was a settlement that was done back decades
6 earlier with his rights on that. So it was other
7 worlds that he had created. But there were also
8 camp outs from Gary's original dungeon which he
9 had created and his castle and things that were
10 still part of the library of worlds that he had
11 created.

12 Q And to your understanding were those things
13 published or unpublished?

14 A Some were published. One of the characters he
15 had created with a gentleman by the name of Clint
16 Dilly (phonetic). And then I had spoke to a
17 publisher by the name of John Need (phonetic).
18 John had given us a contract to republish those
19 works. And there were other characters that Gary
20 had created in his years after Dungeons & Dragons
21 that were included. And there was a list that
22 Gail had sent over.

23 Q And you said that you guys kind of came to a
24 vision of what you wanted to do. Can you tell me
25 what the agreement was or the plan was between

1 you and Gail in terms of what you were going to
2 develop?

3 A Yeah. So it was -- it was two prongs. One was
4 working on the bio film of Gary's life which Gail
5 was very passionate about. And the other one was
6 I had to try and figure out a way into all of
7 these different worlds that Gary had created and
8 how to make it cohesive.

9 So I was going to use the castle that
10 he had created as sort of a nexus of realities.
11 Sort of what Marvel and DC does with multiverses,
12 to be able to go into any story line and create a
13 connection through all those worlds.

14 Q And was this project in any way based off of a
15 script that Gail had written?

16 A Gail had written an -- almost like a short story.
17 I don't think it was -- I don't think she sent
18 me a script where it was in script suitable
19 format.

20 So some people who are not, you know,
21 familiar with the way things are structured in
22 Hollywood, a script is a very specific document
23 which can be turned into a budget and a schedule
24 and you can actually turn it into a production.
25 That's why some screen writers are brought in to

1 adapt, say, a Steven King short story. And then
2 they will translate the short story into a larger
3 script.

4 But Gail had written almost like a
5 treatment, a short story of -- and it was like
6 bullet points and things that were important to
7 her for Gary's life.

8 Q So it was -- what she gave you was to be a part
9 of what you were developing. Is that an
10 accurate --

11 A Only -- Yeah. Only on the bio film. But with
12 bio films -- You know, look. Anyone, even
13 someone not related to Gary could go off and do a
14 biography because he's a public figure. You
15 know, the value is really with Gail's personal
16 experiences and all of those memories that we
17 were gonna try and capture to tell. But it
18 wasn't anything to do with the other properties.
19 It was only to do with the film on Gary's life.

20 Q Okay. And so the other parts of it, those were
21 based on works authored by Gary; is that
22 accurate?

23 A Yes. Gary. And in a few cases they were
24 co-authored where he would write with someone
25 else. And then that would have been different.

1 Again, a chain of title issue where we would need
2 to go to that person to get permission. But
3 again, in order to build this out, you have to
4 lay a solid foundation with knowing chain of
5 title and where everything lies.

6 Q You said that you both had some stipulations.
7 What were the stipulations that you had -- had
8 put in place?

9 A For me what was important was to have creative
10 control. To be able to do what I do without
11 interference. And Gail wanted a few things. She
12 wanted an approval over the bio film, which I had
13 agreed to. She did not have approval over the
14 other world building. And -- And any
15 conversations with the children needed to be
16 approved by her in order for me to talk to the
17 children.

18 Q Did she ever tell you why she wanted approval of
19 your conversations with the children?

20 A I think there -- there was a very public history
21 at that time of her feuding with the children.
22 And from just talking with her over the years, I
23 knew she had a lot of anxiety (unintelligible).

24 Q And you mentioned the phrase "chain of title."
25 Is chain of title something that you discussed

1 with Gail?

2 A Yes. Because, you know, we can be creative all
3 day long and sell a room to creatives. And then
4 fiscal affairs will come in and they will want to
5 know things like chain of title, copyrights,
6 trademarks. All of those things need to be in
7 order.

8 Q And was Gail able to provide you with sufficient
9 proof of chain of title?

10 A On some things. On other things, I had made a
11 trip out to Lake Geneva and we had gotten
12 documents and looked through Gary's files. And
13 it was really like what was there in total,
14 because there was not (Zoom feed interruption) on
15 Gail's part as to where everything was.

16 Q So again, can you just -- I just want to make
17 sure we're clear. What was the purpose of your
18 trip to Lake Geneva?

19 A The purpose was to, one, go out and see Lake
20 Geneva and really sit with Gail and talk with
21 Gail about Gary's life. And that would be done
22 for the bio film. We went to different locations
23 that were important to Gary growing up, including
24 his old school. We met at their home. And then
25 we were looking to see what -- what IP we were

1 missing. Were there anything in files or old
2 computer hard drives that we were not aware of
3 that Gary had written. We also needed legal
4 documentation on when these things were written,
5 if they were registered with a copyright office.
6 So it can be -- it can be quite extensive work to
7 do.

8 Q As part of that investigation, did Gail provide
9 you with access to her computer hard drives?

10 A Yeah. We had access -- We had done copies of
11 the computer hard drive and all of the files.
12 And looking through things that were partially
13 written, things that -- things that were
14 completely written by Gary, also looking at had
15 Gary copyrighted these items. Things like that.

16 Q And your review of the computers, just to be
17 clear, that was done with Gail's knowledge and
18 permission. Is that what -- what you just said?

19 A Yes. That's correct.

20 Q And can you tell me what you found on those hard
21 drives?

22 A Well, I had given those hard drives over to Mark
23 Hallerin (phonetic) who is probably one of the
24 best copyright trademark attorneys. He's written
25 several books on the subject. To do due

1 diligence and sort of see where -- could we have
2 chain of title on things and what was there. And
3 then that was when I got a phone call from Mark
4 stating that he had found Gary's second will, the
5 will that he had -- his last will.

6 Q And did you review that will?

7 A I did. And upon review of that will, I was a
8 little confused because both myself and Mark --
9 And Mark advised me legally he said this is
10 signed. This is a document. You know, I didn't
11 have knowledge of the law at that time, but just
12 common sense reading it and the date on it, which
13 I believe was about, you know, a year before Gary
14 passed, I had realized we had the last will of
15 Gary Gygax.

16 Q And was there something about that will that
17 concerned you regarding the chain of title issue?

18 A Yes. Because in the will it's very clearly
19 stated that Gail was given life rights and that
20 the children were given rights after that. So
21 they would have their perpetual rights after
22 that. So Gail -- The problem with life rights
23 is, you know, if something were to happen to
24 Gail, and we were in the middle of doing
25 something, her rights would then revert to the

1 children. And for business affairs, for a studio
2 or network, that would not be something they
3 would be interested in doing because it was just
4 too big of a risk.

5 Q And so did you have any conversations with Gail
6 about this?

7 A I did. I called her after that and she was upset
8 that I had it. And she said to me that you
9 weren't supposed to see that and that I cannot
10 show that to the children. I had to just
11 disregard that will.

12 And we got a bit of an argument. And
13 that was when our sort of relationship started to
14 take a turn, because I -- I said I can't hide
15 this document. This is -- This is a legal
16 document.

17 Q And did you give that document to the children at
18 that time?

19 A No. I -- Eventually I was advised by my lawyers
20 to do a lawsuit and, therefore, put the document
21 into the public record as a piece of evidence.
22 And that way the children could go see it. But
23 again, there was a bit of confusion on the
24 lawyer's part whether I could give the will to
25 the children because of the NDA. But they

1 eventually came to the conclusion that because
2 Gail had signed a document that didn't
3 actually -- wasn't valid because she didn't own
4 the rights that she was purporting to have, that
5 that made the NDA invalid.

6 And also I believe California has
7 laws that NDAs cannot circumvent the law. So if
8 something -- if there is something that is going
9 on that is against the law, you cannot use a NDA
10 to shield yourself. But I'm not 100 percent sure
11 on that. Again, that's a lawyer question. But
12 that was what I was advised.

13 Q Okay. So you find the will, talk to Mark, you
14 have concerns, you bring it to Gail's attention.
15 And then you said things kind of started to -- to
16 deteriorate. Can you tell me what you mean by
17 that?

18 A Yeah. At that point things sort of went sideways
19 with myself and Gail. I think she -- from my
20 perception, she felt threatened that I knew this
21 knowledge. So she went out and started
22 contacting other people and other representation,
23 going around our legal document, which did not
24 allow her to do that. And then she brought on an
25 agent named Gina from APA to represent her in the

1 dealings where I already had a contract with her.

2 Q Did you approach Gail with any ideas or solutions
3 to how you could work through the problem that
4 you felt was created by the will?

5 A Yeah. Well, previously to that we had discussed
6 a working with the children. Because the battle
7 had become so public and sort of so toxic in the
8 gaming community, I -- I would talk to her about,
9 you know, making it one team, one fight, uniting
10 the Gygax family, all pulling in the same
11 direction and everyone working together. And she
12 had agreed to that. And we had started
13 discussions with the children.

14 And I met with the children with
15 Gail's blessing at Gary Con and had spoken to
16 them about Gail wanting to do a contract with
17 them. And this was before I discovered the
18 second will. So this was months before. I
19 believe it was in March. And then I discovered
20 or Mark discovered the will in July.

21 So we had e-mailed back and forth.
22 We had a meeting while I was in Lake Geneva for
23 Gary Con. And then I went to the children with
24 some details from Gail on what she wanted to do
25 to bring everybody together. And then after --

1 it seemed very positive at the time. And then
2 eventually it just sort of faded away and it sort
3 of -- like, there was resistance on Gail's part
4 from bringing it to --

5 Because the children were asking for
6 getting lawyers involved. And there was just
7 always that last second pump on the brakes from
8 Gail's side which made the agreement we were
9 discussing go away.

10 Q Did you or your -- your company make any kind of
11 payments to Gail under this -- this project to
12 develop the intellectual property?

13 A Yeah. I had assumed the legal costs of her
14 keeping up and all of the Gygax trademarks. So I
15 had written checks to a lawyer by the name of
16 Michael Best and was paying legal fees for all of
17 the maintenance, trademarks and copyrights and
18 things like that.

19 And then I had spent money out-of-
20 pocket to hire Mark Hallerin to do due diligence
21 and organize all the IP. And then, of course,
22 money to -- to go up to Lake Geneva and taking
23 Gail out to lunch or dinner and just really
24 talking with her about Gary and Gary's life and
25 the company.

1 Q Without expecting you to give me an exact number,
2 would you say that your investment in this
3 project was in excess of thousands of dollars?

4 A Yes. Yeah. The legal fees alone were definitely
5 in the tens of thousands of dollars.

6 Q Would you invest that kind of money in a project
7 if you did not expect to at minimum recoup what
8 you've spent?

9 A No. I would not -- My lawyers did not say
10 you've got a contract, go ahead, I would not have
11 started that. That was why the delay in going up
12 to see Gail in Lake Geneva. We did not start
13 that whole process until our contract was done.

14 Q Perhaps I worded the question poorly. Would you
15 have invested all of the money in -- Excuse me.
16 Would you have invested tens of thousands of
17 dollars, as you stated, in due diligence and
18 legal fees and maintaining copyrights if you
19 didn't think essentially that the juice was worth
20 the squeeze? If you didn't think that the
21 projects once developed --

22 ATTORNEY JOHNSON: I'm gonna object
23 to the relevance of -- You know, he's asking to
24 speculate about a project that now he -- would he
25 do this. It has no relevance or -- and it's

1 speculative on this witness's part.

2 THE COURT: Well, I think it may put
3 a value to the intellectual property, so I'll
4 allow the question.

5 ATTORNEY GORN: Thank you.

6 THE WITNESS: And yeah, for -- for
7 me, I really felt that this was a sleeping
8 dragon. I felt that Gary's name alone and what
9 that meant to the gaming community, which is a
10 very loyal community, they spend a lot of money
11 as you can tell by even as -- as large a company
12 as Hasbro, the gaming community through Wizards
13 of the Coast acquired TSR is one of the profit
14 leaders of Hasbro.

15 So for me, I thought that this could
16 be something that could turn into something worth
17 you know work of a hundred million dollars if
18 handled properly.

19 Q All right. So things start to go south with
20 Gail. You testified she hired this -- this other
21 agent?

22 A Yeah. I had reached out to APA --

23 ATTORNEY JOHNSON: Can we wait for a
24 question?

25 ATTORNEY GORN: I apologize. I'll

1 finish -- I'll finish --

2 THE WITNESS: Oh.

3 BY ATTORNEY GORN:

4 Q What happened then?

5 A So when -- I wasn't aware -- I wasn't sure if
6 Gina knew that I had a contract with Gail. But
7 it was in all of the trades. And you guys should
8 have the press release that we did. If not, I
9 can send that to you as well.

10 And I let Gina know that, hey, I've
11 got a contract with Gail and it's legal and
12 binding. And she let me know that she didn't
13 care. So for me having worked with agents and
14 managers for many years, it was a little ajaring
15 to hear that because that's how, you know, the
16 world works is you've got to have the law
17 otherwise we descend into chaos. And Gina
18 eventually was fired by APA. I think this was a
19 cumulative thing because of her
20 unprofessionalism. She was --

21 THE COURT: Sir? Sir --

22 THE WITNESS: -- let go.

23 THE COURT: -- I don't know what APA
24 is.

25 ATTORNEY JOHNSON: And I don't know

1 why we're talking about the firing of an agent
2 who a company that we don't know about --

3 THE COURT: Okay.

4 ATTORNEY JOHNSON: -- has no
5 relevance to this estate.

6 THE COURT: Let me just -- What is
7 APA first, to clarify your answer?

8 THE WITNESS: APA is a talent agency.
9 So they have agents that will represent actors
10 and writers, directors, producers, in doing their
11 deals around Hollywood.

12 THE COURT: Okay. I think the point
13 you made is she went and got another agent. I
14 don't think we need to get into the depths of
15 that. I agree. Objection's sustained.

16 BY ATTORNEY GORN:

17 Q So when you filed the lawsuit, you said that the
18 will became public then. At that point did you
19 consider your contract with Gail to be broken?

20 A Yes.

21 Q Okay.

22 A I considered the -- the underlying -- As part of
23 the lawsuit, it is stating that there was fraud
24 involved because Gail had knowledge that the
25 contract she was entering into with me was not

1 valid because she did not own the rights to the
2 properties. She only had the life rights to the
3 property -- to the library.

4 Q And based on that, you -- did you -- did you then
5 send the will to the children?

6 A Then the will was -- I -- I believe I had a
7 conversation with Luke and he was able to find it
8 online. I don't think I ever sent the will
9 directly to the children at that point. I
10 believe that was a matter of public record, and
11 he was able to download it off of the website.

12 Q Okay. Perfect. Thank you for clarifying.

13 A But I believe years later, again, this is, you
14 know, six, seven years ago. So I'm -- I'm trying
15 to remember exactly --

16 ATTORNEY JOHNSON: Again, that's --
17 there no --

18 THE COURT: There's no question.

19 ATTORNEY JOHNSON: -- no question,
20 sir. If you'd wait, please. Thank you.

21 THE WITNESS: Okay. You got it.

22 BY ATTORNEY GORN:

23 Q Do you currently develop -- Excuse me. Do you
24 currently desire to develop the Gygax
25 intellectual property?

1 A Yes, I do.

2 Q And --

3 A I think there's a lot of value there.

4 Q And -- And would you work with Gail in the
5 future to do so?

6 A No, I would not work with Gail.

7 Q Would you work with any entity, let's say, a
8 trust or an LLC that would have -- perhaps have
9 ownership of the LL -- Sorry. Let me -- Let me
10 phrase that better.

11 If there were hypothetically an LLC
12 or a trust that owned the intellectual property
13 rights and name rights and Gail was a part of the
14 control of that trust or LLC would you be
15 interested in working with -- with that entity to
16 develop the IP?

17 A If there was any control or approval that Gail
18 would have, I would not work with that entity.

19 Q And why is that?

20 A I think it's multiple things for me. My
21 experiences with Gail have proven to be that
22 there was a bit of instability there. She would
23 go online and do attacks which, you know, if
24 you're in the middle of a project and that
25 happened, it would just creates a maelstrom of

1 bad press that you would -- that would hurt the
2 value of what you were trying to build together.

3 I would -- You know, for me, I would
4 love to -- I would love for Gail to have an
5 income as part of this and to be taken care of.
6 But having worked with her in that way where I --
7 I couldn't trust her, that I couldn't go down
8 that road again.

9 Q And you said -- you made mention of kind of
10 attacks online. Can you --

11 ATTORNEY JOHNSON: Objection.
12 Relevance here. I mean, again, we're getting off
13 into something that's far afield. Working with a
14 new entity that doesn't exist, we're talking
15 about hypotheticals about intellectual property
16 that may or may not be here. We're talking about
17 the future now that has nothing to do with the
18 issues that we're here in a probate action in
19 Walworth County, Wisconsin, to determine what
20 assets are in this estate.

21 What isn't, what is intellectual
22 property, what is not. Not what we're dealing
23 with in the future with whether this fine
24 gentleman's gonna act -- or work with Gail Gygax
25 or not. It has nothing to do with the issues

1 that we're here for. There's no relevance other
2 than to attack my client.

3 THE COURT: What if I find that the
4 intellectual property does not belong to her but
5 I need to determine if it's worth more than
6 \$50,000?

7 ATTORNEY JOHNSON: So what if you do,
8 Your Honor? You can find that without having an
9 attack from this gentleman or Miss Gorn and her
10 client about whether they want to work with my
11 client in the future. There's no point to that.

12 THE COURT: So the objection is this
13 character evidence I think is the --

14 ATTORNEY GORN: So --

15 THE COURT: -- more defined
16 objection. This is irrelevant character
17 evidence.

18 ATTORNEY GORN: So the character
19 evidence, Your Honor, goes to two points. One is
20 the sort of truthful nature of the way she
21 conducts business to help this court make light
22 of -- Excuse me. Make sense of her testimony
23 earlier and establish her credibility and her
24 propensity for truthfulness.

25 The other thing is that this court as

1 a court of equity has the power. And, as we
2 stated in our brief, one of the goals of -- of
3 this action for us is to determine if you agree
4 that the intellectual property is not owned by
5 her, what do we do with it now.

6 And so the court, you know, if we get
7 that far, will be tasked with deciding who should
8 manage this intellectual property for the benefit
9 of whomever you deciding to the beneficiaries.
10 So we have somebody like Mr. DeSanto who is
11 saying I'm willing to do it and I can make a
12 hundred million dollars minimum doing this for
13 you all who have rights to it.

14 And so it does matter who he or who
15 people in his industry would be willing to work
16 with. And if she has through her actions and
17 through her reputation destroyed her credibility
18 and her ability to successfully develop the IP,
19 then I think the court needs to know that to
20 inform their decision on what should happen
21 moving forward.

22 THE COURT: All right. Two different
23 legal avenues there. First, regarding
24 truthfulness, it's governed by 906.09 which is do
25 you have an opinion to her truthfulness and what

1 is it. Not specific instances. And that's what
2 he's about to do, it sounds like, is a number of
3 specific instances. So I won't allow that under
4 that guise. He can testify what he believes
5 her -- his opinion is of her truthfulness but not
6 any specifics.

7 The second issue then is this. Who
8 will marshal this in the future. That's a remedy
9 we're not even at yet. I could see that being
10 relevant, but it's gonna take a lot of testimony
11 right now that I'm not sure is necessarily
12 relevant.

13 ATTORNEY GORN: And if -- if it helps
14 inform the court, the intention was not to go
15 much further with that.

16 THE COURT: All right. Let's --

17 ATTORNEY JOHNSON: You've gone far
18 enough, in my opinion.

19 THE COURT: Well, it's -- it's a
20 court trial. I can understand its relevance or
21 not. You can finish this line.

22 ATTORNEY GORN: Thank you, Your
23 Honor. And really, I think I was done with that.

24 BY ATTORNEY GORN:

25 Q So the -- the next question I have is have you

1 been promised any deals or rights in respect to
2 the intellectual property in exchange for your
3 testimony today?

4 A No.

5 Q And do you have any current plans or agreements
6 with any member of the Gygax family to develop
7 the intellectual property as we sit here today?

8 A No.

9 Q Have you helped finance this litigation in any
10 way?

11 A No.

12 Q And have you given any form of compensation at
13 all, at any point in time, to Luke or the other
14 Gygax children?

15 A No.

16 Q Have you given any gifts or donations at all --
17 Excuse me. My last was compensation. This
18 question is have you given any gifts or donations
19 at all at any point in time to Luke or the other
20 Gygax children?

21 A No.

22 ATTORNEY GORN: I have no further
23 questions.

24 THE COURT: All right. Mr. Koch.

25 ATTORNEY KOCH: Your Honor, thank

1 you. Mr. DeSanto, can you hear me?

2 THE WITNESS: I -- I can hear you.
3 It's a little muddled.

4 THE COURT: All right. You won't be
5 able to see Mr. Koch. He's the personal
6 representative. He is the attorney as the
7 personal representative.

8 ATTORNEY KOCH: I can --

9 THE COURT: Thank you. He's gonna
10 move seats so you'll be able to see him. He'll
11 take Gail's attorney's spot. So Gail will be
12 sit -- seated next to him, but Mr. Johnson
13 represents her, as you may know. All right.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Go ahead, Mr. Koch.

16 CROSS-EXAMINATION

17 BY ATTORNEY KOCH:

18 Q All right. Can you see me now?

19 A Yes, I can.

20 Q Okay.

21 A Thank you, sir.

22 Q And can you hear me, sir?

23 A Yes.

24 Q Okay. I'm Steve Koch. As Judge Koss said, I've
25 been appointed personal representative. I have

1 very few questions.

2 You testified, sir, you had a
3 contract with Miss Gail Gygax. What were the
4 terms of the contract?

5 A I can send a copy to that. I don't remember all
6 of the terms. Again, it was done I believe July
7 of 2016 because we did an announcement for Comic-
8 Con that year. But the specifics of all of the
9 details I don't remember off the top of my head.

10 Q Okay. Can you tell me --

11 A But in general (Zoom feed interruption) do you
12 want to give a general --

13 THE COURT: Wait for another
14 question.

15 BY ATTORNEY KOCH:

16 Q Can you tell me --

17 A Okay.

18 Q -- were funds going to be exchanged between you
19 and Miss Gygax?

20 A Funds were going to be exchanged as far as me
21 assuming all responsibility for maintaining all
22 copyrights, trademarks. That is in the contract.
23 And I did fulfill those requirements --

24 Q And --

25 A -- taking care of the --

1 Q -- was that more or less than \$50,000?

2 A I don't remember off the top of my head what the
3 exact legal bills were. But again, I could look
4 through those records and see what those -- those
5 totals were.

6 ATTORNEY KOCH: Your Honor, I'd like
7 an answer to that question.

8 THE COURT: All right. So how much
9 time would it take you to find out the answer to
10 that question, sir?

11 THE WITNESS: I'd have to reach out
12 to my lawyers and get a billing from them on what
13 the totals were sent out. Again, it's something
14 that I don't have in front of me.

15 THE COURT: Can you get it today or
16 tomorrow -- by tomorrow?

17 THE WITNESS: I can reach out to my
18 lawyer. Again, it's something where I can ask
19 them. As you well know, lawyers sometimes work
20 quickly and sometimes they don't. But I can do
21 my best effort for the court. It's just
22 something I don't -- They keep all the records
23 for that.

24 THE COURT: Right. But do you have a
25 person that -- I mean, I don't know if you write

1 the checks or you have somebody write the checks.
2 But I assume from your end somebody paid these
3 legal fees. Wouldn't that --

4 THE WITNESS: Yes. Yes.

5 THE COURT: -- wouldn't you have
6 that?

7 THE WITNESS: Yeah. I can -- I can
8 look through the money that was sent. But do you
9 want a proper accounting from the lawyers? I
10 don't know how long that would take. But I can
11 look through my e-mails with Gail. Gail would
12 send me bills. Things along that. I do remember
13 the name Michael Best who I believe was out of
14 Chicago, but I don't know the totals off the top
15 of my head.

16 THE COURT: Mr. Koch.

17 ATTORNEY KOCH: I guess, Your Honor,
18 I'm not looking for him to contact his attorney
19 and get an accounting. I'm looking for a
20 figure -- his best estimate as to what he paid.
21 That's --

22 THE COURT: Right. We're just trying
23 to figure out what you spent.

24 THE WITNESS: Again, if you want, I
25 can look up my e-mails and see some of the bills.

1 Again, there were multiple bills over a period of
2 time. So it's not like, you know --

3 Also, I pay a lot of legal fees so I
4 don't remember off the top of my head what there
5 was -- what that exact number was. But it
6 shouldn't take me long to -- to find it. I'm
7 sure I could find a rough estimate by the -- by
8 the end of the day today by looking through past
9 transactions.

10 THE COURT: All right. That would be
11 fine.

12 ATTORNEY KOCH: That's fine.

13 THE COURT: Okay. Anymore questions?

14 ATTORNEY KOCH: No.

15 THE COURT: So before Mr. Johnson
16 probably has some questions, I just want to --

17 So was any, like, fee or anything
18 paid to Gail for -- under this contract or it was
19 all just reimbursing her for expenses?

20 THE WITNESS: No. We were -- In the
21 short form version of the contract, it was gonna
22 be a reimbursement of expenses, because that was
23 also the deal I had worked out off of my
24 precedent with Hasbro for Transformers. I didn't
25 pay anything for the rights to Transformers.

1 I -- They gave me the rights for free in order
2 for the value I was going to add to the IP by
3 setting it up. So as a precedent, that was what
4 we used on track with Gail.

5 But I was to assume legal
6 responsibility for the fees, and then we were
7 going to do an assessment of what all of the IP
8 was. And that was why we were doing all the
9 digging to really understand what was in the
10 longer form contract. So we had done the short
11 form contract and then we were working on the
12 longer form, which would have listed out all the
13 IP and get into that detail. But that was when
14 we found the second will.

15 THE COURT: And so would you then
16 have made a lump sum payment to you or she would
17 have got a percentage of like as the movies came
18 out or product --

19 THE WITNESS: Yeah. The way the deal
20 was structured, she would have start -- so even
21 with the contracts that I had in hand for
22 publishing with Clint Dilly, we would have had
23 payments coming to Gail from that contract which
24 we had. So there would have been money coming
25 in. As we got money in, she would have been

1 getting money.

2 THE COURT: That -- And that's what
3 I'm trying to find out. Would it have been as a
4 commission, a residual, or just a lump sum thank
5 you for the IP, here's \$5,000 for it, for
6 example?

7 THE WITNESS: No. Participation. So
8 was -- when we made a dollar, she got a
9 percentage of that money. We all shared in the
10 same pot.

11 THE COURT: Got it. Okay. Go ahead,
12 Mr. Johnson.

13 ATTORNEY JOHNSON: Thank you.

14 THE COURT: This is Gail's attorney
15 now asking you questions.

16 ATTORNEY JOHNSON: Thank you.

17 CROSS-EXAMINATION

18 BY ATTORNEY JOHNSON:

19 Q Can you hear me, okay?

20 A Got it.

21 Q Can you hear me okay, mister --

22 A Yes.

23 Q Okay. As the court indicated, my name is Ted
24 Johnson. I'm Gail's attorney in this matter.

25 You indicated in your testimony you did not know

1 personally Gary Gygax; is that true?

2 A That is correct, yes.

3 Q And you did not know Gail Gygax in 2008.

4 A I did not know Gail Gygax personally in that
5 time.

6 Q Were you in contact or aware of any assets that
7 Mr. Gary Gygax had as of the date of his death in
8 2008?

9 A No.

10 Q And you sued Miss Gygax in 2016 essentially for
11 breach of contract; is that correct?

12 A That is correct, yes. That and for fraud.

13 Q Thank you. That's a yes or no. And you
14 indicated also that, Mr. DeSanto, that you paid
15 money for legal fees to a law firm called Michael
16 Best I believe is what you testified to. Yes?

17 A I -- I believe, yes. I sent it to Michael Best.

18 Q Okay. And -- And do you know -- And you
19 indicated that was for the purpose of maintaining
20 any copyrights or trademarks that -- that Gail
21 had and was using Michael Best to maintain; is
22 that correct?

23 A Yeah.

24 Q Okay. And so those were Gail's copyrights, those
25 were Gail's trademarks, that you were paying

1 money to Michael Best to maintain for her as they
2 came due and needed to be renewed, correct?

3 A Yes.

4 Q And ultimately, sir, your lawsuit was dismissed;
5 is it right?

6 A No. I withdrew my lawsuit.

7 Q Oh, so you voluntarily dismissed or withdrew the
8 lawsuit.

9 A Yes, I --

10 Q Per the merits --

11 A -- did, yes.

12 Q -- the merits of the case, all of the
13 allegations you made for breach --

14 A (Unintelligible).

15 Q Excuse --

16 A Your mic --

17 THE COURT: Just let him ask the
18 question.

19 THE WITNESS: Your microphone --
20 Your microphone is a little garbled.

21 ATTORNEY JOHNSON: Okay.

22 THE WITNESS: Maybe you could just
23 take a little --

24 ATTORNEY JOHNSON: Is that better?

25 THE WITNESS: -- back -- That's much

1 better. Thank you.

2 ATTORNEY JOHNSON: Okay. Sorry. I
3 was maybe too close. I thought that would help
4 but maybe too close. I apologize.

5 BY ATTORNEY KOCH:

6 Q So the -- the merits of the lawsuit where you
7 made these allegations for breach of contract,
8 misrepresentation, like you said, they never
9 essentially saw the light of day because you
10 withdrew the lawsuit.

11 A Well, I did follow the --

12 Q Yes or no?

13 A -- lawsuit was filed --

14 Q Were the merits of your claim ever set before a
15 judge or a jury?

16 A No.

17 Q So nobody -- no court or jury ever determined
18 there was a breach of contract or misrepresenta-
19 tion from Gail.

20 A No.

21 ATTORNEY JOHNSON: That's all I have.

22 THE COURT: Any redirect?

23 ATTORNEY GORN: Yes, Your Honor.

1 REDIRECT EXAMINATION

2 BY ATTORNEY GORN:

3 Q Tom, were there any -- was there any intellectual
4 property -- Sorry. Let me ask that better.

5 Did every piece of intellectual
6 property that you came across in Gary's library
7 have a directly associated filed copyright?

8 A No. We had found things that were not copy
9 written, things that were not maintained. And
10 that was what we were in the process of
11 organizing.

12 Q Did you cause to be filed any registrations that
13 had not previously been filed?

14 A Can you clarify? I'm not sure I understand the
15 question.

16 Q Were there any works that you came across that
17 did not have a copyright that you then had a
18 copyright filed?

19 A Yes. We started to do things that were
20 written -- And you have to understand copyright
21 law. If something is written, there's a soft
22 copyright. But you've got to sort of back it up
23 with a more documented copyright. So Gary would
24 have owned the copyright of anything he'd
25 written, but the court or business affairs or

1 lawyers like to see a filed copyright, trademarks
2 that are maintained.

3 Q So it's -- it's not quite -- If I'm
4 understanding you correctly, the copyright is
5 inherent upon creation of the work. It's just
6 best practice to file it and register it with the
7 copyright office. Is that --

8 ATTORNEY JOHNSON: Object. Calls for
9 a legal conclusion for this witness. He's not an
10 expert.

11 ATTORNEY GORN: I'm clarifying what
12 his testimony --

13 THE COURT: And I assume given his
14 occupation he may have at least a layman's
15 understanding of that. Go ahead.

16 THE WITNESS: Yeah. As far as my
17 understanding goes, whatever anyone writes
18 anything, whoever the author is has an automatic
19 copyright to that work. But the government and
20 legal system likes to see that backed up by a
21 registered copyright with the copyright office.

22 BY ATTORNEY GORN:

23 Q And the copyrights that Gail had in existence
24 that you found, the ones that you testified that
25 you were maintaining, do you know one way or

1 another whether she had the rights, the legal
2 rights to file for those copyrights at the time
3 she did?

4 A I believe she had the legal rights to all of
5 that. That was what our account had laid out,
6 that she had the legal rights to the property
7 that I was maintaining. And there's also
8 trademark issues on the name Gygax. So it wasn't
9 only copyrights. It was the value of Gary's name
10 and defending that which were part of the fees
11 that I paid.

12 Q The lawsuit that you withdrew, why did you
13 withdraw that lawsuit?

14 A I was told by my lawyers that Gail could possibly
15 lose her home. And for me, that was something
16 that I did not want to go down that road. So I
17 withdrew the lawsuit. I didn't want to see that
18 as a possibility.

19 ATTORNEY GORN: No further questions,
20 Your Honor.

21 THE COURT: Mr. Koch?

22 ATTORNEY KOCH: No questions.

23 THE COURT: Mr. Johnson?

24 ATTORNEY JOHNSON: Just a couple.
25

1 RECROSS-EXAMINATION

2 BY ATTORNEY JOHNSON:

3 Q Mr. DeSanto, you indicated that from Miss Gorn's
4 questions that you filed or I guess made legal or
5 something --

6 Or you -- you indicated with some
7 copyrights you filed some unpublished ones that
8 didn't have a formal copyright publish -- or
9 filed. And did you do that as part of your
10 agreement?

11 A No. We were in the process of organizing all of
12 the copyrights. That -- That was why Mark
13 Hallerin was brought in. Again, we were paying
14 legal fees to maintain trademarks but we didn't
15 have -- Like, Gary's dungeon. Was trying to
16 figure out how do we copyright that. Do we need
17 to publish it?

18 So that was what -- I was paying
19 legal fees to mark Hallerin in order to get the
20 house in order to start that process. But I
21 believe I had only paid, again, this is seven
22 years ago, only paid legal fees for the trademark
23 to maintain it. Maintenance.

24 Q Okay.

25 A But I paid Mark Hallerin to check the validity of

1 what could be copyrighted and how we would go
2 about that. So there was legal fees paid to Mark
3 on that.

4 Q That answered my question. Thank you.

5 ATTORNEY JOHNSON: I have nothing
6 else.

7 THE COURT: Is that all?

8 ATTORNEY GORN: I just want to
9 clarify a point, if I may, Your Honor?

10 THE COURT: Yes.

11 REDIRECT EXAMINATION

12 BY ATTORNEY GORN:

13 Q So you hired Mark Hallerin to basically determine
14 the validity of the ownership of these copyrights
15 and trademarks; is that correct?

16 A Not the validity. I didn't -- I didn't think
17 the validity was in dispute. I needed to see
18 what needed to be maintained, what was there, had
19 things been maintained. And that was Mark's
20 expertise as lawyer. He was copyright trademark
21 lawyer. So he was doing a lot of archival work
22 and going through physical paper contracts and
23 hard drives and looking at all of that
24 documentation.

25 Q And in the end, his advice to you was -- was --

1 ATTORNEY JOHNSON: Objection. Calls
2 for hearsay if we're gonna get into what his
3 attorney is gonna tell him here.

4 THE COURT: It's the effect on the
5 listener why he backed out. Go ahead.

6 BY ATTORNEY GORN:

7 Q And so what was Mark's conclusion after he went
8 through everything about the -- the ownership of
9 the intellectual property?

10 A Well, when I got the call from Mark that he had
11 discovered this second last will of Gary, he
12 became very, very concerned that the contract
13 that I had with Gail was no longer valid.
14 Because as outlined in that will, it was a life
15 right situation and not a perpetual right
16 situation.

17 ATTORNEY GORN: Okay. I have no
18 further questions, Your Honor.

19 THE COURT: All right. I think we're
20 done. Thank you, sir. You will try and find
21 those expenses?

22 THE WITNESS: Yes, sir, I will do
23 that. And I'll get you a rough estimate by the
24 end of the day.

25 THE COURT: All right. E-mail that

1 to -- Do you have miss Gorn's e-mail?

2 THE WITNESS: Yes, I do.

3 THE COURT: And then you'll share
4 that with us?

5 ATTORNEY GORN: Yes, Your Honor.

6 THE COURT: All right. Thank you.
7 All right --

8 THE WITNESS: Do you want me to --
9 document --

10 THE COURT: I'm sorry. What, sir?

11 THE WITNESS: Sorry, Your Honor. Did
12 you want me to share some other e-mails where
13 Gail was communicating certain things or just the
14 accounting?

15 THE COURT: You can send whatever you
16 want to Miss Gorn. I'm not sure we'll use it.

17 THE WITNESS: Okay.

18 THE COURT: We just want those
19 expenses for the court.

20 THE WITNESS: You got it. Thank you,
21 Your Honor.

22 THE COURT: Thank you.

23 THE WITNESS: Bye. Thank you.

24 THE COURT: All right. Who's your
25 next witness?

1 ATTORNEY GORN: It is Paul Stornberg.

2 Does Attorney Koch need a break first?

3 VOICE: He's here so.

4 THE COURT: Does anyone need a break?

5 ATTORNEY KOCH: Let's go for a little
6 while, Your Honor.

7 THE COURT: Amber, what about you?

8 VOICE: I'm okay.

9 THE COURT: All right. And we can
10 be -- You know, there's no jury here so if
11 anybody ever needs a break, raise your hand and
12 we'll take a break. Go ahead, Miss Gorn.

13 (Off the record.)

14 THE COURT: Sir, if you want to come
15 up to the stand here.

16 (Off the record.)

17 THE CLERK: Sir, please raise your
18 right hand for me. Please state and spell your
19 name for the record.

20 THE WITNESS: Paul Stornberg.

21 P-A-U-L. S-T-O-R-N-B-E-R-G.

22 THE CLERK: Do you solemnly swear
23 that the testimony you shall give in this matter
24 shall be the truth, the whole truth, and nothing
25 but truth, so help you God?

1 THE WITNESS: I do.

2 THE CLERK: Thank you. Be seated.

3 THE COURT: Go ahead.

4 DIRECT EXAMINATION

5 BY ATTORNEY GORN:

6 Q Thank you, Mr. Stornberg. I just want to
7 establish a little bit of your background for the
8 court. Can you please tell us your current
9 residence?

10 A 6311 William Street, Omaha, Nebraska.

11 Q And what can you -- what can you tell me about
12 your occupation?

13 A I am an auctioneer.

14 Q What do you auction?

15 A I auction collections of game books, games,
16 letters, memorabilia, ephemera. Anything
17 associated with the role-playing game industry or
18 the war-gaming industry. And by that I mean the
19 hobby.

20 Q And how about a little bit about your education.

21 A Grade school, high school, college. Got a
22 bachelor of arts and then went on for two years
23 master's program in anthropology and archeology.

24 Q And perhaps I missed what was your bachelors in?

25 A Yes. It was in anthropology and the master's

1 program was in archeology.

2 Q So how is it that you went from that educational
3 background to being an auctioneer of role-playing
4 game collectibles?

5 A Well, both of them involve digging for relics, so
6 I would assume that it was the same thing. But I
7 was collecting role-playing game materials and
8 war-game materials myself for my own personal
9 collection.

10 And I bought something from an artist
11 named Dave Sutterland (phonetic) who had worked
12 for Gary Gygax and TSR. And Dave asked me to --
13 he said you seem to know a lot about this. I'd
14 like you to -- I'd like to leave some money for
15 my children. And so you would auction off my
16 memorabilia and art. And so I ran that auction
17 for Dave.

18 And then one thing led to another,
19 and another TSR person called me and another
20 ex-TSR person called me. And eventually I built
21 up a practice. And that started in about the
22 late '90s, and I've been auctioning for about a
23 couple decades now.

24 Q And what is TSR?

25 A Tactical Studies Rules is the company founded by

1 Donald R. Kaye and Gary Gygax, E. Gary Gygax.

2 And it was originally intended as a game company
3 selling mostly war games, but it was really
4 founded to publish Dungeons & Dragons.

5 Q And sounds like you have a lot of knowledge on
6 this so if you know, what -- what happened
7 with -- with TSR? Is that company still in
8 existence?

9 A That's a complicated question but the simplest
10 answer is no.

11 Q And are you a fan of the dungeon and dungeon
12 (sic) board game?

13 A Yes. I am a fan of Dungeons & Dragons, yes.

14 Q And prior to his death, is it accurate to say
15 that you were a fan of Gary Gygax?

16 A Yes.

17 Q And how is it that you became acquainted with
18 Gary Gygax?

19 A Gary loved his fans, and he always reached out to
20 his fans and I was one of his fans. And so he
21 had an online user chat group where we talked
22 about games and game design and just about
23 anything Gary wanted to talk about.

24 And so through that, I became an
25 electronic pen pal of Gary's. And then

1 eventually, you know, we exchanged letters and I
2 sent him a gift or two every once in awhile.

3 Because when I had come across things in
4 collections that were somehow associated with
5 him, sometimes I would send him that item so.

6 Q And when is it that this online electronic pen
7 pal relationship started between you and Gary?

8 A Oh, sometime in the early to mid-'90s.

9 Q How often did you communicate during that time?

10 A Way more than Gary would want. Probably once or
11 twice a week.

12 Q What was just generally the substance of those
13 conversations?

14 A Mainly about his world of Greyhawk campaign,
15 which was a Dungeons & Dragons world that he
16 created. And -- and his various characters,
17 characters and other player's characters in that
18 imaginary setting. And occasionally history
19 about the role-playing game industry, the war-
20 gaming -- his war -- his -- his war-gaming clubs
21 and the various stuff that he did leading up to
22 the creation of TSR and Dungeons & Dragons.

23 Q And when was the first time that you met Gary
24 Gygax in person?

25 A I believe it was 2005. It would have been at one

1 of the porch parties they had during the Lake
2 Geneva gaming convention, which was sponsored by
3 Troll Lord Games. Gary wanted to bring back
4 gaming conventions to Lake Geneva and so he urged
5 them to start that.

6 And so he and his wife Gail would
7 have porch parties. And they would invite all of
8 the gamers that had come for the convention, they
9 would invite them over for beer and brats on the
10 night before the convention. Gail would make
11 food and be a hostess for that, and Gary would
12 sit on the porch and visit with everybody and
13 make sure he had some personal time with every
14 gamer who was there.

15 Q And so in 2005 was the first porch party you
16 attended. I assume is it safe to assume you
17 attended one in 2006?

18 A And 2007, yes. That's correct.

19 Q Were those the only three times that you met Gary
20 Gygax in person?

21 A No.

22 Q How many other times did you meet Gary Gygax in
23 person?

24 A A couple of other times at Gen-Con, which is
25 another large gaming convention which takes place

1 in Indianapolis. It was in Milwaukee when I
2 originally met him. The convention was
3 originally in Milwaukee when I met him. I
4 believe '98, '99, 2000. I played in a couple
5 games that he ran at those conventions. And just
6 generally hung out at the booth that he was at
7 and visited with him.

8 Q So I'm a little confused. I thought you said
9 that the first time you met him in person was at
10 this porch party in 2005. But are you saying now
11 you met him at Gen-Con in '98 and '99, 2000?

12 A Yes. That -- The -- The time that I met him at
13 Gen-Con, I had -- I had actually forgotten about.
14 I met him a couple times there. Kind of the game
15 conventions kind of start to blur all into each
16 other.

17 But the first time that I actually
18 got to sit down and personally spend time with
19 him was at the Lake Geneva gaming convention
20 because I was able to go over to his house and
21 sit and chat with him. Where the other one I was
22 not able to interact with him very much. But I
23 played a game with him or two. So my apologies
24 for that.

25 Q So was the 2005, 2006, 2007, were those the only

1 times that you saw him in person where you were
2 really able to have a what you'd consider a
3 significant interaction with him?

4 A A personal conversation, yes. The other one
5 mainly he was running a game and I was playing in
6 it. There was some joking and some joviality
7 between us. But, you know, it was -- he was
8 running a game and I was playing in it. But at
9 the 2005, 2006, 2007 porch parties, obviously we
10 weren't playing games. We were just sitting on
11 his front porch talking.

12 Q How many people were at those porch parties?

13 A Whoa. I don't know. 30, 40. Something like
14 that.

15 Q About what time did they start?

16 A Oh, I think that they started about 5:00 or
17 6:00 p.m. They would go on until 10:00 or 11:00
18 at night, until Gary kicked us out or Gail tried
19 to get us to leave.

20 Q What kind of a -- Was there -- You said there
21 were beer and brats. Were there, like, games
22 being played or any other sort of events going on
23 there?

24 A No. Gary would host games on the porch later
25 when the convention actually started. But the

1 porch parties were designed to just chat and
2 visit with each other and share drinks and good
3 food.

4 Q Were these porch parties, were these exclusive
5 invitation only things or was it essentially kind
6 of people knew about it at the convention and
7 whoever showed up was able to show up?

8 A Exactly so. Everybody --

9 Q The latter?

10 A Just -- They would just know that it was an open
11 invitation. It was not a special invitation.

12 Q How many people were at these conventions?

13 A You know, I would say that it had to be in the
14 100 range for those initial conventions for the
15 2005, 2006 and 2007 Lake Geneva gaming
16 conventions. Gen-Con is in the tens of
17 thousands.

18 Q The Lake Geneva conventions, were those
19 specifically centered around Gary and his fans
20 and intellectual property? Or was it like
21 multiple authors that were sort of being
22 recognized? I guess I don't understand how these
23 work.

24 A Well, so that particular one was sponsored by
25 Troll Lord Games, which was publishing a line of

1 products which Gary had become involved with.

2 And so they were supporting their product. And
3 that was the main feature at the game.

4 But I ran Chainmail games there and
5 other people ran various other types of games
6 there, either created by Gary or created by other
7 publishers. But mainly it was focused on
8 Dungeons & Dragons and games created by Gary or
9 Gary's friends. And mainly Troll Lord Games
10 products were featured there.

11 Q Okay. After Gary died in 2008, you became Gail's
12 sort of assistant confidant and helper; is that
13 accurate?

14 A That's what I said in my deposition. It really
15 it wasn't until later. Because of my role as an
16 auctioneer, I deal with a lot of families who
17 have gone through a loss, the patriarch or
18 matriarch or game designer or artist in their
19 family has died.

20 And then it is the family members
21 that come to me and say, you know, I've got all
22 this stuff. What am I going to do with it? And
23 I help facilitate that. So I didn't want Gary to
24 be in a situation where he didn't have his
25 collection sort of cataloged and identified. And

1 I didn't want materials to be lost.

2 And so I offered on -- at one of
3 those front porch parties to help him for free to
4 organize the thoughts about the collection and
5 identify objects in the collection so that if he
6 did indeed pass, that there would be a chain of
7 knowledge on what each object was. Because a
8 typewriter is just a typewriter unless Gary says
9 I typed D & D with that typewriter. And so that
10 obviously gives it providence and historical
11 meaning, but only because Gary would share that
12 with me.

13 So that was kind of my first breach
14 of the subject with him. And it -- it -- that
15 discussion continued on, because it was such a
16 vast collection and it was not terribly well
17 organized. Because he had had so many moves and
18 had collected so many things over the years that
19 I don't think that he wanted to tackle it at that
20 time.

21 Q And you began inventorying the collection --

22 A Oh, sorry --

23 Q -- about when?

24 A Yeah. So -- So -- Sorry. I kind of got off on
25 a tangent there. But basically it wasn't until

1 2010 -- 2009, sorry, 2009 that I engaged with
2 Gail to deal with the collection. And so while I
3 knew her and I knew Gary and we had talked about
4 the collection in my capacity as an auctioneer,
5 but I was offering to do it purely to help Gary.

6 At that point, you know, obviously I
7 was hoping to curry favor to eventually be the
8 auctioneer, but -- but it wasn't until 2009 that
9 I actually had a sit-down meeting with Gail in
10 Lake Geneva and we discussed about what we were
11 going to do with the collection.

12 Q Okay. So you started inventorying the
13 collection. Did you finish inventorying the
14 collection?

15 A It took me a long time. There's over 15,000
16 items in the collection, and it took me a long
17 time. Took me the better part of a year. And
18 then I had visited her several times between 2010
19 and 2012 each time picking up more materials and
20 sometimes returning materials, depending on what
21 she wanted me to do with the materials.

22 Q So the collection, that includes what exactly?

23 A Letters, business cards, memos, manuscripts, art.
24 Just any sort of ephemera that was involved with
25 his life. Sometimes it ended up being personal

1 items like photographs or -- or little mementos
2 from -- from his past. It just kind of all came
3 to me at once. And it was my job to organize and
4 identify everything to help Gail, which is what
5 Gary wanted me to do.

6 Q And so is it -- is it fair to say that the
7 collection is a lot of miscellaneous things and
8 also essentially a compilation of Gary's library
9 of works?

10 A Would you repeat that?

11 Q Is it -- Is it fair to say that the collection,
12 these 15,000 pieces, that it's a combination of
13 sort of random things like his business cards and
14 then his -- his like collection of works known as
15 his library?

16 A Yeah. It's pretty much what I get from every
17 person that I deal with. I usually get -- I
18 mean, I've sold ashtrays, you know. It just
19 doesn't matter what it is. It just is something
20 that's associated with his creative life. And
21 obviously Gary had a long creative life. So it
22 covers a vast number of objects.

23 Q When you are dealing with authors like -- like
24 this, can you tell me in your experience what
25 items specifically are included in -- in an

1 author's personal library?

2 A It's -- I mean, I don't really define it as
3 that. When I work with these collections, I
4 define it as products and non-products. And
5 products are something that's actually been
6 turned into a product and it's the actual thing
7 that was published, like a book or a novel or an
8 adventure for D & D or a set of rules, whatever.
9 That's published. That's product. It's out
10 there.

11 Q Okay.

12 A There's hundreds or thousands of copies of it in
13 existence. And then I have non-product, which is
14 everything else, from lighters to ashtrays to
15 manuscripts. And so that's basically the special
16 part of the collection.

17 Q So in your world of dealing with sort of the
18 tangible items --

19 A Uh-huh.

20 Q -- library of works is not a term of art in -- in
21 what you do.

22 A No.

23 Q You're dealing with collections, which are, if
24 I'm understanding you correctly, the physical
25 items.

1 A Correct.

2 Q And when you are selling these physical items in
3 the collection, are any of those original items
4 created by the author?

5 A Possibly. I know that one of the items in the
6 collection is a globe painted by Gary. So he was
7 making his layorth (phonetic) or his legendary
8 adventures planet. And Gary decided he would
9 take paint and paint brush to a regular globe and
10 paint the entire world on it. So there is
11 something that is just one of those unusual bits
12 of ephemera that was created by him but wasn't
13 necessarily a written work.

14 Q So if I were to go to one of your auctions and
15 purchase that globe --

16 A Uh-huh.

17 Q -- would I be buying the globe itself as an item
18 as well as the right to reproduce that? The
19 right to register the copyright, or are those
20 separate things?

21 A Those are definitely separate things.

22 Q Okay.

23 A And I often state in my auctions that this is for
24 the physical item only. All intellectual
25 property rights remain with the owner. Well, and

1 just as a point of illustration, a manuscript for
2 a book, even if it was published has value to a
3 collector. But that does not mean that the IP of
4 that manuscript transfers to that person. It's
5 only the actual physical object. But there is
6 cache or interest or desire to have that original
7 piece or that work product creating the ultimate
8 published product.

9 Q When you did this inventory, did you create a
10 writing of any kind to memorialize it or any kind
11 of itemization?

12 A Yes. And I have provided you with that
13 inventory.

14 Q Perfect. And just so we kind of kill two birds
15 with one stone here, you -- you have sold items
16 from this collection --

17 A Yes.

18 Q -- over the course of the years. And did those
19 sales take place between 2008 and 2020?

20 A They occurred between 2010 and 2020. There was a
21 halt to them in 2012. I believe Gail was ill at
22 that time. And then we resumed with an auction I
23 believe in July of 20 -- it was 2020 or 2019? I
24 don't remember. I believe it was 2020. But I
25 have put the auction dates on all of the items

1 and the amount that they sold for in that
2 document that I provided.

3 Q So you're a step ahead of me.

4 A Sorry.

5 Q Did you inventory the items that you sold?

6 A Yes. I inventoried every item that came into my
7 possession. And I inventoried items that went
8 back to the possession of Gail.

9 (Off the record)

10 BY ATTORNEY GORN:

11 Q All right. And when you did the itemization of
12 the things that were sold, you included the date
13 they were sold, the item and the price, is
14 that --

15 A That is correct.

16 Q Okay. So showing Exhibits 12 and 13 (inaudible).

17 (Attorney Gorn has off-the-record
18 discussion with opposing counsel.)

19 BY ATTORNEY GORN:

20 Q And, Mr. Stornberg, I am approaching you with
21 what we have available today as Exhibits 12 and
22 13.

23 A Okay.

24 Q Can you take a minute to page through those?

25 A Sure.

1 Q And let me know when you've had a chance to look
2 through them. Mr. Stornberg, are those the
3 documents that you had provided in your
4 deposition which are intended to be the full
5 itemizations of the collection as a whole for
6 Exhibit 12 and for Exhibit 13, the itemization of
7 the items that have been sold; is that accurate?

8 A Yes. These are all the items I have inventoried.

9 Q Okay. And again, just so that I'm clear, can you
10 tell me what exactly Exhibit 12 is?

11 A Exhibit 12 is the full list of 15,341 items that
12 I inventoried as part of my work in organizing
13 the collection. And ultimately selling
14 approximately a thousand of those items for an
15 amount of \$280,000.

16 Q So \$280,000, 200 and -- \$280,226.41 is the exact
17 property you sold from the collection according
18 to Exhibit 13; is that correct?

19 A Yes. Oh. And I see that it's 1,980 items that I
20 actually sold so.

21 Q And you sold those at -- based on Gail's request,
22 correct?

23 A That is correct.

24 Q And can you tell me how your agreement -- Or
25 excuse me. Can you tell me the terms of your

1 agreement as it relates to payment for your
2 services on the auctioning?

3 A Yes. My agreement with her is 23 percent for an
4 online auction that has expenses. For example,
5 an eBay auction would have a fee, and there would
6 be credit card processing fees and various things
7 like that. And so I would get 23 percent, and I
8 would take the expenses out of that and I would
9 get whatever percentage was left. Usually about
10 11 percent.

11 And then if it was a direct sale say,
12 for example, I approached or was approached by a
13 collector about a specific item that I thought
14 would be difficult to sell because it was too
15 large or it has a very specific market, I would
16 usually deal with a collector individually. And
17 that would be an 18 percent because there
18 wouldn't be the typical auction platform fees
19 like there would be with eBay.

20 Q Okay. So 23 percent and 18 percent.

21 A Yes. That is correct.

22 Q That leaves a significant portion left over. I'm
23 not gonna try to do the math. We already decided
24 I'm bad at that today. So the -- the remaining
25 percentage, that goes to Gail, correct?

1 A Yes. And after each auction, I would give her
2 the auction totals and I would send her
3 percentage of the winnings -- the winnings, the
4 biddings. I would send her percentage as a
5 cashier's check.

6 Q And just to be clear, these are true and accurate
7 copies of what you compiled; is that correct?

8 A Yes. That is correct.

9 ATTORNEY GORN: Your Honor, based on
10 the testimony, I would ask that Exhibits 12 and
11 13 be admitted into evidence.

12 THE COURT: Any objection?

13 ATTORNEY JOHNSON: No objection.

14 ATTORNEY KOCH: No, Your Honor.

15 THE COURT: All right. They are
16 received.

17 BY ATTORNEY GORN:

18 Q And so, Mr. Stornberg, the year-long inventorying
19 process that went into -- to Exhibit 12 --

20 A Uh-huh.

21 Q -- you stated you were not paid anything for
22 that, correct?

23 A That's correct. Typically when I receive a
24 collection --

25 Q That --

1 A Yeah.

2 Q -- asked.

3 A Sorry.

4 Q And then -- Sorry. I just need to catch up with

5 myself here. There's a -- I've been through the

6 inventory and there are a lot of things on there

7 that -- to someone not involved in the gaming

8 industry like myself seem a little insane. Like

9 business cards?

10 A Yeah.

11 Q Are you telling me that those things have value?

12 A Yes. I --

13 Q And --

14 A -- I typically sell business cards for between

15 \$30 and \$150, depending on whose they are.

16 Q And, I mean, old T-shirts.

17 A Yes.

18 Q Those things --

19 A Those -- Those too.

20 Q So could you sell my business card for some

21 money?

22 A I could but I probably would not bring very much.

23 So --

24 Q What about my T-shirts?

25 A No.

1 Q Could you sell those?

2 A It's just -- It's just because it's tied into
3 TSR. Big picture. There's a personal connection
4 to Gary perhaps from the item.

5 And so there's -- there's basically
6 five pillars of value in a collectible. Has to
7 be rare, has to be sought after and popular, has
8 to have a personal connection with somebody, has
9 to have a historical significance. If you can
10 get all five of those together, something will
11 sell for a lot of money.

12 If you only have one of them, you
13 probably won't get much money for it. Like a
14 super, super rare item that nobody's seen, well,
15 there's no competition for it. So it's just a
16 balance of those five different things.

17 So I, mean even Gary's collectibles
18 have different value. They are more valuable now
19 than they would have been 20 or 30 years ago.

20 Q And they have value because people want to buy
21 things associated with Gary Gygax; is that
22 accurate?

23 A Well, and TSR and the products and the game
24 systems and everything else around that. So Gary
25 is one of the pillars of the value of these

1 items. Obviously certain things, he's the
2 pillar. Like, the painted globe is, you know,
3 that's very special to Gary. And so that brings
4 the value. If it was painted by anybody else, it
5 would not have much value.

6 Q And you mentioned sort of the Holy Grail being
7 something that is you know -- fits multiple
8 categories here. So something rare, something
9 that doesn't have, you know, a duplicate,
10 something that was personally created. Is there
11 something in this collection like that?

12 A Many things.

13 Q Can you give me some examples?

14 A The globe would be one, but I don't think that it
15 has a lot of value because there's not a lot of
16 people who are -- have as great an interest in
17 that particular game system that Gary created.

18 But there are other things like, say,
19 a character sheet of his original character,
20 Mordenkainen. That is a very personal item
21 that's tied to the game world that he created.
22 It's tied to his play in -- in the original days
23 of Dungeons & Dragons, and that would have a lot
24 of value, as an example.

25 Q So when you say the globe would have a lot but

1 not a ton I think was your testimony, what are we
2 talking in dollar figures? What would you expect
3 to sell that globe for?

4 A Maybe \$100, \$200. It depends because there's
5 such a small group of people who are interested
6 in that particular thing, that means there's also
7 competition.

8 Also there's another factor, which is
9 size. It's really hard to sell big things
10 because people want little things that they can
11 put in their game room or their office or
12 whatever. You -- It's hard to sell somebody a
13 four foot by five foot painting. So even if it's
14 really rare or really nice, someone has to really
15 consider can I actually fit this in my house.

16 So there's some other intangible
17 sorts of things as well. Shipping cost is
18 another. But -- So the globe mainly would not
19 have much value. Its only value would be that it
20 was hand painted by Gary.

21 Q So how about the character that you just
22 referenced, that original drawing? What would
23 that shall -- something like that be worth?

24 A Well, I always tell my clients I don't know what
25 the value of things is but I know how to get the

1 greatest value of it. And that is to put it in a
2 good advertised auction with other items to
3 support it.

4 And so if I were to guess at what
5 that would be worth, it could be worth \$5,000,
6 \$10,000. It depends on -- Well, I mean, that's
7 just a guess. I mean, I've sold TSR profit
8 sharing plans that I thought would be the dullest
9 piece of bureaucratic toast ever, and I sold one
10 for \$1,100 out of somebody's auction. And it had
11 nothing to do with anything other than it was
12 something they hadn't seen yet in the auction
13 market. And if I were to sell another one today,
14 it probably wouldn't sell for \$50. So I tapped
15 that market basically.

16 Q What is the most valuable thing in the
17 collection?

18 A That I have sold, I can tell you is nine thousand
19 something, which was a tournament module which
20 had a very limited release, an adventure. Had a
21 very limited release, so that makes it rare. It
22 was Gary's. That gives it personal connection.
23 It's from a very popular module by a popular
24 author who wasn't Gary. And so all these pillars
25 made it very valuable.

1 And so that would be the origins
2 version of the Lost Tamoachan, which was authored
3 by Harold Johnson and Jeff Leason. And Gary
4 happened to get, I believe it was, an employee
5 copy of it. And that makes it even rarer because
6 there were numbered copies, there were employee
7 copies, and there were dungeon master's copy, the
8 people who ran it at the game tourn. So it made
9 it a very rare item. And it was the perfect
10 storm of value for the things that I sold.

11 Q So how about the most valuable thing in the
12 collection that you have not sold?

13 A I can only estimate that. And I would say that
14 the most valuable thing would be the original
15 play test castle, of course.

16 Q So you wouldn't say that that item alone is
17 certainly the most valuable thing in the
18 collection?

19 A It -- It certainly is the most valuable physical
20 property in the collection.

21 Q And you would imagine that item to be in the half
22 a million dollar to a million dollar range,
23 correct?

24 A Yes. I have -- Gary had a co-author that he
25 worked with on the castle. His name was Rob

1 Kuntz. And Rob Kuntz designed some levels of the
2 castle. And one of the levels that Rob retained
3 I sold at auction in 2006 for Rob, and I believe
4 that sold in the \$3,680 to \$5,000 range.

5 So if I just multiplied that
6 manuscript for one level of the castle, knowing
7 that there are 98 levels of the castle in
8 existence, you do the math. It comes out to be
9 about \$480,000. And that is how I came up with
10 the minimum estimate is half a million. Because
11 obviously it's Gary's material too, but then you
12 run into who has a half a million dollars. Your
13 bidders go down quite a bit as you go up in
14 value.

15 So you're not gonna have much
16 competition for a million dollar item. It --
17 And you'll be lucky to have two people fight for
18 it. So that is the only way that I could
19 estimate that value.

20 Q All right. So again, for those of us who are
21 unfamiliar with these things, that -- this play
22 test castle, it's called lots of things
23 throughout this case here.

24 A Sure.

25 Q It's Gary's -- It's the dungeon, the original

1 dungeon?

2 A Yep.

3 Q Is that also another term for this what we're

4 talking about?

5 A Yes. Or just simply the castle.

6 Q The castle, castle of Greyhawk, castle Zygag?

7 A Well, those are the published names of -- of

8 the -- of the property, if you will. But the

9 unpublished version is simply Gary's home

10 campaign, castle, or the play test castle, or

11 Gary's castle. Whatever you want to call it.

12 It's just his personal -- personal manuscript

13 that he used to run games before there even was a

14 Dungeons & Dragons or TSR.

15 Q And so is that essentially just a collection of

16 papers?

17 A The castle is a collection of maps. So if you

18 think of the castle as a book, there are chapters

19 in the book or there are levels in the castle.

20 If you think of a strata of like a mine or

21 something like that.

22 But a dungeon in Dungeons & Dragons

23 typically has levels. And the deeper you go the

24 more dangerous or the more worthwhile it is to

25 explore those areas, but the more dangerous they

1 become.

2 And so if you think of each level as
3 a chapter, it's essentially there's, you know,
4 100 chapters in this book. But a level
5 typical -- Well, a level almost always has one
6 map. Sometimes more than one map. And it will
7 be drawn on a piece of graph paper and it will be
8 numbered. And that number is the key.

9 And then on a couple of pieces of
10 loose leaf paper, they will number that key and
11 then they will write what's in it. They will say
12 there's a goblin in this room, there's some orks
13 in this room, behind this iron door -- locked
14 iron door is a dragon with 10,000 gold pieces.

15 And the person running the game, the
16 dungeon master or the game master, has this
17 manuscript or this outline of this chapter or
18 this book. And basically as the players play
19 through it, they're unfolding the story or the
20 actual actions that happen.

21 So really the dungeon or the castle
22 or any sort of adventure is just an outline or a
23 manuscript for an adventure to happen. But it's
24 really the interaction between the players and
25 that outline and the DM's description of it that

1 makes it a story which people then share and tell
2 about their great adventure.

3 And so when I say there's 98 levels
4 that includes variations, there were two castles,
5 the original castle and the second castle. The
6 original castle was a 13-level castle, and then
7 they expanded it to be larger and just added and
8 added and added as they add more and more
9 players. So in total between the whole
10 collective castle, there's 98 levels. Unique
11 levels, I believe.

12 Q And in terms of the collection as a whole, all --
13 all the things here in Exhibit 12, do you have an
14 opinion on the value of the entire collection?

15 A It has changed over the years obviously when Gary
16 passed away the market was terrible. And I
17 actually suspended auctions at that time for some
18 other clients that I had. But -- But I would --
19 I mean, my estimate is that there's probably --

20 I think initially I thought that
21 there was \$480,000 worth of value to \$500,000
22 worth of value. That has gone up over time. And
23 I would imagine that it's probably around 400,
24 \$480,000 for everything but the castle itself.

25 Q Which you stated was anywhere from roughly five

1 hundred to a million.

2 A Yes.

3 Q So understanding that, you know, market
4 fluctuations change --

5 A Uh-huh, yes.

6 Q -- would the -- you know is it -- is it your
7 opinion that in 2008 you could have gotten, say,
8 at least \$100,000 for everything in the kit and
9 caboodle here in Exhibit 12?

10 A I really can't answer that. I mean, it's -- for
11 example -- I mean, there are items that Gary had
12 created just weeks before this that nobody had
13 seen that wasn't published for maybe some project
14 that he was thinking about. You know, just the
15 reality of collecting, again, those five pillars
16 of value, there's just very little value in that.
17 And so some of the stuff would have a value of
18 zero.

19 But obviously you move a couple years
20 away from that and then -- and more people have
21 played that game or seen those rules or heard
22 about this, the value goes up and up and up.

23 Q So I mean, again, understanding that values
24 change, you're talking about going from roughly a
25 million to a million and a half in value in

1 today's market, with the --

2 A Half a million to million, I think. Well --

3 Q You stated just the --

4 A -- because of the castle, sure.

5 Q Just the castle was that?

6 A Sure.

7 Q So for the entire kit and caboodle, you're saying

8 today you'd get anywhere from a million to a

9 million and a half. And is it your position that

10 all of the things in Exhibit 12 would have been

11 worth less than \$50,000 in 2008?

12 A I was thinking it was more along the lines of

13 \$480,000 at the time.

14 Q In 2008?

15 A Roughly, yes.

16 Q Okay.

17 A I mean, remember, I didn't know what the value of

18 the collection was at all because I did not have

19 it in my possession or fully inventoried until

20 somewhere 2010. And then items were added to it

21 as well. And yeah. So it fluctuated.

22 And you'll see in the collectibles

23 insurance, I had multiple collections insured and

24 it fluctuates from \$700,000 down to \$500,000 back

25 up. It depends on what collections I had at the

1 time. And I returned a large portion of the
2 collection to Gail at one point because they
3 contained things that she wanted to have back in
4 her possession.

5 Q And just so that the court understands what --
6 what you're talking about here. You produced
7 documents pursuant to a subpoena stating that --
8 or evidencing that you personally or you through
9 the collectors trove paid to insure the
10 collection of Gary Gygax.

11 A I paid to insure Gail's collection.

12 Q Gail, what -- Yes. What you referred to as
13 Gail's collection.

14 A Uh-huh.

15 Q But the items in the collection are of a value
16 enough that you personally pay to insure them; is
17 that accurate?

18 A Yes. That is correct.

19 Q Do you know if Gail has insured them?

20 A I do not know that.

21 Q So we've been talking about the collection,
22 meaning the physical things, and that that is
23 distinct from the intellectual property. So have
24 you been working with Gail at all to develop any
25 of the intellectual property related to the items

1 in the collection?

2 A Yes.

3 Q And can you tell me, did part of that -- that
4 development, did that involve discussions with a
5 company called Gear Box?

6 A Yes.

7 THE COURT: Why don't we take a
8 break. You changed topics. We'll start up with
9 intellectual property at 3:00.

10 ATTORNEY GORN: Thank you.

11 (A recess was taken.)

12 THE COURT: And, Miss Gorn, we're
13 still in your direct, so go ahead. We turned the
14 topic to IP.

15 ATTORNEY GORN: Thank you, Your
16 Honor.

17 BY ATTORNEY GORN:

18 Q So, Mr. Stornberg, you were saying that you have
19 been working with Gail to develop the
20 intellectual property. I was asking you about a
21 company named Gear Box. Can you tell me about
22 your interaction with Gear Box as it relates to
23 the Gygax intellectual property?

24 A Well, I was on the outside of the whole
25 intellectual property development thing. And

1 eventually I was invited in by Gail and Tom
2 DeSanto. But then Gail wanted to pursue computer
3 games. And she had an agent at that time, Gina
4 Ramirez, who I believe was the one who got us
5 contact with Gear Box, a meeting with Gear Box.
6 And Gail and I went down there to essentially
7 pitch the castle as a potential setting for a
8 multi-player online game for which Gear Box was
9 known for.

10 THE COURT: I was just gonna ask you,
11 tell me what they are. Do they develop? Do
12 they -- Are they retail? What do they do?
13 Both?

14 THE WITNESS: This game company
15 creates -- designs, develops, creates games. And
16 then sells them and -- and that's the whole life
17 cycle. So they have a game called Borderlands,
18 which is a post-apocalyptic sort of Mad Max game.
19 And tens of thousands, hundreds of thousands of
20 people play this game.

21 And -- And so they had started to
22 develop an engine for a fantasy game system. But
23 because they had been strictly in science
24 fiction, they were worried that they didn't have,
25 quote unquote, street cred for fantasy.

1 And so Randy Pitchford took a meeting
2 with us to discuss bringing Gary's name to the
3 project and potentially the castle to the
4 project. And Gail and I went down there, and we
5 pretty much pitched that, well, if you need
6 fantasy cred to make your game, have some appeal,
7 you can't get better than Gary Gygax, the
8 co-creator of Dungeons & Dragons. And that's how
9 we pitched it.

10 BY ATTORNEY GORN:

11 Q So if I'm understanding what you're saying
12 correctly, in terms of people who are looking to
13 do things in this fantasy world, is Gary Gygax
14 sort of the Walt Disney of fantasy gamers?

15 A I'd say that would be a fair comparison.

16 Q And you had conversations with this Randy
17 Pitchford who is the CEO of this company; is that
18 correct?

19 A That is correct.

20 Q And based on those discussions, it was your
21 understanding that the projections on the game
22 were about 80 million dollars net revenue; is
23 that accurate?

24 A We talked to the CEO Randy Pitchford and the CFO
25 I believe and several people in the creative

1 staff. And I believe it was Randy who said, you
2 know, this could be an 80 million dollar game.

3 Now, whether he was specifically
4 talking about Gygax-related game or just what
5 they wanted their fantasy game online game to
6 become, you would have to ask him. But it was my
7 impression that he was encouraging us to join
8 with them.

9 Q And that there was a lot of money to be made; is
10 that accurate?

11 A Yes. And of course that's net revenue. That's a
12 much smaller portion would come back to Gail or
13 myself.

14 Q And the Gear Box as -- as a company, it was a
15 rather successful company, correct?

16 A I believe they just sold last year for 1.3
17 billion dollars. And Randy Pitchford has stayed
18 on as the CEO after the sale.

19 Q So his -- his interest in, you know, developing
20 this 80 million dollar game, this fantasy game
21 based on the Gygax universe, that's not like if,
22 you know, Joe Blow on the street were to say,
23 hey, I can make this an 80 million dollar game,
24 right? You took this as a legitimate
25 opportunity; is that fair?

1 A Yes. It was a legitimate opportunity.

2 Q What happened with that deal?

3 A Well, we had initially met with several smaller
4 companies planning on developing the IP into
5 something. A company game specifically that was
6 sort of Gina Ramirez, Gail's agent, that was her
7 specialty was dealing with computer game
8 companies, online game companies.

9 And she had us take several meetings
10 with some smaller firms. Fig -- And Fig was one
11 of the names of one of them. And throughout this
12 process, the bubbling news started to get to Tom
13 DeSanto. And he was slowly getting wind of what
14 we were doing. And I believe there were even
15 some conversations about what we were doing.

16 Q How -- How do you know that?

17 A We had a conference call with one of the people
18 we were talking to, Tom DeSanto, myself and Gail.
19 And it was pretty clear that Tom did not like
20 what was going on. But he was part of the
21 discussions. And I think that he pretty much
22 tried to just shut us down right then and there
23 by words. Not by any legal action. I would have
24 called that meeting a disaster.

25 Q And were you -- were you working in any

1 capacity -- were you involved in any capacity
2 with what was the deal with Tom DeSanto?

3 A Well, as soon as Tom came on, eventually it
4 became clear that they needed somebody who
5 understood all of the intellectual property in
6 the collection and understood its providence, its
7 history, its chain of title, copyrights,
8 publishing companies. And so that fell on me.
9 And I put several hundred hours into developing
10 research on who owned what.

11 Q And were you paid for that?

12 A No.

13 Q And after doing all of that extensive research,
14 you came to the opinion that, I just want to make
15 sure I get it right, that ownership of the --
16 ownership of Gary's intellectual property was
17 complex. That was --

18 A That is correct.

19 Q -- the opinion that you formed, correct?

20 A That is correct.

21 Q And your belief as to ownership of the
22 intellectual property, that was based essentially
23 on what Gail told you; is that correct?

24 A Yes. And I had seen the Trigee contract amidst
25 the collection at one point. I didn't make a

1 study of it, but it seemed to me that what she
2 was saying was supported by it.

3 Q And at least as of the time of your deposition,
4 which was February 16th of 2023, you were under
5 the impression, again, based on your
6 conversations with Gail, that Trigee was still a
7 valid operating entity; is that correct?

8 A Yes.

9 Q And again, it was your understanding, based on
10 your conversations with Gail, that Trigee dealt
11 with the business portion of licensing Gary's
12 material and that Gary produced the material; is
13 that --

14 A Yes.

15 Q -- your understanding? Other than the Trigee
16 agreement and your conversations with Gail, were
17 there any other documents that you saw that were
18 signed indicating that -- signed by Gary
19 indicating that Gail or Trigee owned any of his
20 intellectual property?

21 A Well, throughout the entire collection, there is
22 I'll say procedural paperwork where Gary is
23 clearly suggesting a product and it's submitted
24 to Trigee for consideration. And so there are
25 hundreds and hundreds of ideas Gary had which he

1 then submitted to Trigee for consideration for
2 publication.

3 And so from that body of work, it was
4 pretty clear to me that Gary was offering his
5 creative works to Trigee to -- to publish or
6 license. And it was quite vast, starting in 1985
7 and going through the 2000s.

8 Q And do you understand the terms "published" or
9 "licensed" to equate to a transfer of ownership?

10 A I know that it varies depending on the company
11 you deal with. I know that, for example, like
12 TSR, they would essentially still allow the
13 creator to receive royalties and have ownership
14 over the item with certain stipulations. I mean,
15 I can't imagine that it's simple and cut and
16 dried as that means it's ownership or not.

17 Q And everything reviewed -- you've reviewed, did
18 you see any documents that specifically said I,
19 Gary Gygax, transfer ownership or my copyright in
20 X to Gail Gygax or to Trigee Enterprises?

21 A No, not in that detail. It was just my general
22 impression of their relationship.

23 Q You have become a part of something called the
24 Gygax Memorial Fund; is that accurate?

25 A That is accurate.

1 Q And that is at this point a non-profit
2 organization that raises funds to construct a
3 memorial for Mr. Gygax; is that accurate?

4 A That is accurate. But the mission statement has
5 several other aspects to it as well, but that is
6 the primary goal of it.

7 Q When was that -- When was the Gygax Memorial
8 Fund created?

9 A I believe in 2009 and 2010, I believe the
10 incorporation papers were completed.

11 Q And who created that?

12 A Gail Gygax.

13 Q And when did you become a part of that
14 organization?

15 A I believe it was in July of 2019. I really had
16 nothing to do with it until that point. And Gail
17 asked me to come on to provide some new direction
18 for the memorial fund.

19 Q So Gail brought you in on the Gygax Memorial
20 Fund.

21 A Yes. She requested it.

22 Q And you are paid for your services rendered to
23 the Gygax Memorial Fund, correct?

24 A Initially I was not. But ultimately, when I was
25 made president I believe in 2020, they started

1 giving me a \$5,000 stipend a year. \$2,500 in the
2 first half of the year and \$2,500 in the second
3 half of the year, pending on the board's review
4 of my progress and work.

5 Q And who is on the board?

6 A Currently the board consists of myself as
7 president, Gail Gygax as chairman of the board,
8 and Diane -- Diane Carpenter, who is Gail's
9 sister, who acts as the secretary and treasurer.
10 We have just recently received a resignation from
11 Alex Gygax. And he's no longer part of the
12 board.

13 Q And so this memorial fund --

14 THE COURT: So I'm sorry. It's just
15 the three of you?

16 THE WITNESS: It's just the three.
17 Earlier this year it was four with Gail's son
18 Alex, but he has just resigned.

19 THE COURT: Okay.

20 ATTORNEY GORN: I'm sorry, Your
21 Honor. I did not mean to interrupt.

22 BY ATTORNEY GORN:

23 Q So this organization that was started in 2009, as
24 of the date of your deposition in February of
25 this year, it's true that nothing had actually

1 been developed to that date by the Gygax Memorial
2 Fund. Meaning, no sculpture, no anything -- any
3 concrete memorial. There was nothing actually
4 developed, correct?

5 A Other than the development of -- other than the
6 development of -- of working with the community
7 to get land granted, which was granted, we were
8 granted a place to build, and of course we
9 engaged several artists who also created models
10 for us. We obviously created a website and
11 created other ways of interacting with the fund.
12 But yes.

13 In fact, nothing has been built as
14 the land that we were given is in a wetland. And
15 it was under eight feet of water in 2019, and we
16 do not want to put a half a million dollar
17 sculpture in a place that will flood.

18 And so we are currently seeking
19 community engagement with several initiatives,
20 several other projects to get the community on
21 our side to recognize the legacy of Gary Gygax
22 and his importance to this community in Lake
23 Geneva.

24 Q And the land that you're talking about, you said
25 that was granted. So you did not -- Gygax

1 Memorial Fund did not pay any comp -- any price
2 to obtain that land; is that accurate?

3 A No, they did not purchase the land. It was given
4 by the city, specifically the parks board.

5 Q And since 2009, the Gygax Memorial Fund has
6 raised over \$200,000; is that correct?

7 A That is correct.

8 Q And as of February of 2023, the account for Gygax
9 Memorial Fund had in it roughly \$40,000; is that
10 accurate?

11 A Roughly, yes. Uh-huh.

12 Q So that would be a lot of money on sculptors or
13 on blueprints and things, correct?

14 A Well, I can explain if you would like. We are
15 under a non-disclosure agreement to discuss the
16 specifics. But I can tell you the generalities
17 of where the money went.

18 Q That's all right. For our purposes right now,
19 Attorney Johnson may want you to elaborate, but I
20 think -- I think I have what I need on that
21 point.

22 The next thing I want to talk about
23 is what is your relationship with the Gygax
24 children? Are you -- We talked about your
25 relationship with Gail. What's your relationship

1 with Gary's children?

2 A Well, the first Gygax child that I had
3 interaction with was Ernie Gygax, Gary's eldest
4 from his first wife. Ernie came to me and I ran
5 an auction. I auctioned off his collectibles
6 from his personal collection. And this is Ernie
7 Gygax, Junior, Gary's oldest son.

8 Haven't had much contact with the
9 other children. Luke and I have known each other
10 since Gary's memorial. I was at Gary's memorial
11 and then went to the event that they held
12 afterwards called Gary Con 0 now. But at the
13 time it was just a get together of gamers to
14 celebrate Gary's life and gaming. And just to
15 get together and -- and share games and stories
16 about Gary.

17 Q Touching on Gary Con, that is something that Luke
18 has put on since 2008; is that correct?

19 UNIDENTIFIED VOICE: 2009.

20 ATTORNEY GORN: 2009?

21 BY ATTORNEY GORN:

22 Q 2009. Is that correct?

23 A I believe in 2008 it was kind of an ad hoc
24 organization with Gail and several other friends
25 that put it all together. But then the next year

1 I believe that Chris Hoffner (phonetic) and Dale
2 Leonard helped Luke organize it and found it and
3 then -- and then Gary -- and then at some point
4 Luke fully took it over.

5 Q Okay. And --

6 A That's my understanding, but I don't have any
7 inside knowledge of that.

8 Q So this year was year 15 of Gary Con, correct?

9 A Yes.

10 Q And have you attended every year?

11 A Yes.

12 Q And do you know approximately how many people
13 attend Gary Con?

14 A It was in the hundreds at the beginning, and now
15 I believe it's about three -- just a little over
16 3,000.

17 Q Would you consider that as somebody who goes to
18 gaming conventions and is a part of this gaming
19 community, would you consider that a successful
20 event?

21 A Yes.

22 Q With respect to the Gygax children, do you
23 believe that Luke has -- or to your knowledge has
24 Luke been involved in any writing about
25 imaginative fictions?

1 A I believe he and his brother Ernie worked on
2 something called Gax More. I believe that was
3 his -- Well, I know that Luke had some creative
4 input in the early days that he created the
5 Bullywug, which is a monster in D & D.

6 And obviously his character in the
7 games that his father ran, Malf ended up. And
8 other characters, Otis ended up in the
9 publications and in the work. And of course that
10 interaction and play between his father and him
11 helped form several things.

12 I believe that there was a post-
13 apocalyptic game module named Gamma World where
14 Gary suggested -- Sorry. Luke suggested a cool
15 group of guys in gold armor, and that became the
16 Legion of Gold.

17 And so there was definitely a
18 creative symbiosis between Luke and his father
19 during that time. But I think that probably his
20 real first effort at game design was probably Gax
21 More, and obviously he's since then created other
22 products.

23 Q Is Luke, in your opinion, sort of following in
24 the footsteps of his father?

25 A Yes.

1 Q And what is, to the best of your knowledge and
2 understanding, sort of the -- the opinion of Luke
3 amongst fellow gamers, fellow fans, fellow
4 participants in this gaming world?

5 A Well, obviously he has a lot of fans. You could
6 call it --

7 THE COURT: A lot of what?

8 THE WITNESS: He has a lot of fans.

9 THE COURT: Okay.

10 THE WITNESS: You could say he has a
11 cultive personality around him because he runs
12 Gary Con and a lot of people depend on Gary Con
13 for a big portion of their income. And so they
14 appreciate that Luke has the access of creating
15 that game environment where they can thrive and
16 publish and share in games. And so yeah, so he
17 definitely has a following.

18 BY ATTORNEY GORN:

19 Q Is it a fair charation -- characterization,
20 sorry, it's getting late in the day here, to say
21 that he's almost viewed by the fan base as sort
22 of the prodigal son, the person carrying the
23 torch? Is that what we're talking about here in
24 terms of how he's viewed?

25 A You know, there -- there are other prodigal sons

1 in the story too, but Luke has certainly -- he
2 has certainly carried himself well in remembering
3 his father and memorializing him.

4 Q Thank you. And I will end on a topic here that
5 you just touched on, which is a portion of --
6 where do you derive a portion of your income? So
7 it's accurate when I say that you profit from the
8 sale of the collection provided to you by Gale?

9 A Yes. But I have other collections. I think I've
10 done over \$2 million worth of business in the
11 last 20 years. So it's not just Gail's
12 collection or any one person. It's actually the
13 whole body of collections I've sold over time so.

14 Q Fair. So -- So you're saying that in 20 years
15 you've done about \$2 million, you sold up to a
16 million of --

17 A About that, yeah.

18 Q And you stand to sell, if you sell Gail's
19 collection, about another additional one to one
20 and a half million dollars if she were to allow
21 you to sell everything. So that's in one
22 collection almost what you've done in 20 years,
23 correct?

24 A Potentially yes, but --

25 Q Okay.

1 A -- there's no way the whole collection can be
2 sold. There's just simply isn't things that can
3 be sold.

4 Q Okay. The -- You also profit, as you just
5 testified, from the -- your participation in the
6 Gygax Memorial Fund, which Gale brought you into,
7 correct?

8 A Yes.

9 Q And are you working on these deals that could be
10 in the millions of dollars related to
11 intellectual property, you're a part of those
12 deals with Gail as her -- her quote unquote
13 partner, correct?

14 A Yes.

15 Q Okay.

16 ATTORNEY GORN: That is all I have,
17 Your Honor.

18 THE COURT: All right.

19 ATTORNEY GORN: Thank you.

20 THE COURT: Mr. Koch?

21 ATTORNEY KOCH: Thank you, Your
22 Honor.

23 CROSS-EXAMINATION

24 BY ATTORNEY KOCH:

25 Q Good afternoon, Mr. Stornberg.

1 A Good afternoon.

2 Q One thing I wanted to touch on was did you have
3 any discussion with Hasbro regarding creating a
4 World of Gygax line?

5 A Yes.

6 Q Can you tell us about that, please?

7 A Well, at the time Tom DeSanto was looking at the
8 entire collection of IP and wanted to know what
9 we could develop and asked me to try to come up
10 with some sort of plan or overall vision. And I
11 decided that Hasbro, which Wizards of Coast is a
12 subsidiary of, which bought TSR, Gary's original
13 game company, and so is the heir to all of Gary's
14 D & D and game design materials.

15 So the idea was that Hasbro has all
16 this published Gary Gygax material and could
17 republish it along with his unpublished works,
18 combine them together to create what I call the
19 World of Gygax, instead of calling it any other
20 particular thing, which would gather it all under
21 the aegis of Gary's name, Gygax.

22 And it would renew the old IP, and it
23 would provide a platform for the unpublished IP.
24 And with that synergy could create a whole new
25 generation of gaming material.

1 Q And were there discussions with Hasbro regarding
2 creating this World of Gygax?

3 A Yes. I had a few discussions with them. And
4 when I discussed the plan with them, they asked
5 how soon could I fly out.

6 Q Okay.

7 A And I approached Tom DeSanto since I was just the
8 sort of copyright, creative, idea guy,
9 consultant. Whatever you wanna call me. And he
10 said he was traveling to China to scout locations
11 for the Bumblebee movie or some Transformers
12 project. And he said I'll look at this when I
13 get back.

14 And in the interim, Gail had wanted
15 to approach some of these electronic gaming
16 companies to produce another product. And then
17 of course Tom DeSanto's lawsuit came down, and
18 when he came back from China or wherever he was
19 at, that lawsuit -- well, trouble about that
20 lawsuit, ultimately the lawsuit resulted from
21 that.

22 Q And do you have any plans to reapproach Hasbro
23 regarding this?

24 A Yes.

25 Q And any idea as to what -- how much the contract

1 would be?

2 A I have no idea. I mean, it would be -- Because
3 it would be a sharing of Gary's unpublished IP
4 along with their published IP that they have very
5 strongly kept away from him for years, it would
6 be -- you know, obviously it would provide them a
7 synergy that would make them money. But it would
8 be -- You know, it would be a negotiation that
9 would be delicate.

10 Q More than \$50,000?

11 A More than \$50,000.

12 ATTORNEY KOCH: It's all I have, Your
13 Honor. Thank you.

14 THE COURT: Mr. Johnson?

15 ATTORNEY JOHNSON: Sure. Thank you,
16 Your Honor.

17 CROSS-EXAMINATION

18 BY ATTORNEY JOHNSON:

19 Q Mr. Stornberg, Attorney Gorn asked you extensive
20 questions about the collection. Who owns the
21 collection?

22 A Gail Gygax owns the collection.

23 ATTORNEY KOCH: Objection. Calls for
24 a legal conclusion.

25 THE COURT: What's your understanding

1 of who owns it?

2 THE WITNESS: My understanding from
3 the documents I've seen and from personal
4 communications with Gary is that that collection
5 is Gail's.

6 BY ATTORNEY JOHNSON:

7 Q And so the follow-up question is how do you know
8 that? But that's from the documents you've seen
9 and discussions with Mr. Gyax?

10 A Yes. The document that I have seen is an
11 explicit transfer of the collection which Gary
12 includes art, ephemera, letters, manuscripts,
13 everything. And the -- the -- I guess the
14 personal communication with Gary is that I
15 believe it was in 2007 in June, well, it was in
16 2007, in June at one of those porch parties I was
17 sitting with Gary. And obviously, as I said to
18 Attorney Gorn, that I was discussing that we
19 really needed to inventory the collection and
20 identify it.

21 And he basically said this collection
22 is all I have to leave Gail. And so if you are
23 the person who gets this collection, you need to
24 sell it and get as much money as possible to
25 support Gail and my child. I'll ex --

1 ATTORNEY JOHNSON: Your Honor, are
2 the exhibits still --
3 BY ATTORNEY JOHNSON:
4 Q Are there exhibits in front of you,
5 Mr. Stornberg, now or --
6 A There are exhibits here.
7 Q Okay. Could you look at Exhibit Number 2?
8 A Yes.
9 Q Do you see that document?
10 A I do.
11 Q Is that the document you're referring to that
12 when you say you've seen documentation for an
13 explicit transfer from Mr. Gygax to Gail?
14 A Uh-huh.
15 Q Yes?
16 A This is it, yes.
17 Q Yes. Okay. And the discussion with Mr. Gygax on
18 his porch, when did that occur, did you say?
19 A June of 2007.
20 Q And so the date on Exhibit Number 2 is 1986. You
21 see that?
22 A That is correct, yes.
23 Q And was anything stated or discussed in your
24 conversation with him about the transfer of the
25 collection? Had it been made, was it -- You

1 know, you said when he left it when he died,
2 had -- had -- had that already been effectively
3 done? If you understand my question?

4 A I would ask you to rephrase that.

5 Q So you said you had your conversation in -- with
6 Mr. Gygax in 2007.

7 A Yes.

8 Q And obviously sometime later you may have seen
9 this document, Exhibit Number 2.

10 A Yes. It wasn't probably until 2010 that I
11 actually saw this document.

12 Q Were there any parts of your discussion with
13 Mr. Gygax that indicated he had already made a
14 transfer of his collection?

15 A Other than he didn't say my collection, I mean, I
16 really don't have anything to -- to know that at
17 that time.

18 Q It was referred to as Gail's collection at that
19 point?

20 A You know, to the best of my recollection, he said
21 the collection.

22 Q Okay.

23 A He did not say my collection.

24 Q That's fair. And I realize that's 15 or 18 years
25 ago as well.

1 A Yeah.

2 Q And again, your understanding, Mr. Stornberg, is
3 that the items that are contained in that
4 collection are listed on Exhibits 12 and 13.
5 Or -- Primarily number 12 is the whole
6 collection.

7 A Yes.

8 Q Okay.

9 THE COURT: 13 is a subset of 12,
10 right?

11 THE WITNESS: Yes, Your Honor.

12 ATTORNEY JOHNSON: 13 is the items
13 that were sold from the -- 12 would contain 13.
14 13 is the items that were sold --

15 THE COURT: Got it. Thank you.

16 ATTORNEY JOHNSON: -- I believe.

17 BY ATTORNEY JOHNSON:

18 Q And during your testimony, you used the word
19 Gary's collection. Gary Gygax and the name. Is
20 that a general reference to Gail's collection or
21 is it just because it's Gary Gygax that you
22 continued to use his name in reference to the
23 collection? If you understand my --

24 A I do. You know, as an auctioneer, I have to tie
25 what I'm selling to the person who is significant

1 to that story so that -- I can't just say that
2 this is a book from Gail Gygax's collection. I
3 have to say it's a book from Gary Gygax's
4 collection.

5 So it's purely a marketing technique.
6 And certificates of authenticity that say this
7 comes from Gary Gygax's collection and that
8 this -- It's really just marketing. It wasn't
9 meant to be any artifice or term of -- of
10 ownership or anything like that.

11 Q Okay. And also you mentioned or talked a lot
12 about in your other direct testimony about the
13 development of IP. You recall saying that?

14 A Uh-huh.

15 Q The -- The IP that exists, do you have an
16 opinion as to who owns that IP?

17 A Well, from my understanding of the Trigea
18 arrangement and the body of letters that I had
19 seen, it seems like Trigea is the owner of Gary's
20 intellectual property.

21 Q Okay.

22 A My understanding was that after having had so
23 many lawsuits, Gail ended up having, with her
24 real estate business and her auction business,
25 having to support the majority of legal defense

1 of the -- of TSR coming after Gary again and
2 again and again. Eventually she had to bear that
3 burden.

4 So my understanding is that they made
5 a deal that she would own the IP and she would
6 defend them. And he would -- he would create the
7 IP. And there would be a licensing arrangement
8 between them.

9 Q And I wanna take one -- One of the examples that
10 you indicated, you met with the company Gear Box.
11 We've talked a little bit about that. And you
12 talked about development of IP in those
13 conversations.

14 A Uh-huh.

15 Q I guess my -- my question -- Because those
16 discussions you said took place in around 2015 to
17 '17 at some point, correct?

18 A 2016.

19 Q 2016. The IP that you were discussing to be
20 developed, that -- did that -- does that exist
21 right now or is that something that would be
22 created as a result of making an arrangement or
23 contract or agreement with Gear Box?

24 A You know, I'm really not an IP expert. So
25 whether it's IP when a manuscript is created or

1 when it's published, I mean, I would have to have
2 an expert explain what is IP in that situation.

3 Q But they would develop something. In this case,
4 a game.

5 A Well, right. We wouldn't have to -- We would
6 provide them with sort of the raw IP, I guess.
7 Say it was the castle. But it would need to be
8 developed to be an actual intellectual property
9 that could be sold. Just kind of like a draft of
10 a book needs to go through editors and formatting
11 and layout and then it becomes a book.

12 Q Okay. And let's talk about the castle again --

13 A Sure.

14 Q -- that we talk about. That is a collection of
15 papers right now?

16 A Yes.

17 Q Handwritten papers --

18 A Yes.

19 Q -- correct?

20 A Uh-huh.

21 Q There to your knowledge is no copyright attached
22 to it right now?

23 A I -- I don't think so.

24 Q There's no trademark attached to it?

25 A No.

1 Q There's no patent attached to it.

2 A No.

3 Q And so any intellectual property, if those -- if
4 that's, I guess for purpose of my question, an
5 exclusive list, would be something that would be
6 created from that castle?

7 ATTORNEY GORN: I'm just going to
8 object to the extent that that calls for a legal
9 conclusion.

10 THE COURT: Again, do you know?

11 THE WITNESS: I don't.

12 THE COURT: Okay.

13 BY ATTORNEY JOHNSON:

14 Q Are you aware of any current trademarks that are
15 actually filed that are owned by Gail Gygax?

16 A Well, I have seen trademark paperwork in the
17 collection, and so I know they exist. What they
18 are specifically I probably could not come up
19 with a list. I believe Trigee is trademarked
20 but --

21 Q Is there any paperwork in the collection that
22 would give any of the trademark copyright to
23 anything attached to the late Gary Gygax?

24 A The only thing I can think of is the Dragonmark
25 Enterprises copyright efforts that they were

1 trying to do.

2 And they were also trying to
3 trademark or find out through trademark research
4 if they could use the name Greyhawk. And other
5 than that, I don't know of anything else in the
6 collection.

7 Q Okay. And Greyhawk specifically, that's a
8 reference to the initial TSR company that was
9 sold and bought up by Hasbro, correct?

10 A No. That is the game world that Gary created.
11 Sort of like Tolken created Middle Earth, Gary's
12 Middle Earth was Greyhawk.

13 Q Okay.

14 A And he published that for the company. He wrote
15 and published that for the company. And it
16 became the de facto setting for most adventures
17 and products for the D & D game.

18 Q Are you aware of a company called TSR
19 Incorporated?

20 A The recent incarnation? There's been several.

21 Q Are you aware of whether or not Gail was involved
22 in a trademark opposition action commenced by a
23 company called TSR Inc.?

24 A Yes. And that would have been, I believe, Jason
25 Elliott's company.

1 Q Okay. Do you have any knowledge of who the other
2 owners of that company were?

3 A I know that Luke and Ernie Gygax had some
4 involvement, but I don't know their specific
5 ownership or relationship to that company.

6 Q Okay. Are you aware -- If I told you that
7 trademark opposition action started in 2014,
8 would you have any reason to disagree?

9 A I know that's around the time the Gygax magazine
10 had come out, and I knew that that's what it was
11 about.

12 Q Do you know the basis or what the substance of
13 that opposition action was for?

14 A I do. It's been on social media quite a bit and
15 I've heard some from Gail and I've heard from
16 Luke and some from Ernie.

17 Q Okay. Do you know if that matter was resolved
18 and how?

19 A I know that it was resolved. I believe there was
20 settlement. And I believe the settlement was --
21 I believe only Jason Elliott agreed to the
22 settlement. My impression was that Ernie and
23 Luke decided to just walk away rather than settle
24 with Gail. That was my impression.

25 Q Have you ever seen the documents that resolve

1 that action?

2 A No.

3 ATTORNEY JOHNSON: That's all I have

4 then.

5 THE COURT: Any redirect based on --

6 ATTORNEY GORN: Not -- Not much but

7 a little bit.

8 REDIRECT EXAMINATION

9 BY ATTORNEY GORN:

10 Q And actually we'll leave off right there on

11 documents you've seen.

12 A Uh-huh.

13 Q So you've stated that the collection you feel is

14 owned by Gail based on the 1986 agreement that

15 you saw.

16 A Yes.

17 Q Did you ever see or review the marital property

18 agreement dated March 17th, 1988?

19 A At some point I had seen it amidst the

20 collection, but I didn't take -- I didn't really

21 study it.

22 Q You never analyzed the --

23 A No.

24 Q -- potential legal effects of that --

25 A No.

1 Q -- as they relate to the agreement?

2 A Correct.

3 Q And nor would you have the probably legal

4 background or expertise to make a determination

5 of the interplay between those two documents.

6 A No.

7 Q And did you ever see or review the transfer of

8 ownership rights dated September 22nd, 2006?

9 A Of the physical property?

10 Q I believe, if it's in front of you, it's Exhibit

11 5.

12 A Exhibit 5. Let me look. No, I have never seen

13 that document.

14 Q And have you seen Exhibit 1 and reviewed its

15 contents?

16 A I have seen Exhibit 1 only in passing, but I

17 hadn't reviewed it. Yeah, I mean, I remember

18 seeing the part about the firearms but --

19 Q And -- So your opinion that Gail owns the

20 collection, you have not analyzed that opinion as

21 it relates to the information in that Exhibit 1,

22 correct?

23 A No. I only have three sources of information and

24 it's not that.

25 THE COURT: When did you become aware

1 of Exhibit 1?

2 THE WITNESS: Exhibit 1, when I -- I
3 don't know. Is this the -- Is this the --

4 THE COURT: The will from --

5 THE WITNESS: Is this the 2006 will?

6 THE COURT: Yes.

7 THE WITNESS: Is that what this is?

8 THE COURT: Yes.

9 THE WITNESS: Well, I think in my
10 discussions with Tom DeSanto in 2016 when the
11 lawsuit was going on, I was trying to mediate
12 between he and Gail. And he brought up the fact
13 that he thought there was a second will. And so
14 Tom DeSanto revealed that to me in, I believe it
15 was, in 2016 as I was trying to mediate between
16 Gail and he. And try to get them to come to an
17 accord.

18 THE COURT: Okay.

19 THE WITNESS: And so while I knew of
20 it, I hadn't actually seen it. And then later
21 when I did document search for this particular
22 trial, I -- I somewhere in the stream of things I
23 think I've seen it so.

24 THE COURT: All right. Thank you.

25 BY ATTORNEY GORN:

1 Q And so it's based on -- your opinion is based on
2 that agree -- the 1986 agreement and is -- does
3 not take into effect these other agreements that
4 we just talked -- talked about, correct?

5 A Yeah. It's just Gary's personal communication,
6 this document, and what Gail has told me.

7 Q Okay. And when you say your conversation with
8 Gary on the porch, where he told you that I need
9 you to sell this for as much as possible to
10 support my wife and my one child because this is
11 all I have to leave her or them, that
12 conversation?

13 A Yes. That is the conversation.

14 Q And that conversation happened on the third true
15 meeting or -- you know, conversation between you
16 and Gary that you ever had. Sometime in a period
17 of about four to five hours over beers and brats
18 with 30 to 40 other people present. Is that your
19 testimony?

20 A No. In fact, it was a period of time where the
21 food had been settled down and some people had
22 started to leave. And there was a sort of quiet
23 moment where I was lucky enough to sit down with
24 Gary and talk to him personally. And Gail
25 occasionally came in, but it was mainly with

1 Gary.

2 Q So you, Gary and Gail. That's who was present
3 for that conversation?

4 A And my friend Martin Wright, who is deceased.

5 Q So there is nobody besides you, Gail -- Well,
6 you and Gail to corroborate that conversation; is
7 that accurate?

8 A That is accurate.

9 Q And it's your understanding that Gary was
10 concerned with the support of Alex and Gail and
11 not his other children. Is that your testimony?

12 A That is correct.

13 ATTORNEY GORN: I have no other
14 questions, Your Honor.

15 THE COURT: Follow-up, Mr. Koch?

16 ATTORNEY KOCH: No, Your Honor.

17 THE COURT: Mr. Johnson?

18 ATTORNEY JOHNSON: No, Your Honor.

19 THE COURT: All right. You may step
20 down.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Any other witnesses
23 today?

24 ATTORNEY GORN: I think it sounds
25 like quitting time, Your Honor.

1 THE COURT: Okay.

2 ATTORNEY GORN: My other witnesses
3 are scheduled for tomorrow with the exception of
4 Luke, who I know will -- will take some time.

5 THE COURT: All right.

6 ATTORNEY GORN: If you'd like me to
7 call Luke, I'm happy to get started. I'll leave
8 that to your -- your decision.

9 THE COURT: No. No. Why don't we
10 wait on that. Well --

11 ATTORNEY GORN: I do anticipate
12 tomorrow's testimony we have the police officer
13 and we have Alex --

14 THE COURT: Let's go off the record
15 and decide housekeeping here.

16 (Proceedings concluded.)

17 - - - - -

18 (Proceedings concluded.)

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1 STATE OF WISCONSIN)
2 MILWAUKEE COUNTY) SS:

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5
6 I, KRISTIN MENZIA, RMR, CRR, an
7 official court reporter in and for the Circuit Court
8 of Milwaukee County, do hereby certify that I have
9 carefully transcribed from and compared the foregoing
10 pages with the original electronic recording from said
11 proceedings and that this transcript is true and
12 correct to the best of my ability.

13 Dated at Milwaukee, Wisconsin, this
14 8th day of March, 2024.

15
16
17
18
19 ELECTRONICALLY SIGNED BY

20
21 Kristin Menzia, RMR, CRR
22 Official Reporter
23
24
25