UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

DAVID L. ARNESON,

Plaintiff

vs.

GARY GYGAX, TACTICAL STUDY RULES, a partnership consisting of Gary Gygax and Brian Blume, and TSR HOBBIES, INC., a corporation,

Defendants.

Civil Action No. 4-79-109

MEMORANDUM

IN SUPPORT OF DEFENDANTS' MOTION TO QUASH SERVICE OF PROCESS AND DISMISS FOR LACK OF PERSONAL JURISDICTION, AND

IN SUPPORT OF DEFENDANTS' ALTERNATE MOTION TO TRANSFER UNDER 28 U.S.C. §1404 (a)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

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INTRODUCTION

DAVID L. ARNESON commenced this action in a Minnesota District Court, County of Hennepin, the 4th Judical District. Service of Process was purportedly made in Lake Geneva, Wisconsin, February 12, 1979 by personal service and delivery of three copies of a Summons and Complaint on Gary Gygax as an individual Defendant, as a former partner of Defendant, Tactical Study Rules [sic] (should be "Studies"), and as President of Defendant, TSR Hobbies, Inc. The case was removed to this Court by Defendants, March 12, 1979.

Plaintiff, Arneson, is a resident of St. Paul, Minneosta. Defendant, Gygax, is a citizen of Wisconsin, and resides in Lake Geneva, Wisconsin. Defendant, Tactical Studies Rules was a Wisconsin partnership, but has been dissolved and wound up since approximately November, 1975. TSR Hobbies, Inc. is a Wisconsin corporation incorporated in July, 1975, and having its principal place of business in Lake Geneva, Wisconsin. The subject matter jurisdiction of this Court is based on diversity of citizenship.

In April, 1975, Defendant Gygax and Arneson executed a written Agreement ("Agreement") as authors of the game rules DUNGEONS & DRAGONS, with Defendant Partnership, Tactical Studies Rules (hereinafter referred to as "Partnership"). Gygax signed the Agreement on behalf of the Partnership and on behalf of himself as author. The Agreement allowed the Partnership to "...publish, sell and distribute, the set of game rules or game entitled DUNGEONS & DRAGONS in any form TSR [the Partnership] deemed suitable for commercial sales..." in return for payment to the authors of "...a royalty of 10% of the cover price of the game rules or game on each and every copy sold...". A copy of the Agreement is attached to the end of this Memorandum as Exhibit B.

Arneson has alleged in paragraph 1.4 of his Complaint that Defendant, TSR Hobbies, Inc., is the assignee of the rights of the Partnership and has assumed the obligations thereof. In fact, all assets, goodwill, and the trade name of the Partnership were sold to Defendant, TSR Hobbies, Inc., and the Partnership was dissolved, pursuant to a written dissolution agreement, effective November 16, 1975. Thereafter, pursuant to the Agreement, TSR Hobbies, Inc. has paid Arneson (and Gygax) royalties for sales of the game or game rules DUNGEONS & DRAGONS.

TSR continues to make 5% royalty payments to Arneson for sales of the DUNGEONS & DRAGONS game rules book included in a boxed game entitled "DUNGEONS & DRAGONS Basic Set" and for sales of the three volume set "Original DUNGEONS & DRAGONS Collector's Edition". The TSR royalty payment to Plaintiff, Arneson for sales during the 3rd quarter of 1978 was $5,759.14, and for sales during the 4th quarter of 1978, was $6,635.50.

It is believed that the basic dispute which led to this law suit relates to TSR's position that under the Agreement, Arneson is not entitled to a 5% royalty on separately developed (and at times separately priced and marketed) playing aids, (e.g., polyhedra dice set, Dungeon Geomorphs set, and Monster and Treasure Assortment set) included along with an edited DUNGEONS & DRAGONS game rules book, in a boxed game entitled "DUNGEONS & DRAGONS Basic Set". Also, TSR takes the position that Arneson is not entitled to a 5% royalty for sales of what TSR submits are separately and later developed works which relate to the original game rules DUNGEONS & DRAGONS, but which are solely authored by Defendant, Gygax, for example, a one volume work entitled "ADVANCED DUNGEONS & DRAGONS, PLAYERS HANDBOOK" and a related one volume work entitled "ADVANCED DUNGEONS & DRAGONS, MONSTER MANUAL".

Summary of Plaintiff's Alleged Causes of Action

Arneson's First Cause of Action lies in Contract and alleges that from and after the middle of 1977 Defendants have continued to publish, market and exploit "Dungeons & Dragons" but have failed and refused to pay Plaintiff royalties in accordance with the Agreement, except for certain sums paid which are less than the amounts required by the contract [Agreement]. Plaintiff alleges damage in an amount equal to one-half of ten percent (10%) of the cover price of continuing publications sold by Defendant, TSR Hobbies, Inc. The continuing publications noted by Plaintiff include a boxed game entitled "Dungeons and Dragons, Basic Set", a three-volume set denominated "Original Collector's Edition", a one-volume work entitled "Advanced Dungeons and Dragons, Players' Handbook" (hereinafter referred to as "PLAYERS

HANDBOOK"), a one-volume work entitled "Dungeons and Dragons, Monster Manual" (hereinafter referred to as "MONSTER MANUAL"), and numerous other playing aids and publications copied, derived and developed from "Dungeons and Dragons".

Plaintiff's Second, Third, and Fourth Causes of Action apparently lie in tort, and more specifically, defamation, Defendant alleging: that the above referenced PLAYERS HANDBOOK and MONSTER MANUAL are published in a form falsely represented to be solely authored by Defendant, Gygax, Defendants thereby having converted the rights of Plaintiff as the co-author of DUNGEONS & DRAGONS to receive royalties (Second Cause of Action); alleging Defendants thereby deprived Plaintiff of the valuable right to be disclosed as an author of a work to the consuming public and publishing profession (Third Cause of Action); and relating back to the Second and Third Causes of Action, alleging that Defendants will continue to publish the above noted and other works "copied in substantial part and wholly derived from DUNGEONS & DRAGONS," falsely representing that Gygax is the sole author thereof, thereby causing irreparable damage to Plaintiff's reputation as a professional author of games and games rules (Fourth Cause of Action).

Summary of Plaintiff's Requested Relief

Plaintiff has requested, inter alia, that the Court enter judgment in favor of Plaintiff and against Defendants and each of them, a sum equal to 5% of the cover price of each game or game rules set of DUNGEONS & DRAGONS and its copies, derivations and adaptations sold by Defendant, TSR Hobbies, Inc., as well as an amount exceeding $50,000 for pecuniary damages resulting from willful omission of Plaintiff's name as co-author from the PLAYERS

HANDBOOK and MONSTER MANUAL, and exemplary damages in excess of $50,000 for willful conversion of Plaintiff's rights and damage to Plaintiff's reputation in his profession.

Plaintiff has also requested the Court to enjoin and restrain Defendants, and each of them, from the further publication of "Dungeons and Dragons" or any work copied, derived or adapted therefrom, without disclosing the Plaintiff's co-authorship thereof upon the cover or box-top of such game or game rules.

Defendants' Pending Motions

Defendants have moved, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, (prior to answering Plaintiff's Complaint) for an Order Quashing Service of Process and Dismissing the Suit for Lack of Personal Jurisdiction over each of the Defendants. In the alternative, in event the Court finds that it has jurisdiction over any of the Defendants, Defendants have moved to transfer this action under 28 U.S.C. §1404 (a) to the United States District Court for the Eastern District of Wisconsin.

ARGUMENT

Defendants respectfully submit that this Court does not have personal jurisdiction over any of the Defendants with respect to any of the causes of action set forth in Plaintiff's Complaint.

I. DEFENDANTS' MOTION TO DISMISS AFTER REMOVAL IS PROPER

Defendants, by removing this case, have not waived their rights to object to jurisdiction. General Investment Co. v. Lakeshore Railway, 260 U.S. 261, 288 (1922). It is well established that if the State Court from which the case

was removed lacked personal jurisdiction over the defendants, the Federal Court to which the case is removed also lacks personal jurisdiction over the defendants. Lambert Co. v. Baltimore & Ohio Railroad Co., 258 U.S. 377, 382 (1922).

II. THE BURDEN IS UPON PLAINTIFF TO PROVE THAT THE COURT HAS JURISDICTION OVER EACH OF THE DEFENDANTS, FOR EACH ALLEGED CAUSE OF ACTION, CONSISTENT WITH DUE PROCESS

It is clear under the rules of this Circuit and the laws of Minnesota, that where the nonresident Defendant challenges the jurisdiction of the Court, the burden is upon Plaintiff to prove not only that personal jurisdiction is authorized by the terms of a Minnesota Statute, but also that minimum contacts exist rendering exercise of such jurisdiction consistent with due process. All Lease Company v. Betts, 294 Minn. 473, 199 N.W. 2d, 821 (1972). The due process question, so far as personal jurisdiction over a non-resident or foreign corporation is concerned, is a matter of Federal law, and is not governed by the law of the State Court in which the Federal Court sits. Aftanase v. Economy Baler Co., 343 F.2d 187 (8th Cir. 1965).

Furthermore, Defendant has the burden of establishing that such jurisdictional statute and due process requirements have been met with respect to each cause of action alleged in the Complaint. Plaintiff must allege and prove a nexus between each of Plaintiff's claims and Defendant's contacts with Minnesota to satisfy statutory and due process requirements. Toro Co. v. Ballas Liquidating Co., 572 F.2d 1267 (8th Cir. 1978), Tunnell v. Doegler & Kirsent Inc., 405 F.Supp. 1338 (D. Minn. 1976).

To satisfy due process concerns, this Circuit requires consideration be given to Defendant's relationship

with the forum state, including (a) the quantity of the defendant's contacts with the forum state; (b) the nature and quality of those contacts; (c) the relationship between the plaintiff's claim and the contacts; (d) the interest of the state in providing a forum for litigation; and (e) the convenience of the parties. Aftanase v. Economy Baler Co., supra.

III. MINNESOTA LONG-ARM STATUTES

The Minnesota Long-Arm Statutes which might possibly apply to one or more of the Defendants are believed to be Minn. Stat. §303.13 (1969) and §543.19 (1978). The relevant provisions of these statutes are as follows:

> §303.13 Service of process
> Subdivision 1. Foreign corporation. A foreign corporation shall be subject to service of process, as follows:
>
> * * *
>
> (3) If a foreign corporation makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if such foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota, such acts shall be deemed to be doing business in Minnesota by the foreign corporation . . .
>
> §543.19 Personal jurisdiction over nonresidents
> Subdivision 1. As to a cause of action arising from any acts enumerated in this subdivision, a court of this state with jurisdiction of the subject matter may exercise personal jurisdiction over any foreign corporation or any nonresident individual, or his personal representative, in the same manner as if it were a domestic corporation or he were a resident of this state. This section applies if, in person or through an agent, the foreign corporation or non-resident individual:
>
> (a) Owns, uses, or possesses any real or personal property situated in this state, or
>
> (b) Transacts any business within the state, or
>
> (c) Commits any act in Minnesota causing injury or property damage, or

(d) Commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found:

(1) Minnesota has no substantial interest in providing a forum; or

(2) the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice; or

(3) the cause of action lies in defamation or privacy.

IV. THE COURT LACKS PERSONAL JURISDICTION OVER EACH OF THE DEFENDANTS

The following sections will, except as noted, treat each Defendant separately, presenting arguments and authorities in support of Defendants' position that the Court lacks personal jurisdiction over each of the Defendants.

A. The Court Lacks Jurisdiction Over the Nonresident Individual Defendant, Gary Gygax.

As is supported by the affidavit of Defendant, Gygax, filed herewith, Gygax is a citizen of the State of Wisconsin, residing in Lake Geneva, Wisconsin. When served, Gygax was not present in the State of Minnesota, nor engaged in any business or any other activity whatsoever in Minnesota. Gygax has no office, no bank account, no telephone listing and no real or personal property in Minnesota. From a time prior to the formation of the Partnership, Tactical Studies Rules, (now dissolved) Gygax has traveled to Minnesota only twice, once on behalf of the corporation TSR Hobbies, Inc., to meet with Prof. M. A. R. Barker, and once accompanied by his family during a personal vacation trip.

As explained in the Introduction hereto, virtually the only (and extremely limited) contact Gygax had with

Minnesota is his entering into the Agreement in 1975 on behalf of the Partnership and himself as co-author with Plaintiff, Arneson, a Minnesota resident. To the extent that there was any negotiation between the Partnership and the authors relating to the Agreement, such negotiation occurred in Lake Geneva, Wisconsin, and the Agreement was signed by Gygax on behalf of the Partnership and himself in Wisconsin.

(1) Jurisdiction over Gygax is not conferred by Minnesota Statutes.

Plaintiff has not alleged, and Defendant Gygax does not have, contacts with Minnesota necessary for Minnesota Long-Arm Statutes to confer jurisdiction upon this Court.

In paragraph 1.5 of Plaintiff's Complaint under the heading "Jurisdiction", Plaintiff does not allege that Gygax, as an individual, has been or is now doing business or has agents in the State of Minnesota. Plaintiff does state in paragraph 1.6 of the Complaint that the causes of action arise, in part, from a contract [the Agreement] entered into in the State of Minnesota and partially performed in the State of Minnesota.

Since Minn. Stat. §303.13(3), dealing with a contract made with a resident of Minnesota, relates exclusively to foreign corporations, it is clear that jurisdiction over the individual Defendant, Gygax, can not be based on this statute. "Because Section 303.13 applies only to foreign corporations, it can not be invoked against the Partnership, nor the individual partners", Imperial Products, Inc. v. Zuro, 176 U.S.P.Q. 172, (D. Minn. 1971). See also Washington Scientific Ind., v. American Safeguard Corp., 308 F. Supp. 736, 738 (D. Minn. 1970).

The only other Minnesota Statute on which Plaintiff might possibly rely is §543.19 Subd. 1, which again does not apply. Specifically, referring to Subd. 1 (set forth in section III above) parts (a), (b), and (c) do not apply since Gygax owns no real or personal property in Minnesota, Plaintiff has not alleged that Gygax transacts, and Gygax does not transact, any business in Minnesota, and Gygax has not committed any act in Minnesota causing injury or property damage.

Part (d) relates to a nonresident committing an act outside of Minnesota causing injury or property damage in Minnesota, except that jurisdiction will not be found if . . . (3) the cause of action lies in defamation or privacy. Thus, part (d) provides no basis for conferring jurisdiction over Gygax with respect to Plaintiff's First Cause of Action which lies in contract, or the Second, Third or Fourth Causes of Action, which apparently lie in defamation, i.e., Arneson alleged that Defendants falsely represented that certain publications were solely authored by Defendant, Gygax, thereby depriving Plaintiff of a valuable right and causing irreparable damage to Plaintiff's reputation.

Since no Minnesota Statute confers jurisdiction upon this Court with respect to Gygax, Defendants' Motion to Dismiss for Lack of Jurisdiction over Gygax should be granted.

(2) Jurisdiction over Gygax is not consistent with due process.

Even if this Court were to find that a Minnesota Statute did confer jurisdiction over Gygax, it is respectfully submitted that the exercise of personal jurisdiction

over Gygax on this basis would be improper since Gygax has not had sufficient contacts with Minnesota to satisfy due process requirements. Because of Gygax's remote and limited contact with Minnesota, exercise of jurisdiction over Gygax would offend "traditional notions of fair play and substantial justice". International Shoe v. Washington, 326 U.S. 310 (1945).

The conclusion that due process requirements would be violated if jurisdiction over Gygax were exercised, is also reached following the five factor analysis ((a) - (e)) of the Eighth Circuit set forth in Aftanase, supra. Specifically, referring to these five factors, (a) Gygax at most, has only one remote contact with Minnesota, i.e., entering into the Agreement (signed by Gygax in Wisconsin in April, 1975) with Plaintiff, a resident of Minnesota. (b) Gygax, signing the Agreement on behalf of the Partnership and himself, did not avail himself of the benefits and privileges of Minnesota law. (c) Plaintiff's claims are not directly related to the act of Gygax signing or entering into the Agreement. With respect to the first contract cause of action, Plaintiff's claim arises from the alleged failure of the corporation, TSR Hobbies, Inc., (which is alleged by Plaintiff to have assumed the obligations of the Agreement), to make required royalty payments from approximately after the middle of 1977. The relationship of Gygax's signing the Agreement to Plaintiff's Second through Fourth Causes of Action, which apparently lie in defamation, is even more remote.

(d) It is conceded that Minnesota may have an interest in providing Plaintiff, a Minnesota resident, with a forum for litigation, although §543.19 subd. 1 (b) (3) indicates that the Minnesota Legislature has expressed its

intent not to provide Plaintiff with a forum for causes of action grounded in defamation, where jurisdiction is based on this Minnesota Long-Arm Statute.

(e) The convenience of the parties or forum non conveniens considerations weigh against this Court exercising jurisdiction. Specifically, as will be further discussed in Section V dealing with forum non conveniens considerations, substantially all the documentation and witnesses (except for Plaintiff Arneson) having knowledge relating to the apparent touchstone of Plaintiff's Causes of Action, (i.e., whether the alleged additional "D&D" publications are substantially copied and derived from the original game rules entitled DUNGEONS & DRAGONS) are located in Wisconsin in the Lake Geneva or Lake Geneva - Milwaukee, Wisconsin area.

Although it is submitted that the five factors (a) - (e) considered in the Eighth Circuit analysis dictate that exercise of jurisdiction over Gygax would not satisfy due process concerns, it is submitted, that in any event, exercise of jurisdiction would be improper under the rule set forth by the Supreme Court in Hanson v. Denckla, 357 U.S. 235 (1958).

As stated in Hanson v. Denckla, at 357 U.S. 235, 251 "...However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that state that are a prerequisite to exercise of power over him." It is submitted that Defendant, Gygax, has not had such "minimal contacts". Put another way, as is supported by a recent Eighth Circuit decision noted below, Plaintiff has not alleged, and Gygax has not had, minimal contacts with Minnesota sufficient to demonstrate that Gygax purposely availed himself of the privilege of conducting activities within

Minnesota, thus invoking the benefits and protections of its laws, which minimal contacts are the ultimate test or are essential before exercise of jurisdiction over Gygax would conform with due process requirements. Hanson v. Denckla, supra, Aaron Ferer & Sons Co. v. Diversified Metals Corp., 564 F.2d 1211, 1215 (8th Cir. 1977). See also Rheem Manufacturing Co. v. Johnson Heater Corp., 370 F. Supp. 806, 808 (D. Minn. 1974).

In summary, Defendants' Motion to Quash Service of Process and Dismiss for Lack of Personal Jurisdiction over Defendant Gygax should be granted, since Minnesota Statutes do not confer jurisdiction, and exercise of jurisdiction over Gygax would not be consistent with due process.

B. The Court Lacks Jurisdiction Over The Defendant Partnership, Tactical Studies Rules, (Dissolved in November, 1975)

Service of process on "Tactical Study Rules" [sic] (should be "Studies") was purportedly made in Lake Geneva, Wisconsin, by personal service on Gary Gygax, a former partner of the dissolved Partnership.

As is supported by the Affidavit of Brian J. Blume, also a former partner of the dissolved Partnership, filed herewith, during the existence of the Partnership, the Partnership had no offices, no bank account, no telephone listing, and no real or personal property in Minnesota. No business activities of any kind were carried on by the Partnership in Minneosta. At the time of service on the Partnership, as will be further explained below, the Partnership was dissolved and wound up, and was not engaged in any business or any other activity in Minnesota or elsewhere.

By way of background, the original Partnership, Tactical Studies Rules, consisted of Donald R. Kaye and E.

Gary Gygax (Gary Gygax) and was formed October 1, 1973. By amendment to the original Partnership Agreement, effective February 1, 1975, Gary Gygax, Donna Kaye (the heir of the late Donald R. Kaye) and Brian J. Blume were made full and equal partners in the Partnership.

As noted in the Introduction hereto, Gary Gygax, on behalf of the Partnership and himself, entered into the "Agreement" (Exhibit B) with co-author, Plaintiff Arneson. The authors agreed to assign to the Partnership "...the copyright, the right to publish, sell, and distribute the set of game rules or game entitled DUNGEONS & DRAGONS..." in return for the Partnership agreeing to pay the authors "...a royalty of 10% of the cover price of the game rules or game on each and every copy sold...".

To the extent there was any negotiation between the Partnership and the authors relating to the Agreement, such negotiation occurred in Lake Geneva, Wisconsin, and the Agreement was signed on behalf of the Partnership and Gary Gygax in Wisconsin.

The Partnership was dissolved effective November 16, 1975, pursuant to a written Partnership Dissolution Agreement, attached as Exhibit C to Brian Blume's Affidavit on behalf of the Partnership (hereinafter referred to as "1st Affidavit").

Pursuant to a Liquidation Sale acknowledged in the Partnership Dissolution Agreement, all assets of the Partnership, including inventory, goodwill and the trade name of the Partnership, Tactical Studies Rules, were sold and assigned to TSR Hobbies, Inc. Purchase of these assets is evidenced by a copy of a check for the full purchase price, dated September 26, 1975, from TSR Hobbies, Inc. to the Partnership. A copy of the check is attached to Brian

Blume's 1st Affidavit as Exhibit D (the copy of the check is inverted because of an error in a microfilm copy).

As will be explained below, Defendants submit that the terminated Partnership is not an entity which can be sued, or an entity over which this Court can exercise jurisdiction. Furthermore, this Court does not have jurisdiction over the terminated Partnership for substantially the same reasons as advanced with respect to the individual Defendant, Gygax.

(1) Jurisdiction over the Terminated Partnership is not Conferred by Minnesota Statutes

For the same reasons advanced with respect to Defendant, Gygax, in section A above, Plaintiff has not alleged, and the terminated Partnership did not and does not have, contacts with Minnesota necessary for a Minnesota Long-Arm Statute to confer jurisdiction over the Partnership upon this Court. In particular, Minnesota Stat. §303.13 (3) relates exclusively to foreign corporations and does not relate to partnerships. Imperial Products, Inc. v. Zuro, supra.

Also, Minnesota Stat. §543.19 Subd. 1 parts (a), (b), (c), and (d) do not apply. Specifically, the terminated Partnership never owned any real or personal property in Minnesota. Contrary to Plaintiff's allegation in paragraph 1.5 of its complaint, Defendant Partnership does not transact any business in Minnesota and has no agents in Minnesota, and the Partnership has not committed any act causing injury or property damage in Minnesota.

Finally, Defendant Partnership was terminated long before the time Plaintiff's alleged causes of action arose. Thus, Plaintiff can not satisfy its burden to prove

a nexus between each of Plaintiff's causes of action and the Defendant Partnership's acts or contacts with Minnesota, which nexus is required to confer jurisdiction under §543.19 Subd. 1. See Tunnell v. Doegler & Kirsent, Inc., 405 F.Supp. 1338 (D. Minn. 1976).

Since no Minnesota Statute confers jurisdiction upon this Court with respect to the terminated Defendant Partnership, Defendants' Motion to Dismiss for Lack of Jurisdiction over the terminated Partnership, Tactical Studies Rules, should be granted.

(2) Jurisdiction over the Partnership is not Consistent with Due Process.

Again, at least for the same reasons advanced with respect to Defendant, Gygax, even if this Court were to find that a Minnesota Statute did confer jurisdiction over the terminated Partnership, exercise of such jurisdiction would be improper since the Partnership has not had sufficient contacts with Minnesota to satisfy due process requirements. This is because the Partnership, while in existence, had the same and equally as remote a contact with Minnesota as Gygax, i.e., entering into the 1975 Agreement (signed by Gygax on behalf of the Partnership in Wisconsin) with Plaintiff Arneson, a resident of Minnesota. Thus, the conclusion that due process requirements would be violated if jurisdiction were exercised over the terminated Partnership is also reached following the five factor analysis of the Eighth Circuit set forth in the Aftanase, supra, for the same reasons as noted with respect to Defendant Gygax.

In any event, it is submitted that exercise of jurisdiction over the terminated Partnership would be improper under the rules set forth by the Supreme Court in

Hanson v. Denckla, supra. Plaintiff has not alleged, and Defendant Partnership has not had, minimal contacts with Minnesota sufficient to demonstrate that Defendant Partnership purposely availed itself of the privilege of conducting activities within Minnesota, thus invoking the benefits and protection of its laws, which minimal contacts are the ultimate test or are essential before exercise of jurisdiction over the Partnership would conform with due process requirements. Arron Fara and Sons Co. v. Diversified Metals Corp., supra, Rheem Manufacturing Co. v. Johnson Heater Corp., supra.

(3) Jurisdiction Cannot Be Obtained over A Terminated or Nonexistent Partnership.

Finally, it is submitted that exercise of jurisdiction over Defendant Partnership is impossible since the Partnership was dissolved and wound up long before Plaintiff's alleged Causes of Action arose.

At the time of the dissolution (November 16, 1975), all obligations of the Partnership under the Agreement were current. All debts of the Partnership were satisfied shortly thereafter. Liquidation and winding up of the Partnership was completed prior to the end of 1975. The final Partnership tax return for the year 1975, (which indicated the value of the remaining inventory was -0-) was filed February 2, 1976 (first page of the Final Tax Return attached to Blume's 1st Affidavit as Exhibit E).

Incident to the liquidation sale, but prior to dissolution, TSR Hobbies, Inc. purchased the entire inventory of the game rules DUNGEONS & DRAGONS from the Partnership, and assumed the obligations of the Partnership with respect to the Agreement. Immediately thereafter, pursuant

to the Agreement, TSR Hobbies, Inc. paid Arneson royalties for copies of the game rules DUNGEONS & DRAGONS sold by the corporation during the third quarter of 1975. Payment was made by check from the corporation to David L. Arneson. (A copy of the check is attached to Blume's 1st Affidavit as Exhibit F).

All subsequent sales of the game rules DUNGEONS & DRAGONS, and royalty payments due to Arneson from such sales have been made by TSR Hobbies, Inc.

Under the Uniform Partnership Act, adopted in both Wisconsin and Minnesota, a partnership ceases to exist when the winding up of the partnership affairs is completed. Minn. Stats. 329.29; Wis. Stats. 178.25. "Winding up" means the administration of assets for the purpose of terminating business and discharging the obligations of the partnership. Hurst v. Hurst, 1 Ariz. App. 227, 401 P.2d 232 (1965). Clearly such an administration of assets occurred in 1975 when the Partnership was liquidated, debts were satisfied, and the Agreement was assumed by the corporation.

The fact that the corporation honored the Agreement by making royalty payments does not negate the winding up of partnership affairs. The Partnership paid royalties on all copies which it sold and thus no liability to Arneson existed at the time of termination. All future obligations under the Agreement were incurred by the corporation for its own sales.

Moreover, even if it were contended that some existing liability prevented the winding up of the Partnership, that existing liability of the Partnership was discharged by Arneson.

Under the UPA, partners are discharged of their liability to creditors by an agreement with the creditor.

Such an agreement may be inferred from the course of dealing between a creditor with knowledge and the partnership. Minn. Stat., 323.35; Wis. Stat. 178.31. The following paragraphs of Blume's 1st Affidavit unmistakably infer that Arneson was aware of the assumption of obligation by the corporation, and looked exclusively to the corporation for payment:

> (12) Shortly after the dissolution of the Partnership and incorporation of TSR Hobbies, Inc., Arneson became a full-time employee of TSR Hobbies, Inc. Arneson's employment by the corporation extended from about the end of January, 1976, to the middle of November, 1976. Arneson was a shareholder of TSR Hobbies, Inc. and attended the shareholder's meetings in 1976 and 1977. Arneson is still a shareholder of TSR Hobbies, Inc. and attended the 1978 shareholder's meeting by proxy.
>
> (13) By virtue of his status as employee and shareholder of TSR Hobbies, Inc., and by receipt of royalty payments paid directly by the corporation TSR Hobbies, Inc., to Arneson for sales of DUNGEONS and DRAGONS, and through other personal contacts with the Partnership, Arneson was made aware of the dissolution of the Partnership and the incorporation and activities of TSR Hobbies, Inc., including the assumption of rights and obligations under the Agreement by TSR Hobbies, Inc.
>
> (14) After receiving the initial royalty check for sales of DUNGEONS & DRAGONS from TSR Hobbies, Inc., and thereafter, (prior to instituting this action) Arneson did not object to the transfer of the rights and obligations of the Agreement from the Partnership to TSR Hobbies, Inc., and Arneson did not look to the Partnership or request the Partnership (after dissolution) to make payment of royalties for sales of DUNGEONS & DRAGONS made by the corporation, TSR Hobbies, Inc.
>
> (15) All letters and demands of payment relating to the disputes on royalties due to Arneson for sale of DUNGEONS & DRAGONS have (prior to instituting this action) been directed by Arneson to the corporation, TSR Hobbies, Inc.
>
> (16) Arneson alleged in the Complaint filed herein (See Arneson's Complaint, ¶1.4) that "Plaintiff is informed and believes that Defendant, TSR Hobbies, Inc., is the assignee of the rights of the said partnership and assumed the obligations thereof."
>
> (17) Arneson alleges in his first cause of action (See Arneson's ¶1.11) that Plaintiff is informed and believes that Defendants in the above-entitled action

> paid royalties thereon to Plaintiff in accordance with the Agreement [Arneson's Exhibit A] until approximately the middle of 1977. It is not until "from and after the middle of 1977" [almost two years after dissolution and liquidation of the Partnership] that Plaintiff, Arneson, alleges Defendants failed and refused to pay Arneson royalties in accordance with the Agreement (See Arneson's ¶1.12).

In view of Arneson's knowledge of the Partnership dissolution, and acceptance of royalty payments from the corporation TSR Hobbies, Inc., any liability of the Partnership to Arneson under the Agreement was discharged. Hauge v. Bye, 51 N.D. 848, 201 N.W. 159 (1924). Therefore, there can be no claim of continuing liability. The Partnership was wound up and terminated, and thus, is not an entity capable of being sued or over which this Court has jurisdiction.

This result is further dictated by traditional notions of "fair play and substantial justice." All of the claims raised by Arneson relate to transactions occurring so long after the Partnership termination that notions of fair play prohibit exercise of jurisdiction.

Arneson's First Cause of Action is based on the Agreement, but arises only from the alleged failure of TSR Hobbies, Inc. to make royalty payments beginning in 1977, almost two years after termination of the Defendant Partnership. Arneson's Second, Third and Fourth Causes of Action do not relate to the Agreement, but instead relate to tort or defamation claims concerning works not even in existence until more than a year after termination of the Partnership.

More particularly, Arneson's Second, Third, and Fourth Causes of Action specifically relate to works entitled ADVANCED DUNGEONS & DRAGONS, PLAYERS HANDBOOK ("PLAYERS HANDBOOK"), and ADVANCED DUNGEONS & DRAGONS, MONSTER MANUAL ("MONSTER MANUAL"), which are alleged to be "copied in substantial part and wholly derived from the original work

entitled DUNGEONS and DRAGONS" (See Arneson's ¶2.2). Also, Arneson alleges that Defendants, "individually and acting in concert", have caused the PLAYERS HANDBOOK and MONSTER MANUAL to be published in a form falsely represented to be solely authored by Gygax (See Arneson's ¶2.3).

The MONSTER MANUAL (copyright 1977) and the PLAYERS HANDBOOK (copyright 1978) were not in existence until more than a year after termination of the Partnership. (Copies of the title pages of the MONSTER MANUAL and PLAYERS HANDBOOK attached to Blume's 1st Affidavit as Exhibits G and H, respectively).

Surely a lawfully terminated Partnership cannot be revived by Plaintiff to answer for independent acts occurring years after termination. Since Arneson's claims relate to transactions occurring substantially after termination of the Partnership, fair play and substantial justice dictate that personal jurisdiction not be exercised over the Partnership.

Defendants' Motion to Dismiss with respect to the terminated Partnership is far from academic. In view of the remote contacts with Minnesota, neither Defendant Partnership, (nor Defendant Gygax) should be subject to personal liability resulting from this action being brought in a Minnesota court. As noted earlier, Plaintiff has requested judgment against "Defendants and each of them" in excess of Fifty Thousand Dollars ($50,000) for pecuniary damages, and in excess of Fifty Thousand Dollars ($50,000) for punitive damages. Plaintiff also requested injunctive relief restraining Defendants and each of them from the further publication of DUNGEONS & DRAGONS or any work copies, derived or adapted therefrom, without disclosing Plaintiff as co-author. Exercise of jurisdiction and exposure of the

Defendant Partnership and Defendant Gygax to such liability, in view of these Defendants' extremely remote contacts with Minnesota, would be, it is submitted, a classic example of exercise of jurisdiction which offends "traditional notions of fair play and substantial justice". International Shoe v. Washington, supra.

In summary, the Motion to Quash Service of Process and Dismiss for Lack of Personal Jurisdiction over Defendant Partnership, Tactical Studies Rules, should be granted. The Minnesota Statutes offer no basis for jurisdiction, based on the lack of contacts with that State. Clearly, any exercise of jurisdiction over the Partnership would be inconsistent with due process. Further, Defendants' Motion should be granted since the Partnership itself is terminated or nonexistent and thus, with respect to each of Plaintiff's alleged causes of actions, the Partnership is not an entity over which this Court has jurisdiction.

C. The Court Lacks Jurisdiction Over The Defendant Corporation, TSR Hobbies, Inc.

Service of process on TSR Hobbies, Inc. was purportedly make in Lake Geneva, Wisconsin, by personal service and delivery of a Summons and Complaint delivered to Gary Gygax, President of TSR Hobbies, Inc., and a Defendant herein.

As is supported by the second affidavit of Brian J. Blume, ("2nd Affidavit") on behalf of the corporation, "TSR" was incorporated as a Wisconsin corporation July 19, 1975, and has always had its principal place of business in Lake Geneva, Wisconsin. TSR's activities generally include the publication and sale of games or game rules, and also publication of periodical magazines, for example, THE

DRAGON, which includes articles of interest to gaming hobbyists. TSR also sells various accessories and game playing aids for its games.

As noted in the section B above, TSR Hobbies, Inc. purchased all assets of the Partnership on September 26, 1975, acquiring the rights and assuming the obligations of the Agreement entered into by the Partnership with co-authors Gygax and the Plaintiff, Arneson.

Royalty payments for sales of the game rules DUNGEONS & DRAGONS have been made by checks written in Wisconsin and mailed to Plaintiff, Arneson, the first check being dated October 21, 1975. TSR continues to make royalty payments to Arneson for sales of the DUNGEONS & DRAGONS game rules book included in a boxed game entitled "DUNGEONS & DRAGONS Basic Set" and for sales of a three volume set entitled "Original DUNGEONS & DRAGONS, Collector's Edition". TSR royalty payments to Arneson for these sales during the 3rd and 4th quarters of 1978, amounted to $5,759.14, and $6,635.50, respectively.

(1) Summary of TSR's Contacts with Minnesota.

The only TSR products shipped into Minnesota are in response to orders and payments sent directly from consumers in Minnesota to TSR Hobbies, Inc. at Lake Geneva, or in response to orders sent from a small number of retailers in Minnesota (usually no more than five) to TSR or to distributors of TSR products located outside of Minnesota. Also, a small number of TSR periodicals (on the order of fifty to a hundred) are mailed into Minnesota pursuant to subscription orders received by TSR at Lake Geneva.

Since TSR Hobbies, Inc. was incorporated in 1975, sales of all TSR products shipped into Minnesota by TSR have

never exceeded Fifty-Five Hundred Dollars ($5,500.00) a year, and such sales have always constituted a very small fraction, or less than .7%, of total TSR sales for a given fiscal year. Total sales of TSR products in Minnesota since incorporation of TSR are believed to be less than Twelve Thousand Dollars ($12,000.00).

TSR recently made an arrangement (effective the end of January, 1979) with an individual (Rick Meinece, residing in St. Louis Park, Minn.) to act in a capacity as a TSR manufacturer's Rep., to be paid on a commission basis for TSR products sold in a territory including Minnesota and North and South Dakota. As of the date of service of the Complaint herein, no commission was due to the Rep. for sales of any TSR products shipped into Minnesota, and no written contract between TSR and the Rep. has been entered into.

One TSR employee officially represented TSR and attended a trade show in Rochester, Minnesota during a single weekend in 1976 and again in 1978, and sales of TSR products at either of these shows are believed to be less than Five Hundred Dollars ($500.00).

(2) Jurisdiction over TSR Hobbies, Inc. is not conferred by Minnesota Statutes

Plaintiff has alleged in paragraphs 1.5 and 1.6 of the Complaint that Defendant, Tactical Studies Rules, and Defendant, TSR Hobbies, Inc., have been and are now doing business and have agents in the state of Minnesota and have entered into a contract with Plaintiff, a Minnesota resident. Plaintiff also alleges that the causes of action arise, in part, from a contract [the Agreement] entered into in the state of Minnesota and partially performed in the state of Minnesota.

Minn. Stat. §303.13

With respect to Minnesota Stat. §303.13 (3), TSR Hobbies, Inc. did not make the contract or enter into the Agreement with Arneson, but acquired the rights and assumed the obligations of the Agreement by purchase of all the assets of the now terminated Partnership, Tactical Studies Rules. Thus, §303.13 (3) does not apply.

Furthermore, although Plaintiff has alleged in conclusory terms, that the Agreement or contract was entered into in the state of Minnesota and partially performed in the state of Minnesota, Plaintiff has alleged no facts which support such allegations. Defendants submit that by the terms of the Agreement, the only performance required after making of the contract was the Partnership and now TSR Hobbies, Inc., paying the authors a royalty of 10% for the DUNGEONS and DRAGONS game rules sold. All such performance occurred in Wisconsin where the royalty payment checks were written, and then mailed to Arneson. Thus, since there was no performance of the Agreement in Minnesota, §303.13 (3) can not confer jurisdiction over TSR Hobbies, Inc.

Plaintiff has not alleged that Defendant, TSR Hobbies, Inc. has committed a tort in whole or in part in Minnesota. It is submitted the "tort in Minnesota" requirement of §303.13 (3) does not apply since no tort against Plaintiff has been committed by TSR Hobbies, Inc. in Minnesota.

In summary, since Defendant, TSR Hobbies, Inc., did not "make a contract" or directly enter into an Agreement with Plaintiff, and since the Agreement, after making of the contract, was not performed in whole or in part in Minnesota, and since TSR has not committed a tort against

Plaintiff in Minnesota, jurisdiction over Defendant, TSR Hobbies, Inc., is not conferred by §303.13 (3).

Minn. Stat. §543.19

The only other Minnesota Statute which might be applicable is believed to be §543.19 Subd. 1 which again, it is submitted, does not apply. Specifically, as noted with respect to Defendant, Gygax, and the Defendant Partnership, Subd. 1, parts (a) and (c) do not apply since TSR Hobbies, Inc. owns no real or personal property in Minnesota, and has not committed any act in Minnesota causing injury or property damage. Part (d) can not apply to confer jurisdiction over TSR Hobbies, Inc. since, as noted earlier, Plaintiff's First Cause of Action lies in contract, and Plaintiff's Second through Fourth Causes of Action lie in defamation.

Plaintiff has alleged TSR Hobbies, Inc., has been and now is doing business in the state of Minnesota, but it is submitted that part (b) relating to "transacting any business within the state" does not confer jurisdiction over Defendant, TSR Hobbies, Inc. This is because Plaintiff has not alleged and can not prove a nexus between the contacts of TSR with Minnesota, and Plaintiff's Causes of Action. Specifically, it has been held that proof of such a nexus is an expressed statutory requirement under Subd. 1, of §543.19, that statute referring to "a cause of action arising from any of the acts enumerated in Subdivision 1". Tunnell v. Doelger & Kirsent, Inc., supra.

Since a nexus between TSR's contacts with Minnesota and Plaintiffs causes of action does not exist, it is submitted that §543.19 Subd. 1 does not confer jurisdiction over Defendant TSR Hobbies, Inc.

(3) Jurisdiction Over Defendant, TSR Hobbies, Inc., Is Not Consistent With Due Process.

Because the contacts of TSR Hobbies, Inc. with Minnesota are extremely limited, and at most, remotely connected to Plaintiff's Causes of Action, exercise of jurisdiction over TSR Hobbies, Inc. would "offend traditional notions of fair play and substantial justice". International Shoe v. Washington, supra.

The conclusion that due process requirements would be violated if jurisdiction were exercised is also reached following the five factor ((a) - (e)) analysis of the Eighth Circuit set forth in Aftanase, Supra. Specifically, (a) the quantity of contacts that TSR has with Minnesota is extremely limited. TSR Hobbies, Inc. has no office, no bank account, no telephone listing, no employee and no real or personal property in Minnesota. (b) As to "nature and quality of the contacts", the only direct contacts of TSR in Minnesota are the official attendance of one TSR employee at two weekend tradeshows and the recent arrangement with an individual to act as a TSR manufacturer's Rep. in a territory including Minnesota, and North and South Dakota. There were no TSR product sales as a result of the Rep. prior to commencement of this Action. Otherwise, all TSR's limited contacts with Minnesota result from products or publications shipped into Minnesota in response to orders and payments sent directly from consumers or from a small number of retailers in Minnesota, to TSR Hobbies, Inc. in Lake Geneva, Wisconsin.

Total sales of TSR products in Minnesota are believed to be less than $12,000, since TSR's incorporation in 1975. These sales have resulted, in substantial part, from publication and mailing of game rules and periodicals into Minnesota. It is submitted that the great weight of

authority supports Defendants' position that TSR Hobbies, Inc., which operates primarily as a publisher of game rules and periodicals, is not doing business within a State (Minnesota) so as to be subject to service of process and suit therein, merely because its games or periodicals circulate in that state through sales by mailings from out of state to in-state customers and subscribers. See DeNucci v. Fleischer, 225 F. Supp. 935 (D. Mass. 1964), and Insull v. New York World-Telegram Corporation, 172 F. Supp. 615 (N.D. Ill. 1969).

TSR's only other attenuated contact with Minnesota results from the purchase in Wisconsin of all the assets of the Wisconsin Partnership, including the rights and assuming the obligations of the Agreement with Plaintiff, a Minnesota resident. It is submitted that by purchase of such Partnership assets in Wisconsin, TSR did not "avail itself of the benefits and privileges of Minnesota law", sufficient to empower exercise of jurisdiction over TSR consistent with due process, Hanson v. Denckla, supra.

With respect to the factor "(c)" of the Eighth Circuit test, the relationship between Plaintiff's Causes of Action and TSR's contacts with Minnesota are, at most, remotely connected. The Eighth Circuit requires Plaintiff to allege a nexus between Plaintiff's claim and Defendant's contacts with Minnesota to satisfy due process. It is submitted that Plaintiff has not alleged such an nexus, and in fact, Plaintiff's Causes of Action are too remotely connected to Defendant's limited contacts with Minnesota for exercise of jurisdiction to satisfy due process. Toro Co. v. Ballas Liquidating Co., 572 F.2d 1267 (8th Cir. 1978).

Specifically, Plaintiff's First Cause of Action arising from the alleged failure of TSR Hobbies, Inc. to

make required royalty payments under the Agreement, has virtually no connection to the extremely limited sales of TSR products in Minnesota, or any other TSR contacts with Minnesota. Similarly, TSR's limited sales of published games and other related products in Minnesota are not connected with Plaintiff's Second through Fourth Causes of Action, which are grounded in defamation. See Insull v. New York World-Telegram Corporation, supra.

It is conceded that Minnesota may have an interest in providing Plaintiff with a forum for litigation under factor (d) of the Eight Circuit test. It is submitted, however, that the last factor to be considered (e) "the convenience of the parties" and related forum non conveniens considerations, weigh heavily against this Court exercising jurisdiction over Defendant, TSR Hobbies, Inc., or over the other Defendants herein, as will be explained in section V, below.

In summary, Defendants' Motion to Quash Service of Process and Dismiss for Lack of Personal Jurisdiction over Defendant, TSR Hobbies, Inc., should be granted, since Minnesota Statutes do not confer jurisdiction, and exercise of jurisdiction would not be consistent with due process.

V. This Court Should Not Exercise Jurisdiction Over Any Of Defendants Based On Forum Non Conveniens Considerations

It is well established that Minnesota and 8th Circuit courts can consider forum non conveniens consideration in considering whether to exercise jurisdiction over a Defendant. Houston v. Fehr Bros., Inc., 584 F. 2d 833 (8th Cir. 1978), Fourth Northwestern National Bank v. Hillson Industries, 264 Minn. 110, 117 N.W. 2d 732 (1962).

As stated by the Minnesota Supreme Court in the Fourth Northwestern National Bank case, supra, at 117 N.W. 2d 736.

> "One other important factor in deciding whether a nonresident corporation is amenable to process under a statute such as ours [§303.13] is the rule governing forum non conveniens."

As stated by the Eighth Circuit Appeals Court in Houston v. Fehr Bros. Inc., supra. at 837, "'Whatever will support the plea [of forum non conveniens] will excuse the corporation from defending * * *,' and can be considered in determining whether jurisdiction should be exercised," the Court citing an earlier 2nd Circuit decision.

In this action, every one of Plaintiff's Causes of Action relies upon an allegation that the one volume work ADVANCED DUNGEONS & DRAGONS, PLAYERS HANDBOOK and the one volume work ADVANCED DUNGEONS & DRAGONS, MONSTER MANUAL, and other publications, are works "derived and developed" from the original game rules DUNGEONS & DRAGONS, or are works "copied in substantial part and wholly derived" from the original work DUNGEONS & DRAGONS.

As is supported by Blume's 2nd affidavit on behalf of the corporation, substantial amounts of compensated TSR staff time, literally thousands of hours, has been expended, both by Defendant, Gygax, and by other TSR employees, in the design, development and preparation of "D&D" publications in issue. These D&D publications include the PLAYERS HANDBOOK and MONSTER MANUAL, as well as other publications which TSR submits have been separately developed and authored, but which relate to the original game rules entitled DUNGEONS & DRAGONS. Plaintiff, Arneson claims the sales of such D&D publications entitle him to royalty payments under the Agreement.

At least seven TSR employees, all located in Lake Geneva, Wisconsin, (identified in Blume's 2nd Affidavit) have actually participated in and have personal knowledge of the design, development and preparation of the above referenced

D&D publications. Also, other individuals residing in Wisconsin in the Lake Geneva area, not employees of TSR, (two listed in Blume's 2nd Affidavit) have knowledge of the development of these publications. Further, all the documentation relating to design and development, and to the physical preparation of the above referenced D&D publications, is located at TSR's place of business in Lake Geneva, Wisconsin. These Witnesses and Documents are crucial to the factual dispute of whether the "D&D" publications have been "copied is substantial part and wholly derived" from the original game rules DUNGEONS & DRAGONS.

The only connection of this action to Minnesota is that the Plaintiff, Arneson, lives there, whereas, as noted above, Defendants and virtually all the potential witnesses, as well as virtually all the documents or physical proof relating to design and development of the D&D publications in issue, are located in Wisconsin. Thus, even if this Court finds that it could otherwise exercise jurisdiction over Defendants under Minnesota Long-Arm Statutes, consistent with due process, it is submitted that the Court, on the basis of forum non conveniens considerations, should hold that jurisdiction over the Defendants not be exercised.

VI. Defendants Alternate Motion To Transfer Under 28 U.S.C. §1404 (a)

If the Court finds that it has jurisdiction over any of the Defendants, it is respectfully submitted that this Court, in its discretion, should transfer this action with respect to such Defendants to the United States District Court for the Eastern District of Wisconsin, for the convenience of the parties and witnesses and in the interest of justice.

Section 1404 (a) of Title 28 U.S.C., authorizes a District Court to transfer a civil action to any other district where it might have been brought "[f]or the convenience of parties and witnesses, in the interest of justice." A motion pursuant to §1404 (a) is committed to the sound discretion of the district court judge and is a motion "peculiarly for the exercise of judgment by those in daily proximity to these delicate problems of trail litigation." Lykes Bros. S.S. Co. v. Sugarman, 272 F.2d 679, 680 (2d. Cir. 1959). Defendants assert that a §1404 (a) transfer should be ordered, if jurisdiction over any of the Defendants is found.

(1) This Action could have been brought in Eastern District of Wisconsin

Plaintiff, a Minnesota citizen, could have brought this action under 28 U.S.C. §1332, in the Eastern District of Wisconsin, wherein the Defendants Gygax and TSR Hobbies, Inc. are citizens and reside. The amount in controversy exceeds $10,000.

(2) The Convenience of the Parties and Witnesses Supports a Motion to Transfer

As discussed in the forum non conveniens section above, virtually all the potential witnesses (nine identified in Blume's 2nd Affidavit) as well as the documents relating to Plaintiff's alleged claim that the above referrenced "D&D" publication are substantially copied and wholly derived from the original game rules DUNGEONS & DRAGONS, are located in Wisconsin in the Lake Geneva - Milwaukee area. The Court in the Eastern District of Wisconsin sits in Milwaukee, located about 50 miles from Lake Geneva, Wisconsin. Thus, it is submitted that the Eastern District of

Wisconsin is the most convenient forum for the parties and potential witnesses in this action.

(3) Plaintiff's Choice of Forum is no Longer Entitled to Great Weight.

As stated in Medtronic Inc. v. American Optical Corporation, 337 F. Supp. 490, 497 (D. Minn. 1971), "In light of the Supreme Court's decision in Norwood [Norwood v. Kirkpatrick, 349 U.S. 29 (1959)] it is now clear that a plaintiff's choice of forum is no longer entitled to the great weight given it under the doctrine of forum non conveniens, and is simply one factor to be considered." The rule that Plaintiff's choice of forum is no longer entitled to great weight was envolved by the Supreme Court in Norwood, supra. when it stated, "The harshest result of the application of the old doctrine of forum non conveniens, dismissal of the action, was eliminated by provision in §1404 (a) for transfer."

(4) The Interests of Justice Compel a Transfer

In addition to considering the convenience of the parties and witnesses, a third factor determining whether a transfer under §1404 (a) is proper is the "interest of justice". A typical factor to be considered is the relative ability of the parties to bear the expense of litigating in the different forums. In this case, since the Eastern District of Wisconsin is not located a great distance away from Plaintiffs residence, transfer would not be a significant burden on Plaintiff. In fact, it is submitted that since substantially all the witnesses and documents relating to the development of the "D&D" publications in dispute are located in Lake Geneva, the expense for

Plaintiff would not be greatly increased by transfer to the Eastern District of Wisconsin. On the other hand, there is no question but that the Eastern District of Wisconsin is a more convenient and less expensive forum for Defendants, particularly with respect to the potential trail witnesses, many of whom are employees of Defendant, TSR Hobbies, Inc.

Thus, in this case, it is submitted that the interest of justice is coincident with the convenience of the parties and witnesses, and as discussed earlier, the balance of convenience weighs sufficiently in Defendants' favor to warrant transfer of this action. See, for example, First National Bank of Minneapolis v. White, 420 F. Supp. 1331, 1337 (1976) wherein the Court stated:

> In this case, the force of numbers would weigh on the side of transfer, for defendants and witnesses who are permanently located in or near the transferee froum far outnumber the plaintiff and any Minnesota-based witnesses (indeed, plaintiff does not claim that there will be any significant number of local witnesses).

In summary, if the Court finds that it has jurisdiction over any of the Defendants, then with respect to such Defendants, it is submitted that for the convenience of the parties and the witnesses, this action be transferred to the Eastern District of Wisconsin.

VII. Conclusion

Any Plaintiff, when challenged, has the burden to prove that it has obtained in personam jurisdiction. Plaintiff has not and can not meet that burden in this case.

Defendants' Motion for an Order Quashing Service of Process and Dismissing this Suit for Lack of Personal Jurisdiction over each of Defendants should be granted. In the alternative, if the Court finds that it has jurisdiction over any of the Defendants, then with respect to such Defen-

dants, this action should be transferred under 28 U.S.C. §1404 (a) to the Eastern District of Wisconsin.

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Attorneys for Defendants

Dated: April 28, 1979

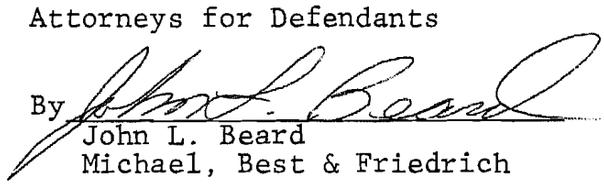
By 
John L. Beard
Michael, Best & Friedrich

EXHIBIT B

AGREEMENT

To take effect as of 1 April 1975, item 4. below notwithstanding.

THIS AGREEMENT is made between the the Author(s) specified hereafter and Tactical Studies Rules, 542 Sage Street, Lake Geneva, WI 53147, hereafter called TSR.

Author(s): Gary Gygax, 330 Center St., La.,Geneva, WI

Dave Arneson, 1496 Hartford Ave, St. Paul, MN

1. The Author(s) hereby agree to assign to TSR the copyright, the right to publish, sell, and distribute, the set of game rules or game entitled DUNGEONS & DRAGONS, in any form TSR deems suitable for commercial sales, as well as any other similar rights.

2. TSR hereby agrees to pay the Author(s) a royalty of TEN PERCENT (10 %)of the cover price of the game rules or game on each and every copy sold; this royalty to be payable on a quarterly basis reported within 30 days after the end of each quarter, with quarters ending 31 March, 30 June, 30 September and 31 December of each year.

3. TSR also hereby agrees that the ownership of the copyright mentioned above shall revert to the Author(s) not more than 90 days after the set of game rules or game is no longer maintained in-print.

4. This Agreement shall not be considered a valid contract until all parties concerned have signed and dated the contract, but upon so signing the contract shall take effect on a retroactive basis from the date of publication of the set of game rules or game.

TACTICAL STUDIES RULES

E. Gary Gygax — 7 April 1975

E. Gary Gygax, Editor

Gary Gygax — 7 April 1975

Gary Gygax

Dave Arneson — 14-4-75

Dave Arneson

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

DAVID L. ARNESON,

Plaintiff

vs.

GARY GYGAX, TACTICAL STUDY RULES, a partnership consisting of Gary Gygax and Brian Blume, and TSR HOBBIES, INC., a corporation,

Defendants.

Civil Action No. 4-79-109

MEMORANDUM

IN SUPPORT OF DEFENDANTS' MOTION TO QUASH SERVICE OF PROCESS AND DISMISS FOR LACK OF PERSONAL JURISDICTION, AND

IN SUPPORT OF DEFENDANTS' ALTERNATE MOTION TO TRANSFER UNDER 28 U.S.C. §1404 (a)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

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INTRODUCTION

DAVID L. ARNESON commenced this action in a Minnesota District Court, County of Hennepin, the 4th Judical District. Service of Process was purportedly made in Lake Geneva, Wisconsin, February 12, 1979 by personal service and delivery of three copies of a Summons and Complaint on Gary Gygax as an individual Defendant, as a former partner of Defendant, Tactical Study Rules [sic] (should be "Studies"), and as President of Defendant, TSR Hobbies, Inc. The case was removed to this Court by Defendants, March 12, 1979.

Plaintiff, Arneson, is a resident of St. Paul, Minneosta. Defendant, Gygax, is a citizen of Wisconsin, and resides in Lake Geneva, Wisconsin. Defendant, Tactical Studies Rules was a Wisconsin partnership, but has been dissolved and wound up since approximately November, 1975. TSR Hobbies, Inc. is a Wisconsin corporation incorporated in July, 1975, and having its principal place of business in Lake Geneva, Wisconsin. The subject matter jurisdiction of this Court is based on diversity of citizenship.

In April, 1975, Defendant Gygax and Arneson executed a written Agreement ("Agreement") as authors of the game rules DUNGEONS & DRAGONS, with Defendant Partnership, Tactical Studies Rules (hereinafter referred to as "Partnership"). Gygax signed the Agreement on behalf of the Partnership and on behalf of himself as author. The Agreement allowed the Partnership to "...publish, sell and distribute, the set of game rules or game entitled DUNGEONS & DRAGONS in any form TSR [the Partnership] deemed suitable for commercial sales..." in return for payment to the authors of "...a royalty of 10% of the cover price of the game rules or game on each and every copy sold...". A copy of the Agreement is attached to the end of this Memorandum as Exhibit B.

Arneson has alleged in paragraph 1.4 of his Complaint that Defendant, TSR Hobbies, Inc., is the assignee of the rights of the Partnership and has assumed the obligations thereof. In fact, all assets, goodwill, and the trade name of the Partnership were sold to Defendant, TSR Hobbies, Inc., and the Partnership was dissolved, pursuant to a written dissolution agreement, effective November 16, 1975. Thereafter, pursuant to the Agreement, TSR Hobbies, Inc. has paid Arneson (and Gygax) royalties for sales of the game or game rules DUNGEONS & DRAGONS.

TSR continues to make 5% royalty payments to Arneson for sales of the DUNGEONS & DRAGONS game rules book included in a boxed game entitled "DUNGEONS & DRAGONS Basic Set" and for sales of the three volume set "Original DUNGEONS & DRAGONS Collector's Edition". The TSR royalty payment to Plaintiff, Arneson for sales during the 3rd quarter of 1978 was $5,759.14, and for sales during the 4th quarter of 1978, was $6,635.50.

It is believed that the basic dispute which led to this law suit relates to TSR's position that under the Agreement, Arneson is not entitled to a 5% royalty on separately developed (and at times separately priced and marketed) playing aids, (e.g., polyhedra dice set, Dungeon Geomorphs set, and Monster and Treasure Assortment set) included along with an edited DUNGEONS & DRAGONS game rules book, in a boxed game entitled "DUNGEONS & DRAGONS Basic Set". Also, TSR takes the position that Arneson is not entitled to a 5% royalty for sales of what TSR submits are separately and later developed works which relate to the original game rules DUNGEONS & DRAGONS, but which are solely authored by Defendant, Gygax, for example, a one volume work entitled "ADVANCED DUNGEONS & DRAGONS, PLAYERS HANDBOOK" and a related one volume work entitled "ADVANCED DUNGEONS & DRAGONS, MONSTER MANUAL".

Summary of Plaintiff's Alleged Causes of Action

Arneson's First Cause of Action lies in Contract and alleges that from and after the middle of 1977 Defendants have continued to publish, market and exploit "Dungeons & Dragons" but have failed and refused to pay Plaintiff royalties in accordance with the Agreement, except for certain sums paid which are less than the amounts required by the contract [Agreement]. Plaintiff alleges damage in an amount equal to one-half of ten percent (10%) of the cover price of continuing publications sold by Defendant, TSR Hobbies, Inc. The continuing publications noted by Plaintiff include a boxed game entitled "Dungeons and Dragons, Basic Set", a three-volume set denominated "Original Collector's Edition", a one-volume work entitled "Advanced Dungeons and Dragons, Players' Handbook" (hereinafter referred to as "PLAYERS

HANDBOOK"), a one-volume work entitled "Dungeons and Dragons, Monster Manual" (hereinafter referred to as "MONSTER MANUAL"), and numerous other playing aids and publications copied, derived and developed from "Dungeons and Dragons".

Plaintiff's Second, Third, and Fourth Causes of Action apparently lie in tort, and more specifically, defamation, Defendant alleging: that the above referenced PLAYERS HANDBOOK and MONSTER MANUAL are published in a form falsely represented to be solely authored by Defendant, Gygax, Defendants thereby having converted the rights of Plaintiff as the co-author of DUNGEONS & DRAGONS to receive royalties (Second Cause of Action); alleging Defendants thereby deprived Plaintiff of the valuable right to be disclosed as an author of a work to the consuming public and publishing profession (Third Cause of Action); and relating back to the Second and Third Causes of Action, alleging that Defendants will continue to publish the above noted and other works "copied in substantial part and wholly derived from DUNGEONS & DRAGONS," falsely representing that Gygax is the sole author thereof, thereby causing irreparable damage to Plaintiff's reputation as a professional author of games and games rules (Fourth Cause of Action).

Summary of Plaintiff's Requested Relief

Plaintiff has requested, inter alia, that the Court enter judgment in favor of Plaintiff and against Defendants and each of them, a sum equal to 5% of the cover price of each game or game rules set of DUNGEONS & DRAGONS and its copies, derivations and adaptations sold by Defendant, TSR Hobbies, Inc., as well as an amount exceeding $50,000 for pecuniary damages resulting from willful omission of Plaintiff's name as co-author from the PLAYERS

HANDBOOK and MONSTER MANUAL, and exemplary damages in excess of $50,000 for willful conversion of Plaintiff's rights and damage to Plaintiff's reputation in his profession.

Plaintiff has also requested the Court to enjoin and restrain Defendants, and each of them, from the further publication of "Dungeons and Dragons" or any work copied, derived or adapted therefrom, without disclosing the Plaintiff's co-authorship thereof upon the cover or box-top of such game or game rules.

Defendants' Pending Motions

Defendants have moved, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, (prior to answering Plaintiff's Complaint) for an Order Quashing Service of Process and Dismissing the Suit for Lack of Personal Jurisdiction over each of the Defendants. In the alternative, in event the Court finds that it has jurisdiction over any of the Defendants, Defendants have moved to transfer this action under 28 U.S.C. §1404 (a) to the United States District Court for the Eastern District of Wisconsin.

ARGUMENT

Defendants respectfully submit that this Court does not have personal jurisdiction over any of the Defendants with respect to any of the causes of action set forth in Plaintiff's Complaint.

I. DEFENDANTS' MOTION TO DISMISS AFTER REMOVAL IS PROPER

Defendants, by removing this case, have not waived their rights to object to jurisdiction. General Investment Co. v. Lakeshore Railway, 260 U.S. 261, 288 (1922). It is well established that if the State Court from which the case

was removed lacked personal jurisdiction over the defendants, the Federal Court to which the case is removed also lacks personal jurisdiction over the defendants. Lambert Co. v. Baltimore & Ohio Railroad Co., 258 U.S. 377, 382 (1922).

II. THE BURDEN IS UPON PLAINTIFF TO PROVE THAT THE COURT HAS JURISDICTION OVER EACH OF THE DEFENDANTS, FOR EACH ALLEGED CAUSE OF ACTION, CONSISTENT WITH DUE PROCESS

It is clear under the rules of this Circuit and the laws of Minnesota, that where the nonresident Defendant challenges the jurisdiction of the Court, the burden is upon Plaintiff to prove not only that personal jurisdiction is authorized by the terms of a Minnesota Statute, but also that minimum contacts exist rendering exercise of such jurisdiction consistent with due process. All Lease Company v. Betts, 294 Minn. 473, 199 N.W. 2d, 821 (1972). The due process question, so far as personal jurisdiction over a non-resident or foreign corporation is concerned, is a matter of Federal law, and is not governed by the law of the State Court in which the Federal Court sits. Aftanase v. Economy Baler Co., 343 F.2d 187 (8th Cir. 1965).

Furthermore, Defendant has the burden of establishing that such jurisdictional statute and due process requirements have been met with respect to each cause of action alleged in the Complaint. Plaintiff must allege and prove a nexus between each of Plaintiff's claims and Defendant's contacts with Minnesota to satisfy statutory and due process requirements. Toro Co. v. Ballas Liquidating Co., 572 F.2d 1267 (8th Cir. 1978), Tunnell v. Doegler & Kirsent Inc., 405 F.Supp. 1338 (D. Minn. 1976).

To satisfy due process concerns, this Circuit requires consideration be given to Defendant's relationship

with the forum state, including (a) the quantity of the defendant's contacts with the forum state; (b) the nature and quality of those contacts; (c) the relationship between the plaintiff's claim and the contacts; (d) the interest of the state in providing a forum for litigation; and (e) the convenience of the parties. Aftanase v. Economy Baler Co., supra.

III. MINNESOTA LONG-ARM STATUTES

The Minnesota Long-Arm Statutes which might possibly apply to one or more of the Defendants are believed to be Minn. Stat. §303.13 (1969) and §543.19 (1978). The relevant provisions of these statutes are as follows:

> §303.13 Service of process
> Subdivision 1. Foreign corporation. A foreign corporation shall be subject to service of process, as follows:
>
> * * *
>
> (3) If a foreign corporation makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if such foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota, such acts shall be deemed to be doing business in Minnesota by the foreign corporation . . .
>
> §543.19 Personal jurisdiction over nonresidents
> Subdivision 1. As to a cause of action arising from any acts enumerated in this subdivision, a court of this state with jurisdiction of the subject matter may exercise personal jurisdiction over any foreign corporation or any nonresident individual, or his personal representative, in the same manner as if it were a domestic corporation or he were a resident of this state. This section applies if, in person or through an agent, the foreign corporation or non-resident individual:
>
> (a) Owns, uses, or possesses any real or personal property situated in this state, or
>
> (b) Transacts any business within the state, or
>
> (c) Commits any act in Minnesota causing injury or property damage, or

(d) Commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found:

(1) Minnesota has no substantial interest in providing a forum; or

(2) the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice; or

(3) the cause of action lies in defamation or privacy.

IV. THE COURT LACKS PERSONAL JURISDICTION OVER EACH OF THE DEFENDANTS

The following sections will, except as noted, treat each Defendant separately, presenting arguments and authorities in support of Defendants' position that the Court lacks personal jurisdiction over each of the Defendants.

A. The Court Lacks Jurisdiction Over the Nonresident Individual Defendant, Gary Gygax.

As is supported by the affidavit of Defendant, Gygax, filed herewith, Gygax is a citizen of the State of Wisconsin, residing in Lake Geneva, Wisconsin. When served, Gygax was not present in the State of Minnesota, nor engaged in any business or any other activity whatsoever in Minnesota. Gygax has no office, no bank account, no telephone listing and no real or personal property in Minnesota. From a time prior to the formation of the Partnership, Tactical Studies Rules, (now dissolved) Gygax has traveled to Minnesota only twice, once on behalf of the corporation TSR Hobbies, Inc., to meet with Prof. M. A. R. Barker, and once accompanied by his family during a personal vacation trip.

As explained in the Introduction hereto, virtually the only (and extremely limited) contact Gygax had with

Minnesota is his entering into the Agreement in 1975 on behalf of the Partnership and himself as co-author with Plaintiff, Arneson, a Minnesota resident. To the extent that there was any negotiation between the Partnership and the authors relating to the Agreement, such negotiation occurred in Lake Geneva, Wisconsin, and the Agreement was signed by Gygax on behalf of the Partnership and himself in Wisconsin.

(1) Jurisdiction over Gygax is not conferred by Minnesota Statutes.

Plaintiff has not alleged, and Defendant Gygax does not have, contacts with Minnesota necessary for Minnesota Long-Arm Statutes to confer jurisdiction upon this Court.

In paragraph 1.5 of Plaintiff's Complaint under the heading "Jurisdiction", Plaintiff does not allege that Gygax, as an individual, has been or is now doing business or has agents in the State of Minnesota. Plaintiff does state in paragraph 1.6 of the Complaint that the causes of action arise, in part, from a contract [the Agreement] entered into in the State of Minnesota and partially performed in the State of Minnesota.

Since Minn. Stat. §303.13(3), dealing with a contract made with a resident of Minnesota, relates exclusively to foreign corporations, it is clear that jurisdiction over the individual Defendant, Gygax, can not be based on this statute. "Because Section 303.13 applies only to foreign corporations, it can not be invoked against the Partnership, nor the individual partners", Imperial Products, Inc. v. Zuro, 176 U.S.P.Q. 172, (D. Minn. 1971). See also Washington Scientific Ind., v. American Safeguard Corp., 308 F. Supp. 736, 738 (D. Minn. 1970).

The only other Minnesota Statute on which Plaintiff might possibly rely is §543.19 Subd. 1, which again does not apply. Specifically, referring to Subd. 1 (set forth in section III above) parts (a), (b), and (c) do not apply since Gygax owns no real or personal property in Minnesota, Plaintiff has not alleged that Gygax transacts, and Gygax does not transact, any business in Minnesota, and Gygax has not committed any act in Minnesota causing injury or property damage.

Part (d) relates to a nonresident committing an act outside of Minnesota causing injury or property damage in Minnesota, except that jurisdiction will not be found if . . . (3) the cause of action lies in defamation or privacy. Thus, part (d) provides no basis for conferring jurisdiction over Gygax with respect to Plaintiff's First Cause of Action which lies in contract, or the Second, Third or Fourth Causes of Action, which apparently lie in defamation, i.e., Arneson alleged that Defendants falsely represented that certain publications were solely authored by Defendant, Gygax, thereby depriving Plaintiff of a valuable right and causing irreparable damage to Plaintiff's reputation.

Since no Minnesota Statute confers jurisdiction upon this Court with respect to Gygax, Defendants' Motion to Dismiss for Lack of Jurisdiction over Gygax should be granted.

(2) Jurisdiction over Gygax is not consistent with due process.

Even if this Court were to find that a Minnesota Statute did confer jurisdiction over Gygax, it is respectfully submitted that the exercise of personal jurisdiction

over Gygax on this basis would be improper since Gygax has not had sufficient contacts with Minnesota to satisfy due process requirements. Because of Gygax's remote and limited contact with Minnesota, exercise of jurisdiction over Gygax would offend "traditional notions of fair play and substantial justice". International Shoe v. Washington, 326 U.S. 310 (1945).

The conclusion that due process requirements would be violated if jurisdiction over Gygax were exercised, is also reached following the five factor analysis ((a) - (e)) of the Eighth Circuit set forth in Aftanase, supra. Specifically, referring to these five factors, (a) Gygax at most, has only one remote contact with Minnesota, i.e., entering into the Agreement (signed by Gygax in Wisconsin in April, 1975) with Plaintiff, a resident of Minnesota. (b) Gygax, signing the Agreement on behalf of the Partnership and himself, did not avail himself of the benefits and privileges of Minnesota law. (c) Plaintiff's claims are not directly related to the act of Gygax signing or entering into the Agreement. With respect to the first contract cause of action, Plaintiff's claim arises from the alleged failure of the corporation, TSR Hobbies, Inc., (which is alleged by Plaintiff to have assumed the obligations of the Agreement), to make required royalty payments from approximately after the middle of 1977. The relationship of Gygax's signing the Agreement to Plaintiff's Second through Fourth Causes of Action, which apparently lie in defamation, is even more remote.

(d) It is conceded that Minnesota may have an interest in providing Plaintiff, a Minnesota resident, with a forum for litigation, although §543.19 subd. 1 (b) (3) indicates that the Minnesota Legislature has expressed its

intent not to provide Plaintiff with a forum for causes of action grounded in defamation, where jurisdiction is based on this Minnesota Long-Arm Statute.

(e) The convenience of the parties or forum non conveniens considerations weigh against this Court exercising jurisdiction. Specifically, as will be further discussed in Section V dealing with forum non conveniens considerations, substantially all the documentation and witnesses (except for Plaintiff Arneson) having knowledge relating to the apparent touchstone of Plaintiff's Causes of Action, (i.e., whether the alleged additional "D&D" publications are substantially copied and derived from the original game rules entitled DUNGEONS & DRAGONS) are located in Wisconsin in the Lake Geneva or Lake Geneva - Milwaukee, Wisconsin area.

Although it is submitted that the five factors (a) - (e) considered in the Eighth Circuit analysis dictate that exercise of jurisdiction over Gygax would not satisfy due process concerns, it is submitted, that in any event, exercise of jurisdiction would be improper under the rule set forth by the Supreme Court in Hanson v. Denckla, 357 U.S. 235 (1958).

As stated in Hanson v. Denckla, at 357 U.S. 235, 251 "...However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that state that are a prerequisite to exercise of power over him." It is submitted that Defendant, Gygax, has not had such "minimal contacts". Put another way, as is supported by a recent Eighth Circuit decision noted below, Plaintiff has not alleged, and Gygax has not had, minimal contacts with Minnesota sufficient to demonstrate that Gygax purposely availed himself of the privilege of conducting activities within

Minnesota, thus invoking the benefits and protections of its laws, which minimal contacts are the ultimate test or are essential before exercise of jurisdiction over Gygax would conform with due process requirements. Hanson v. Denckla, supra, Aaron Ferer & Sons Co. v. Diversified Metals Corp., 564 F.2d 1211, 1215 (8th Cir. 1977). See also Rheem Manufacturing Co. v. Johnson Heater Corp., 370 F. Supp. 806, 808 (D. Minn. 1974).

In summary, Defendants' Motion to Quash Service of Process and Dismiss for Lack of Personal Jurisdiction over Defendant Gygax should be granted, since Minnesota Statutes do not confer jurisdiction, and exercise of jurisdiction over Gygax would not be consistent with due process.

B. The Court Lacks Jurisdiction Over The Defendant Partnership, Tactical Studies Rules, (Dissolved in November, 1975)

Service of process on "Tactical Study Rules" [sic] (should be "Studies") was purportedly made in Lake Geneva, Wisconsin, by personal service on Gary Gygax, a former partner of the dissolved Partnership.

As is supported by the Affidavit of Brian J. Blume, also a former partner of the dissolved Partnership, filed herewith, during the existence of the Partnership, the Partnership had no offices, no bank account, no telephone listing, and no real or personal property in Minnesota. No business activities of any kind were carried on by the Partnership in Minneosta. At the time of service on the Partnership, as will be further explained below, the Partnership was dissolved and wound up, and was not engaged in any business or any other activity in Minnesota or elsewhere.

By way of background, the original Partnership, Tactical Studies Rules, consisted of Donald R. Kaye and E.

Gary Gygax (Gary Gygax) and was formed October 1, 1973. By amendment to the original Partnership Agreement, effective February 1, 1975, Gary Gygax, Donna Kaye (the heir of the late Donald R. Kaye) and Brian J. Blume were made full and equal partners in the Partnership.

As noted in the Introduction hereto, Gary Gygax, on behalf of the Partnership and himself, entered into the "Agreement" (Exhibit B) with co-author, Plaintiff Arneson. The authors agreed to assign to the Partnership "...the copyright, the right to publish, sell, and distribute the set of game rules or game entitled DUNGEONS & DRAGONS..." in return for the Partnership agreeing to pay the authors "...a royalty of 10% of the cover price of the game rules or game on each and every copy sold...".

To the extent there was any negotiation between the Partnership and the authors relating to the Agreement, such negotiation occurred in Lake Geneva, Wisconsin, and the Agreement was signed on behalf of the Partnership and Gary Gygax in Wisconsin.

The Partnership was dissolved effective November 16, 1975, pursuant to a written Partnership Dissolution Agreement, attached as Exhibit C to Brian Blume's Affidavit on behalf of the Partnership (hereinafter referred to as "1st Affidavit").

Pursuant to a Liquidation Sale acknowledged in the Partnership Dissolution Agreement, all assets of the Partnership, including inventory, goodwill and the trade name of the Partnership, Tactical Studies Rules, were sold and assigned to TSR Hobbies, Inc. Purchase of these assets is evidenced by a copy of a check for the full purchase price, dated September 26, 1975, from TSR Hobbies, Inc. to the Partnership. A copy of the check is attached to Brian

Blume's 1st Affidavit as Exhibit D (the copy of the check is inverted because of an error in a microfilm copy).

As will be explained below, Defendants submit that the terminated Partnership is not an entity which can be sued, or an entity over which this Court can exercise jurisdiction. Furthermore, this Court does not have jurisdiction over the terminated Partnership for substantially the same reasons as advanced with respect to the individual Defendant, Gygax.

(1) Jurisdiction over the Terminated Partnership is not Conferred by Minnesota Statutes

For the same reasons advanced with respect to Defendant, Gygax, in section A above, Plaintiff has not alleged, and the terminated Partnership did not and does not have, contacts with Minnesota necessary for a Minnesota Long-Arm Statute to confer jurisdiction over the Partnership upon this Court. In particular, Minnesota Stat. §303.13 (3) relates exclusively to foreign corporations and does not relate to partnerships. Imperial Products, Inc. v. Zuro, supra.

Also, Minnesota Stat. §543.19 Subd. 1 parts (a), (b), (c), and (d) do not apply. Specifically, the terminated Partnership never owned any real or personal property in Minnesota. Contrary to Plaintiff's allegation in paragraph 1.5 of its complaint, Defendant Partnership does not transact any business in Minnesota and has no agents in Minnesota, and the Partnership has not committed any act causing injury or property damage in Minnesota.

Finally, Defendant Partnership was terminated long before the time Plaintiff's alleged causes of action arose. Thus, Plaintiff can not satisfy its burden to prove

a nexus between each of Plaintiff's causes of action and the Defendant Partnership's acts or contacts with Minnesota, which nexus is required to confer jurisdiction under §543.19 Subd. 1. See Tunnell v. Doegler & Kirsent, Inc., 405 F.Supp. 1338 (D. Minn. 1976).

Since no Minnesota Statute confers jurisdiction upon this Court with respect to the terminated Defendant Partnership, Defendants' Motion to Dismiss for Lack of Jurisdiction over the terminated Partnership, Tactical Studies Rules, should be granted.

(2) Jurisdiction over the Partnership is not Consistent with Due Process.

Again, at least for the same reasons advanced with respect to Defendant, Gygax, even if this Court were to find that a Minnesota Statute did confer jurisdiction over the terminated Partnership, exercise of such jurisdiction would be improper since the Partnership has not had sufficient contacts with Minnesota to satisfy due process requirements. This is because the Partnership, while in existence, had the same and equally as remote a contact with Minnesota as Gygax, i.e., entering into the 1975 Agreement (signed by Gygax on behalf of the Partnership in Wisconsin) with Plaintiff Arneson, a resident of Minnesota. Thus, the conclusion that due process requirements would be violated if jurisdiction were exercised over the terminated Partnership is also reached following the five factor analysis of the Eighth Circuit set forth in the Aftanase, supra, for the same reasons as noted with respect to Defendant Gygax.

In any event, it is submitted that exercise of jurisdiction over the terminated Partnership would be improper under the rules set forth by the Supreme Court in

Hanson v. Denckla, supra. Plaintiff has not alleged, and Defendant Partnership has not had, minimal contacts with Minnesota sufficient to demonstrate that Defendant Partnership purposely availed itself of the privilege of conducting activities within Minnesota, thus invoking the benefits and protection of its laws, which minimal contacts are the ultimate test or are essential before exercise of jurisdiction over the Partnership would conform with due process requirements. Arron Fara and Sons Co. v. Diversified Metals Corp., supra, Rheem Manufacturing Co. v. Johnson Heater Corp., supra.

(3) Jurisdiction Cannot Be Obtained over A Terminated or Nonexistent Partnership.

Finally, it is submitted that exercise of jurisdiction over Defendant Partnership is impossible since the Partnership was dissolved and wound up long before Plaintiff's alleged Causes of Action arose.

At the time of the dissolution (November 16, 1975), all obligations of the Partnership under the Agreement were current. All debts of the Partnership were satisfied shortly thereafter. Liquidation and winding up of the Partnership was completed prior to the end of 1975. The final Partnership tax return for the year 1975, (which indicated the value of the remaining inventory was -0-) was filed February 2, 1976 (first page of the Final Tax Return attached to Blume's 1st Affidavit as Exhibit E).

Incident to the liquidation sale, but prior to dissolution, TSR Hobbies, Inc. purchased the entire inventory of the game rules DUNGEONS & DRAGONS from the Partnership, and assumed the obligations of the Partnership with respect to the Agreement. Immediately thereafter, pursuant

to the Agreement, TSR Hobbies, Inc. paid Arneson royalties for copies of the game rules DUNGEONS & DRAGONS sold by the corporation during the third quarter of 1975. Payment was made by check from the corporation to David L. Arneson. (A copy of the check is attached to Blume's 1st Affidavit as Exhibit F).

All subsequent sales of the game rules DUNGEONS & DRAGONS, and royalty payments due to Arneson from such sales have been made by TSR Hobbies, Inc.

Under the Uniform Partnership Act, adopted in both Wisconsin and Minnesota, a partnership ceases to exist when the winding up of the partnership affairs is completed. Minn. Stats. 329.29; Wis. Stats. 178.25. "Winding up" means the administration of assets for the purpose of terminating business and discharging the obligations of the partnership. Hurst v. Hurst, 1 Ariz. App. 227, 401 P.2d 232 (1965). Clearly such an administration of assets occurred in 1975 when the Partnership was liquidated, debts were satisfied, and the Agreement was assumed by the corporation.

The fact that the corporation honored the Agreement by making royalty payments does not negate the winding up of partnership affairs. The Partnership paid royalties on all copies which it sold and thus no liability to Arneson existed at the time of termination. All future obligations under the Agreement were incurred by the corporation for its own sales.

Moreover, even if it were contended that some existing liability prevented the winding up of the Partnership, that existing liability of the Partnership was discharged by Arneson.

Under the UPA, partners are discharged of their liability to creditors by an agreement with the creditor.

Such an agreement may be inferred from the course of dealing between a creditor with knowledge and the partnership. Minn. Stat., 323.35; Wis. Stat. 178.31. The following paragraphs of Blume's 1st Affidavit unmistakably infer that Arneson was aware of the assumption of obligation by the corporation, and looked exclusively to the corporation for payment:

> (12) Shortly after the dissolution of the Partnership and incorporation of TSR Hobbies, Inc., Arneson became a full-time employee of TSR Hobbies, Inc. Arneson's employment by the corporation extended from about the end of January, 1976, to the middle of November, 1976. Arneson was a shareholder of TSR Hobbies, Inc. and attended the shareholder's meetings in 1976 and 1977. Arneson is still a shareholder of TSR Hobbies, Inc. and attended the 1978 shareholder's meeting by proxy.
>
> (13) By virtue of his status as employee and shareholder of TSR Hobbies, Inc., and by receipt of royalty payments paid directly by the corporation TSR Hobbies, Inc., to Arneson for sales of DUNGEONS and DRAGONS, and through other personal contacts with the Partnership, Arneson was made aware of the dissolution of the Partnership and the incorporation and activities of TSR Hobbies, Inc., including the assumption of rights and obligations under the Agreement by TSR Hobbies, Inc.
>
> (14) After receiving the initial royalty check for sales of DUNGEONS & DRAGONS from TSR Hobbies, Inc., and thereafter, (prior to instituting this action) Arneson did not object to the transfer of the rights and obligations of the Agreement from the Partnership to TSR Hobbies, Inc., and Arneson did not look to the Partnership or request the Partnership (after dissolution) to make payment of royalties for sales of DUNGEONS & DRAGONS made by the corporation, TSR Hobbies, Inc.
>
> (15) All letters and demands of payment relating to the disputes on royalties due to Arneson for sale of DUNGEONS & DRAGONS have (prior to instituting this action) been directed by Arneson to the corporation, TSR Hobbies, Inc.
>
> (16) Arneson alleged in the Complaint filed herein (See Arneson's Complaint, ¶1.4) that "Plaintiff is informed and believes that Defendant, TSR Hobbies, Inc., is the assignee of the rights of the said partnership and assumed the obligations thereof."
>
> (17) Arneson alleges in his first cause of action (See Arneson's ¶1.11) that Plaintiff is informed and believes that Defendants in the above-entitled action

> paid royalties thereon to Plaintiff in accordance with the Agreement [Arneson's Exhibit A] until approximately the middle of 1977. It is not until "from and after the middle of 1977" [almost two years after dissolution and liquidation of the Partnership] that Plaintiff, Arneson, alleges Defendants failed and refused to pay Arneson royalties in accordance with the Agreement (See Arneson's ¶1.12).

In view of Arneson's knowledge of the Partnership dissolution, and acceptance of royalty payments from the corporation TSR Hobbies, Inc., any liability of the Partnership to Arneson under the Agreement was discharged. Hauge v. Bye, 51 N.D. 848, 201 N.W. 159 (1924). Therefore, there can be no claim of continuing liability. The Partnership was wound up and terminated, and thus, is not an entity capable of being sued or over which this Court has jurisdiction.

This result is further dictated by traditional notions of "fair play and substantial justice." All of the claims raised by Arneson relate to transactions occurring so long after the Partnership termination that notions of fair play prohibit exercise of jurisdiction.

Arneson's First Cause of Action is based on the Agreement, but arises only from the alleged failure of TSR Hobbies, Inc. to make royalty payments beginning in 1977, almost two years after termination of the Defendant Partnership. Arneson's Second, Third and Fourth Causes of Action do not relate to the Agreement, but instead relate to tort or defamation claims concerning works not even in existence until more than a year after termination of the Partnership.

More particularly, Arneson's Second, Third, and Fourth Causes of Action specifically relate to works entitled ADVANCED DUNGEONS & DRAGONS, PLAYERS HANDBOOK ("PLAYERS HANDBOOK"), and ADVANCED DUNGEONS & DRAGONS, MONSTER MANUAL ("MONSTER MANUAL"), which are alleged to be "copied in substantial part and wholly derived from the original work

entitled DUNGEONS and DRAGONS" (See Arneson's ¶2.2). Also, Arneson alleges that Defendants, "individually and acting in concert", have caused the PLAYERS HANDBOOK and MONSTER MANUAL to be published in a form falsely represented to be solely authored by Gygax (See Arneson's ¶2.3).

The MONSTER MANUAL (copyright 1977) and the PLAYERS HANDBOOK (copyright 1978) were not in existence until more than a year after termination of the Partnership. (Copies of the title pages of the MONSTER MANUAL and PLAYERS HANDBOOK attached to Blume's 1st Affidavit as Exhibits G and H, respectively).

Surely a lawfully terminated Partnership cannot be revived by Plaintiff to answer for independent acts occurring years after termination. Since Arneson's claims relate to transactions occurring substantially after termination of the Partnership, fair play and substantial justice dictate that personal jurisdiction not be exercised over the Partnership.

Defendants' Motion to Dismiss with respect to the terminated Partnership is far from academic. In view of the remote contacts with Minnesota, neither Defendant Partnership, (nor Defendant Gygax) should be subject to personal liability resulting from this action being brought in a Minnesota court. As noted earlier, Plaintiff has requested judgment against "Defendants and each of them" in excess of Fifty Thousand Dollars ($50,000) for pecuniary damages, and in excess of Fifty Thousand Dollars ($50,000) for punitive damages. Plaintiff also requested injunctive relief restraining Defendants and each of them from the further publication of DUNGEONS & DRAGONS or any work copies, derived or adapted therefrom, without disclosing Plaintiff as co-author. Exercise of jurisdiction and exposure of the

Defendant Partnership and Defendant Gygax to such liability, in view of these Defendants' extremely remote contacts with Minnesota, would be, it is submitted, a classic example of exercise of jurisdiction which offends "traditional notions of fair play and substantial justice". International Shoe v. Washington, supra.

In summary, the Motion to Quash Service of Process and Dismiss for Lack of Personal Jurisdiction over Defendant Partnership, Tactical Studies Rules, should be granted. The Minnesota Statutes offer no basis for jurisdiction, based on the lack of contacts with that State. Clearly, any exercise of jurisdiction over the Partnership would be inconsistent with due process. Further, Defendants' Motion should be granted since the Partnership itself is terminated or nonexistent and thus, with respect to each of Plaintiff's alleged causes of actions, the Partnership is not an entity over which this Court has jurisdiction.

C. The Court Lacks Jurisdiction Over The Defendant Corporation, TSR Hobbies, Inc.

Service of process on TSR Hobbies, Inc. was purportedly make in Lake Geneva, Wisconsin, by personal service and delivery of a Summons and Complaint delivered to Gary Gygax, President of TSR Hobbies, Inc., and a Defendant herein.

As is supported by the second affidavit of Brian J. Blume, ("2nd Affidavit") on behalf of the corporation, "TSR" was incorporated as a Wisconsin corporation July 19, 1975, and has always had its principal place of business in Lake Geneva, Wisconsin. TSR's activities generally include the publication and sale of games or game rules, and also publication of periodical magazines, for example, THE

DRAGON, which includes articles of interest to gaming hobbyists. TSR also sells various accessories and game playing aids for its games.

As noted in the section B above, TSR Hobbies, Inc. purchased all assets of the Partnership on September 26, 1975, acquiring the rights and assuming the obligations of the Agreement entered into by the Partnership with co-authors Gygax and the Plaintiff, Arneson.

Royalty payments for sales of the game rules DUNGEONS & DRAGONS have been made by checks written in Wisconsin and mailed to Plaintiff, Arneson, the first check being dated October 21, 1975. TSR continues to make royalty payments to Arneson for sales of the DUNGEONS & DRAGONS game rules book included in a boxed game entitled "DUNGEONS & DRAGONS Basic Set" and for sales of a three volume set entitled "Original DUNGEONS & DRAGONS, Collector's Edition". TSR royalty payments to Arneson for these sales during the 3rd and 4th quarters of 1978, amounted to $5,759.14, and $6,635.50, respectively.

(1) Summary of TSR's Contacts with Minnesota.

The only TSR products shipped into Minnesota are in response to orders and payments sent directly from consumers in Minnesota to TSR Hobbies, Inc. at Lake Geneva, or in response to orders sent from a small number of retailers in Minnesota (usually no more than five) to TSR or to distributors of TSR products located outside of Minnesota. Also, a small number of TSR periodicals (on the order of fifty to a hundred) are mailed into Minnesota pursuant to subscription orders received by TSR at Lake Geneva.

Since TSR Hobbies, Inc. was incorporated in 1975, sales of all TSR products shipped into Minnesota by TSR have

never exceeded Fifty-Five Hundred Dollars ($5,500.00) a year, and such sales have always constituted a very small fraction, or less than .7%, of total TSR sales for a given fiscal year. Total sales of TSR products in Minnesota since incorporation of TSR are believed to be less than Twelve Thousand Dollars ($12,000.00).

TSR recently made an arrangement (effective the end of January, 1979) with an individual (Rick Meinece, residing in St. Louis Park, Minn.) to act in a capacity as a TSR manufacturer's Rep., to be paid on a commission basis for TSR products sold in a territory including Minnesota and North and South Dakota. As of the date of service of the Complaint herein, no commission was due to the Rep. for sales of any TSR products shipped into Minnesota, and no written contract between TSR and the Rep. has been entered into.

One TSR employee officially represented TSR and attended a trade show in Rochester, Minnesota during a single weekend in 1976 and again in 1978, and sales of TSR products at either of these shows are believed to be less than Five Hundred Dollars ($500.00).

(2) Jurisdiction over TSR Hobbies, Inc. is not conferred by Minnesota Statutes

Plaintiff has alleged in paragraphs 1.5 and 1.6 of the Complaint that Defendant, Tactical Studies Rules, and Defendant, TSR Hobbies, Inc., have been and are now doing business and have agents in the state of Minnesota and have entered into a contract with Plaintiff, a Minnesota resident. Plaintiff also alleges that the causes of action arise, in part, from a contract [the Agreement] entered into in the state of Minnesota and partially performed in the state of Minnesota.

Minn. Stat. §303.13

With respect to Minnesota Stat. §303.13 (3), TSR Hobbies, Inc. did not make the contract or enter into the Agreement with Arneson, but acquired the rights and assumed the obligations of the Agreement by purchase of all the assets of the now terminated Partnership, Tactical Studies Rules. Thus, §303.13 (3) does not apply.

Furthermore, although Plaintiff has alleged in conclusory terms, that the Agreement or contract was entered into in the state of Minnesota and partially performed in the state of Minnesota, Plaintiff has alleged no facts which support such allegations. Defendants submit that by the terms of the Agreement, the only performance required after making of the contract was the Partnership and now TSR Hobbies, Inc., paying the authors a royalty of 10% for the DUNGEONS and DRAGONS game rules sold. All such performance occurred in Wisconsin where the royalty payment checks were written, and then mailed to Arneson. Thus, since there was no performance of the Agreement in Minnesota, §303.13 (3) can not confer jurisdiction over TSR Hobbies, Inc.

Plaintiff has not alleged that Defendant, TSR Hobbies, Inc. has committed a tort in whole or in part in Minnesota. It is submitted the "tort in Minnesota" requirement of §303.13 (3) does not apply since no tort against Plaintiff has been committed by TSR Hobbies, Inc. in Minnesota.

In summary, since Defendant, TSR Hobbies, Inc., did not "make a contract" or directly enter into an Agreement with Plaintiff, and since the Agreement, after making of the contract, was not performed in whole or in part in Minnesota, and since TSR has not committed a tort against

Plaintiff in Minnesota, jurisdiction over Defendant, TSR Hobbies, Inc., is not conferred by §303.13 (3).

Minn. Stat. §543.19

The only other Minnesota Statute which might be applicable is believed to be §543.19 Subd. 1 which again, it is submitted, does not apply. Specifically, as noted with respect to Defendant, Gygax, and the Defendant Partnership, Subd. 1, parts (a) and (c) do not apply since TSR Hobbies, Inc. owns no real or personal property in Minnesota, and has not committed any act in Minnesota causing injury or property damage. Part (d) can not apply to confer jurisdiction over TSR Hobbies, Inc. since, as noted earlier, Plaintiff's First Cause of Action lies in contract, and Plaintiff's Second through Fourth Causes of Action lie in defamation.

Plaintiff has alleged TSR Hobbies, Inc., has been and now is doing business in the state of Minnesota, but it is submitted that part (b) relating to "transacting any business within the state" does not confer jurisdiction over Defendant, TSR Hobbies, Inc.. This is because Plaintiff has not alleged and can not prove a nexus between the contacts of TSR with Minnesota, and Plaintiff's Causes of Action. Specifically, it has been held that proof of such a nexus is an expressed statutory requirement under Subd. 1, of §543.19, that statute referring to "a cause of action arising from any of the acts enumerated in Subdivision 1". Tunnell v. Doelger & Kirsent, Inc., supra.

Since a nexus between TSR's contacts with Minnesota and Plaintiffs causes of action does not exist, it is submitted that §543.19 Subd. 1 does not confer jurisdiction over Defendant TSR Hobbies, Inc.

(3) Jurisdiction Over Defendant, TSR Hobbies, Inc., Is Not Consistent With Due Process.

Because the contacts of TSR Hobbies, Inc. with Minnesota are extremely limited, and at most, remotely connected to Plaintiff's Causes of Action, exercise of jurisdiction over TSR Hobbies, Inc. would "offend traditional notions of fair play and substantial justice". International Shoe v. Washington, supra.

The conclusion that due process requirements would be violated if jurisdiction were exercised is also reached following the five factor ((a) - (e)) analysis of the Eighth Circuit set forth in Aftanase, Supra. Specifically, (a) the quantity of contacts that TSR has with Minnesota is extremely limited. TSR Hobbies, Inc. has no office, no bank account, no telephone listing, no employee and no real or personal property in Minnesota. (b) As to "nature and quality of the contacts", the only direct contacts of TSR in Minnesota are the official attendance of one TSR employee at two weekend tradeshows and the recent arrangement with an individual to act as a TSR manufacturer's Rep. in a territory including Minnesota, and North and South Dakota. There were no TSR product sales as a result of the Rep. prior to commencement of this Action. Otherwise, all TSR's limited contacts with Minnesota result from products or publications shipped into Minnesota in response to orders and payments sent directly from consumers or from a small number of retailers in Minnesota, to TSR Hobbies, Inc. in Lake Geneva, Wisconsin.

Total sales of TSR products in Minnesota are believed to be less than $12,000, since TSR's incorporation in 1975. These sales have resulted, in substantial part, from publication and mailing of game rules and periodicals into Minnesota. It is submitted that the great weight of

authority supports Defendants' position that TSR Hobbies, Inc., which operates primarily as a publisher of game rules and periodicals, is not doing business within a State (Minnesota) so as to be subject to service of process and suit therein, merely because its games or periodicals circulate in that state through sales by mailings from out of state to in-state customers and subscribers. See DeNucci v. Fleischer, 225 F. Supp. 935 (D. Mass. 1964), and Insull v. New York World-Telegram Corporation, 172 F. Supp. 615 (N.D. Ill. 1969).

TSR's only other attenuated contact with Minnesota results from the purchase in Wisconsin of all the assets of the Wisconsin Partnership, including the rights and assuming the obligations of the Agreement with Plaintiff, a Minnesota resident. It is submitted that by purchase of such Partnership assets in Wisconsin, TSR did not "avail itself of the benefits and privileges of Minnesota law", sufficient to empower exercise of jurisdiction over TSR consistent with due process, Hanson v. Denckla, supra.

With respect to the factor "(c)" of the Eighth Circuit test, the relationship between Plaintiff's Causes of Action and TSR's contacts with Minnesota are, at most, remotely connected. The Eighth Circuit requires Plaintiff to allege a nexus between Plaintiff's claim and Defendant's contacts with Minnesota to satisfy due process. It is submitted that Plaintiff has not alleged such an nexus, and in fact, Plaintiff's Causes of Action are too remotely connected to Defendant's limited contacts with Minnesota for exercise of jurisdiction to satisfy due process. Toro Co. v. Ballas Liquidating Co., 572 F.2d 1267 (8th Cir. 1978).

Specifically, Plaintiff's First Cause of Action arising from the alleged failure of TSR Hobbies, Inc. to

make required royalty payments under the Agreement, has virtually no connection to the extremely limited sales of TSR products in Minnesota, or any other TSR contacts with Minnesota. Similarly, TSR's limited sales of published games and other related products in Minnesota are not connected with Plaintiff's Second through Fourth Causes of Action, which are grounded in defamation. See Insull v. New York World-Telegram Corporation, supra.

It is conceded that Minnesota may have an interest in providing Plaintiff with a forum for litigation under factor (d) of the Eight Circuit test. It is submitted, however, that the last factor to be considered (e) "the convenience of the parties" and related forum non conveniens considerations, weigh heavily against this Court exercising jurisdiction over Defendant, TSR Hobbies, Inc., or over the other Defendants herein, as will be explained in section V, below.

In summary, Defendants' Motion to Quash Service of Process and Dismiss for Lack of Personal Jurisdiction over Defendant, TSR Hobbies, Inc., should be granted, since Minnesota Statutes do not confer jurisdiction, and exercise of jurisdiction would not be consistent with due process.

V. This Court Should Not Exercise Jurisdiction Over Any Of Defendants Based On Forum Non Conveniens Considerations

It is well established that Minnesota and 8th Circuit courts can consider forum non conveniens consideration in considering whether to exercise jurisdiction over a Defendant. Houston v. Fehr Bros., Inc., 584 F. 2d 833 (8th Cir. 1978), Fourth Northwestern National Bank v. Hillson Industries, 264 Minn. 110, 117 N.W. 2d 732 (1962).

As stated by the Minnesota Supreme Court in the Fourth Northwestern National Bank case, supra, at 117 N.W. 2d 736.

> "One other important factor in deciding whether a nonresident corporation is amenable to process under a statute such as ours [§303.13] is the rule governing forum non conveniens."

As stated by the Eighth Circuit Appeals Court in Houston v. Fehr Bros. Inc., supra. at 837, "'Whatever will support the plea [of forum non conveniens] will excuse the corporation from defending * * *,' and can be considered in determining whether jurisdiction should be exercised," the Court citing an earlier 2nd Circuit decision.

In this action, every one of Plaintiff's Causes of Action relies upon an allegation that the one volume work ADVANCED DUNGEONS & DRAGONS, PLAYERS HANDBOOK and the one volume work ADVANCED DUNGEONS & DRAGONS, MONSTER MANUAL, and other publications, are works "derived and developed" from the original game rules DUNGEONS & DRAGONS, or are works "copied in substantial part and wholly derived" from the original work DUNGEONS & DRAGONS.

As is supported by Blume's 2nd affidavit on behalf of the corporation, substantial amounts of compensated TSR staff time, literally thousands of hours, has been expended, both by Defendant, Gygax, and by other TSR employees, in the design, development and preparation of "D&D" publications in issue. These D&D publications include the PLAYERS HANDBOOK and MONSTER MANUAL, as well as other publications which TSR submits have been separately developed and authored, but which relate to the original game rules entitled DUNGEONS & DRAGONS. Plaintiff, Arneson claims the sales of such D&D publications entitle him to royalty payments under the Agreement.

At least seven TSR employees, all located in Lake Geneva, Wisconsin, (identified in Blume's 2nd Affidavit) have actually participated in and have personal knowledge of the design, development and preparation of the above referenced

D&D publications. Also, other individuals residing in Wisconsin in the Lake Geneva area, not employees of TSR, (two listed in Blume's 2nd Affidavit) have knowledge of the development of these publications. Further, all the documentation relating to design and development, and to the physical preparation of the above referenced D&D publications, is located at TSR's place of business in Lake Geneva, Wisconsin. These Witnesses and Documents are crucial to the factual dispute of whether the "D&D" publications have been "copied is substantial part and wholly derived" from the original game rules DUNGEONS & DRAGONS.

The only connection of this action to Minnesota is that the Plaintiff, Arneson, lives there, whereas, as noted above, Defendants and virtually all the potential witnesses, as well as virtually all the documents or physical proof relating to design and development of the D&D publications in issue, are located in Wisconsin. Thus, even if this Court finds that it could otherwise exercise jurisdiction over Defendants under Minnesota Long-Arm Statutes, consistent with due process, it is submitted that the Court, on the basis of forum non conveniens considerations, should hold that jurisdiction over the Defendants not be exercised.

VI. Defendants Alternate Motion To Transfer Under 28 U.S.C. §1404 (a)

If the Court finds that it has jurisdiction over any of the Defendants, it is respectfully submitted that this Court, in its discretion, should transfer this action with respect to such Defendants to the United States District Court for the Eastern District of Wisconsin, for the convenience of the parties and witnesses and in the interest of justice.

Section 1404 (a) of Title 28 U.S.C., authorizes a District Court to transfer a civil action to any other district where it might have been brought "[f]or the convenience of parties and witnesses, in the interest of justice." A motion pursuant to §1404 (a) is committed to the sound discretion of the district court judge and is a motion "peculiarly for the exercise of judgment by those in daily proximity to these delicate problems of trail litigation." Lykes Bros. S.S. Co. v. Sugarman, 272 F.2d 679, 680 (2d. Cir. 1959). Defendants assert that a §1404 (a) transfer should be ordered, if jurisdiction over any of the Defendants is found.

(1) This Action could have been brought in Eastern District of Wisconsin

Plaintiff, a Minnesota citizen, could have brought this action under 28 U.S.C. §1332, in the Eastern District of Wisconsin, wherein the Defendants Gygax and TSR Hobbies, Inc. are citizens and reside. The amount in controversy exceeds $10,000.

(2) The Convenience of the Parties and Witnesses Supports a Motion to Transfer

As discussed in the forum non conveniens section above, virtually all the potential witnesses (nine identified in Blume's 2nd Affidavit) as well as the documents relating to Plaintiff's alleged claim that the above referrenced "D&D" publication are substantially copied and wholly derived from the original game rules DUNGEONS & DRAGONS, are located in Wisconsin in the Lake Geneva - Milwaukee area. The Court in the Eastern District of Wisconsin sits in Milwaukee, located about 50 miles from Lake Geneva, Wisconsin. Thus, it is submitted that the Eastern District of

Wisconsin is the most convenient forum for the parties and potential witnesses in this action.

(3) Plaintiff's Choice of Forum is no Longer Entitled to Great Weight.

As stated in Medtronic Inc. v. American Optical Corporation, 337 F. Supp. 490, 497 (D. Minn. 1971), "In light of the Supreme Court's decision in Norwood [Norwood v. Kirkpatrick, 349 U.S. 29 (1959)] it is now clear that a plaintiff's choice of forum is no longer entitled to the great weight given it under the doctrine of forum non conveniens, and is simply one factor to be considered." The rule that Plaintiff's choice of forum is no longer entitled to great weight was envolved by the Supreme Court in Norwood, supra. when it stated, "The harshest result of the application of the old doctrine of forum non conveniens, dismissal of the action, was eliminated by provision in §1404 (a) for transfer."

(4) The Interests of Justice Compel a Transfer

In addition to considering the convenience of the parties and witnesses, a third factor determining whether a transfer under §1404 (a) is proper is the "interest of justice". A typical factor to be considered is the relative ability of the parties to bear the expense of litigating in the different forums. In this case, since the Eastern District of Wisconsin is not located a great distance away from Plaintiffs residence, transfer would not be a significant burden on Plaintiff. In fact, it is submitted that since substantially all the witnesses and documents relating to the development of the "D&D" publications in dispute are located in Lake Geneva, the expense for

Plaintiff would not be greatly increased by transfer to the Eastern District of Wisconsin. On the other hand, there is no question but that the Eastern District of Wisconsin is a more convenient and less expensive forum for Defendants, particularly with respect to the potential trail witnesses, many of whom are employees of Defendant, TSR Hobbies, Inc.

Thus, in this case, it is submitted that the interest of justice is coincident with the convenience of the parties and witnesses, and as discussed earlier, the balance of convenience weighs sufficiently in Defendants' favor to warrant transfer of this action. See, for example, First National Bank of Minneapolis v. White, 420 F. Supp. 1331, 1337 (1976) wherein the Court stated:

> In this case, the force of numbers would weigh on the side of transfer, for defendants and witnesses who are permanently located in or near the transferee froum far outnumber the plaintiff and any Minnesota-based witnesses (indeed, plaintiff does not claim that there will be any significant number of local witnesses).

In summary, if the Court finds that it has jurisdiction over any of the Defendants, then with respect to such Defendants, it is submitted that for the convenience of the parties and the witnesses, this action be transferred to the Eastern District of Wisconsin.

VII. Conclusion

Any Plaintiff, when challenged, has the burden to prove that it has obtained in personam jurisdiction. Plaintiff has not and can not meet that burden in this case.

Defendants' Motion for an Order Quashing Service of Process and Dismissing this Suit for Lack of Personal Jurisdiction over each of Defendants should be granted. In the alternative, if the Court finds that it has jurisdiction over any of the Defendants, then with respect to such Defen-

dants, this action should be transferred under 28 U.S.C. §1404 (a) to the Eastern District of Wisconsin.

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Dated: April 28, 1979

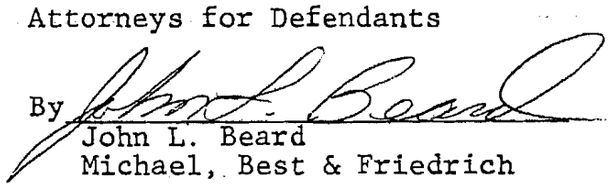
By 
John L. Beard
Michael, Best & Friedrich

EXHIBIT B

AGREEMENT

To take effect as of 1 April 1975, item 4. below notwithstanding.

THIS AGREEMENT is made between the the Author(s) specified hereafter and Tactical Studies Rules, 542 Sage Street, Lake Geneva, WI 53147, hereafter called TSR.

Author(s): Gary Gygax, 330 Center St., La.,Geneva, WI

Dave Arneson, 1496 Hartford Ave, St. Paul, MN

1. The Author(s) hereby agree to assign to TSR the copyright, the right to publish, sell, and distribute, the set of game rules or game entitled DUNGEONS & DRAGONS, in any form TSR deems suitable for commercial sales, as well as any other similar rights.

2. TSR hereby agrees to pay the Author(s) a royalty of TEN PERCENT (10 %)of the cover price of the game rules or game on each and every copy sold; this royalty to be payable on a quarterly basis reported within 30 days after the end of each quarter, with quarters ending 31 March, 30 June, 30 September and 31 December of each year.

3. TSR also hereby agrees that the ownership of the copyright mentioned above shall revert to the Author(s) not more than 90 days after the set of game rules or game is no longer maintained in-print.

4. This Agreement shall not be considered a valid contract until all parties concerned have signed and dated the contract, but upon so signing the contract shall take effect on a retroactive basis from the date of publication of the set of game rules or game.

TACTICAL STUDIES RULES

E Gary Gygax — 7 April 1975

E. Gary Gygax, Editor

Gary Gygax — 7 April 1975

Gary Gygax

Dave Arneson — 14-4-75

Dave Arneson

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

DAVID L. ARNESON,

Plaintiff,

vs.

GARY GYGAX, TACTICAL STUDY RULES, a partnership consisting of Gary Gygax and Brian Blume, and TSR HOBBIES, INC., a corporation,

Civil Action No. 4-79-109

PLAINTIFF'S MEMORANDUM

IN OPPOSITION TO DEFENDANTS' MOTION TO QUASH SERVICE OF PROCESS AND DISMISS FOR LACK OF PERSONAL JURISDICTION, AND

IN OPPOSITION TO DEFENDANTS' ALTERNATE MOTION TO TRANSFER UNDER 28 U.S.C. § 1404 (a)

STATEMENT OF FACTS

The facts of this case are not complicated. In 1973 and 1974, Plaintiff David L. Arneson and Defendant Gary Gygax co-authored a game together called "Dungeons & Dragons". The two co-authors entered into an agreement with Defendant Tactical Studies Rules, a partnership of Defendant Gygax, Brian Blume and Donna Kaye, which allowed Defendant Tactical Studies Rules to publish, sell and distribute the game or game rules entitled "Dungeons & Dragons" in any form that Tactical Studies Rules deemed suitable for commercial sales. In return, Plaintiff and his co-author, Defendant Gygax, were to receive a royalty of ten percent (10%) of the cover price of the game or game rules on each and every copy sold by Tactical Studies Rules. The co-authors by agreement were to split said royalties equally; each receiving five percent (5%) of the cover price of the game or game rules sold. A copy of said agreement is attached hereto as Exhibit "A".

In 1975, Defendant Tactical Studies Rules incorporated itself as Defendant TSR Hobbies, Inc. All rights and obligations of the partnership under the above-referenced agreement were transferred to the successor corporation, and Defendant TSR Hobbies, Inc. has marketed the game and paid Plaintiff royalties for sales thereof since 1975. Sales of the game have grown, and there were no problems until approximately the fall of 1977, when Plaintiff learned that

Defendant TSR Hobbies, Inc. was marketing a repackaged version of the game "Dungeons & Dragons" as "Dungeons & Dragons, Basic Set" without paying Plaintiff five percent (5%) of the cover price of the repackaged game as required by the agreement. Plaintiff has protested this breach of the agreement to Defendant TSR Hobbies, Inc., but has not yet obtained relief.

Then in 1977 or 1978, Defendant TSR Hobbies, Inc. began marketing two new publications entitled "Advanced Dungeons & Dragons, Monster Manual" and "Advanced Dungeons & Dragons, Players' Handbook" which purport to be original works written solely by Defendant Gary Gygax, President of Defendant TSR Hobbies, Inc. These works are copied in substantial part and wholly derived from the original work "Dungeons & Dragons", but despite repeated demands by Plaintiff, Defendant TSR Hobbies, Inc. has refused to pay Plaintiff any royalties for sales of either the "Monster Manual" or the "Players' Handbook".

As a result, Plaintiff was forced to commence the present action. As stated in Defendants' Memorandum, Plaintiff's First Cause of Action lies in contract and alleges in essence that from and after the middle of 1977, Defendants have continued to publish, market and exploit "Dungeons & Dragons" but have failed and refused to pay Plaintiff royalties in accordance with the agreement, except for certain sums paid which are less than the amounts required by the agreement. Plaintiff's Second, Third and Fourth Causes of Action lie in tort but not in defamation as asserted by Defendants in their memorandum.

Plaintiff's Second Cause of Action alleges that the Defendants have caused the "Players' Handbook" and "Monster Manual" (which are copied in substantial part and are wholly derived from the original work entitled "Dungeons & Dragons") to be published in a form falsely represented to be solely authored by Defendant Gygax and have converted, taken and stolen the rights of Plaintiff as the co-author of "Dungeons & Dragons" to receive royalties for his work. This cause of action clearly lies in the tort of conversion. While Plaintiff granted Defendants the right to exploit his work, this right was conditioned on the payment of royalties. Defendants have exceeded the authorized use of Plaintiff's work to his damage and a cause of action for conversion has been stated. See Restatement, Second, Torts, §§ 228 and 242.

Plaintiff's Third and Fourth Causes of Action allege that Defendants have willfully and wrongfully deprived Plaintiff of the commercially and artistically valuable right to be identified as the author of "Dungeons & Dragons" in its original form and in the various republications and adaptions thereof such as the "Players' Handbook" and "Monster Manual", all to Plaintiff's pecuniary damage, and that the continued false representation that Defendant Gygax is the sole author thereof will irreparably damage Plaintiff's reputation as a professional author of games and game rules. These causes of action lie in the tort of injurious falsehood. See Restatement, Second, Torts § 623A. The tort of injurious falsehood is a distinct tort from the tort of defamation which requires a false and defamatory statement concerning another. Plaintiff is not alleging that Defendants have said anything false and defamatory about him, but rather that they have willfully and wrongfully failed to communicate that he is a co-author of the works in question.

PROCEDURAL HISTORY

On February 12, 1979, Plaintiff commenced this action in Minnesota District Court, County of Hennepin, Fourth Judicial District by personal service of the Summons and Complaint on Gary Gygax in Lake Geneva, Wisconsin as an individual Defendant, as a partner of Defendant Tactical Studies Rules and as President of Defendant TSR Hobbies, Inc.; the case was removed to this Court by Defendants, March 12, 1979.

Defendants have now moved, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure for an Order Quashing Service of Process and Dismissing the Suit for Lack of Personal Jurisdiction Over Each of the Defendants. In the alternative, in event the Court finds that it has jurisdiction over any of the Defendants, Defendants have moved to transfer this action under 28 U.S.C. § 1404 (a) to the United States District Court for the Eastern District of Wisconsin. Plaintiff opposes both alternative motions.

ISSUES

I. DOES THIS COURT LACK JURISDICTION OVER THE PERSONS OF DEFENDANTS GARY GYGAX, TACTICAL STUDIES RULES AND TSR HOBBIES, INC.?

II. IF THIS COURT HAS JURISDICTION OVER THE NAMED DEFENDANTS, SHOULD

THIS ACTION BE TRANSFERRED TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN PURSUANT TO 28 U.S.C. § 1404 (a)?

ARGUMENT OF LAW AND FACTS

I. THIS COURT MAY EXERCISE PERSONAL JURISDICTION OVER DEFENDANTS GYGAX AND TSR HOBBIES, INC. PURSUANT TO MINN. STAT. §§ 303.12 AND 543.19.

Plaintiff agrees that this Court lacks jurisdiction over the partnership, Defendant Tactical Studies Rules, based on the facts stated in the Affidavit of Brian J. Blume. While Plaintiff believes that the partnership had significant contacts with the State of Minnesota, he agrees with Defendants' analysis of the impact of Minn. Stat. § 323.35 and Wis. Stat. § 178.31 on Plaintiff's contractual claim against the partnership, and has no knowledge that any tortious acts such as are alleged in Plaintiff's Second, Third and Fourth Causes of Action were committed prior to the partnership's dissolution. This Court may properly exercise personal jurisdiction over Defendant Gygax and TSR Hobbies, Inc., however.

A. This Court has Jurisdiction Over the Defendant TSR Hobbies, Inc.

TSR Hobbies, Inc. is a Wisconsin corporation with its principal place of business in Wisconsin. Two Minnesota Statutes provide the authority for the Court to exercise jursidction over this non-resident corporation, Minn. Stat. §§ 303.12 and 543.19. The relevant provisions of these statutes are as follows:

> "§303.13 Service of Process
> Subdivision 1. Foreign corporation. A foreign corporation shall be subject to service of process, as follows:
>
> * * *
>
> (3) If a foreign corporation makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if such foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota, such acts shall be deemed to be doing business in Minnesota by the foreign corporation . . ."

"§543.19 Personal Jurisdiction Over Nonresidents

Subdivision 1. As to a cause of action arising from any acts enumerated in this subdivision, a court of this state with jurisdiction of the subject matter may exercise personal jurisdiction over any foreign corporation or any non-resident individual, or his personal representative, in the same manner as if it were a domestic corporation or he were a resident of this state. This section applies if, in person or through an agent, the foreign corporation or non-resident individual:

(a) Owns, uses or possesses any real or personal property situated in this state, or

(b) Transacts any business within the state, or

(c) Commits any act in Minnesota causing injury or property damage, or

(d) Commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found:

(1) Minnesota has no substantial interest in providing a forum; or

(2) The burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice; or

(3) The cause of action lies in defamation or privacy.

As stated by this Court in Dotterweich v. Yamaha International Corporation, 416 F. Supp. 542, 544 (1976), the determination of whether this Court can assert personal jurisdiction over foreign corporations turns on two considerations:

"(1) 'What Minnesota has established as the limits of its jurisdiction over foreign corporations under its statute;' and

(2) 'If these limitations do not exclude the present suit, whether its inclusion complies with due process under the Fourteenth Amendment.'"

Regarding the limits which Minnesota has established for jurisdiction over foreign corporations under its statute, it has been repeatedly said that Minnesota's Long-Arm Statutes, Minn. Stat. §§ 303.13 and 543.19, authorize the assertion of jurisdiction over foreign corporations to the fullest extent allowed by constitutional due process. Toro Company v. Ballas Liquidating Co., 572 F2d 1267 (1978).

The facts of this case as set forth in the various affidavits makes clear that Defendant TSR Hobbies, Inc. made a contract required by Minn. Stat. § 303.13 with Plaintiff, a resident of Minnesota, when it assumed the rights and obligations of Tactical Studies Rule's agreement with Plaintiff by operation of Minn. Stat. § 323.35 and Wis. Stat. § 178.31. Said agreement clearly contemplated that royalties payments would be made to Plaintiff in the State of Minnesota. As stated in American Pollution Prevention Company, Inc. v. National Alfalfa Dehydrating and Milling Company, 304 Minn. 191, 230 N.W. 2d. 63, certiorari denied 96 S.Ct. 193, 423 U.S. 894, 46 L.Ed. 126 (1975), if all payments were to be made in Minnesota, then the agreement was to be performed in part here and, as such, fell within the reach of the statute if there is sufficient minimum contacts with this jurisdiction to meet due process requirements. It is also submitted that each time that Defendant TSR Hobbies, Inc. sells "Monster Manual" or "Players' Handbook" in the State of Minnesota, it commits one or both of the torts alleged in Plaintiff's Second, Third and Fourth Causes of Action in whole or in part in Minnesota. Thus, the acts of Defendant TSR Hobbies, Inc. as alleged in Plaintiff's Complaint clearly fall within the reach of Minn. Stat. § 303.13.

Similarly, Plaintiff's causes of action arises from several of the acts enumerated in Minn. Stat. § 543.19, to-wit:

1. § 543.19, Subdivision 1(b) - TSR Hobbies, Inc. transacts business within the state. As will be discussed in more detail below, TSR Hobbies has signed a number of contracts with Minnesota authors, has actively solicited sales and outlets of TSR products, and has substantial sales in the State of Minnesota.
2. § 543.19, Subdivision 1(c) - TSR Hobbies, Inc. causes injury to Plaintiff each time it sells works such as "Monster Manual" or "Players' Handbook" in the State of Minnesota without paying royalties or acknowledging Plaintiff's co-authorship of these works.
3. § 543.19, Subdivision 1(d) - TSR Hobbies, Inc. also causes injury to Plaintiff in Minnesota each time it sells works such as "Monster Manual" or "Players' Handbook" in other states

and overseas without paying royalties or acknowledging Plaintiff's co-authorship of these works. It should again be noted that Plaintiff's causes of action in tort do not lie in defamation as asserted by Defendants, but rather in conversion and injurious falsehood.

Defendant TSR Hobbies, Inc. admits that it has transacted business in Minnesota, but argues that there is no nexus between the sales activity of TSR Hobbies, Inc. in Minnesota and Plaintiff's causes of action as required by Minn. Stat. § 543.19. This argument fails, because there is a very clear nexus between Defendant TSR Hobbies, Inc.'s activities in Minnesota and Plaintiff's causes of action. Each time, Defendant TSR Hobbies, Inc. sells works such as "Monster Manual" and "Players' Handbook" in the State of Minnesota, without paying royalties to Plaintiff, it breaches its agreement with Plaintiff as alleged in Plaintiff's First Cause of Action. There is a similar nexus between said Defendants' sales activity in Minnesota and the tort allegations contained in Plaintiff's other causes of action.

While the language of Minn. Stat. §§ 303.13 and 543.19 clearly would include the present suit, it is also necessary to consider whether Defendant TSR Hobbies, Inc.'s activities in the State of Minnesota are such as to make it reasonable "to require the corporation to defend the particular suit which is brought there". International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L. Ed. 95 (1945); Shaffer v. Heitner, 433 U.S. 186, 97 S.Ct. 2569, 53 L. Ed. 2d. 683 (1977). The Eighth Circuit has considered five factors as being especially significant in evaluating the exercise of personal jurisdiction in a given situation: (1) the quantity of the defendant's contacts with the forum state, (2) the nature and quality of those contacts, (3) the relationship between the cause of action and the contacts, (4) the interest of the state in providing a forum for the litigation, and (5) the convenience of the parties. Toro Company, supra, at page 1270.

An analysis of these factors clearly shows that this Court will not offend due process by exercising personal jurisdiction over Defendant TSR Hobbies, Inc.:

1. Quantity of Contacts - The present case does not involve a single and solitary contact by Defendant TSR Hobbies, Inc. with Minnesota. Rather, there has been continuous and systematic solicitation of business in Minnesota through

advertising and by representatives. TSR Hobbies, Inc. has employed at least four different sales representatives at different times to solicit business in the State of Minnesota, and it is admitted in Defendants' affidavit and memorandum that Defendant TSR Hobbies, Inc. currently has a sales representative residing in Minnesota. TSR Hobbies, Inc. advertises in a number of magazines which are circulated in this state, and it solicited business at trade shows and conventions attended by its officers and employees in Minnesota in 1975, 1976, 1977 and 1978. Defendants argue that its sales in the State of Minnesota result from orders sent to it in Minnesota, but fail to mention that these orders are actively solicited by Defendant TSR Hobbies, Inc. in the State of Minnesota.

Defendant TSR Hobbies, Inc. also admits in its affidavit and memorandum that its extensive solicitation of business in the State of Minnesota has borne fruit: TSR products are now sold regularly by a number of retail stores in Minnesota; TSR periodicals (Little Wars and The Dragon) are sent regularly to at least 50 to 100 Minnesota subscribers, and total sales in Minnesota by TSR Hobbies, Inc., since incorporation, is admitted to be nearly $12,000.00. It should be noted that fantasy games of the kind involved in the present action do not possess a wide market in Minnesota or elsewhere, and, when purchased, a game will last for many years. Thus, like the balers in Aftanase v. Economy Baler Company, 343 F.2d. 187 (1965), the quantity of sales of these games in Minnesota is not insignificant. It should also be noted that Tactical Studies Rules had already made sales of the original game "Dungeons & Dragons" in Minnesota which further decreased the pool of potential buyers in this state available for sales by the successor corporation, Defendant TSR Hobbies, Inc.

Defendant TSR Hobbies, Inc.'s agreement with Plaintiff is also not a single and solitary game contract with a Minnesota resident. Defendant TSR Hobbies, Inc. has signed game contracts with at least three other Minnesota residents: David Wesley, Phil Barker and John Snider. These agreements were actively solicited by authorized representatives of Defendant, and Defendant Gygax, President of TSR Hobbies, Inc., traveled to Minnesota to negotiate one of the agreements with Phil Barker. In addition, Defendant TSR Hobbies signed two other game contracts with Plaintiff, entered into an oral agreement for minature ship models with Plaintiff, entered into an agreement for art work with a Minnesota artist, negotiated with at least two other Minnesota authors for games through Defendant Gygax while he was in Minnesota, solicited bids from Minnesota printing firms, and sold its own securities in the State of Minnesota. Surely, it cannot be said that such contacts are attenuated or insignificant.

2. Quality of Contacts - Defendant TSR Hobbies, Inc. ships its products directly into Minnesota. It has employed sales representatives in this state to solicit sales. It has systematically sought sales through attendance at trade shows and conventions in Minnesota and through advertising. Defendant TSR Hobbies, Inc. has "voluntarily placed its product on the Minnesota market, derived benefit therefrom, received the protection of Minnesota laws, and reasonably could have anticipated that this activity could have consequences in the state . . . (the activity of TSR Hobbies, Inc. in Minnesota) was voluntary, affirmative economic activity of substance." Aftanase, supra, at page 197.

3. The Relationship Between the Cause of Action and the Contacts - As has been pointed out earlier, Plaintiff's causes of action arise directly out of Defendant TSR Hobbies, Inc.'s sales activity in the State of Minnesota.

4. The Interest of Minnesota in Providing a Forum for the

Litigation - Defendant TSR Hobbies, Inc. concedes in its memorandum that this factor is present.

5. The Convenience of the Parties - This factor of the Aftanase test is of only "secondary" importance. Toro Company, supra at page 1270. It is submitted, however, that it is not any harder for Defendant TSR Hobbies, Inc. to defend this suit in Minnesota than it is for Plaintiff to travel to Wisconsin to assert its claims. In Aftanase, supra, the Court considered the factor of convenience to carry little persuasive weight either way where the defendant is a corporation in an adjoining state, and Defendant TSR Hobbies, Inc. admits in its memorandum that Plaintiff's residence (and this Court) is not located a great distance away from Milwaukee or Lake Geneva, Wisconsin.

Defendant TSR Hobbies, Inc. attempts to argue that its inconvenience will be greater than Plaintiff's inconvenience based on the large number of witnesses it intends to call at trial. This type of argument simply reveals that Defendant TSR Hobbies, Inc. has failed to confront the real issue presented by this case. The primary question here is simply whether Defendant TSR Hobbies, Inc. is required to pay royalties to Plaintiff for the full cover price of "Dungeons & Dragons, Basic Set", "Monster Manual", "Players' Handbook" and any other playing aids or publications copied, derived and developed from "Dungeons & Dragons". To make this determination, this Court will have to interpret the simple one page agreement attached hereto as Exhibit "A" and compare the work "Dungeons & Dragons" to the other publications purportedly authored solely by Defendant Gygax to decide whether these publications are substantially similar and wholly derived from Plaintiff's work "Dungeons & Dragons". The Court does not need witnesses to help it make these decisions as the documents here speak for themselves. If the works like "Monster Manual" are in fact copied in substantial part from the original work "Dungeons & Dragons", it is completely irrelevant how long it took

employees of Defendant TSR Hobbies, Inc. to do the copying.

Based on the above five factors, it is apparent that the exercise of personal jurisdiction over Defendant TSR Hobbies, Inc. will not offend traditional notions of due process. In its facts, the present case is very similar to the facts of American Pollution Prevention Company, Inc., supra, where the Minnesota Supreme Court held that exercise of long-arm jurisdiction over a nonresident corporation was proper in view of the corporation's contacts with Minnesota, including its solicitation of business in Minnesota through trade paper advertisement, its transaction of business with numerous Minnesota corporations, and fact that payment of a substantial purchase price under the contract in suit was to be made in Minnesota. In Washington Scientific Industries, Inc. v. American Safeguard Corporation, 308 F. Supp. 736 (1970), this Court held that solicitation by nonresident agents of a nonresident corporation in the State of Minnesota plus performance of at least a portion of the contract within Minnesota was sufficient contact with the State of Minnesota to enable the Plaintiff to invoke jurisdiction through the Long-Arm Statute. This case is clearly distinguishable from cases like DeNucci v. Fleischer, 225 F. Supp. 935 (1964), since TSR Hobbies, Inc. has actively solicited sales in Minnesota through advertising and agents as well as transacting other business in this state. Defendant TSR Hobbies, Inc.'s contacts with the State of Minnesota are much more significant, systematic and continuous than these cases, and it is submitted that Plaintiff's prima facie showing of jurisdiction casts the burden upon the Defendant as moving party to demonstrate a lack of personal jurisdiction. Aaron Ferer & Sons Co. v. Diversified Metals Corp., 564 F.2d. 1211 (1977).

B. This Court has Jurisdiction Over the Defendant Gary Gygax.

Minn. Stat. § 543.10 allows jurisdiction not only over foreign corporations, but also over nonresident individuals. Defendant Gygax is the President of Defendant TSR Hobbies, Inc., a controlling shareholder, a key salaried employee, and the author of the major games sold by the corporation. Defendant Gygax completely controls the activities of Defendant TSR Hobbies, Inc. It would have been impossible for Defendant TSR Hobbies, Inc. to publish "Monster Manual" or "Players' Handbook" in a form falsely representing these works to be authored solely by Defendant Gygax without his consent and direction. Thus, the tort claims alleged against Defendant TSR Hobbies, Inc. are equally alleged

against Defendant Gygax in Plaintiff's Second, Third and Fourth Causes of Action.

The tortious acts of Defendant Gygax as alleged in Plaintiff's Second, Third and Fourth Causes of Action were acts committed outside the State of Minnesota which have caused injury to Plaintiff in the State of Minnesota (Minn. Stat. 543.10, Subdivision 1(d)). Defendant Gygax has also caused Defendant TSR Hobbies, Inc., a corporation he completely controls and dominates, to transact business in the State of Minnesota (Minn. Stat., 543.19, Subd. 1(b), and Defendant TSR Hobbies, Inc. sales activity in the State of Minnesota causes injury to the Plaintiff each time it sells works such as "Monster Manual" or "Players' Handbook" in the State of Minnesota without paying royalties or acknowledging Plaintiff's co-authorship. (Minn. Stat. 543.19, Subdivision 1(c)).

This Court will also not offend due process by exercising jurisdiction over Defendant Gygax. Through his control and domination of Defendant TSR Hobbies, Inc., Defendant Gygax has actively sought sales in Minnesota. The Affidavit of David Arneson and the exhibits attached thereto, clearly point out Defendant Gygax has voluntarily and actively sought sales in the Minnesota market, derived benefits therefrom, received the protection of Minnesota laws, and reasonably could have anticipated that this activity could have consequences in Minnesota. It is submitted that Defendant Gygax has actively caused Defendant TSR Hobbies, Inc. and its predecessor partnership to engage in voluntary, affirmative economic activity of substance in the State of Minnesota.

It should also be noted that Defendant has personally transacted business in the State of Minnesota on at least one occasion. See the Affidavit of M.A.R. Barker and Exhibits "Q", "R", "S" and "T" attached to the Affidavit of David Arneson. Defendant Gygax cannot claim that his activities are somehow shielded from liability in that he was only acting as an agent of TSR Hobbies, Inc. The domination and control exercised by Defendant Gygax over Defendant TSR Hobbies, Inc. excludes such a characterization, but it is also clear that an agent is not shielded from liability if he commits a tort while acting within the scope of his authority for his employer. See Washington Scientific Industries, Inc., supra.

The exercise of long-arm jurisdiction over Defendant Gygax is proper in view of his contacts with Minnesota, including his continuous and systematic solicitation of business in this state.

II. THIS COURT HAS JURISDICTION OVER DEFENDANTS GYGAX AND TSR HOBBIES, INC., AND TRANSFER OF THIS ACTION TO THE EASTERN DISTRICT OF WISCONSIN WOULD NOT PROMOTE THE CONVENIENCE OF PARTIES AND WITNESSES OR THE INTEREST OF JUSTICE.

In First National Bank of Minneapolis v. White, 420 F. Supp. 1331, 1337 (1976), the Court states that 28 U.S.C. § 1404 (a) provides that a change of venue to another forum where the case could have been brought, may be had when it suits the convenience of the parties, the convenience of witnesses, and the interest of justice, and the moving party has the burden of establishing that the transfer should be granted. An analysis of these three factors weigh against transfer of this action to the Eastern District of Wisconsin as follows:

1. Convenience of the Parties - As pointed out earlier, the distance between Lake Geneva and Minneapolis which Defendants must now travel is no greater than the distance between St. Paul and Milwaukee which Plaintiff would be required to travel if this action is transferred to the Eastern District of Wisconsin. As was the case in Medtronic, Inc. v. American Optical Corporation, 337 F. Supp. 490 (1971), the parties are in a state of virtual equipoise as it appears that the Wisconsin forum would be just as inconvenient to the Plaintiff as the Minnesota forum would be to the Defendants.

2. Convenience of Witnesses - Hoping to influence this Court's decision regarding transfer by the sheer weight of alleged witnesses, Defendant Gygax alleges in his affidavit and the Defendants' memorandum that there are a large number of witnesses in the Lake Geneva area who are prepared to testify regarding the development of the works which Plaintiff has alleged are copied in substantial part and wholly derived from the original work "Dungeons & Dragons". As stated above, the testimony of these witnesses is completely irrelevant as the documents

involved speak for themselves. See the Affidavit of J. Michael Hirsch and Exhibit "C" attached thereto. The sole question involved in this suit is whether the works in question are substantially similar to the original work "Dungeons & Dragons", and this Court can determine said question by simply comparing the works to the original work "Dungeons & Dragons". Thus, it is submitted that the second factor of convenience to witnesses does not weigh in favor of either forum.

3. The Interest of Justice - The "interest of justice" is the dominant factor, and should be given the greatest weight by the Courts. Medtronic, supra, at page 495. As stated in First National Bank of Minneapolis, supra, at page 1337, factors which may be considered include relative familiarity of the two courts with the law to be applied; relative ability of the parties to bear the expense of litigating in a distant forum; comparative probabilities of delay and concomitant expense because of overloaded dockets.

None of these factors compel a transfer of venue to Wisconsin. Plaintiff is aware of no conflict of law between Wisconsin law and Minnesota law on the issues presented by the present case. This is not a case like First National Bank of Minneapolis, supra, where the parties had stipulated that the laws of one forum would govern, and presumably the laws of Minnesota would govern as it is a general rule that personal contracts are governed by the law of the place where they are made and a contract is deemed to be made at the place where the final assent is given. Pierce v. Foley Bros., Inc. 283 Minn. 360, 168 N.W.2d. 346 (1969). Exhibit "A" attached hereto clearly indicates that the contract was presented to Plaintiff for execution last.

Last year, Defendant TSR Hobbies, Inc. had net sales of nearly a million dollars, and it would be harder for Plaintiff, whose sole source of income is royalties from his professional

writing, to bear the expense of litigating in a distant forum. Finally, there is no comparative differences in delay and concomitant expense between the two forums due to overloaded dockets as the appointment of new Judges to this Court will help eliminate some of the present overcrowding of this Court's docket.

Defendants, as the moving parties, have not sustained their burden of establishing that the transfer should be granted, and Defendants' alternative motion pursuant to 28 U.S.C. § 1404 (a) should also be denied.

CONCLUSION

Minnesota's Long-Arm Statutes would apply to both Defendant Gygax and TSR Hobbies, Inc. under the present factual situation and both defendants have the requisite minimal contacts with the State of Minnesota for the exercise of jurisdiction by this Court and that such a result is "consistent with fair play and substantial justice and does not violate federal due process". Defendants' motion to dismiss the Plaintiff's Complaint should be denied.

Similarly, Defendants have not sustained their burden of establishing that venue of this action should be transferred to the Eastern District of Wisconsin, and their alternative motion to transfer under 28 U.S.C. §§ 1404 (a) should also be denied.

Respectfully submitted,

MOSS, FLAHERTY, CLARKSON & FLETCHER,
A Professional Association

Dated: May 7, 1979

By _____
Maher J. Weinstein

By _____
J. Michael Hirsch
Attorneys for Plaintiff David L. Arneson
2350 IDS Center
Minneapolis, MN 55402
Telephone: (612) 339-8551

EXHIBIT "A"

AGREEMENT

to take effect as of 1 April 1975, item 4. below notwithstanding.

THIS AGREEMENT is made between the the Author(s) specified hereafter and Tactical Studies Rules, 542 Sage Street, Lake Geneva, WI 53147, hereafter called TSR.

Author(s): Gary Gygax, 330 Center St., Lake Geneva, WI

Dave Arneson, 1406 Hartford Ave., St. Paul, MN

1. The Author(s) hereby agree to assign to TSR the copyright, the right to publish, sell, and distribute, the set of game rules or game entitled [illegible], in any form TSR deems suitable for commercial sales, as well as any other similar rights.

2. TSR hereby agrees to pay the Author(s) a royalty of [illegible] (10 %) of the cover price of the game rules or game on each and every copy sold; this royalty to be payable on a quarterly basis reported within 30 days after the end of each quarter, with quarters ending 31 March, 30 June, 30 September and 31 December of each year.

3. TSR also hereby agrees that the ownership of the copyright mentioned above shall revert to the Author(s) not more than 90 days after the set of game rules or game is no longer maintained in-print.

4. This Agreement shall not be considered a valid contract until all parties concerned have signed and dated the contract, but upon so signing the contract shall take effect on a retroactive basis from the date of publication of the set of game rules or game.

TACTICAL STUDIES RULES

E. Gary Gygax — 7 April 1975

E. Gary Gygax, Editor

Gary Gygax — 7 April 1975

Gary Gygax

Dave Arneson

Dave Arneson

UNITED STATES GOVERNMENT

memorandum

DATE: May 9, 1979

REPLY TO ATTN OF:

SUBJECT: ~~Chamfer v. Tapes~~ Arneson v. Gygax, Civ. 4-79-109, defendants' motion to dismiss or transfer

TO: Judge Devitt

This is a diversity action for breach of contract and tort. The case was removed to federal court from state court. Plaintiff is a Minnesota resident and defendants are a Wisconson individual, a Wisconsin corpration, and a dissolved Wisconsin partnership. It seems that plaintiff authored and ~~x~~ designed a game, apparently along the lines of monopoly, and sold the rights to defendant partnership in exchange for a 10% royalty on each game sold. The partnership was later dissolved and replaced by defendant corporation, which assumed the partnership's responsibilities, including the royalty payments. The individual defendant is president and majority shareholder of defendant corporation. The present action is based on allegations that defendants have not been paying plaintiff royalties on all games sold. Defendants' defense is that the games it now sells are diferent from the game designed by plaintiff, and therefore they are not liable for the royalty payments. The particular motions before the court are for dismissal of all defendants for lack of personal jurisdiction, and in the alternative transfer of venue to Wisconsin for the convenience of the parties and witnesses.

Plaintiff in his brief admits that this ~~x~~ court does not have personal jurisdiction of the dissolved partnership, and therefore we need only be concerned with the individual defendant

and the defendants corporation.

With respect to the defendant corporation, I think it is fairly clear that the court has personal jurisdiction. The corporation has a number of contacts with Minnesota. First, it markets its games in Minnesota, and has had sales of at least $12,000 in Minnesota. Second, it advertises in Minnesota and has sent representatives to trade shows in this state. Third, Third, it has entered into contracts with several Minnesota authors, including plaintiff. Moreover, these contacts with Minnesota have a nexus with the present cause of action, as required by Toro Co. v. Ballas Liquidating Co., 572 F.2d 1267 (8th Cir. 1978). Plaintiff asserts that every sale made in Minnesota constitutes a breach of contract and conversion of his property because he is not paid a royalty for those sales. Consequently, have little problem with finding jurisdiction over defendant corporation.

With respect to defendant individual, the answer is not so clear. Nearly all of his contacts with Minnesota were as agent for defendant corporation. Therefore, the only contacts are the same as stated above concerning the defendant corporation. Plaintiff alleges that all the marketing of the games in Minnesota was done under the control and approval of the individual defendant. Normally, it is not enough contact when the individual acts only as agent for another. See, e.g., Washington Scientific Industries, Inc. v. American Safeguard Corp., 308 F. Supp. 736 (D. Minn. 1970). However, when the activity by the agent is allegedly tortious, then his contacts can be considered in

determining whether the court has jurisdiction over him. Id. at 739. Therefore, although the individual defendant's contacts with Minneota are tenuous, they may be enough to establish jurisdiction over him, at least with respect to the tort claims. They are not relevant, however, with respect to the contract claims, but the court could hear the contract claim anyhow since it arises from the same set of operative facts as the tort claims. Consequently, although the contacts are minimal, I suggest you find jurisdiction over the individual plaintiff to be proper.

It should be noted that much of defendants' arguments are based on the assertion that plaintiff's tort counts are based on defamation. Tort actions based on defamation are treated different from other tort actions under Minnnesota's long arm statute, and if the action was for defamation then we probably would not have personal jurisdiction over at least the individual defendant. However, plaintiff's tort counts are not for defamation, but rather are for conversion and for injurious falsehood, neither of which are defamation actions.

Defendants' alternative motion is for transfer of venue for the convenience of the parties and witnesses. This seems to be a case where it is just as inconvenient for plaintif to go to Wisconsin as it is for defendants to come to Minnesota. Therefore, I would deny this motion.

Recommendation: Grant defendant partnership's motion to dismiss for lack of personal jurisdiction, but deny all other motions.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

DAVID L. ARNESON, Plaintiff, vs. GARY GYGAX, TACTICAL STUDY RULES, a partnership consisting of Gary Gygax and Brian Blume, and TSR HOBBIES, INC., a corporation. Defendants.	Civil Action No. 4-79-109 SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO QUASH SERVICE OF PROCESS AND DISMISS FOR LACK OF PERSONAL JURISDICTION, AND IN SUPPORT OF DEFENDANTS' ALTERNATE MOTION TO TRANSFER UNDER 28 U.S.C. §1404(a)

This Supplemental Memorandum is addressed to two arguments made in Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss, which arguments Defendants dispute and feel should be rebutted and considered by the Court prior to the Hearing on this matter.

Plaintiff's first argument relies on the allegations that Defendant, Gygax, is "a controlling shareholder" and "completely controls the activities" of Defendant, TSR Hobbies, Inc. Thus, Plaintiff argues that this Court's exercise of jurisdiction over Defendant, Gygax, as an individual, would not offend due process, since through his control and domination of TSR Hobbies, Inc., Gygax has sought sales in Minnesota. Plaintiff's argument should fail because it has no factual support.

As evidenced by the accompanying Supplemental Affidavit of Brian J. Blume, Chairman of Defendant, TSR Hobbies, Inc., Gygax is not the largest or a controlling shareholder of Defendant, TSR Hobbies, Inc. In fact, Gygax owns less than 1/3 of the voting stock in TSR Hobbies, Inc.

As stated by Brian Blume, Chairman of TSR Hobbies, Inc., Gygax does not completely control the activities of TSR Hobbies, Inc.

Since Gygax is not a controlling shareholder and does not completely control the activities of TSR Hobbies, Inc., it is submitted that Gygax's activity, as President of TSR Hobbies, Inc., does not subject him, as an individual, to the jurisdiction of a Minnesota court. See for example, the recent case Rheodyne Inc. v. James A. Ramin', Stanley D. Stearns, Valco Instruments Co. and Glenco Scientific Inc., (N.D. Ca. 1978), (apparently still unpublished, a copy of decision attached hereto).

In Rheodyne, starting on page 6 of the decision, the Court rejected an argument that an individual defendant (Stearns) was but the "alter ego" of the corporate defendant, and since the corporate defendant was subject to jurisdiction, so should the individual be subject to jurisdiction. The concluding language of the Rheodyne Court, dismissing the action as to the individual, is believed to be particularly applicable to this case, and supports Gygax's Motion to Dismiss; the court stating at page 6, supra:

> The facts presented here present no justification why defendant Stearns should be denied the protection of an otherwise legitimate corporate form and be required to defend in this forum an action where he has had no personal contacts.

Plaintiff has not alleged or proven virtually any personal contacts of the Defendant, Gygax, with Minnesota. As noted in Defendants' initial Memorandum, Plaintiff has failed to allege, and in fact, Gygax has not had "the minimal contacts" with the state of Minnesota that are a prerequisite to this Court's exercise of jurisdiction or power over him. Hanson v. Denkla, 357 U.S. 235 (1958).

Plaintiff's second argument, which Defendants dispute, relates to this Court's consideration of Forum non conveniens, and to the interests of the parties and witnesses to be considered under Defendants Alternate Motion to transfer under 28 U.S.C. §1404(a). Plaintiff has attempted to mitigate the force of Defendants' argument that virtually all the documents and potential trial witnesses relating to the development of the ADVANCED DUNGEONS & DRAGONS ("AD&D) works and other works in dispute, are located in Lake Geneva, Wisconsin. Specifically, Plaintiff has stated at page 14 of his Memorandum, "the sole question involved in this suit is whether the works in question are substantially similar to the original work "DUNGEONS & DRAGONS", and this Court can determine such question by simply comparing the works to the original work "DUNGEONS & DRAGONS".

Contrary to Plaintiff's characterization of the "sole question" in this case, nowhere in the Agreement which Plaintiff relies on, does it state that Arneson will be entitled to a royalty payment for works "substantially similar to" the original work DUNGEONS & DRAGONS. As is supported by the Supplemental Affidavit of Brian Blume, at the time of entering into the Agreement with Plaintiff, Arneson, the Partnership did not contemplate or intend that Arneson would be entitled to royalty payments for sales of later and separately developed works such as ADVANCED DUNGEONS & DRAGONS, MONSTER MANUAL and ADVANCED DUNGEONS & DRAGONS, PLAYERS HANDBOOK.

In fact, Plaintiff has alleged in his Complaint that the accused works are "copied in substantial part and

wholly derived" from the original work DUNGEONS & DRAGONS. Virtually all the witnesses and all the documents which are material to the allegations of plaintiff's complaint, i.e., the question of whether, in fact, the AD&D and other works were copied in substantial part and wholly derived from the original work, DUNGEONS & DRAGONS, are located in Lake Geneva, Wisconsin.

As is supported by Blume's Supplemental Affidavit, the vast majority of material in the ADVANCED DUNGEONS & DRAGONS works is new material or substantially different material, when compared to the original work DUNGEONS & DRAGONS. Several pages of an ADVANCED DUNGEONS & DRAGONS work which contains examples of material not included in the original DUNGEONS & DRAGONS, are attached to the Affidavit as Exhibit A.

A simple comparision of the ADVANCED DUNGEONS & DRAGONS works with the original work DUNGEONS & DRAGONS will not necessarily resolve the dispute in this case. The question of whether Arneson is entitled to additional royalty payments, and if so, what amount of additional royalty payments would be equitable, can not be answered by simply reviewing the one-page Agreement and comparing the AD&D works to the original work DUNGEONS & DRAGONS. If Plaintiff is to recover based on its allegations in the Complaint that the accused works are "substantially copied and wholly derived" from the game rules DUNGEONS & DRAGONS, the documents and the testimony of witnesses relating to development of the AD&D works, virtually all of which are located in Lake Geneva, Wisconsin, are certainly material to a final resolution of the dispute between the parties.

Furthermore, Plaintiff's argument that the testimony of the Lake Geneva witnesses is irrelevant, must certainly fail as to the Second, Third and Fourth Causes of Action, wherein Plaintiff has alleged that Defendants have falsely

represented that the AD&D works are solely authored by Defendant, Gary Gygax. Plaintiff claims that he is entitled to be named as a co-author of these AD&D works. Contrary to Plaintiff's claim, Blume states in his supplemental affidavit that Plaintiff, Arneson, was not employed by TSR Hobbies, Inc. to write or in any way contribute to the materials contained in the ADVANCED DUNGEONS & DRAGONS works.

Lake Geneva witnesses' testimony and documents relating to who prepared these AD&D works, when these works were prepared, and how they were prepared, etc., are all material to the question of authorship and whether, in fact, the failure of Defendants to list Plaintiff as a co-aurthor is actionable.

As was stated in Defendants' initial Memorandum, the only real connection Minnesota has with this case is that the Plaintiff, Arneson, resides in Minnesota. Accordingly, this Court should exercise its discretion and decline to exercise jurisdiction over Defendants on the basis of Forum non conveniens. If the Court finds that it should exercise jurisdiction over any of the Defendants, then the Court should also exercise its discretion and transfer this action as to those Defendants to the Eastern District of Wisconsin, pursuant to §1404(a), for the convenience of the parties and witnesses, in the interest of justice.

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MICHAEL, BEST & FRIEDRICH
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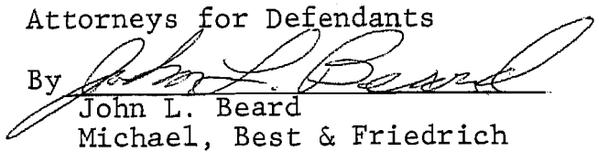
Attorneys for Defendants

Dated: May 10, 1979

By 
John L. Beard
Michael, Best & Friedrich

CERTIFICATE OF SERVICE

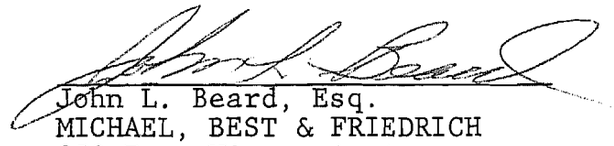
I certify that on the 10th day of May, 1979, I served the following:

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO QUASH SERVICE OF PROCESS AND DISMISS FOR LACK OF PERSONAL JURISDICTION, AND IN SUPPORT OF DEFENDANTS' ALTERNATE MOTION TO TRANSFER UNDER 28 U.S.C. §1404 (a)

SUPPLEMENTAL AFFIDAVIT OF BRIAN J. BLUME IN SUPPORT OF MOTION TO QUASH SERVICE OF PROCESS AND DISMISS FOR LACK OF PERSONAL JURISDICTION OVER DEFENDANTS

on Plaintiff's counsel of record by causing one copy to be deposited with the United States Postal Service, Express Mail, postage provided, addressed to:

J. Michael Hirsch, Esq.
MOSS, FLAHERTY & CLARKSON
2350 IDS Center
Minneapolis, MN 55402



John L. Beard, Esq.
MICHAEL, BEST & FRIEDRICH
250 East Wisconsin Avenue
Milwaukee, WI 53202
Attorneys for Defendants

DEC 21 1978

CLERK, U. S. DIST. COURT
SAN FRANCISCO

United States District Court

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

DEC 21 1978

WILLIAM L. WHITTAKER
CLERK, U. S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CIVIL ACTION FILE NO. C77-1804 C

30

RHEODYNE INCORPORATED, Plaintiff,

vs.

JAMES A. RAMIN', STANLEY D. STEARNS, VALCO INSTRUMENTS CO. and GLENCO SCIENTIFIC INC.

Defendants,

JUDGMENT

This action came on for ~~trial~~ (hearing) before the Court, Honorable CECIL F. POOLE, United States District Judge, presiding, and the issues having been duly ~~tried~~ (heard) and a decision having been duly rendered,

It is Ordered and Adjudged plaintiff take nothing and the action is dismiss on the merits and defendants recover their costs of action.

RECEIVED.
JAN 02 19[illegible]

Dated at San Francisco, California, this 21st day of December, 19 79.

WILLIAM L. WHITTAKER
Clerk of Court

BY: F. J. Casabonne
F. J. Casabonne, Deputy Clerk

DEC 21 1978

ENTERED IN CIVIL DOCKET

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RHEODYNE INCORPORATED, Plaintiff, vs. JAMES A. RAMIN', STANLEY D. STEARNS, VALCO INSTRUMENTS CO., and GLENCO SCIENTIFIC, INC., Defendants.	C 77-1804 CFP ORDER OF DISMISSAL

On August 15, 1977, plaintiff Rheodyne Incorporated, a California corporation, filed this action for declaratory and injunctive relief. The complaint alleges that a certain United States Letters Patent No. 4,022,065, purportedly invented and owned by defendants Ramin' and Stearns, and manufactured and distributed under license by defendants Valco Instruments Co. (Valco) and Glenco Scientific, Inc. (Glenco) is invalid, that plaintiff has not infringed against it, and praying an injunction to restrain defendants from suing or threatening suit against plaintiff's customers for infringement. Ramin' and Stearns are Texas residents. Valco and Glenco are Texas corporations which transact business in California. Jurisdiction over the corporations pursuant to California's long-arm statute (California Code of Civil

Procedure § 410.10) is conceded. The complaint alleges jurisdiction under the patent laws (Title 35 United States Code), under Title 28 U.S.C. § 1338(a), and through diversity (Title 28 U.S.C. § 1332).

Defendants have moved to dismiss on several grounds which may be summarized as follows: (1) Lack of personal jurisdiction over the individual defendants Ramin' and Stearns; (2) failure to join indispensable parties; (3) improper venue; (4) insufficient service of process; (5) improper form due to a previously filed action in Texas; and (6) lack of subject matter jurisdiction due to the absence of actual controversy. These contentions will be discussed in order.

1. Personal Jurisdiction Over Defendants Ramin' and Stearns.

Defendant Ramin': Plaintiff asserts the Court has personal jurisdiction over defendant Ramin', a Texas resident, solely on the basis of three letters. Two letters were sent by Ramin' in Texas to plaintiff in California. The third letter was sent by Ramin''s Texas attorney to the plaintiff in California. The three documents are characterized as "threats" on the part of Ramin' to sue for patent infringement and it is alleged that these mailings constitute sufficient minimum contacts to confer personal jurisdiction over Ramin'. No other contacts are alleged.

Under Rule 4 of the Federal Rules of Civil Procedure the Court looks to the California long-arm statute to determine whether personal jurisdiction exists. Section 410.10 of the California Code of Civil Procedure provides:

> "'A court of this state may exercise jurisdiction on any basis not inconsistent with the constitution of this state or of the United States.'"

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Subsequent decisions such as McGee v. International Life Insurance Co., 355 U.S. 220 (1957), and Hanson v. Denckla, supra, made it clear that although personal jurisdiction can be found based on very minimal contacts with the forum state (e.g., a single insurance policy between a foreign insurer and a California insured, in McGee), there are limits beyond which due process cannot be stretched. In Hanson v. Denckla, supra, at 253, the Court said:

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> "* * * by reason of defendant's notification to the plaintiff of infringement of the [patent] in this jurisdiction, and defendant's threats to proceed with 'coercive litigation' in the event that the plaintiff refused to comply with the notification. * * *"

Citing International Shoe v. Washington (supra), the court concluded that such notification of patent infringement to the plaintiff in that case constituted "transaction of business" within the jurisdiction and that the defendant thereby had submitted to jurisdiction of the court.

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Defendant, on the other hand, cites only one decision but it is directly on point. In Conwed Corp. v. Nortene, S.A., 404 F. Supp. 497 (D.Minn. 1975), the court rejected a plaintiff's theory that a letter threatening an infringement action was sufficient to subject the foreign defendant to the jurisdiction of the Minnesota courts. There were no other meaningful contacts with the forum and the court distinguished B & J and Imperial, supra, on the grounds that in both of those cases there were other acts amounting to contacts. In its long and detailed consideration, the court discussed persuasive public policy reasons in support of its decision. The court observed that the rule contended for by plaintiffs here would discourage an innocent party from demanding recourse from a wrongdoer because to do so would be to submit to the jurisdiction of the wrongdoer's forum. Such a rule the court said "would positively discourage the settlement of disputes, in direct conflict with other rules of law." Id. at 506, n.8. The Minnesota court came to grips with a fundamental philosophical consideration:

"* * * It is undoubtedly true that some threats of infringement action are made in bad faith for the purpose of engaging in unfair competition. But to base a generally applicable jurisdictional rule on this occasional practice would be extreme. Moreover, the patent laws anticipate that written notice of infringement will be routinely sent prior to litigation, see Appendix Form 16 to Federal Rules of Civil Procedure, and expressly provide that the amount of damages recoverable will often hinge on the sending of such notice. * * * . It would offend 'traditional notions of substantial justice and fair play' to hold that the written notice of infringement necessary to commence the running of damages submits the patentee to the foreign jurisdiction of the infringer."

This Court is persuaded by the reasoning and result reached in Conwed decision. The contacts between defendant Ramin' and the state of California are minimal. The conclusic is that defendant Ramin''s motion to dismiss for lack of personal jurisdiction should be granted.

Defendant Stearns: Plaintiff does not contend that Stearns sent into the forum state letters charging patent infringement. Rather, the argument is that Stearns is but the "alter ego" of the corporate defendant Valco, which concededly does business and is subject to jurisdiction here. Plaintiff urges this Court to "pierce the corporate veil" and to assert jurisdiction over Stearns for this reason.

The Ninth Circuit prescribes a two-part test for determining whether the corporate forum should be disregarded and that entity treated as but an alter ego of its shareholders. In United States v. Standard Beauty Supply Stores, Inc., 561 F.2d 774 (9th Cir. 1977), Judge Sneed stated:

"Issues of alter ego do not lend themselves to strict rules and prima facie cases. Whether the corporate veil should be pierced depends on the innumerable individual equities of each case. 'Only general rules may be laid down for guidance.' * * * .

"Before a court can hold that a corporation is the mere alter ego of its shareholders, two

particular findings must be made. First, the court must determine that there is 'such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist.' Watson v. Commonwealth Insurance Co., 8 Cal.2d 61, 68, 63 P.2d 295, 298 (1936). Second, however, it must be shown that the failure to disregard the corporation would result in fraud or injustice. Id. * * *."

The standard adopted by the California courts, followed by Judge Sneed in the Standard Beauty case, is the same:

"It is the general rule that the conditions under which a corporate entity may be disregarded vary according to the circumstances of each case. [Citation omitted]. It has been stated that the two requirements for application of this doctrine are (1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow." Automotoriz, etc., de California, etc., v. Resnik, 47 Cal.2d 792, 796 (1957).

In its effort to prove this a proper case for application of the alter ego doctrine, plaintiff has submitted excerpts from a deposition of defendant Stearns from which it has distilled the following facts:

(1) Stearns owns 100 per cent of Valco's shares;

(2) Stearns is president of Valco, and his wife is its secretary-treasurer;

(3) Stearns and wife are Valco's only directors;

(4) The corporate records contain no minutes of meetings after January 5, 1977;

(5) Mrs. Stearns draws no salary from Valco;

(6) Property owned by Stearns and his wife is leased to the corporation.

Plaintiff argues that these facts show that the corporate forum is a "sham" and it ought to be disregarded for jurisdictional purposes over Stearns.

However, the same transcript shows that the

corporation did have bylaws; did keep minutes of meetings prior to January 1977; that its directors met five times a year between 1973 and 1976. There is no indication that Stearns and the corporation commingled funds, failed to keep separate bank accounts, or that the corporation failed to keep separate books of account. The Ninth Circuit has included such conduct among the factors to be considered in ruling on jurisdiction. See Wells Fargo & Co. v. Wells Fargo Express Co., 194 U.S.P.Q. 10 (9th Cir. 1977). Applying these standards to the known facts about the Stearns-Valco relationship it does not appear that Valco's corporate form is a mere sham which should be disregarded. Neither does it appear that "the failure to disregard the corporation would result in fraud or injustice." United States v. Standard Beauty Supply Stores, supra.

On this record it cannot be said that any fraud or injustice at all results to plaintiff from the use by the Stearnses of the Valco corporate form for doing business. Valco is small and closely held, and some of its record-keeping concededly appears to have been sloppy, but there is no allegation by the plaintiff that the corporate form was used for any improper purposes. Presumably, incorporation was accomplished in order to obtain the financial advantages and insulation from liability which are the normal consequences of such action. The facts presented here present no justification why dependent Stearns should be denied the protection of an otherwise legitimate corporate form and be required to defend in this forum an action where he has had no personal contacts.

The motion by defendant Stearns to dismiss for lack of personal jurisdiction will be granted.

/////

2. Failure to Join Indispensable Parties.

It follows from the preceding ruling dismissing the individual defendants, that this entire action must be dismissed for failure to join the patent owners (individuals Ramin' and Stearns).

Many cases hold that the patent owner is an indispensable party to an action seeking a declaratory judgment of patent invalidity and non-infringement. Massa v. Jiffy Products Co., 240 F.2d 702 (9th Cir. 1957); Sweetwater Rug Corp. v. J & C Bedspread Company, Inc., 198 F.Supp. 941 (S.D. N.Y. 1961), aff'd 299 F.2d 573 (2d Cir. 1962); Technical Tape Corp. v. Minnesota Mining & Mfg. Co., 135 F.Supp. 505 (S.D. N.Y. 1955); Caldwell Mfg. Co. v. Unique Balance Co., 18 F.R.D. 258 (S.D.N.Y. 1955).

Plaintiff contends that even if only the corporate defendants remain in this jurisdiction, that is sufficient to carry on this lawsuit because they have "substantial rights" in the patents. Plaintiff does not, however, assert that Valco and Glenco are patent owners; they are at most licensees as appears by licensing agreements attached to the defendants' moving papers. The Sweetwater Rug Corp. case, supra, held that an individual patent owner's indispensability is not diminished by the fact that he was the president and major shareholder of the corporate defendant, and that the corporate licensee could not defend a suit seeking a declaration of patent invalidity in the absence of the patent owner. In Caldwell Mfg. Co., supra, at 264, the general rule was stated to be:

> [10] In the absence of the licensor-patentee as a party defendant in the Southern District action, this declaratory judgment proceeding must fail, since the 'case or controversy' requirement is unsatisfied. Without the owner of the patent before this Court, the validity of the patent may not be adjudicated. Under such circumstances,

the allegations of non-infringement and invalidity of the patent present moot issues because no substantial controversy exists pursuant to the mandate of the Declaratory Judgment Act."

Ramin' and Stearns are co-owners of the patent in question here. Both of them have been dismissed for lack of personal jurisdiction. The action, therefore, cannot proceed and must be dismissed under Rule 12(b)(7) and Rule 19 of the Federal Rules of Civil Procedure.

In view of the above rulings, it is clear that none of the remaining contentions of the defendants need be considered.

IT IS HEREBY ORDERED that the above action be, and the same is, hereby dismissed.

DATED: December 21, 1978.

CECIL F. POOLE
UNITED STATES DISTRICT JUDGE

FPI—Sandstone
2-5-75—175M—003

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

DAVID L. ARNESON,

Plaintiff,

vs.

GARY GYGAX, TACTICAL STUDY RULES, a partnership consisting of Gary Gygax and Brian Blume, and TSR HOBBIES, INC., a corporation.

Defendants.

Civil Action No. 4-79-109

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO QUASH SERVICE OF PROCESS AND DISMISS FOR LACK OF PERSONAL JURISDICTION, AND

IN SUPPORT OF DEFENDANTS' ALTERNATE MOTION TO TRANSFER UNDER 28 U.S.C. §1404(a)

This Supplemental Memorandum is addressed to two arguments made in Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss, which arguments Defendants dispute and feel should be rebutted and considered by the Court prior to the Hearing on this matter.

Plaintiff's first argument relies on the allegations that Defendant, Gygax, is "a controlling shareholder" and "completely controls the activities" of Defendant, TSR Hobbies, Inc. Thus, Plaintiff argues that this Court's exercise of jurisdiction over Defendant, Gygax, as an individual, would not offend due process, since through his control and domination of TSR Hobbies, Inc., Gygax has sought sales in Minnesota. Plaintiff's argument should fail because it has no factual support.

As evidenced by the accompanying Supplemental Affidavit of Brian J. Blume, Chairman of Defendant, TSR Hobbies, Inc., Gygax is not the largest or a controlling shareholder of Defendant, TSR Hobbies, Inc. In fact, Gygax owns less than 1/3 of the voting stock in TSR Hobbies, Inc.

As stated by Brian Blume, Chairman of TSR Hobbies, Inc., Gygax does not completely control the activities of TSR Hobbies, Inc.

Since Gygax is not a controlling shareholder and does not completely control the activities of TSR Hobbies, Inc., it is submitted that Gygax's activity, as President of TSR Hobbies, Inc., does not subject him, as an individual, to the jurisdiction of a Minnesota court. See for example, the recent case Rheodyne Inc. v. James A. Ramin', Stanley D. Stearns, Valco Instruments Co. and Glenco Scientific Inc., (N.D. Ca. 1978), (apparently still unpublished, a copy of decision attached hereto).

In Rheodyne, starting on page 6 of the decision, the Court rejected an argument that an individual defendant (Stearns) was but the "alter ego" of the corporate defendant, and since the corporate defendant was subject to jurisdiction, so should the individual be subject to jurisdiction. The concluding language of the Rheodyne Court, dismissing the action as to the individual, is believed to be particularly applicable to this case, and supports Gygax's Motion to Dismiss; the court stating at page 6, supra:

> The facts presented here present no justification why defendant Stearns should be denied the protection of an otherwise legitimate corporate form and be required to defend in this forum an action where he has had no personal contacts.

Plaintiff has not alleged or proven virtually any personal contacts of the Defendant, Gygax, with Minnesota. As noted in Defendants' initial Memorandum, Plaintiff has failed to allege, and in fact, Gygax has not had "the minimal contacts" with the state of Minnesota that are a prerequisite to this Court's exercise of jurisdiction or power over him. Hanson v. Denkla, 357 U.S. 235 (1958).

Plaintiff's second argument, which Defendants dispute, relates to this Court's consideration of Forum non conveniens, and to the interests of the parties and witnesses to be considered under Defendants Alternate Motion to transfer under 28 U.S.C. §1404(a). Plaintiff has attempted to mitigate the force of Defendants' argument that virtually all the documents and potential trial witnesses relating to the development of the ADVANCED DUNGEONS & DRAGONS ("AD&D) works and other works in dispute, are located in Lake Geneva, Wisconsin. Specifically, Plaintiff has stated at page 14 of his Memorandum, "the sole question involved in this suit is whether the works in question are substantially similar to the original work "DUNGEONS & DRAGONS", and this Court can determine such question by simply comparing the works to the original work "DUNGEONS & DRAGONS".

Contrary to Plaintiff's characterization of the "sole question" in this case, nowhere in the Agreement which Plaintiff relies on, does it state that Arneson will be entitled to a royalty payment for works "substantially similar to" the original work DUNGEONS & DRAGONS. As is supported by the Supplemental Affidavit of Brian Blume, at the time of entering into the Agreement with Plaintiff, Arneson, the Partnership did not contemplate or intend that Arneson would be entitled to royalty payments for sales of later and separately developed works such as ADVANCED DUNGEONS & DRAGONS, MONSTER MANUAL and ADVANCED DUNGEONS & DRAGONS, PLAYERS HANDBOOK.

In fact, Plaintiff has alleged in his Complaint that the accused works are "copied in substantial part and

wholly derived" from the original work DUNGEONS & DRAGONS. Virtually all the witnesses and all the documents which are material to the allegations of plaintiff's complaint, i.e., the question of whether, in fact, the AD&D and other works were copied in substantial part and wholly derived from the original work, DUNGEONS & DRAGONS, are located in Lake Geneva, Wisconsin.

As is supported by Blume's Supplemental Affidavit, the vast majority of material in the ADVANCED DUNGEONS & DRAGONS works is new material or substantially different material, when compared to the original work DUNGEONS & DRAGONS. Several pages of an ADVANCED DUNGEONS & DRAGONS work which contains examples of material not included in the original DUNGEONS & DRAGONS, are attached to the Affidavit as Exhibit A.

A simple comparision of the ADVANCED DUNGEONS & DRAGONS works with the original work DUNGEONS & DRAGONS will not necessarily resolve the dispute in this case. The question of whether Arneson is entitled to additional royalty payments, and if so, what amount of additional royalty payments would be equitable, can not be answered by simply reviewing the one-page Agreement and comparing the AD&D works to the original work DUNGEONS & DRAGONS. If Plaintiff is to recover based on its allegations in the Complaint that the accused works are "substantially copied and wholly derived" from the game rules DUNGEONS & DRAGONS, the documents and the testimony of witnesses relating to development of the AD&D works, virtually all of which are located in Lake Geneva, Wisconsin, are certainly material to a final resolution of the dispute between the parties.

Furthermore, Plaintiff's argument that the testimony of the Lake Geneva witnesses is irrelevant, must certainly fail as to the Second, Third and Fourth Causes of Action, wherein Plaintiff has alleged that Defendants have falsely

represented that the AD&D works are solely authored by Defendant, Gary Gygax. Plaintiff claims that he is entitled to be named as a co-author of these AD&D works. Contrary to Plaintiff's claim, Blume states in his supplemental affidavit that Plaintiff, Arneson, was not employed by TSR Hobbies, Inc. to write or in any way contribute to the materials contained in the ADVANCED DUNGEONS & DRAGONS works.

Lake Geneva witnesses' testimony and documents relating to who prepared these AD&D works, when these works were prepared, and how they were prepared, etc., are all material to the question of authorship and whether, in fact, the failure of Defendants to list Plaintiff as a co-aurthor is actionable.

As was stated in Defendants' initial Memorandum, the only real connection Minnesota has with this case is that the Plaintiff, Arneson, resides in Minnesota. Accordingly, this Court should exercise its discretion and decline to exercise jurisdiction over Defendants on the basis of Forum non conveniens. If the Court finds that it should exercise jurisdiction over any of the Defendants, then the Court should also exercise its discretion and transfer this action as to those Defendants to the Eastern District of Wisconsin, pursuant to §1404(a), for the convenience of the parties and witnesses, in the interest of justice.

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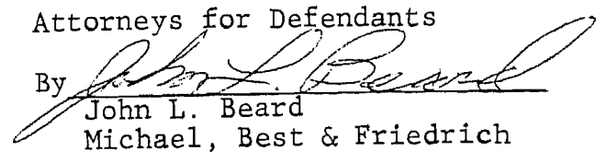
Attorneys for Defendants

Dated: May 10, 1979

By 
John L. Beard
Michael, Best & Friedrich

CERTIFICATE OF SERVICE

I certify that on the 10th day of May, 1979, I served the following:

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO QUASH SERVICE OF PROCESS AND DISMISS FOR LACK OF PERSONAL JURISDICTION, AND IN SUPPORT OF DEFENDANTS' ALTERNATE MOTION TO TRANSFER UNDER 28 U.S.C. §1404 (a)

SUPPLEMENTAL AFFIDAVIT OF BRIAN J. BLUME IN SUPPORT OF MOTION TO QUASH SERVICE OF PROCESS AND DISMISS FOR LACK OF PERSONAL JURISDICTION OVER DEFENDANTS

on Plaintiff's counsel of record by causing one copy to be deposited with the United States Postal Service, Express Mail, postage provided, addressed to:

J. Michael Hirsch, Esq.
MOSS, FLAHERTY & CLARKSON
2350 IDS Center
Minneapolis, MN 55402

John L. Beard, Esq.
MICHAEL, BEST & FRIEDRICH
250 East Wisconsin Avenue
Milwaukee, WI 53202
Attorneys for Defendants

DEC 21 1978

CLERK, U. S. DIST. COURT
SAN [illegible]

United States District Court

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

DEC 21 1978

WILLIAM L. WHITTAKER
CLERK, U. S. DISTRICT COUR
NORTHERN DISTRICT OF CALIFOR

CIVIL ACTION FILE NO. C77-1804 C

30

RHEODYNE INCORPORATED, Plaintiff,

vs.

JAMES A. RAMIN', STANLEY D. STEARNS, VALCO INSTRUMENTS CO. and GLENCO SCIENTIFIC INC.

Defendants,

JUDGMENT

This action came on for ~~trial~~ (hearing) before the Court, Honorable CECIL F. POOLE, United States District Judge, presiding, and the issues having been duly ~~tried~~ (heard) and a decision having been duly rendered,

It is Ordered and Adjudged plaintiff take nothing and the action is dismiss on the merits and defendants recover their costs of action.

RECEIVED.
JAN 02 [illegible]

Dated at San Francisco, California, this 21st day of December, 19 79.

WILLIAM L. WHITTAKER
Clerk of Court

BY: F. J. Casabonne
F. J. Casabonne, Deputy Clerk

DEC 21 1978
ENTERED IN CIVIL DOCKET

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RHEODYNE INCORPORATED, Plaintiff, vs. JAMES A. RAMIN', STANLEY D. STEARNS, VALCO INSTRUMENTS CO., and GLENCO SCIENTIFIC, INC., Defendants.	C 77-1804 CFP ORDER OF DISMISSAL

On August 15, 1977, plaintiff Rheodyne Incorporated, a California corporation, filed this action for declaratory and injunctive relief. The complaint alleges that a certain United States Letters Patent No. 4,022,065, purportedly invented and owned by defendants Ramin' and Stearns, and manufactured and distributed under license by defendants Valco Instruments Co. (Valco) and Glenco Scientific, Inc. (Glenco) is invalid, that plaintiff has not infringed against it, and praying an injunction to restrain defendants from suing or threatening suit against plaintiff's customers for infringement. Ramin' and Stearns are Texas residents. Valco and Glenco are Texas corporations which transact business in California. Jurisdiction over the corporations pursuant to California's long-arm statute (California Code of Civil

Procedure § 410.10) is conceded. The complaint alleges jurisdiction under the patent laws (Title 35 United States Code), under Title 28 U.S.C. § 1338(a), and through diversity (Title 28 U.S.C. § 1332).

Defendants have moved to dismiss on several grounds which may be summarized as follows: (1) Lack of personal jurisdiction over the individual defendants Ramin' and Stearns; (2) failure to join indispensable parties; (3) improper venue; (4) insufficient service of process; (5) improper form due to a previously filed action in Texas; and (6) lack of subject matter jurisdiction due to the absence of actual controversy. These contentions will be discussed in order.

1. Personal Jurisdiction Over Defendants Ramin' and Stearns.

Defendant Ramin': Plaintiff asserts the Court has personal jurisdiction over defendant Ramin', a Texas resident, solely on the basis of three letters. Two letters were sent by Ramin' in Texas to plaintiff in California. The third letter was sent by Ramin''s Texas attorney to the plaintiff in California. The three documents are characterized as "threats" on the part of Ramin' to sue for patent infringement and it is alleged that these mailings constitute sufficient minimum contacts to confer personal jurisdiction over Ramin'. No other contacts are alleged.

Under Rule 4 of the Federal Rules of Civil Procedure the Court looks to the California long-arm statute to determine whether personal jurisdiction exists. Section 410.10 of the California Code of Civil Procedure provides:

> "'A court of this state may exercise jurisdiction on any basis not inconsistent with the constitution of this state or of the United States.'"

The Ninth Circuit has interpreted this statute as meaning:

> "The jurisdiction of the California courts is therefore coextensive with the outer limits of due process under the state and federal constitutions, as those limits have been defined by the United States Supreme Court." Threlkeld v. Tucker, 496 F.2d 1101, 1103 (9th Cir. 1974).

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Subsequent decisions such as McGee v. International Life Insurance Co., 355 U.S. 220 (1957), and Hanson v. Denckla, supra, made it clear that although personal jurisdiction can be found based on very minimal contacts with the forum state (e.g., a single insurance policy between a foreign insurer and a California insured, in McGee), there are limits beyond which due process cannot be stretched. In Hanson v. Denckla, supra, at 253, the Court said:

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> "* * * by reason of defendant's notification to the plaintiff of infringement of the [patent] in this jurisdiction, and defendant's threats to proceed with 'coercive litigation' in the event that the plaintiff refused to comply with the notification. * * *"

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Defendant Stearns: Plaintiff does not contend that Stearns sent into the forum state letters charging patent infringement. Rather, the argument is that Stearns is but the "alter ego" of the corporate defendant Valco, which concededly does business and is subject to jurisdiction here. Plaintiff urges this Court to "pierce the corporate veil" and to assert jurisdiction over Stearns for this reason.

The Ninth Circuit prescribes a two-part test for determining whether the corporate forum should be disregarded and that entity treated as but an alter ego of its shareholders. In United States v. Standard Beauty Supply Stores, Inc., 561 F.2d 774 (9th Cir. 1977), Judge Sneed stated:

> "Issues of alter ego do not lend themselves to strict rules and prima facie cases. Whether the corporate veil should be pierced depends on the innumerable individual equities of each case. 'Only general rules may be laid down for guidance.' * * * .
>
> "Before a court can hold that a corporation is the mere alter ego of its shareholders, two

particular findings must be made. First, the court must determine that there is 'such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist.' Watson v. Commonwealth Insurance Co., 8 Cal.2d 61, 68, 63 P.2d 295, 298 (1936). Second, however, it must be shown that the failure to disregard the corporation would result in fraud or injustice. Id. * * *."

The standard adopted by the California courts, followed by Judge Sneed in the Standard Beauty case, is the same:

> "It is the general rule that the conditions under which a corporate entity may be disregarded vary according to the circumstances of each case. [Citation omitted]. It has been stated that the two requirements for application of this doctrine are (1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow." Automotoriz, etc., de California, etc., v. Resnik, 47 Cal.2d 792, 796 (1957).

In its effort to prove this a proper case for application of the alter ego doctrine, plaintiff has submitted excerpts from a deposition of defendant Stearns from which it has distilled the following facts:

(1) Stearns owns 100 per cent of Valco's shares;

(2) Stearns is president of Valco, and his wife is its secretary-treasurer;

(3) Stearns and wife are Valco's only directors;

(4) The corporate records contain no minutes of meetings after January 5, 1977;

(5) Mrs. Stearns draws no salary from Valco;

(6) Property owned by Stearns and his wife is leased to the corporation.

Plaintiff argues that these facts show that the corporate forum is a "sham" and it ought to be disregarded for jurisdictional purposes over Stearns.

However, the same transcript shows that the

corporation did have bylaws; did keep minutes of meetings prior to January 1977; that its directors met five times a year between 1973 and 1976. There is no indication that Stearns and the corporation commingled funds, failed to keep separate bank accounts, or that the corporation failed to keep separate books of account. The Ninth Circuit has included such conduct among the factors to be considered in ruling on jurisdiction. See Wells Fargo & Co. v. Wells Fargo Express Co., 194 U.S.P.Q. 10 (9th Cir. 1977). Applying these standards to the known facts about the Stearns-Valco relationship it does not appear that Valco's corporate form is a mere sham which should be disregarded. Neither does it appear that "the failure to disregard the corporation would result in fraud or injustice." United States v. Standard Beauty Supply Stores, supra.

On this record it cannot be said that any fraud or injustice at all results to plaintiff from the use by the Stearnses of the Valco corporate form for doing business. Valco is small and closely held, and some of its record-keeping concededly appears to have been sloppy, but there is no allegation by the plaintiff that the corporate form was used for any improper purposes. Presumably, incorporation was accomplished in order to obtain the financial advantages and insulation from liability which are the normal consequences of such action. The facts presented here present no justification why dependent Stearns should be denied the protection of an otherwise legitimate corporate form and be required to defend in this forum an action where he has had no personal contacts.

The motion by defendant Stearns to dismiss for lack of personal jurisdiction will be granted.

/////

2. Failure to Join Indispensable Parties.

It follows from the preceding ruling dismissing the individual defendants, that this entire action must be dismissed for failure to join the patent owners (individuals Ramin' and Stearns).

Many cases hold that the patent owner is an indispensable party to an action seeking a declaratory judgment of patent invalidity and non-infringement. Massa v. Jiffy Products Co., 240 F.2d 702 (9th Cir. 1957); Sweetwater Rug Corp. v. J & C Bedspread Company, Inc., 198 F.Supp. 941 (S.D. N.Y. 1961), aff'd 299 F.2d 573 (2d Cir. 1962); Technical Tape Corp. v. Minnesota Mining & Mfg. Co., 135 F.Supp. 505 (S.D. N.Y. 1955); Caldwell Mfg. Co. v. Unique Balance Co., 18 F.R.D. 258 (S.D.N.Y. 1955).

Plaintiff contends that even if only the corporate defendants remain in this jurisdiction, that is sufficient to carry on this lawsuit because they have "substantial rights" in the patents. Plaintiff does not, however, assert that Valco and Glenco are patent owners; they are at most licensees as appears by licensing agreements attached to the defendants' moving papers. The Sweetwater Rug. Corp. case, supra, held that an individual patent owner's indispensability is not diminished by the fact that he was the president and major shareholder of the corporate defendant, and that the corporate licensee could not defend a suit seeking a declaration of patent invalidity in the absence of the patent owner. In Caldwell Mfg. Co., supra, at 264, the general rule was stated to be:

> [10] In the absence of the licensor-patentee as a party defendant in the Southern District action, this declaratory judgment proceeding must fail, since the 'case or controversy' requirement is unsatisfied. Without the owner of the patent before this Court, the validity of the patent may not be adjudicated. Under such circumstances,

the allegations of non-infringement and invalidity of the patent present moot issues because no substantial controversy exists pursuant to the mandate of the Declaratory Judgment Act."

Ramin' and Stearns are co-owners of the patent in question here. Both of them have been dismissed for lack of personal jurisdiction. The action, therefore, cannot proceed and must be dismissed under Rule 12(b)(7) and Rule 19 of the Federal Rules of Civil Procedure.

In view of the above rulings, it is clear that none of the remaining contentions of the defendants need be considered.

IT IS HEREBY ORDERED that the above action be, and the same is, hereby dismissed.

DATED: December 21, 1978.

CECIL F. POOLE
UNITED STATES DISTRICT JUDGE

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January 18, 1979

FILE 4252, 4421

The United States Patents Quarterly
The Bureau of National Affairs, Inc.
1231 Twenty-Fifth Street, N.W.
Washington, D. C. 20037

RE: Civil Action No. C77-1804-CFP
Rheodyne Incorporated v. James A. Ramin',
Stanley D. Stearns, Valco Instruments, Inc.
and Glenco Scientific, Inc.
United States District Court for the
Northern District of California

Dear Sirs:

Enclosed for inclusion in The United States Patents Quarterly are two (2) copies of the Judgment and Order of Dismissal rendered in the above captioned cause of action.

Cordially yours,

Donald Gunn

DG:tf
Enclosures

cc: Ted D. Lee (w/enc.)
Stanley D. Stearns (w/enc.)
James A. Ramin' (w/enc.)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

DAVID L. ARNESON,

Plaintiff,

vs.

GARY GYGAX and TSR HOBBIES, INC., a corporation,

Defendants.

Civil Action No. 4-79-109

MOTION FOR RECONSIDERATION OR CLARIFICATION OF THE COURT'S ORDER DENYING DEFENDANT GYGAX'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

NOTICE OF WAIVER OF ORAL HEARING ON DEFENDANT'S MOTION

MOTION

NOW COMES the above-named Defendant, Gary Gygax, appearing specially by his attorneys, Jacobson and Johnson and Michael, Best & Friedrich, and hereby moves the Court, pursuant to Rule 60 (b) of the Federal Rules of Civil Procedure, for reconsideration or clarification of the May 14, 1979 oral decision of the Court denying Defendant, Gygax's, Motion to Dismiss for Lack of Personal Jurisdiction. This Motion is brought for the following reasons:

1. Defendant's counsel believe that the issue of personal jurisdiction over the individual Defendant, Gygax, was inadvertently presented to the Court at the oral Hearing without sufficient clarity or detail to insure full and proper consideration of the issue.

2. It is believed that the exercise of personal jurisdiction over Defendant, Gygax, is not consistent with the due process clause of the 14th Amendment, and Defendant respectfully requests that the Court reconsider its decision and grant Defendant, Gygax's Motion to Dismiss for Lack of Personal Jurisdiction.

3. It is unclear to Defendant's counsel on what basis the Court found that it could exercise personal jurisdiction over the individual Defendant, Gygax. If the Court reaffirms its decision, Defendant respectfully requests a ruling clarifying the Court's basis for exercise of personal jurisdiction over the Defendant, Gygax.

4. See the additional reasons set forth in the accompanying Memorandum in Support of Defendant's Motion for Reconsideration or Clarification.

WAIVER OF ORAL HEARING

In view of the accompanying Memorandum, Defendant believes that the issue of personal jurisdiction over Defendant, Gygax, is now adequately presented for the Court's reconsideration, and accordingly, Defendant waives his right to request an oral hearing.

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Attorneys for Defendants

Dated May 25, 1979

By 
John L. Beard
Michael, Best & Friedrich

CERTIFICATE OF SERVICE

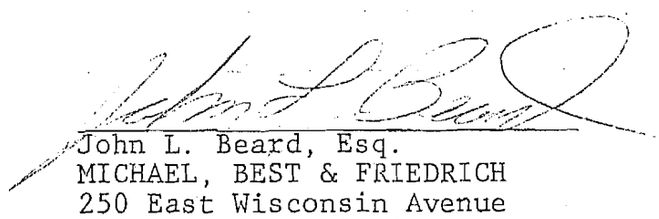
I certify that on the 25th day of May, 1979, I served the following:

MOTION FOR RECONSIDERATION OR CLARIFICATION OF THE COURT'S ORDER DENYING DEFENDANT GYGAX'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION - NOTICE OF WAIVER OF ORAL HEARING ON DEFENDANT'S MOTION

DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OR CLARIFICATION OF THE COURT'S ORDER DENYING DEFENDANT GYGAX'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

on Plaintiff's counsel of record by causing one copy to be deposited with the United States Postal Service, First Class, postage provided, addressed to:

J. Michael Hirsch, Esq.
MOSS, FLAHERTY & CLARKSON
2350 IDS Center
Minneapolis, MN 55402



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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

DAVID L. ARNESON, Plaintiff, vs. GARY GYGAX and TSR HOBBIES, INC., a corporation, Defendants.	Civil Action No. 4-79-109 DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OR CLARIFICATION OF THE COURT'S ORDER DENYING DEFENDANT GYGAX'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

I. INTRODUCTION

Defendant's Motion for Reconsideration or Clarification is brought pursuant to Rule 60 (b) of the Federal Rules of Civil Procedure, and for the reasons set forth in the body of the Motion.

At the May 14, 1979 Hearing, this Court ruled from the bench and denied the Motions of Defendants, Gygax and TSR Hobbies, Inc., to dismiss for lack of personal jurisdiction, and denied Defendants' alternative motions to transfer under §1404 (a) to the Eastern District of Wisconsin. The Court granted the motion to dismiss as to the former Defendant Partnership, Tactical Study Rules, based upon a stipulation of the parties.

With respect to Defendant, TSR Hobbies, Inc., it is presumed that the Court found that Minnesota sales and other Minnesota contacts of TSR Hobbies, Inc. were sufficient to confer personal jurisdiction over the corporate Defendant.

It is unclear to Defendants' counsel, however, on what basis the Court found that it could exercise personal jurisdiction over Gygax, consistent with due process, since Gygax, as an individual, has had virtually no personal contacts with the state of Minnesota. Defendants' counsel believe the issue of personal jurisdiction over Gygax was inadvertently not fully presented to the Court, due to the time and emphasis accorded to the issues of forum non conveniens and transfer argued at the Hearing with respect to the Defendant corporation, TSR Hobbies, Inc. Thus, Defendant has brought a Motion for Reconsideration or Clarification of the Court's Order denying Defendant, Gygax's, Motion to Dismiss for Lack of Personal Jurisdiction.

II. MATERIAL REQUIRED TO BE REVIEWED FOR RECONSIDERATION BY THE COURT

Defendant has not requested an oral hearing on this Motion. It is believed that the Court's attention need only by directed to portions of the following papers already filed with the Court:

(1) Defendants' First Memorandum, pages 8-13; reference is made therein to the Affidavit of Gary Gygax.

(2) Defendants' Supplemental Memorandum, pages 1 and 2; reference is made therein to the Supplemental Affidavit of Brian Blume.

(3) Plaintiff's Memorandum, pages 11-13; reference is made therein to Affidavits of Plaintiff, Arneson, and M.A.R. Barker.

Identified copies of the above referenced pages of Defendants' and Plaintiff's memoranda are attached hereto as Exhibits 1, 2, and 3, respectively, for the Courts convenient reference. A summary or background of this Action, if necessary, is set forth at the beginning of Defendants' first Memorandum.

III. ARGUMENT SUPPORTING RECONSIDERATION

Gygax, as an individual, has had virtually no contacts with the state of Minnesota, having traveled to Minnesota only twice, once on behalf of the corporate Defendant, TSR Hobbies, Inc., to meet with Prof. M.A.R. Barker concerning subject matter unrelated to this Action, and once during a personal vacation. (See pages 8 and 9 of Defendants' Memorandum). Gygax transacts no personal business in Minnesota, has no office, no bank account, no telephone listing, and no real or personal property in Minnesota. Virtually the only possibly relevant, but extremely limited contact Gygax has had with Minnesota, was his entering into a royalty Agreement with Plaintiff, a Minnesota resident, relating to sales of the game rules DUNGEONS & DRAGONS. (The "Agreement" is Plaintiff's Exhibit A, attached to the Complaint.) Gygax signed the Agreement on behalf of the Partnership, Tactical Study Rules, and on behalf of himself as co-author in Wisconsin, over four years ago.

A stipulation between the parties was read into the record at the Hearing to the effect that the corporate Defendant, TSR Hobbies, Inc., has assumed the contractual obligations of the Partnership under the Agreement, and the Court dismissed this action as to the Partnership. Since any contractual

obligation of the Partnership under the Agreement has been assumed by the corporate Defendant, it is not understood how Gygax's entering into the Agreement on behalf of the Partnership could provide a basis rendering Gygax subject to personal jurisdiction of this Court with respect to Plaintiff's first cause of action grounded in contract and based on the Agreement, or with respect to Plaintiff's second through fourth causes of action grounded in tort.

Plaintiff argued that the exercise of personal jurisdiction over Gygax would not violate due process, primarily upon the basis that Defendant, Gygax, "completely controls the activities of Defendant, TSR Hobbies, Inc." and on the basis that Gygax "has actively caused Defendant, TSR Hobbies, Inc., and its predecessor Partnership to engage in voluntary, affirmative economic activities of substance in the state of Minnesota" (pages 11 and 12 of Plaintiff's Memorandum).

The record contains no factual basis to support a holding that Gygax is subject to personal jurisdiction based on the activities of the corporate Defendant, TSR Hobbies, Inc. As is supported by the Supplemental Affidavit of Brian Blume, Chairman of TSR Hobbies, Inc., Defendant, Gygax, is not the largest or a controlling shareholder of TSR Hobbies, Inc. Gygax owns less than one-third of the voting stock, and although President of TSR, Gygax does not completely control the activities of TSR Hobbies, Inc. Plaintiff has presented argument, <u>but no facts</u>, controverting TSR Chairman Blume's

Affidavit that Gygax does not completely control TSR Hobbies, Inc. Thus, Defendant strenously submits that the Minnesota sales or contacts of the corporate Defendant, TSR Hobbies, Inc., can not be attributed to Defendant, Gygax, consistent with due process, to render him personally subject to the exercise of jurisdiction of this Court.

Defendant's position is amply supported by the recent case of Rheodyne, Inc. v. James A. Ramin', et al. (N.D. Cal. 1978) (apparently still unpublished). The Court's attention is specifically directed to pages 6-8 of the Rheodyne decision (identified copies of pages 6-8 attached hereto as Exhibit 4) relating to the issue of exercise of jurisdiction over an individual defendant, based on the argument that the individual was but the "alter ego" of a corporate defendant. The Rheodyne court refused to "pierce the corporate veil" and assert jurisdiction over the individual defendant (Stearns) based upon activities of the corporate defendant, Valco. No personal jurisdiction was found over the individual defendant Stearns even though Stearns owned 100% of the stock and Stearns and his wife were the only directors of the corporation. A complete copy of the Rheodyne case is attached to Defendants' Supplemental Memorandum.

Plaintiff's apparent secondary argument is that Gygax should be subject to personal jurisdiction based upon his being an author of the works in dispute. Plaintiff concedes, however, at page 12 of his Memorandum, that the alleged tortious acts of Defendant, Gygax, relating to Plaintiff's Second, Third, and

Fourth Causes of Action, were committed outside the state of Minnesota, jurisdiction allegedly being conferred upon this Court under Minn. Stat. §543.19 (1) (d). The torts Gygax is alleged to have committed relate to Gygax claiming sole authorship in the "MONSTER MANUAL" and "PLAYERS HANDBOOK" and other works in dispute. Gygax's authorship of the disputed works occurred in Wisconsin, and such authorship does not constitute sufficient contact with Minnesota to allow exercise of personal jurisdiction over Gygax, consistent with due process.

As stated in Defendants' Memorandum at page 12, Plaintiff has not alleged, and Gygax has not had, minimal contacts with Minnesota sufficient to demonstrate that Gygax purposely availed himself of the privilege of conducting personal activities within Minnesota, thus invoking the benefits and protection of its laws. These minimal contacts, which Plaintiff has failed to prove, are the ultimate test and are essential before exercise of jurisdiction over Gygax would conform to due process requirements. Hanson v. Denckla, 357 U.S. 235 (1968). The aggregate of Gygax's personal contacts with Minnesota is not sufficient to justify the maintenance of this action against Gygax in this Court consistent with "traditional notions of fair play and substantial justice". International Shoe Co. v. Washington, 326 U.S. 310 (1945). Rheem Manufacturing Co. v. Johnson Heater Corp., 370 F. Supp. 806, 808 (D. Minn. 1974) (C. J. Devitt).

IV. CONCLUSION

In view of the foregoing, it is respectfully requested that this Court reconsider its decision and grant Defendant, Gygax's Motion to Dismiss for lack of personal jurisdiction.

If this Court reaffirms its decision denying Gygax's Motion to Dismiss, it is respectfully requested that this Court provide Defendant with a ruling clarifying the Court's basis for exercise of personal jurisdiction over the individual Defendant, Gygax.

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Dated May 25, 1979

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Michael, Best & Friedrich

EXHIBIT 1
pgs. 8-13

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

DAVID L. ARNESON,

Plaintiff

vs.

Civil Action No. 4-79-109

MEMORANDUM

GARY GYGAX, TACTICAL STUDY RULES, a partnership consisting of Gary Gygax and Brian Blume, and TSR HOBBIES, INC., a corporation,

Defendants.

IN SUPPORT OF DEFENDANTS' MOTION TO QUASH SERVICE OF PROCESS AND DISMISS FOR LACK OF PERSONAL JURISDICTION, AND

IN SUPPORT OF DEFENDANTS' ALTERNATE MOTION TO TRANSFER UNDER 28 U.S.C. §1404 (a)

(d) Commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found:

(1) Minnesota has no substantial interest in providing a forum; or

(2) the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice; or

(3) the cause of action lies in defamation or privacy.

IV. THE COURT LACKS PERSONAL JURISDICTION OVER EACH OF THE DEFENDANTS

The following sections will, except as noted, treat each Defendant separately, presenting arguments and authorities in support of Defendants' position that the Court lacks personal jurisdiction over each of the Defendants.

A. The Court Lacks Jurisdiction Over the Nonresident Individual Defendant, Gary Gygax.

As is supported by the affidavit of Defendant, Gygax, filed herewith, Gygax is a citizen of the State of Wisconsin, residing in Lake Geneva, Wisconsin. When served, Gygax was not present in the State of Minnesota, nor engaged in any business or any other activity whatsoever in Minnesota. Gygax has no office, no bank account, no telephone listing and no real or personal property in Minnesota. From a time prior to the formation of the Partnership, Tactical Studies Rules, (now dissolved) Gygax has traveled to Minnesota only twice, once on behalf of the corporation TSR Hobbies, Inc., to meet with Prof. M. A. R. Barker, and once accompanied by his family during a personal vacation trip.

As explained in the Introduction hereto, virtually the only (and extremely limited) contact Gygax had with

Minnesota is his entering into the Agreement in 1975 on behalf of the Partnership and himself as co-author with Plaintiff, Arneson, a Minnesota resident. To the extent that there was any negotiation between the Partnership and the authors relating to the Agreement, such negotiation occurred in Lake Geneva, Wisconsin, and the Agreement was signed by Gygax on behalf of the Partnership and himself in Wisconsin.

(1) Jurisdiction over Gygax is not conferred by Minnesota Statutes.

Plaintiff has not alleged, and Defendant Gygax does not have, contacts with Minnesota necessary for Minnesota Long-Arm Statutes to confer jurisdiction upon this Court.

In paragraph 1.5 of Plaintiff's Complaint under the heading "Jurisdiction", Plaintiff does not allege that Gygax, as an individual, has been or is now doing business or has agents in the State of Minnesota. Plaintiff does state in paragraph 1.6 of the Complaint that the causes of action arise, in part, from a contract [the Agreement] entered into in the State of Minnesota and partially performed in the State of Minnesota.

Since Minn. Stat. §303.13(3), dealing with a contract made with a resident of Minnesota, relates exclusively to foreign corporations, it is clear that jurisdiction over the individual Defendant, Gygax, can not be based on this statute. "Because Section 303.13 applies only to foreign corporations, it can not be invoked against the Partnership, nor the individual partners", Imperial Products, Inc. v. Zuro, 176 U.S.P.Q. 172, (D. Minn. 1971). See also Washington Scientific Ind., v. American Safeguard Corp., 308 F. Supp. 736, 738 (D. Minn. 1970).

The only other Minnesota Statute on which Plaintiff might possibly rely is §543.19 Subd. 1, which again does not apply. Specifically, referring to Subd. 1 (set forth in section III above) parts (a), (b), and (c) do not apply since Gygax owns no real or personal property in Minnesota, Plaintiff has not alleged that Gygax transacts, and Gygax does not transact, any business in Minnesota, and Gygax has not committed any act in Minnesota causing injury or property damage.

Part (d) relates to a nonresident committing an act outside of Minnesota causing injury or property damage in Minnesota, except that jurisdiction will not be found if . . . (3) the cause of action lies in defamation or privacy. Thus, part (d) provides no basis for conferring jurisdiction over Gygax with respect to Plaintiff's First Cause of Action which lies in contract, or the Second, Third or Fourth Causes of Action, which apparently lie in defamation, i.e., Arneson alleged that Defendants falsely represented that certain publications were solely authored by Defendant, Gygax, thereby depriving Plaintiff of a valuable right and causing irreparable damage to Plaintiff's reputation.

Since no Minnesota Statute confers jurisdiction upon this Court with respect to Gygax, Defendants' Motion to Dismiss for Lack of Jurisdiction over Gygax should be granted.

(2) Jurisdiction over Gygax is not consistent with due process.

Even if this Court were to find that a Minnesota Statute did confer jurisdiction over Gygax, it is respectfully submitted that the exercise of personal jurisdiction

over Gygax on this basis would be improper since Gygax has not had sufficient contacts with Minnesota to satisfy due process requirements. Because of Gygax's remote and limited contact with Minnesota, exercise of jurisdiction over Gygax would offend "traditional notions of fair play and substantial justice". International Shoe v. Washington, 326 U.S. 310 (1945).

The conclusion that due process requirements would be violated if jurisdiction over Gygax were exercised, is also reached following the five factor analysis ((a) - (e)) of the Eighth Circuit set forth in Aftanase, supra. Specifically, referring to these five factors, (a) Gygax at most, has only one remote contact with Minnesota, i.e., entering into the Agreement (signed by Gygax in Wisconsin in April, 1975) with Plaintiff, a resident of Minnesota. (b) Gygax, signing the Agreement on behalf of the Partnership and himself, did not avail himself of the benefits and privileges of Minnesota law. (c) Plaintiff's claims are not directly related to the act of Gygax signing or entering into the Agreement. With respect to the first contract cause of action, Plaintiff's claim arises from the alleged failure of the corporation, TSR Hobbies, Inc., (which is alleged by Plaintiff to have assumed the obligations of the Agreement), to make required royalty payments from approximately after the middle of 1977. The relationship of Gygax's signing the Agreement to Plaintiff's Second through Fourth Causes of Action, which apparently lie in defamation, is even more remote.

(d) It is conceded that Minnesota may have an interest in providing Plaintiff, a Minnesota resident, with a forum for litigation, although §543.19 subd. 1 (b) (3) indicates that the Minnesota Legislature has expressed its

intent not to provide Plaintiff with a forum for causes of action grounded in defamation, where jurisdiction is based on this Minnesota Long-Arm Statute.

(e) The convenience of the parties or forum non conveniens considerations weigh against this Court exercising jurisdiction. Specifically, as will be further discussed in Section V dealing with forum non conveniens considerations, substantially all the documentation and witnesses (except for Plaintiff Arneson) having knowledge relating to the apparent touchstone of Plaintiff's Causes of Action, (i.e., whether the alleged additional "D&D" publications are substantially copied and derived from the original game rules entitled DUNGEONS & DRAGONS) are located in Wisconsin in the Lake Geneva or Lake Geneva - Milwaukee, Wisconsin area.

Although it is submitted that the five factors (a) - (e) considered in the Eighth Circuit analysis dictate that exercise of jurisdiction over Gygax would not satisfy due process concerns, it is submitted, that in any event, exercise of jurisdiction would be improper under the rule set forth by the Supreme Court in Hanson v. Denckla, 357 U.S. 235 (1958).

As stated in Hanson v. Denckla, at 357 U.S. 235, 251 "...However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that state that are a prerequisite to exercise of power over him." It is submitted that Defendant, Gygax, has not had such "minimal contacts". Put another way, as is supported by a recent Eighth Circuit decision noted below, Plaintiff has not alleged, and Gygax has not had, minimal contacts with Minnesota sufficient to demonstrate that Gygax purposely availed himself of the privilege of conducting activities within

Minnesota, thus invoking the benefits and protections of its laws, which minimal contacts are the ultimate test or are essential before exercise of jurisdiction over Gygax would conform with due process requirements. Hanson v. Denckla, supra, Aaron Ferer & Sons Co. v. Diversified Metals Corp., 564 F.2d 1211, 1215 (8th Cir. 1977). See also Rheem Manufacturing Co. v. Johnson Heater Corp., 370 F. Supp. 806, 808 (D. Minn. 1974).

In summary, Defendants' Motion to Quash Service of Process and Dismiss for Lack of Personal Jurisdiction over Defendant Gygax should be granted, since Minnesota Statutes do not confer jurisdiction, and exercise of jurisdiction over Gygax would not be consistent with due process.

B. The Court Lacks Jurisdiction Over The Defendant Partnership, Tactical Studies Rules, (Dissolved in November, 1975)

Service of process on "Tactical Study Rules" [sic] (should be "Studies") was purportedly made in Lake Geneva, Wisconsin, by personal service on Gary Gygax, a former partner of the dissolved Partnership.

As is supported by the Affidavit of Brian J. Blume, also a former partner of the dissolved Partnership, filed herewith, during the existence of the Partnership, the Partnership had no offices, no bank account, no telephone listing, and no real or personal property in Minnesota. No business activities of any kind were carried on by the Partnership in Minneosta. At the time of service on the Partnership, as will be further explained below, the Partnership was dissolved and wound up, and was not engaged in any business or any other activity in Minnesota or elsewhere.

By way of background, the original Partnership, Tactical Studies Rules, consisted of Donald R. Kaye and E.

EXHIBIT 2
pgs. 1 & 2

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

DAVID L. ARNESON, Plaintiff, vs.	Civil Action No. 4-79-109
GARY GYGAX, TACTICAL STUDY RULES, a partnership consisting of Gary Gygax and Brian Blume, and TSR HOBBIES, INC., a corporation. Defendants.	SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO QUASH SERVICE OF PROCESS AND DISMISS FOR LACK OF PERSONAL JURISDICTION, AND IN SUPPORT OF DEFENDANTS' ALTERNATE MOTION TO TRANSFER UNDER 28 U.S.C. §1404(a)

This Supplemental Memorandum is addressed to two arguments made in Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss, which arguments Defendants dispute and feel should be rebutted and considered by the Court prior to the Hearing on this matter.

Plaintiff's first argument relies on the allegations that Defendant, Gygax, is "a controlling shareholder" and "completely controls the activities" of Defendant, TSR Hobbies, Inc. Thus, Plaintiff argues that this Court's exercise of jurisdiction over Defendant, Gygax, as an individual, would not offend due process, since through his control and domination of TSR Hobbies, Inc., Gygax has sought sales in Minnesota. Plaintiff's argument should fail because it has no factual support.

As evidenced by the accompanying Supplemental Affidavit of Brian J. Blume, Chairman of Defendant, TSR Hobbies, Inc., Gygax is not the largest or a controlling shareholder of Defendant, TSR Hobbies, Inc. In fact, Gygax owns less than 1/3 of the voting stock in TSR Hobbies, Inc.

As stated by Brian Blume, Chairman of TSR Hobbies, Inc., Gygax does not completely control the activities of TSR Hobbies, Inc.

Since Gygax is not a controlling shareholder and does not completely control the activities of TSR Hobbies, Inc., it is submitted that Gygax's activity, as President of TSR Hobbies, Inc., does not subject him, as an individual, to the jurisdiction of a Minnesota court. See for example, the recent case Rheodyne Inc. v. James A. Ramin', Stanley D. Stearns, Valco Instruments Co. and Glenco Scientific Inc., (N.D. Ca. 1978), (apparently still unpublished, a copy of decision attached hereto).

In Rheodyne, starting on page 6 of the decision, the Court rejected an argument that an individual defendant (Stearns) was but the "alter ego" of the corporate defendant, and since the corporate defendant was subject to jurisdiction, so should the individual be subject to jurisdiction. The concluding language of the Rheodyne Court, dismissing the action as to the individual, is believed to be particularly applicable to this case, and supports Gygax's Motion to Dismiss; the court stating at page 6, supra:

> The facts presented here present no justification why defendant Stearns should be denied the protection of an otherwise legitimate corporate form and be required to defend in this forum an action where he has had no personal contacts.

Plaintiff has not alleged or proven virtually any personal contacts of the Defendant, Gygax, with Minnesota. As noted in Defendants' initial Memorandum, Plaintiff has failed to allege, and in fact, Gygax has not had "the minimal contacts" with the state of Minnesota that are a prerequisite to this Court's exercise of jurisdiction or power over him. Hanson v. Denkla, 357 U.S. 235 (1958).

EXHIBIT 3
pgs. 11-13

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

DAVID L. ARNESON,

Plaintiff,

vs.

GARY GYGAX, TACTICAL STUDY RULES, a partnership consisting of Gary Gygax and Brian Blume, and TSR HOBBIES, INC., a corporation,

Civil Action No. 4-79-109

PLAINTIFF'S MEMORANDUM

IN OPPOSITION TO DEFENDANTS' MOTION TO QUASH SERVICE OF PROCESS AND DISMISS FOR LACK OF PERSONAL JURISDICTION, AND

IN OPPOSITION TO DEFENDANTS' ALTERNATE MOTION TO TRANSFER UNDER 28 U.S.C. § 1404 (a)

STATEMENT OF FACTS

The facts of this case are not complicated. In 1973 and 1974, Plaintiff David L. Arneson and Defendant Gary Gygax co-authored a game together called "Dungeons & Dragons". The two co-authors entered into an agreement with Defendant Tactical Studies Rules, a partnership of Defendant Gygax, Brian Blume and Donna Kaye, which allowed Defendant Tactical Studies Rules to publish, sell and distribute the game or game rules entitled "Dungeons & Dragons" in any form that Tactical Studies Rules deemed suitable for commercial sales. In return, Plaintiff and his co-author, Defendant Gygax, were to receive a royalty of ten percent (10%) of the cover price of the game or game rules on each and every copy sold by Tactical Studies Rules. The co-authors by agreement were to split said royalties equally; each receiving five percent (5%) of the cover price of the game or game rules sold. A copy of said agreement is attached hereto as Exhibit "A".

In 1975, Defendant Tactical Studies Rules incorporated itself as Defendant TSR Hobbies, Inc. All rights and obligations of the partnership under the above-referenced agreement were transferred to the successor corporation, and Defendant TSR Hobbies, Inc. has marketed the game and paid Plaintiff royalties for sales thereof since 1975. Sales of the game have grown, and there were no problems until approximately the fall of 1977, when Plaintiff learned that

employees of Defendant TSR Hobbies, Inc. to do the copying.

Based on the above five factors, it is apparent that the exercise of personal jurisdiction over Defendant TSR Hobbies, Inc. will not offend traditional notions of due process. In its facts, the present case is very similar to the facts of American Pollution Prevention Company, Inc., supra, where the Minnesota Supreme Court held that exercise of long-arm jurisdiction over a nonresident corporation was proper in view of the corporation's contacts with Minnesota, including its solicitation of business in Minnesota through trade paper advertisement, its transaction of business with numerous Minnesota corporations, and fact that payment of a substantial purchase price under the contract in suit was to be made in Minnesota. In Washington Scientific Industries, Inc. v. American Safeguard Corporation, 308 F. Supp. 736 (1970), this Court held that solicitation by nonresident agents of a nonresident corporation in the State of Minnesota plus performance of at least a portion of the contract within Minnesota was sufficient contact with the State of Minnesota to enable the Plaintiff to invoke jurisdiction through the Long-Arm Statute. This case is clearly distinguishable from cases like DeNucci v. Fleischer, 225 F. Supp. 935 (1964), since TSR Hobbies, Inc. has actively solicited sales in Minnesota through advertising and agents as well as transacting other business in this state. Defendant TSR Hobbies, Inc.'s contacts with the State of Minnesota are much more significant, systematic and continuous than these cases, and it is submitted that Plaintiff's prima facie showing of jurisdiction casts the burden upon the Defendant as moving party to demonstrate a lack of personal jurisdiction. Aaron Ferer & Sons Co. v. Diversified Metals Corp., 564 F.2d. 1211 (1977).

B. This Court has Jurisdiction Over the Defendant Gary Gygax.

Minn. Stat. § 543.10 allows jurisdiction not only over foreign corporations, but also over nonresident individuals. Defendant Gygax is the President of Defendant TSR Hobbies, Inc., a controlling shareholder, a key salaried employee, and the author of the major games sold by the corporation. Defendant Gygax completely controls the activities of Defendant TSR Hobbies, Inc. It would have been impossible for Defendant TSR Hobbies, Inc. to publish "Monster Manual" or "Players' Handbook" in a form falsely representing these works to be authored solely by Defendant Gygax without his consent and direction. Thus, the tort claims alleged against Defendant TSR Hobbies, Inc. are equally alleged

against Defendant Gygax in Plaintiff's Second, Third and Fourth Causes of Action.

The tortious acts of Defendant Gygax as alleged in Plaintiff's Second, Third and Fourth Causes of Action were acts committed outside the State of Minnesota which have caused injury to Plaintiff in the State of Minnesota (Minn. Stat. 543.10, Subdivision 1(d)). Defendant Gygax has also caused Defendant TSR Hobbies, Inc., a corporation he completely controls and dominates to transact business in the State of Minnesota (Minn. Stat., 543.19, Subd. 1(b), and Defendant TSR Hobbies, Inc. sales activity in the State of Minnesota causes injury to the Plaintiff each time it sells works such as "Monster Manual" or "Players' Handbook" in the State of Minnesota without paying royalties or acknowledging Plaintiff's co-authorship. (Minn. Stat. 543.19, Subdivision 1(c)).

This Court will also not offend due process by exercising jurisdiction over Defendant Gygax. Through his control and domination of Defendant TSR Hobbies, Inc., Defendant Gygax has actively sought sales in Minnesota. The Affidavit of David Arneson and the exhibits attached thereto, clearly point out Defendant Gygax has voluntarily and actively sought sales in the Minnesota market, derived benefits therefrom, received the protection of Minnesota laws, and reasonably could have anticipated that this activity could have consequences in Minnesota. It is submitted that Defendant Gygax has actively caused Defendant TSR Hobbies, Inc. and its predecessor partnership to engage in voluntary, affirmative economic activity of substance in the State of Minnesota.

It should also be noted that Defendant has personally transacted business in the State of Minnesota on at least one occasion. See the Affidavit of M.A.R. Barker and Exhibits "Q", "R", "S" and "T" attached to the Affidavit of David Arneson. Defendant Gygax cannot claim that his activities are somehow shielded from liability in that he was only acting as an agent of TSR Hobbies, Inc. The domination and control exercised by Defendant Gygax over Defendant TSR Hobbies, Inc. excludes such a characterization, but it is also clear that an agent is not shielded from liability if he commits a tort while acting within the scope of his authority for his employer. See Washington Scientific Industries, Inc., supra.

The exercise of long-arm jurisdiction over Defendant Gygax is proper in view of his contacts with Minnesota, including his continuous and systematic solicitation of business in this state.

II. THIS COURT HAS JURISDICTION OVER DEFENDANTS GYGAX AND TSR HOBBIES, INC., AND TRANSFER OF THIS ACTION TO THE EASTERN DISTRICT OF WISCONSIN WOULD NOT PROMOTE THE CONVENIENCE OF PARTIES AND WITNESSES OR THE INTEREST OF JUSTICE.

In First National Bank of Minneapolis v. White, 420 F. Supp. 1331, 1337 (1976), the Court states that 28 U.S.C. § 1404 (a) provides that a change of venue to another forum where the case could have been brought, may be had when it suits the convenience of the parties, the convenience of witnesses, and the interest of justice, and the moving party has the burden of establishing that the transfer should be granted. An analysis of these three factors weigh against transfer of this action to the Eastern District of Wisconsin as follows:

1. Convenience of the Parties - As pointed out earlier, the distance between Lake Geneva and Minneapolis which Defendants must now travel is no greater than the distance between St. Paul and Milwaukee which Plaintiff would be required to travel if this action is transferred to the Eastern District of Wisconsin. As was the case in Medtronic, Inc. v. American Optical Corporation, 337 F. Supp. 490 (1971), the parties are in a state of virtual equipoise as it appears that the Wisconsin forum would be just as inconvenient to the Plaintiff as the Minnesota forum would be to the Defendants.

2. Convenience of Witnesses - Hoping to influence this Court's decision regarding transfer by the sheer weight of alleged witnesses, Defendant Gygax alleges in his affidavit and the Defendants' memorandum that there are a large number of witnesses in the Lake Geneva area who are prepared to testify regarding the development of the works which Plaintiff has alleged are copied in substantial part and wholly derived from the original work "Dungeons & Dragons". As stated above, the testimony of these witnesses is completely irrelevant as the documents

DEC 21 1978

CLERK, U. S. DIST. COURT
SAN FRANCISCO

United States District Court

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

DEC 21 1978

WILLIAM L. WHITTAKER
CLERK, U. S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CIVIL ACTION FILE NO. C77-1804

EXHIBIT 4
— pgs. 6-8

RHEODYNE INCORPORATED 30/ Plaintiff,

vs.

JAMES A. RAMIN', STANLEY D. STEARNS, VALCO INSTRUMENTS CO. and GLENCO SCIENTIFIC INC.

Defendants,

JUDGMENT

This action came on for ~~trial~~ (hearing) before the Court, Honorable CECIL F. POOLE, United States District Judge, presiding, and the issues having been duly ~~tried~~ (heard) and a decision having been duly rendered,

It is Ordered and Adjudged plaintiff take nothing and the action is dismis on the merits and defendants recover their costs of action.

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JAN 02 19[illegible]

Dated at San Francisco, California, this 21st day of December, 19 79.

WILLIAM L. WHITTAKER
Clerk of Court

BY: F. J. Casabonne
F. J. Casabonne, Deputy Clerk

DEC 21 1978

ENTERED IN CIVIL DOCKET

> "* * * It is undoubtedly true that some threats of infringement action are made in bad faith for the purpose of engaging in unfair competition. But to base a generally applicable jurisdictional rule on this occasional practice would be extreme. Moreover, the patent laws anticipate that written notice of infringement will be routinely sent prior to litigation, see Appendix Form 16 to Federal Rules of Civil Procedure, and expressly provide that the amount of damages recoverable will often hinge on the sending of such notice. * * * . It would offend 'traditional notions of substantial justice and fair play' to hold that the written notice of infringement necessary to commence the running of damages submits the patentee to the foreign jurisdiction of the infringer."

This Court is persuaded by the reasoning and result reached in Conwed decision. The contacts between defendant Ramin' and the state of California are minimal. The conclusi is that defendant Ramin''s motion to dismiss for lack of personal jurisdiction should be granted.

Defendant Stearns: Plaintiff does not contend that Stearns sent into the forum state letters charging patent infringement. Rather, the argument is that Stearns is but the "alter ego" of the corporate defendant Valco, which concededly does business and is subject to jurisdiction here. Plaintiff urges this Court to "pierce the corporate veil" and to assert jurisdiction over Stearns for this reason.

The Ninth Circuit prescribes a two-part test for determining whether the corporate forum should be disregarded and that entity treated as but an alter ego of its shareholders. In United States v. Standard Beauty Supply Stores, Inc., 561 F.2d 774 (9th Cir. 1977), Judge Sneed stated:

> "Issues of alter ego do not lend themselves to strict rules and prima facie cases. Whether the corporate veil should be pierced depends on the innumerable individual equities of each case. 'Only general rules may be laid down for guidance.' * * * .
>
> "Before a court can hold that a corporation is the mere alter ego of its shareholders, two

particular findings must be made. First, the court must determine that there is 'such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist.' Watson v. Commonwealth Insurance Co., 8 Cal.2d 61, 68, 63 P.2d 295, 298 (1936). Second, however, it must be shown that the failure to disregard the corporation would result in fraud or injustice. Id. * * *."

The standard adopted by the California courts, followed by Judge Sneed in the Standard Beauty case, is the same:

> "It is the general rule that the conditions under which a corporate entity may be disregarded vary according to the circumstances of each case. [Citation omitted]. It has been stated that the two requirements for application of this doctrine are (1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow." Automotoriz, etc., de California, etc., v. Resnik, 47 Cal.2d 792, 796 (1957).

In its effort to prove this a proper case for application of the alter ego doctrine, plaintiff has submitted excerpts from a deposition of defendant Stearns from which it has distilled the following facts:

(1) Stearns owns 100 per cent of Valco's shares;

(2) Stearns is president of Valco, and his wife is its secretary-treasurer;

(3) Stearns and wife are Valco's only directors;

(4) The corporate records contain no minutes of meetings after January 5, 1977;

(5) Mrs. Stearns draws no salary from Valco;

(6) Property owned by Stearns and his wife is leased to the corporation.

Plaintiff argues that these facts show that the corporate forum is a "sham" and it ought to be disregarded for jurisdictional purposes over Stearns.

However, the same transcript shows that the

corporation did have bylaws; did keep minutes of meetings prior to January 1977; that its directors met five times a year between 1973 and 1976. There is no indication that Stearns and the corporation commingled funds, failed to keep separate bank accounts, or that the corporation failed to keep separate books of account. The Ninth Circuit has included such conduct among the factors to be considered in ruling on jurisdiction. See Wells Fargo & Co. v. Wells Fargo Express Co., 194 U.S.P.Q. 10 (9th Cir. 1977). Applying these standards to the known facts about the Stearns-Valco relationship it does not appear that Valco's corporate form is a mere sham which should be disregarded. Neither does it appear that "the failure to disregard the corporation would result in fraud or injustice." United States v. Standard Beauty Supply Stores, supra.

On this record it cannot be said that any fraud or injustice at all results to plaintiff from the use by the Stearnses of the Valco corporate form for doing business. Valco is small and closely held, and some of its record-keeping concededly appears to have been sloppy, but there is no allegation by the plaintiff that the corporate form was used for any improper purposes. Presumably, incorporation was accomplished in order to obtain the financial advantages and insulation from liability which are the normal consequences of such action. The facts presented here present no justification why dependent Stearns should be denied the protection of an otherwise legitimate corporate form and be required to defend in this forum an action where he has had no personal contacts.

The motion by defendant Stearns to dismiss for lack of personal jurisdiction will be granted.

/////

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

David L. Arneson,

Plaintiff,

vs. Civ. 4-79-109

Gary Gygax, and TSR Hobbies, Inc., a corporation, MEMORANDUM & ORDER

Defendant.

Maher J. Seinstein and J. Michael Hirsch, Moss, Flaherty, Clarkson & Fletcher, Minneapolis, Minnesota, attorneys for plaintiff.

Marvin Jacobson, Jacobson and Johnson, St. Paul, Minnesota, and John L. Beard, Michael, Best & Friedrich, Milwaukee, Wisconsin, attorneys for defendant.

Defendant Gary Gygax moves the court for relief, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, from an ~~order~~ ruling of this court, filed May 21, 1979, denying defendant Gygax's motion to dismiss for lack of personal jurisdiction. In the alternative, defendant Gygax requests clarification of the court's order denying his motion to dismiss. The motion to dismiss is denied, for the reasons clarified below ~~These motions are denied~~.

This diversity action arises out of a dispute over the authorship and royalty rights to a game or game rules entitled "Dungeons and Dragons," and the rights to certain subsequently produced playing aids, game or game rules entitled "Advanced Dungeons and Dragons, Players Handbook" and "Dungeons and Dragons, Monster Manual," as well as various other publications pertaining to the above games.

FACTS

Plaintiff's complaint alleges that defendants have breached a royalty agreement entered into in April 1975

In a March 13, 1974 letter to plaintiff, Gygax states "Seeing as how you and I each make a buck on a retail sale by TSR we have to be dreaming up ways to promote same! Get to work!" In the same letter, Gygax cites examples of his own promotional activities, asks plaintiff if he knows of other possibilities for promotion, and then states: "Now if that gets going we can really do a job selling D & D with ads and stories (with plenty of graphic work to put it across with POW!)".

In sum, Gygax took numerous steps, both in and out of Minnesota, to cause the games in question to be marketed in Minnesota. The Minnesota long arm statute, Minn. Stat. § 543.19(1)(d)(2), permits the courts of Minnesota to exercise personal jurisdiction over a non-resident individual if the individual commits any act outside Minnesota causing injury or property damage in Minnesota, except when the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice.

The language of the statute evinces the legislative intent to permit the exercise of personal jurisdiction over non-residents to the maximum extent consistent with constitutional due process.

When personal jurisdiction is challenged, plaintiff has the burden of showing that he has acquired personal jurisdiction over the defendant. A prima facie showing on a pretrial motion is sufficient, however. See McQuay, Inc. v. Samuel Selibosberg, Inc.., 321 F. Supp. 902, 904 (D. Minn. 1971), and cases cited.

For the court to have jurisdiction over defendant Gygax, a non-resident individual, Gygax must have sufficient minimum contacts with Minnesota such that maintenance of the suit in Minnesota "does not offend 'traditional notions of fair play and substantial justice.'" International Shoe

the present case. It is a point well taken. Defendant Gygax is co-author of the disputed game, entitled to royalties from its sales, and he is also the chief executive officer of the corporation to which he, along with plaintiff, assigned the right to produce, sell, and distribute the game. Because of his dual capacity as co-author and chief executive officer of the corporation, certain activities of the corporation are intermingled and coincide with activities of Gygax which furthered his individual authorship interests. As a result some corporate contacts with the forum state that were initiated by Gygax or under his direction can properly be viewed both as corporate contacts and as Gygax's individual contacts as co-author.

This intermingling is seen in the letters from Gygax to plaintiff quoted in the facts supra. It is also seen in the corporate decisions to devote substantial amounts of corporate staff time to development of the later, disputed works, and to devote corporate assets to advertising and marketing those disputed works in Minnesota and elsewhere. The court does not rely on the doctrine of "piercing the corporate veil," where the corporation is seen merely as the "alter ego" of the individual, with the result that the two personalities are merged. Rather, the allegations made by plaintiff are sufficient, at this pre-trial stage, to create an inference that Gygax was acting both in his corporate capacity and in his individual capacity as co-author when he caused the games and game rules to be marketed in Minnesota. Compare Independence Tube Corp. v. Copperweld Corp. 74 F.R.D. 462, 467 (N.D. Ill. 1977), Morgan v. Eaton's Dude Ranch, 307 Minn 280, 239 N.W.2d 761, 762 (1976).

Proceeding to the application of the Aftanase five factor test, the court finds the contacts of defendant Gygax with the forum state to be numerous and continuous. Games which bear his authorship have been actively advertised and marketed through his efforts in Minnesota from 1974 to the present. The defendant has recruited various representatives, including plaintiff, to promote sales of corporate products including the disputed works herein. He traveled to Minnesota in November 1975, and one purpose of that trip was apparently to contract for art work for the game "Dungeons and Dragons" which he co-authored with plaintiff.. Defendant Gygax also contacted plaintiff during that trip to Minnesota.

The second factor, the quality and nature of the contacts, considers the contacts insofar as they indicate "whether defendant has purposefully involved the benefits and protection of the forum state's law and has set off a chain of events that it should foresee could have effects in the forum state. For these reasons, there is a clear tendency in the cases to hold a non-resident corporate seller subject to the jurisdiction of the courts of a state where the seller has caused his goods to be sold into the forum state." Munsingwear, Inc. v. Damon Coats, Inc., 449 F. Supp. 532 (1978), and cases cited. Those cases involved corporate sellers but would appear to apply to individuals as well. In the instant case Gygax as co-author of "Dungeons and Dragons" and allegedly sole author of the later, disputed works, caused them to be developed by the corporation, and advertised and marketed in Minnesota. By causing games to be marketed and advertised in Minnesota, which he either claimed to have co-authored or solely authored, Gygax availed himself of the state laws to protect the contractual rights based on his authorship interests.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

David L. Arneson,

Plaintiff,

vs. Civ. 4-79-109

Gary Gygax, and TSR Hobbies, Inc., a corporation, MEMORANDUM & ORDER

Defendant.

Maher J. Weinstein and J. Michael Hirsch, Moss, Flaherty, Clarkson & Fletcher, Minneapolis, Minnesota, attorneys for plaintiff.

Marvin Jacobson, Jacobson and Johnson, St. Paul, Minnesota, and John L. Beard, Michael, Best & Friedrich, Milwaukee, Wisconsin, attorneys for defendant.

Defendant Gary Gygax moves the court for relief, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, from a ruling of this court, filed May 21, 1979, denying defendant Gygax's motion to dismiss for lack of personal jurisdiction. In the alternative, defendant Gygax requests clarification of the court's order denying his motion to dismiss. The motion to dismiss is denied for the reasons clarified below.

This diversity action arises out of a dispute over the authorship and royalty rights to a game or game rules entitled "Dungeons and Dragons" and the rights to certain subsequently produced playing aids, game or game rules entitled "Advanced Dungeons and Dragons, Players Handbook" and "Dungeons and Dragons, Monster Manual," as well as various other publications pertaining to the above games.

FACTS

Plaintiff's complaint alleges that defendants have breached a royalty agreement entered into in April 1975 between plaintiff and defendant Gygax, as co-authors of

"Dungeons and Dragons," and TSR Hobbies, Inc., a Wisconsin corporation, of which Gygax is president and a major stockholder.[1/] Plaintiff alleges that since mid-1977 amounts less than those required by the royalty agreement have been paid to him. Plaintiff further claims that defendants Gygax and TSR Hobbies, Inc., individually and in concert, have tortiously interfered with the royalty agreement by developing and marketing, in Minnesota and elsewhere, games or game rules and playing aids "copied in substantial part and wholly derived" from "Dungeons and Dragons," and have defeated his right to the notoriety of authorship by falsely representing such games and playing aids to be solely authored by defendant Gygax.

The issue raised by defendant Gygax in his motion for relief is whether Gygax, individually, had sufficient minimum contacts with Minnesota, so as to enable this court to exercise personal jurisdiction over him, consistent with due process requirements. Gygax asserts that all his contacts with Minnesota were as agent for TSR Hobbies and therefore cannot be imputed to him for purposes of personal jurisdiction.

The record indicates that Gygax is and was at all times a resident of Wisconsin and has no place of business, no bank account, no phone listing, and owns no real or personal property in Minnesota. During 1973 and 1974 plaintiff and defendant Gygax in his individual capacity collaborated on the authorship of "Dungeons and Dragons." There was extensive correspondence between them by phone and mail during this time. The game was first marketed in January 1974. The written contract was executed in April 1975. Defendant Gygax signed in Wisconsin and he was named as co-author.

1/ TSR Hobbies, Inc. is the successor to Tactical Studies Rules, a partnership of which Gygax was a member. The partnership was the original party to the contract. It was dissolved in 1975. The corporation assumed all rights and liabilities of the partnership. Both are referred to as TSR herein.

His signature appears twice -- once as Editor for TSR Hobbies, Inc., and once without any agency designation, as co-author. The contract assigned TSR Hobbies, Inc., the right to publish, sell, and distribute "Dungeons and Dragons" in exchange for a royalty of 10% of the cover price of each set sold, payable to the authors, Gygax and plaintiff. Plaintiff's royalties were paid, pursuant to the contract, to him in Minnesota, from 1974 until mid-1977. Since then further amounts, allegedly insufficient, have been received by plaintiff in Minnesota.

In 1977 TSR Hobbies, Inc. began marketing "Advanced Dungeons and Dragons, Players Handbook" and in 1978 "Dungeons and Dragons, Monster Manual," under the sole authorship of Gary Gygax. These works were advertised and marketed in Minnesota. No royalties were paid to plaintiff for sales of these works. Defendant Gygax contends that these are independent creations developed and produced by expenditure of literally thousands of hours of his time and the time of the TSR Hobbies, Inc. staff.

Gygax has numerous contacts with Minnesota, but he claims they were all as agent of TSR Hobbies, Inc. One example is a trip Gygax took to Minnesota in late October or early November 1975 for the purpose of negotiating contracts with various Minnesota residents for games and art work. Defendant Gygax also contacted plaintiff on this occasion.

Plaintiff also submits correspondence from Gygax tending to show that Gygax sought to have plaintiff promote sales of TSR Hobbies, Inc. products in Minnesota, including "Dungeons and Dragons." In his March 5, 1974 letter Gygax states ". . . every flyer you pass out could mean more royalty dollars. Remember, every retail sale we make is $1.00 to you. Put a flyer in all letters, right?" It is unclear whether Gygax wrote this letter in his corporate capacity or his individual capacity as co-author, or both.

In a March 13, 1974 letter to plaintiff, Gygax states "Seeing as how you and I each make a buck on a retail sale by TSR we have to be dreaming up ways to promote same! Get to work!" In the same letter, Gygax cites examples of his own promotional activities, asks plaintiff if he knows of other possibilities for promotion, and then states: "Now if that gets going we can really do a job selling D & D with ads and stories (with plenty of graphic work to put it across with POW!)" In sum, Gygax took numerous steps, both in and out of Minnesota, to cause the games in question to be marketed in Minnesota.

DISCUSSION

The Minnesota long arm statute, Minn. Stat. § 543.19(1)(d)(2), permits the courts of Minnesota to exercise personal jurisdiction over a non-resident individual if the individual commits any act outside Minnesota causing injury or property damage in Minnesota, except when the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice.

The language of the statute evinces the legislative intent to permit the exercise of personal jurisdiction over non-residents to the maximum extent consistent with constitutional due process.

When personal jurisdiction is challenged, plaintiff has the burden of showing that he has acquired personal jurisdiction over the defendant. A prima facie showing on a pretrial motion is sufficient, however. See McQuay, Inc. v. Samuel Schlosberg, Inc., 321 F. Supp. 902, 904 (D. Minn. 1971), and cases cited.

For the court to have jurisdiction over defendant Gygax, a non-resident individual, Gygax must have sufficient minimum contacts with Minnesota such that maintenance of the suit in Minnesota "does not offend 'traditional notions of fair play and substantial justice.'" International Shoe

Co. v. Washington, 326 U.S. 310, 316, (1945). It is also essential in each case that there be some act by which the defendant purposefully availed himself of the privilege of conducting activities within the forum state. Hanson v. Denckla, 357 U.S. 235, 253, (1958).

Further guidance is found in Toro Company v. Ballas Liquidating Co., 572 F.2d 1267, 1270 (8th Cir. 1978), where the court laid down the requirement that "the defendant's forum activities be related to the plaintiff's cause of action, and in Aaron Ferer & Sons Co. v. American Compressed Steel Co., 564 F.2d 1206, 1211 (8th Cir. 1977), the court stated:

> To assess compliance with due process, with respect to jurisdiction in a particular case, the mimimum contacts relied upon must be between the defendant and the forum state, not simply between the defendant and a resident of the forum state.

In a leading case, Aftanase v. Economy Baler Co., 343 F.2d 187, 197 (8th Cir. 1965), the Eighth Circuit adopted a five factor test to be used as guidelines in applying the International Shoe fair play and substantial justice requirement. The first three factors are of primary significance:

(1) the quantity of the contacts of defendant with the forum state;

(2) the nature and quality of the contacts;

(3) the relation of the cause of action to the contacts;

The last two are of secondary significance:

(4) the interest of the forum state in providing a forum for its residents;

(5) the convenience of the parties.

Before applying these criteria to the facts of this case, one crucial point must be made. In his memorandum, plaintiff emphasizes the dual capacity in which defendant Gygax operated in the course of his activities relating to

the present case. It is a point well taken. Defendant Gygax is co-author of the disputed game, entitled to royalties from its sales, and he is also the chief executive officer of the corporation to which he, along with plaintiff, assigned the right to produce, sell, and distribute the game. Because of his dual capacity as co-author and chief executive officer of the corporation, certain activities of the corporation are intermingled and coincide with activities of Gygax which furthered his individual authorship interests. As a result, several contacts with the forum state that were initiated by Gygax or under his direction can properly be viewed both as corporate contacts and as Gygax's individual contacts as co-author.

This intermingling is seen in the letters from Gygax to plaintiff quoted in the facts supra. It is also seen in the corporate decisions to devote substantial amounts of corporate staff time to development of the later, disputed works, and to devote corporate assets to advertising and marketing those disputed works in Minnesota and elsewhere. The court does not rely on the doctrine of "piercing the corporate veil," where the corporation is seen merely as the "alter ego" of the individual, with the result that the two personalities are merged. Rather, the allegations made by plaintiff are sufficient, at this pre-trial stage, to create an inference that Gygax was acting both in his corporate capacity and in his individual capacity as co-author when he caused the games and game rules to be marketed in Minnesota. Compare Independence Tube Corp. v. Copperweld Corp. 74 F.R.D. 462, 467 (N.D. Ill. 1977), Morgan v. Eaton's Dude Ranch, 307 Minn 280, 239 N.W.2d 761, 762 (1976).

Proceeding to the application of the Aftanase five factor test, the court finds the contacts of defendant Gygax with the forum state to be numerous and continuous. Games which bear his authorship have been actively advertised and marketed through his efforts in Minnesota from 1974 to the present. The defendant has recruited various representatives, including plaintiff, to promote sales of corporate products including the disputed works herein. He traveled to Minnesota in November 1975, and one purpose of that trip was apparently to contract for art work for the game "Dungeons and Dragons" which he co-authored with plaintiff. Defendant Gygax also contacted plaintiff during that trip to Minnesota.

The second factor, the quality and nature of the contacts, considers the contacts insofar as they indicate "whether defendant has purposefully invoked the benefits and protection of the forum state's law and has set off a chain of events that it should foresee could have effects in the forum state. For these reasons, there is a clear tendency in the cases to hold a non-resident corporate seller subject to the jurisdiction of the courts of a state where the seller has caused his goods to be sold in the forum state." Munsingwear, Inc. v. Damon Coats, Inc., 449 F. Supp. 532, 535 (D. Minn. 1978), and cases cited. Those cases involved corporate sellers but would appear to apply to individuals as well. In the instant case Gygax as co-author of "Dungeons and Dragons" and allegedly sole author of the later, disputed works, caused them to be developed by the corporation, and advertised and marketed in Minnesota. By causing games to be marketed and advertised in Minnesota, which he either claimed to have co-authored or solely authored, Gygax availed himself of the state laws to protect the contractual rights based on his authorship interests.

Plaintiff alleges that the royalties paid to him in Minnesota for sales of "Dungeons and Dragons" for the last half of 1978 amounted to $12,394.64. The protection of defendant's authorship interest in Minnesota courts was thus an important benefit. Therefore, the nature and quality of the contacts are substantial and significant.

The relationship between the contacts and the cause of action leans quite clearly toward exercising jurisdiction. The cause of action arises out of a dispute over rights under a royalty contract to various games or game rules. Defendant's contacts with the forum state involve promoting sales of those games, allegedly in derogation of that same contract.

As to the last two factors, which are of secondary significance, Minnesota's interest in providing a forum for plaintiff to protect his contractual rights from interference or breach is clear, since plaintiff is a citizen of Minnesota.

The convenience of the parties appears to be balanced. Because of its secondary significance and because the three primary factors lean in favor of jurisdiction, this factor cannot control.

Defendant's motion for relief under Rule 60(b) is DENIED.

Dated: July 25, 1979.

EDWARD J. DEVITT, Chief Judge
United States District Court

LAW OFFICES

MOSS, FLAHERTY, CLARKSON & FLETCHER

A PROFESSIONAL ASSOCIATION

2350 IDS CENTER · 80 SOUTH EIGHTH STREET

MINNEAPOLIS, MINNESOTA 55402

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L. GLENN FASSETT (1930-1975)
ABBOTT L. FLETCHER (1916-1974)

May 31, 1979

Clerk of Courts
U.S. District Court
District of Minnesota
Fourth Division
110 South Fourth Street
Minneapolis, MN 55401

Re: David L. Arneson vs. Gary Gygax and TSR Hobbies, Inc.
Civil Action No. 4-79-109

Dear Sir:

Enclosed for filing please find the following document, the original of which was mailed directly to Chief Judge Devitt:

PLAINTIFF'S MEMORANDUM IN OPPOSITION
TO DEFENDANT GYGAX'S MOTION FOR
RELIEF FROM AN ORDER.

Very truly yours,

J. Michael Hirsch

J. Michael Hirsch

JMH:mhl

Enclosure

cc: Mr. John L. Beard
Mr. Marvin Jacobson

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

DAVID L. ARNESON,

Plaintiff,

vs.

GARY GYGAX and TSR HOBBIES, INC., a corporation,

Defendants.

Civil Action No. 4-79-109

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I. NONE OF THE REASONS REQUIRED BY RULE 60(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE FOR THE RELIEF REQUESTED BY DEFENDANT GYGAX ARE PRESENT, AND HIS MOTION SHOULD BE DENIED.

The issues of personal jurisdiction over both Defendant Gygax and TSR Hobbies, Inc. were fully presented to and considered by this Court. Absolutely nothing new is presented in Defendant Gygax's latest memorandum which has not already been presented to this Court in earlier memoranda and affidavits. None of the reasons required by Rule 60(b) for the requested relief from the Court's Order are present, and Defendant's Gygax's motion should be summarily denied.

If, however, this Court decides to entertain Defendant Gygax's motion to reconsider the issue of personal jurisdiction, this memorandum is submitted in opposition to his motion. Defendant Gygax has failed to give Plaintiff any notice of when he wishes this Court to reconsider its Order, but we believe this memorandum has been timely filed under the normal rules regarding motions. Plaintiff also waives oral hearing if the Court decides to consider said motion.

II. THIS COURT HAS PROPERLY EXERCISED LONG-ARM JURISDICTION OVER DEFENDANT GYGAX.

It has been repeatedly held that the Minnesota Long-Arm Statutes are to be interpreted to extend jurisdiction to the outermost limits consistent with the requirements of due process. Dotterweich v. Yamaha International Corporation, 416 F. Supp. 542 (1976). The facts presented in a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction must be viewed in the light most favorable to the party opposing the motion, and once a prima facie showing of jurisdiction has been made, the burden is cast upon the moving party to demonstrate a lack of

personal jurisdiction. Aaron Ferer & Sons Co. v. Diversified Metals Corp., 564 F.2d. 1211 (1977). Defendant Gygax has not sustained this burden, and his motion to reconsider should be denied.

It is important to keep in mind that Defendant Gygax plays several different roles in the present litigation. In 1973 and 1974, Defendant Gygax and Plaintiff co-authored the game "Dungeons & Dragons". This game was initially published and marketed by Defendant Gygax's partnership, Tactical Studies Rules. The contract which is in dispute in this lawsuit was signed by Defendant Gygax twice, once as a co-author and again as a partner in Tactical Studies Rules. In 1975, this same partnership was incorporated as Defendant TSR Hobbies, Inc., and Defendant Gygax has been and continues to be President and a Director of this corporation. In addition to the fact that Gygax is the chief executive officer of Defendant TSR Hobbies, Inc., there is additional evidence that Defendant Gygax exercises a controlling influence over the corporation: He is a key employee of the corporation; at least three of his close relatives are employed by the corporation; the corporation rents the buildings it occupies from a partnership of Defendant Gygax and Brian Blume, and the major games sold by the corporation are "Dungeons & Dragons" and works derived therefrom, which are works co-authored by Defendant Gygax or purportedly authored solely by Defendant Gygax. As argued by Plaintiff in oral argument, the 1978 financial statements of TSR Hobbies, Inc. state that Defendant Gygax is a majority shareholder with Brian Blume in the corporation. See the copy of the relevant page from these financial statements which is attached hereto as Exhibit "A".

The facts presented in the Affidavits submitted to this Court provide abundant evidence that Defendant Gygax has engaged in voluntary, affirmative economic activity of substance in the State of Minnesota. Both as an officer/agent/employee of Defendant TSR Hobbies, Inc. and its predecessor partnership and as an author receiving royalties from his marketing efforts, Defendant Gygax has been involved in continuous and systematic solicitation of business in Minnesota. In addition to the "Dungeons & Dragons" contract which he executed with Plaintiff, a Minnesota resident, Defendant Gygax executed other contracts with the Plaintiff for the games "Don't Give Up the Ship" and "Blackmoor" (Arneson Exhibits "N" and "O"). He entered into an agreement for the purchase of minature ships with the Plaintiff (Arneson Exhibit "P"). He solicited

and/or executed game contracts with at least three other Minnesota authors: David Wesley (Arneson Exhibit "B"), John Snider (Arneson Exhibit "B"), and Phil Barker (Arneson Exhibits "B" and "Q") and negotiated with at least two other Minnesota authors: Gary Rudolph (Arneson Exhibit "S") and Bill Hoyt (Arneson Exhibit "T"). While in Minnesota, he entered into a contract with Dave Sutherland, an artist who was at that time a resident of the State of Minnesota (Arneson Exhibit "R"). Defendant Gygax has actively solicited sales in Minnesota, and he employed at least one of the sale representatives used by Defendant TSR Hobbies, Inc. in the State of Minnesota. (Arneson Exhibits "A", "B", "C" and "J"). Arneson Exhibits "A" (". . . every flyer you pass out could mean more royalty dollars") and "C" ("Seeing as how you and I each make a buck on a retail sale by TSR, we have to be dreaming up ways to promote same!") make it clear that Defendant Gygax's sales efforts in the State of Minnesota were not strictly in his role as an agent or employee.

It must not be forgotten that Defendant Gygax is a co-author with Plaintiff of the game "Dungeons & Dragons" as well as the president of the corporation which markets the game. Defendant TSR Hobbies, Inc. could not market works such as "Monster Manual" or "Player's Handbook" in the State of Minnesota and elsewhere without paying royalties or acknowledging Plaintiff's co-authorship, unless Defendant Gygax participated in, approved, and directed this tortious activity as alleged in Plaintiff's Second, Third and Fourth Causes of Action. This is not a case like Washington Scientific Industries, Inc. v. American Safeguard Corporation, 308 F. Supp. 736 (1978) where the allegations sounded solely in contract. Defendant Gygax cannot claim that his tortious activities are shielded from liability in that he was merely "about his master's business". As stated in Washington Scientific Industries, Inc., supra, at page 739, an agent is liable along with his principal if he commits a tortious act. The case of Rheodyne, Inc. v. James A. Ramin, et al (N.D. Ca. 1978) cited by the Defendant is similarly distinguishable on this point as well as on the basis of the significant contacts of Defendant Gygax with the State of Minnesota which were totally lacking in that case. These tortious sales activities committed

both inside and outside the State of Minnesota and causing injury to Plaintiff in the State of Minnesota clearly satisfy the requirements of Minnesota Statutes Section 543.19. There is a direct nexus between the causes of action alleged in Plaintiff's Complaint and Defendant Gygax's sales activities and solicitation of game contracts in the State of Minnesota.

As pointed out above, this Court will not offend due process by exercising jurisdiction over Defendant Gygax. The affidavits submitted clearly point out that Defendant Gygax has voluntarily and actively sought sales in the Minnesota market, derived benefits therefrom, received the protection of Minnesota laws, and reasonably could have anticipated that this activity could have consequences in Minnesota. Defendant Gygax's contacts with the State of Minnesota are more significant, systematic and continuous than the case of Washington Scientific Industries, Inc., supra, where personal juridiction was exercised over a foreign corporation based on two trips by its agent to Minnesota and the partial performance of the disputed contract in Minnesota. Similarly, see Northwestern National Bank of Saint Paul v. Kratt, 303 Minn. 256, 226 N.W.2d. 910 (1975) where the Minnesota Supreme Court exercised personal jurisdiction over an officer of a corporation based on the individual's telephone discussions with Minnesota residents and attendance at two meetings in Saint Paul.

The Minnesota Long-Arm Statutes should apply to both Defendant Gygax and TSR Hobbies, Inc. under the present factual situation and both defendants have the requisite minimal contacts with the State of Minnesota for the exercise of jurisdiction by this Court. Such a result is "consistent with fair play and substantial justice and does not violate federal due process". Defendant Gygax's motion to reconsider should be denied.

Respectfully Submitted,

MOSS, FLAHERTY, CLARKSON & FLETCHER

By _____
Maher J. Weinstein

By _____
J. Michael Hirsch

Attorneys for Plaintiff
2350 IDS Center
Minneapolis, MN 55402
Telephone: (612) 339-8551

DATED: May 31, 1979

T.S.R. HOBBIES, INC.
LAKE GENEVA, WISCONSIN

NOTES TO FINANCIAL STATEMENTS
September 30, 1978

NOTE A: Summary of Significant Accounting Policies:

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May 31, 1979

The Honorable Edward J. Devitt
Chief Judge
United States District Court
Federal Courts Building
16 North Roberts Street
St. Paul, MN 55101

Re: David L. Arneson vs. Gary Gygax and TSR Hobbies, Inc.
Civil Action No. 4-79-109

Dear Judge Devitt:

Please find enclosed the original of Plaintiff's Memorandum in Opposition to Defendant Gygax's Motion for Relief from an Order with regard to the above matter, a copy of which was sent to the Clerk of U.S. District Court.

Very truly yours,

J. Michael Hirsch

J. Michael Hirsch

JMH:mhl

Enclosure

cc: Mr. John L. Beard
Mr. Marvin Jacobson

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DISTRICT OF MINNESOTA
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Respectfully Submitted,

MOSS, FLAHERTY, CLARKSON & FLETCHER

By _____
Maher J. Weinstein

By _____
J. Michael Hirsch

Attorneys for Plaintiff
2350 IDS Center
Minneapolis, MN 55402
Telephone: (612) 339-8551

DATED: May 31, 1979

T.S.R. HOBBIES, INC.
LAKE GENEVA, WISCONSIN

NOTES TO FINANCIAL STATEMENTS
September 30, 1978

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JACOBSON AND JOHNSON
ATTORNEYS AT LAW
PATENT, TRADEMARK AND COPYRIGHT
SUITE 204, MINNESOTA STATE BANK BUILDING
200 SOUTH ROBERT STREET, ST. PAUL, MINN. 55107

MARVIN JACOBSON
CARL L. JOHNSON
NEIL B. SCHULTE

TEL. (612) 222-3775

JOHN E. STRYKER
1895 - 1969

July 12, 1979

Clerk of Court
U.S. District Court
District of Minnesota
Fourth Division
110 South Fourth Street
Minneapolis, MN 55401

SUBJECT: David L. Arneson v Gary Gygax and TSR Hobbies, Inc.
Civil Action No. 4-79-109

Dear Sir:

Enclosed for filing please find Stipulation of Extension of Time to Answer Interrogatories and Requests for Documents.

Yours very truly,

JACOBSON AND JOHNSON

By
Marvin Jacobson

MJ:jo

Enclosure

cc Michael, Best & Friedrich (John L. Beard)
J. M. Hirsch, Esq.

COMMERCE CLEARING HOUSE, INC.

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312 583-8500
• WASHINGTON
202 347-1776

Chicago 60646, September 6, 1979

The Honorable Edward J. Devitt, Chief Judge
United States District Court
District of Minnesota
St. Paul, Minnesota 55101

Dear Judge Devitt:

Thank you for your thoughtfulness in sending us a copy of your decision in Arneson v. Gygax, No. Civ. 4-79-109, rendered 7/25/79.

Your kind cooperation is greatly appreciated.

Very truly yours,

COMMERCE CLEARING HOUSE, Inc.

John E. Flynn

John E. Flynn
Assistant Vice President

JEF:cw