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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

16-21199-CV-ALTONAGA/O'SULLIVAN

ANDREA ROSSI, ET AL,)
)
 PLAINTIFFS,)
)
 VS.)
)
 THOMAS DARDEN, ET AL,)
)
 DEFENDANT.)
 -----)

(TRANSCRIPT BY DIGITAL RECORDING)

TRANSCRIPT OF DISCOVERY HEARING HAD BEFORE THE
HONORABLE JOHN J. O'SULLIVAN, IN MIAMI, MIAMI-DADE COUNTY,
FLORIDA, ON AUGUST 30, 2016, IN THE ABOVE-STYLED MATTER.

APPEARANCES:

FOR THE PLAINTIFFS: JOHN W. ANNESSER, II, ESQ.
BRIAN W. CHAIKEN, ESQ.
D. PORPOISE EVANS, ESQ.
PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P.L.
283 CATALONIA AVENUE, SUITE 200
MIAMI, FL 33131 - 305 377-0086

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CERTIFIED COURT REPORTER
9960 SW 4TH STREET
PLANTATION, FLORIDA 33324
954 424-6723

1 APPEARANCES CONTINUED:

2 FOR THE DEFENDANTS: CHRISTOPHER R. J. PACE, ESQ.
CHRISTOPHER M. LOMAX, ESQ.

3 JONES DAY
4 600 BRICKELL AVENUE, SUITE 3300
MIAMI, FL 33131 - 305 714-9730

5 FOR THIRD PARTY DEFENDANTS: FRANCISCO LEON DE LA BARRA, ESQ.

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1 (MIAMI, MIAMI-DADE COUNTY, FLORIDA; AUGUST 30, 2016, IN OPEN
2 COURT.)

3 THE COURT: WE'RE HERE TODAY IN THE CASE OF ANDREA
4 ROSSI AND LEONARDO CORPORATION VERSUS THOMAS DARDEN, INDUSTRIAL
5 HEAT, LLC, IPH INTERNATIONAL B.V., AND CHEROKEE INVESTMENT
6 PARTNERS, LLC.

7 COULD I HAVE APPEARANCES FOR THE PLAINTIFF FIRST?

8 MR. ANNESSER: YOUR HONOR, JOHN ANNESSER, MR. RYAN
9 CHAIKEN AND MR. PORPOISE EVANS ON BEHALF OF LEONARDO
10 CORPORATION AND DR. ROSSI.

11 THE COURT: OKAY. GOOD. THANKS. YOU CAN BE SEATED.

12 MR. ANNESSER: WE ALSO HAVE OUR CLIENT PRESENT AS
13 WELL --

14 THE COURT: OKAY.

15 MR. ANNESSER: -- DR. ROSSI.

16 THE COURT: ALL RIGHT. THANK YOU.

17 AND WHO IS HERE FOR THE DEFENDANTS?

18 MR. PACE: GOOD MORNING, YOUR HONOR. CHRIS PACE AND
19 CHRIS LOMAX FROM JONES DAY ON BEHALF OF ALL OF THE DEFENDANTS.

20 THE COURT: OKAY. GOOD.

21 MR. PACE, I HAVEN'T SEEN YOU IN A LONG TIME. YOU WERE
22 AT THE U.S. ATTORNEY'S OFFICE YEARS AGO, RIGHT?

23 MR. PACE: I WAS. I HAD FAR MORE BLOND HAIR BACK
24 THEN.

25 THE COURT: WELL, I HAD SOME HAIR BACK THEN. I THINK

1 YOU WERE KNOWN BY REBEL PACE BACK THEN. THAT'S PROBABLY NOT A
2 GOOD NAME ANYMORE.

3 MR. LEON DE LA BARRA: GOOD MORNING, YOUR HONOR.
4 FRANCISCO LEON ON BEHALF OF HENRY JOHNSON AND J.M. PRODUCTS.

5 THE COURT: OKAY. HENRY JOHNSON, ARE THEY ON A
6 COUNTER-CLAIM?

7 MR. LEON DE LA BARRA: YEAH.

8 THE COURT: OKAY. I'M SORRY. TELL ME YOUR NAME
9 AGAIN?

10 MR. LEON DE LA BARRA: FRANCISCO LEON.

11 THE COURT: OKAY. AND TELL ME YOUR CLIENTS AGAIN?

12 MR. LEON DE LA BARRA: HENRY JOHNSON AND J.M.
13 PRODUCTS.

14 THE COURT: OKAY. GOOD.

15 ANYBODY ELSE HERE?

16 (NO RESPONSE)

17 THE COURT: NO? OKAY. GOOD.

18 ALL RIGHT. I THINK THE PLAINTIFFS SET THIS DOWN IN
19 REGARDS TO OBJECTIONS TO THIRD PARTY SUBPOENAS?

20 MR. ANNESSER: YES, YOUR HONOR.

21 THE COURT: ALL RIGHT. MAYBE GIVE ME A LITTLE
22 SUMMARY. I MEAN, I DID GO THROUGH THE CASE A LITTLE BIT BUT
23 MAYBE YOU CAN GIVE ME A LITTLE SUMMARY ON WHAT'S GOING ON.

24 MR. ANNESSER: YES, YOUR HONOR.

25 MY CLIENTS FILED A COMPLAINT IN THIS ACTION FOR BREACH

1 OF CONTRACT ARISING OUT OF A LICENSE AGREEMENTS THAT WAS
2 ENTERED INTO BETWEEN THE PLAINTIFFS AND TWO OF THE
3 DEFENDANTS -- ACTUALLY ONE OF THE DEFENDANTS WHICH LATER
4 ASSIGNED TO A SECOND DEFENDANT.

5 THE COURT: WHAT IS THE LOW ENERGY NUCLEAR REACTOR?

6 MR. ANNESSER: A LOW ENERGY NUCLEAR REACTOR IS A
7 DEVICE THAT IS CAPABLE OF PRODUCING ENERGY IN EXCESS OF THE
8 AMOUNT OF ENERGY THAT COMES INTO THE DEVICE.

9 THE ISSUE IN THIS CASE PERTAINS TO A DEVICE GENERATED
10 OR, I'M SORRY, CREATED BY MY CLIENT CALLED THE E-CAT, WHICH IS
11 PERCEIVED TO BE A LOW ENERGY NUCLEAR REACTOR. AGAIN, IT'S
12 IN -- IT'S THE SUBJECT OF A LICENSE AGREEMENT WITH INDUSTRIAL
13 HEAT WHICH IS ONE OF THE DEFENDANTS WHICH LATER ASSIGNED TO IPH
14 INTERNATIONAL, A SECOND DEFENDANT.

15 THE COURT: OKAY.

16 MR. ANNESSER: SO THE CAUSE OF ACTION THAT HAS
17 SURVIVED A MOTION TO DISMISS IN THIS CASE FROM THE PLAINTIFFS
18 WAS A BREACH OF CONTRACT CLAIM AND UNJUST ENRICHMENT CLAIM,
19 FRAUD IN THE INDUCEMENT CLAIM, AS WELL AS A MISAPPROPRIATION OF
20 TRADE SECRETES.

21 THE DEFENDANTS IN THIS CASE HAVE FILED A
22 COUNTER-CLAIM, SPECIFICALLY DEFENDANTS INTERNATIONAL -- OH. I'M
23 SORRY. IPH INTERNATIONAL B.V. AND INDUSTRIAL HEAT, LLC. THEIR
24 BREACH OF -- I'M SORRY. THEY FILED CLAIMS FOR BREACH OF
25 CONTRACT, A SECOND CLAIM FOR BREACH OF CONTRACTS WHICH

1 ENCOMPASSES NUMEROUS VARIOUS BREACHES THAT ARE ALLEGED
2 INCLUDING ONE IN PARTICULAR CLAIMING THAT WE HAVE SOMEHOW
3 BREACHED THE CONTRACT UPON INFORMATION AND BELIEF THAT MY
4 CLIENTS FAILED TO PAY THE APPROPRIATE TAXES ON THE INCOME THAT
5 THEY HAVE RECEIVED. THAT PARTICULAR CLAIM IS LIKELY GOING TO
6 BE THE SUBJECT OF A MOTION FOR SANCTIONS. WE FEEL THAT IT IS
7 FRIVOLOUS.

8 NOTWITHSTANDING, THE THIRD CLAIM IS FRAUD IN THE
9 INDUCEMENT. THE FOURTH CLAIM WAS A CLAIM UNDER THE FLORIDA
10 DECEPTIVE AND UNFAIR TRADE PRACTICES ACT. AND LASTLY A CLAIM
11 THAT DOES NOT PERTAIN TO MY CLIENTS, BUT A -- AN ADDITIONAL
12 CLAIM OF BREACH OF CONTRACT AGAINST A THIRD-PARTY DEFENDANT.

13 THE COURT: AND WHAT IS THE THIRD PARTY'S -- WHAT WAS
14 THEIR PARTICIPATION IN THIS? HOW DID THEY GET INTO THIS CASE?

15 MR. ANNESSER: THE -- OKAY. THERE ARE MULTIPLE
16 THIRD-PARTY DEFENDANTS. MR. LEON DE LA BARRA REPRESENTS SOME
17 OF THEM. J.M. PRODUCTS WAS A COMPANY THAT IN ESSENCE HAD THE
18 LENER REACTOR OR THE E-CAT PLANT OPERATING AT ITS FACILITY. IT
19 WAS A CUSTOMER OF INDUSTRIAL HEAT.

20 MR. HENRY JOHNSON IS THE PRINCIPAL OF THAT COMPANY.
21 HE IS, I BELIEVE, IF I'M NOT MISTAKEN THE PRESIDENT AND CEO.
22 THERE IS ANOTHER THIRD-PARTY DEFENDANT FABIO -- I'M SORRY.
23 FULVIO FABIANI WHO IS A INDEPENDENT CONTRACTOR OR A CONSULTANT
24 HIRED BY INDUSTRIAL HEAT THAT THEY HAVE ELECTED TO SUE. HIS
25 COMPANY, USQ&L, WHICH IS UNITED STATES QUANTUM LEAP, IS ALSO

1 NAMED. THAT AGAIN IS WHAT THE LAST COUNT IN THE COMPLAINTS
2 PERTAINS TO SOLELY TO THAT AGREEMENTS BETWEEN USQ&L,
3 MR. FABIANI AND THE DEFENDANTS IN THIS CASE.

4 AND LASTLY, THERE ARE TWO OTHER THIRD-PARTY
5 DEFENDANTS. ONE IS AN EXPERT THAT WAS HIRED TO DO AN
6 INDEPENDENT EVALUATION. HE WAS SELECTED BY BOTH PARTIES. HE
7 WAS ENGAGED TO TEST THIS E-CAT DEVICE AND TO MAKE SURE THAT IT
8 COULD MEET CONCERN PERFORMANCE CRITERIA. HE DID THAT.

9 HE HAS NOW BEEN NAMED AS A DEFENDANT ON THE CLAIMS
10 ALLEGING A VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE
11 PRACTICES ACT, AND I DO NOT BELIEVE HE WAS NAMED AS PART OF THE
12 FRAUD IN THE INDUCEMENT BUT HE MAY HAVE BEEN.

13 THE COURT: ALL RIGHT.

14 MR. ANNESSER: AND THEN LASTLY A GENTLEMAN BY THE NAME
15 OF JAMES BASS WHO WAS A -- AN EMPLOYEE OR AGENT OF J.M.
16 PRODUCTS. AND MR. BASS, I DON'T BELIEVE HE HAS BEEN SERVED
17 YET. AND THE DEFENDANTS HAVE ALLEGED THAT HE IS FICTITIOUS AND
18 THAT HE DOES NOT EXIST, ALTHOUGH THEY HAVE NAMED HIM IN THE
19 CASE AND THEY HAVE SUED HIM UNDER THE FLORIDA DECEPTIVE AND
20 UNFAIR TRADE PRACTICES ACT AS WELL.

21 THE COURT: ALL RIGHT. AND SO WHAT'S THE PROBLEM?

22 MR. ANNESSER: YOUR HONOR, THERE WERE FIVE SUBPOENAS
23 ISSUED AND WE REALLY TAKE ISSUE WITH THREE OF THEM FROM MY
24 PERSPECTIVE.

25 THE COURT: OKAY.

1 MR. ANNESSER: THE FIRST TWO SUBPOENAS, ONE OF WHICH
2 WAS TO TD BANK, THE OTHER WHICH WAS DIRECTLY TO BANK UNITED ARE
3 EXTREMELY BROAD.

4 THEY REQUEST ANY AND ALL DOCUMENTS OR ESI RELATING TO
5 A SPECIFIC ACCOUNT NUMBER OR HELD IN THE NAME OF LEONARDO
6 CORPORATION OR ANDREA ROSSI. IT DOES NOT LIMIT IT WHATSOEVER
7 AS TO SPECIFIC DOCUMENTS THAT THEY NEED.

8 THE FINANCIAL INFORMATION FROM OUR COMPANY IS NOT AT
9 ISSUE IN THIS CASE. IN FACT, THE FINANCIAL INFORMATION LIKELY
10 CONTAINS NAMES OF CUSTOMERS THAT WE HAVE RECEIVED MONEY FROM,
11 NAMES OF VENDORS THAT WE HAVE PAID. AND INDUSTRIAL HEAT AND
12 IPH INTERNATIONAL, THE DEFENDANTS, HAVE PUT THEMSELVES IN A
13 POSITION OF BEING, IN ESSENCE, A COMPETITOR OF MY CLIENT,
14 DR. ROSSI AND LEONARDO CORPORATION.

15 SO DISCLOSURE OF THAT INFORMATION WOULD SERVE NO
16 RELEVANT PURPOSE IN THIS CASE, COULD LEAD TO NO DISCOVERABLE OR
17 ADMISSIBLE EVIDENCE IN THIS CASE. AND IT'S OVERLY BROAD TO THE
18 EXTENT THAT IT REQUESTS THE ENTIRE UNIVERSE OF DOCUMENTS THAT
19 THESE BANKS MAY HAVE ON MY CLIENTS AND THEIR BANK ACCOUNTS.

20 THE COURT: WELL, THE ACCOUNT THEY NAMED, IS THAT --
21 WHOSE ACCOUNT IS THAT?

22 MR. ANNESSER: I BELIEVE THAT'S OWNED BY LEONARDO
23 CORPORATION.

24 THE COURT: OKAY.

25 MR. ANNESSER: AND IN FLORIDA THERE IS A

1 CONFIDENTIALITY THAT ATTACHES TO BANK ACCOUNTS. SPECIFICALLY
2 THE FLORIDA CONSTITUTION GIVES ITS RESIDENTS THE RIGHT TO
3 PRIVACY, AND I QUOTE, PROTECTS THE INDIVIDUAL'S EXPECTATION OF
4 PRIVACY IN FINANCIAL

5 RECORDS. AND TO THAT I CITE TO --

6 THE COURT: DOES THAT APPLY IN A FEDERAL LITIGATION
7 DISCOVERY?

8 MR. ANNESSER: YES, YOUR HONOR. THERE IS A RIGHT TO
9 PROTECTION OF DOCUMENTS. THERE IS AN EXCEPTION TO THAT RIGHT
10 OF PROTECTION, AND THAT IS WHERE THE DOCUMENTS THAT ARE BEING
11 SOUGHT SPECIFICALLY ARE AT ISSUE, EITHER THE STATUS OF THE
12 DOCUMENTS OR THE STATE US OF THE FINANCIAL STANDING OF THE
13 CLIENTS. BUT THAT'S NOT THE CASE HERE.

14 THE COURT: BUT THAT'S THE CASE FOR ANY -- IN OTHER
15 WORDS, I DON'T THINK I HAVE TO LOOK AT THE FLORIDA
16 CONSTITUTION. I HAVE TO LOOK AT RULE 26 AND DETERMINE WHETHER
17 OR NOT THEY ARE RELEVANT. IF THEY'RE RELEVANT THEN IT DOESN'T
18 MATTER THAT THE STATE SAYS THAT THEY HAVE SOME KIND OF SUPERIOR
19 PROTECTION, DOES IT?

20 MR. ANNESSER: THAT'S CORRECT, YOUR HONOR.

21 THE COURT: OKAY.

22 MR. ANNESSER: IF THEY'RE NOT RELEVANT. BUT EVEN IF
23 THEY ARE RELEVANT TO THE EXTENT THAT IT COULD RELEASE
24 INFORMATION THAT WOULD BE HARMFUL TO HAVE RELEASED TO A
25 COMPETITOR --

1 THE COURT: YEAH.

2 MR. ANNESSER: -- WE HAVE TO GO A STEP FURTHER. IT'S
3 NOT JUST THAT THE DOCUMENTS THEMSELVES --

4 THE COURT: WELL, HAVE YOU ENTERED A PROTECTIVE ORDER?
5 I MEAN, HAVE YOU ENTERED INTO AN AGREEMENT IN REGARDS TO
6 DISCOVERY IN THIS MATTER TO PROTECT, YOU KNOW, TRADE SECRETES
7 OR CONFIDENTIAL INFORMATION?

8 MR. ANNESSER: WE HAVE NOT EXECUTED ONE YET. WE HAVE
9 BEEN -- ONE HAS GONE BACK AND FORTH AND WE ANTICIPATE HAVING IT
10 EXECUTED SOON.

11 THE COURT: AND WOULD THAT PROTECT WHATEVER PROBLEMS
12 YOU HAVE REGARDING THE --

13 MR. ANNESSER: NO, YOUR HONOR. SPECIFICALLY BECAUSE
14 THE STATUS OF THE TWO PARTIES AT THIS POINT IN TIME IS THEY ARE
15 COMPETITORS IN BUSINESS. JUST SIMPLY KNOWING WHO THE SUPPLIERS
16 AND CUSTOMERS ARE COULD CAUSE SUBSTANTIAL FINANCIAL HARM TO MY
17 CLIENTS.

18 THEY'RE IN ESSENCE ASKING FOR INFORMATION THAT
19 COULDN'T POSSIBLY BE RELEVANT FOR THE SOLE PURPOSE OF KNOWING
20 WHO WE'RE BUYING FROM, WHO WE'RE SELLING FROM, WHERE MONEY WAS
21 TRANSFERRED AND THAT'S NOT AT ISSUE IN THIS CASE. THERE IS --
22 THERE IS NO ALLEGATIONS THAT GO TO THE FINANCIAL STANDING OF MY
23 CLIENT AT ANY GIVEN TIME.

24 THE COURT: AND THE DAMAGES AREN'T RELATED TO THAT?

25 MR. ANNESSER: THE ONLY THING THAT SEEKS DAMAGES

1 RELATING TO ANYTHING FINANCIAL IS THEIR CLAIM THAT WE FAILED TO
2 PAY THE APPROPRIATE TAXES, WHICH AGAIN WE BELIEVE IS FRIVOLOUS.
3 WE HAVE NOT RESPONDED TO THE COMPLAINT YET, ALTHOUGH THAT WILL
4 BE DONE ON THURSDAY AND WE EXPECT TO REQUEST THE COURT TO
5 DISMISS THAT AS EXPECT OF THE BREACH OF CONTRACT CLAIM.

6 SO IF NOTHING ELSE WE WOULD REQUEST THAT THE COURT AT
7 LEAST STAY ITS DECISION AND STAY THE SUBPOENA SUBJECT TO THE
8 COURT'S RULING ON THE MOTION TO DISMISS BECAUSE WE BELIEVE THAT
9 THAT WAS A RED HEARING THROWN IN JUST SIMPLY TO DISCOVER
10 INFORMATION THAT OTHERWISE THEY WOULD NOT BE ENTITLED TO.

11 THE COURT: OKAY. WHAT DOES THE DEFENDANT SAY ABOUT
12 THESE TWO BANK SUBPOENAS?

13 MR. PACE: YOUR HONOR, I THINK THIS IS SIMPLE.

14 AS TO BOTH BANK ACCOUNTS MONEY WAS PAID BY MY CLIENT
15 INTO THESE BANK ACCOUNTS. LEONARDO CORPORATION -- I'M GOING --
16 I APOLOGIZE, YOUR HONOR. LET ME JUST -- I DON'T KNOW WHY I
17 FEEL MORE COMFORTABLE -- THE MICROPHONE IS A LITTLE BETTER.

18 LEONARDO CORPORATION IS ESSENTIALLY A SINGLE PURPOSE
19 ENTITY. THEY OPERATE TO TRY TO DEVELOP -- IN EFFORTS TO
20 DEVELOP AND PRODUCE IN SOME FASHION A PRODUCT, AN INTELLECTUAL
21 PROPERTY ASSOCIATED WITH A PRODUCT. SO -- AND WE HAVE -- MY
22 CLIENTS HAD A LICENSE FOR THAT PRODUCT IN A NUMBER OF
23 TERRITORIES INCLUDING THE UNITED STATES.

24 THE COURT: RIGHT.

25 MR. PACE: SO EVERYTHING THAT COMPANY DID WAS RELATED

1 TO THIS -- TO THIS AGREEMENT. WE MADE OUR PAYMENTS INTO
2 THAT -- INTO THESE ACCOUNTS. THERE IS A NUMBER OF INVOICES
3 THEY SENT US. WE MADE PAYMENTS INCLUDING TEN MILLION DOLLARS
4 WAS SENT TO THE TD MERITRADE ACCOUNT. THERE WAS THE INITIAL
5 BIG PAYMENT WHICH WE ARE CHALLENGING NOW.

6 WE HAVE A -- I THINK IT'S QUITE LOGICAL --

7 THE COURT: LET ME ASK YOU.

8 WHAT DIFFERENCE DOES IT MAKE WHAT THEY DID WITH THE
9 MONEY? IF THEY SENT IT TO A CHARITY, OR THEY SENT IT TO THEIR
10 WIFE, OR THEY USED IT TO HAVE A PARTY, OR THEY BOUGHT MORE
11 EQUIPMENT WITH IT. WHAT DIFFERENCE DOES IT MAKE?

12 MR. PACE: WELL, THERE ARE SEVERAL RELEVANCES TO IT.
13 SO LET ME -- IF I CAN KIND OF WALK THROUGH IT.

14 ONE RELEVANCE OF THE USE OF THE MONEY ENDS UP BEING IF
15 IT WENT TO ANY OF THE OTHER DEFENDANTS WHO WE HAVE PLED THAT
16 THERE HAS BEEN A SCHEME TO DEFRAUD OUR CLIENTS OUT OF -- OUT
17 OF -- YOU KNOW, IN ATTEMPT TO KIND OF MAKE IT APPEAR THAT
18 THEY'RE COMPLYING WITH AN AGREEMENT WHEN THEY'RE NOT COMPLYING
19 WITH THE AGREEMENT. THAT'S ONE.

20 TWO, WE HAVE BEEN TRYING TO IDENTIFY --

21 THE COURT: YOUR TALKING ABOUT THE THIRD-PARTY
22 DEFENDANTS I ASSUME, RIGHT?

23 MR. PACE: NO. LEONARDO ROSS -- OH. YES. PAYMENTS?
24 YES. I APOLOGIZE.

25 THE COURT: OKAY.

1 MR. PACE: PAYMENTS FROM LEONARDO AND ROSSI TO THE
2 THIRD-PARTY DEFENDANTS.

3 AND PART OF THE PROBLEM IS, I'LL TAKE HENRY JOHNSON
4 JUST AS AN EXAMPLE -- NOT TRYING TO SINGLE HIM OUT BUT IT'S HE
5 EASIEST EXAMPLE.

6 HE HAS A NUMBER OF OTHER COMPANIES. MOST OF THESE
7 DEFENDANTS HAVE A NUMBER OF OTHER COMPANIES. SO THE WHOLE IDEA
8 OF SAYING, GIVE US A LAUNDRY LIST OF TO WHOM THESE PAYMENTS MAY
9 HAVE BEEN MADE IS NOT QUITE SO SIMPLE. IT'S NOT SIMPLY, YOU
10 LOOK AT THE CAPTION AND SAY, IS THERE ANY PAYMENT MADE TO
11 THESE -- YOU KNOW, THESE IDENTIFIED THIRD PARTIES. YOU ALSO
12 HAVE TO FIGURE OUT ALL OF THEIR COMPANIES AND CORPORATIONS.

13 SECOND. TO THE EXTENT ONE OF THE ISSUES IN THIS CASE
14 THERE IS A TESTING PERIOD THAT THE PLAINTIFFS ARE CLAIMING THAT
15 THEY PERFORMED DURING A PERIOD THAT HAS TO -- THIS PRODUCT HAD
16 TO RUN FOR 350 OUT OF 40 DAYS. THEY RAN A TEST FOR 357 OR
17 EIGHT DAYS AND SAID, HEY, THIS THING FUNCTIONED PERFECTLY FOR
18 350 OF THOSE DAYS.

19 THE COURT: ALL RIGHT.

20 MR. PACE: WE'RE LOOKING FOR THE SERVICE PROVIDERS.
21 AGAIN, THIS BANK ACCOUNT WILL SHOW US WHO MONEY WAS PAID TO
22 BECAUSE WE HAVE INFORMATION, AND WE'VE PLED IT IN THE
23 COMPLAINT, THAT THERE WAS -- PLED IN THE COUNTER-CLAIMS AND
24 THIRD-PARTY CLAIMS THAT THEIR DAYS -- THAT THE SYSTEM WASN'T
25 OPERATING WHEN THEY CLAIM IT WAS OPERATING. THAT'S DIRECTLY

1 RELEVANT TO WHAT'S GOING ON IN THIS CASE.

2 SO, FOR EXAMPLE, IF WE WERE INVOICED BY THE
3 PLAINTIFFS, FOR EXAMPLE, FOR ELECTRICAL WORK THAT WAS DONE OVER
4 A FIVE DAY TIME PERIOD, WE DIDN'T GET THE UNDERLYING BACKUP, WE
5 JUST GOT THE INVOICE. OBVIOUSLY WE WANT TO SEE WHERE THE
6 PAYMENT WENT FROM THE BANK ACCOUNT AND BE ABLE TO SAY, HERE IS
7 THE SERVICE PROVIDERS.

8 WE KNOW OF ONE SERVICE PROVIDER. WE'VE ALREADY
9 SUBPOENAED THEM. THEY'RE NOT EVEN CHALLENGING. THAT WAS A
10 WELDING COMPANY THAT WE HAPPENED TO, YOU KNOW, BE ABLE TO -- WE
11 GOT THEIR NAME FROM SOMEBODY ELSE.

12 THE COURT: OKAY.

13 MR. PACE: WE DON'T KNOW THE OTHER SERVICE PROVIDERS.
14 THOSE PAYMENTS WOULD COME OUT OF THAT -- OUT OF THESE TWO BANK
15 ACCOUNTS. AND IT DOES -- THERE ARE ALSO ALLEGATIONS OF -- YOU
16 KNOW, WHEN THEY TALK ABOUT -- LET ME BREAK THE CUSTOMER ISSUE
17 INTO TWO.

18 ONE IS, IF THERE WERE OTHER CUSTOMERS HE WAS SELLING
19 TO, AS WE'VE PLED IN THE COUNTER-CLAIMS AND THIRD-PARTY CLAIMS,
20 THAT IN AND OF ITSELF IS ACTUALLY A -- WOULD BE A BREACH OF THE
21 LICENSE AGREEMENT.

22 BUT PUTTING THAT EVENING ASIDE. THE FACT OF THE
23 MATTER IS A CONFIDENTIALITY ORDER CAN COVER ANY OF THAT
24 INFORMATION AND THAT SHOULDN'T BE OF A GREAT CONCERN.

25 BUT THERE ACTUALLY IS LITERALLY A PROVISION IN THERE

1 BECAUSE THE LICENSE AGREEMENT ALSO HAS ESSENTIALLY A RIGHT OF
2 FIRST OFFER THAT IF YOU ARE GOING TO ALSO -- EVEN IF YOU'RE
3 GOING TO SELL TO OTHER TERRITORIES THERE ARE EXCEPTIONS TO IT.
4 I DON'T WANTED TO GET, YOU KNOW, DEEP INTO IT --

5 THE COURT: RIGHT.

6 MR. PACE: -- BUT EVEN EVIDENCE IN THAT AREA WOULD BE
7 RELEVANT. SO WE THINK OVER ALL IT MAKES A LOT OF SENSE FOR US
8 TO GET THESE RECORDS.

9 AND AGAIN, ALL OF -- IT'S THE RECORDS. IT DOES NOT,
10 JUST TO CLARIFY SOMETHING HERE BECAUSE OF A STATEMENT THAT WAS
11 MADE. IT IS FOCUSED ON THESE TWO BANK ACCOUNTS. IT DOESN'T
12 KIND OF SAY GO DIG AROUND AND FIND ANY OTHER ACCOUNT THAT YOU
13 HAVE. THE REQUEST IS THE DOCUMENTS OF ESI RELATING TO THIS
14 BANK ACCOUNT OWNED OR HELD IN THE NAME OF EITHER LEONARDO
15 CORPORATION OR --

16 THE COURT: YOU ONLY WANT THE PARTICULAR BANK ACCOUNTS
17 THAT YOU NAMED.

18 MR. PACE: YES. THE ONLY THING IS WE ASKED TO BE --
19 WHAT WE ASKED TO CLARIFY HERE IS THAT IF THERE ARE
20 COMMUNICATIONS ABOUT THE ACCOUNT THEN WE SHOULD GET THOSE
21 COMMUNICATIONS.

22 IN OTHER WORDS, IF THEY'RE COMMUNICATING -- THERE IS
23 NOT JUST A BANK ACCOUNT STATEMENT, RIGHT? IF THEY HAVE
24 COMMUNICATIONS WITH THESE DIFFERENT PARTIES --

25 THE COURT: RIGHT.

1 MR. PACE: -- ABOUT THE BANK ACCOUNTS THAT WE THINK WE
2 ARE ENTITLED TO THAT AS WELL.

3 AND SOMETIMES OBVIOUSLY THE COMMUNICATION CAN BE --
4 YOU KNOW, IF IT WERE UNCLEAR. IN OTHER WORDS, IF SOMEBODY
5 WROTE A LETTER SAYING, I WANT TO WITHDRAW ALL OF MY MONEY FROM
6 YOUR FINANCIAL INSTITUTION, THAT MAY NOT REFERENCE A PARTICULAR
7 BANK ACCOUNT BUT IT COVERS THAT BANK ACCOUNT.

8 THE COURT: OKAY. WHAT DO YOU SAY ABOUT ALL OF THAT?

9 MR. ANNESSER: A BRIEF RESPONSE, YOUR HONOR.

10 SPECIFICALLY THE CONCERNS THAT I HEARD IN WHAT THEY'RE
11 LOOKING FOR IS WHERE WHETHER MONEY WENT TO THE OTHER
12 DEFENDANTS, AND THAT CERTAINLY COULD BE SUBJECT TO AN
13 INTERROGATORY OR OTHER FORM OF DISCOVERY THAT DOES NOT INCLUDE
14 DISCLOSING OUR CONFIDENTIAL BUSINESS INFORMATION IN ITS
15 ENTIRETY.

16 NOW, MR. PACE STATED THAT THEY'VE ONLY REQUESTED FROM
17 ONE ACCOUNT. THE LANGUAGE OF THE SUBPOENA THAT WAS SERVED UPON
18 THESE DIFFERENT ENTITIES SPECIFICALLY SAYS --

19 THE COURT: WELL, HE'S SAYING THAT HE'S LIMITING IT TO
20 THE ACCOUNTS. I DON'T CARE WHAT IT SAYS. HE'S SAYING HE'S
21 LIMITING IT TO THE TWO ACCOUNTS OTHER THAN CORRESPONDENCE
22 BETWEEN THE BANK AND THOSE FOLKS.

23 MR. ANNESSER: YES, YOUR HONOR.

24 NOW, THE SECOND ISSUE THAT HE RAISED WAS SERVICE
25 PROVIDERS.

1 THE COURT: RIGHT.

2 MR. ANNESSER: THEY HAVEN'T REQUESTED INFORMATION.
3 AND UNFORTUNATELY WE ARE HERE BEFORE THE COURT -- I CONTACTED
4 MR. PACE BEFORE WE SET THIS UP AND I SAID, IS THERE A WAY WE
5 CAN LIMIT THIS, AND WE COULDN'T. AT THAT POINT IN TIME HE
6 REFUSED TO LIMIT TO ANY DEGREE.

7 I THINK A LIMITATION THAT WOULD LIMIT IT TO, AGAIN IF
8 THERE ARE ANY PAYMENTS THEN THEY CAN REQUEST THAT OF US AND WE
9 WOULD CERTAINLY RESPOND TO OTHER DEFENDANTS IN THIS MATTER. I
10 DON'T DISPUTE THAT THEY WOULD BE ENTITLED TO THAT INFORMATION.

11 THE COURT: YES.

12 MR. ANNESSER: BUT I DON'T THINK WE HAVE TO GIVE THEM
13 THE ENTIRE UNIVERSE OF INFORMATION REGARDING MY CLIENT'S
14 BUSINESS, THEIR FINANCIAL DEALINGS, ET CETERA.

15 THE COURT: WHAT ABOUT OTHER CUSTOMERS HE WAS SELLING
16 TO?

17 MR. ANNESSER: YOUR HONOR, THEY HAVE A LIMITED LICENSE
18 AS TO CERTAIN TERRITORIES. WE HAVE OTHER LICENSEES, THOSE ARE
19 RECOGNIZED IN THE CONTRACT, THE CONTRACT THAT'S ATTACHED TO THE
20 COMPLAINT, THE LICENSE AGREEMENT AND IT'S REFERENCED IN THE
21 COUNTERCLAIM.

22 THERE IS NO QUESTION THAT THERE WERE OTHER CUSTOMERS,
23 IF YOU WILL, OR OTHER LICENSEES THAT ARE OUT THERE. THIS IS A
24 LIMITED LICENSE SPECIFICALLY TO A VERY WELL DEFINED GROUP OF
25 TERRITORIES.

1 THE COURT: WHICH IS -- WHAT ARE THE TERRITORIES?

2 MR. ANNESSER: THE TERRITORIES ARE NORTH AMERICA,
3 SOUTH AMERICA, RUSSIA, THE UNITED ARAB EMIRATES --

4 (INAUDIBLE)

5 MR. ANNESSER: -- AND CHINA.

6 THANK YOU.

7 THE COURT: SO WHAT DOES THAT LEAVE, EUROPE AND
8 AUSTRALIA, OR SOMETHING?

9 MR. ANNESSER: WE HAVE ALL OF EUROPE. WE HAVE
10 AFRICA --

11 THE COURT: ALL RIGHT.

12 MR. ANNESSER: -- WE HAVE AUSTRALIA -- AND THE REST OF
13 ASIA.

14 THE COURT: ALL RIGHT.

15 MR. PACE, I THINK YOU'RE USED TO BEING -- YOU KNOW,
16 IT'S BEEN SOME TIME I THINK BUT YOU'RE USED TO BEING A
17 PROSECUTOR WHERE YOU JUST GO AND GET ALL THE RECORDS AND THEN
18 HOPE TO FIND STUFF. BUT THAT'S NOT THE WAY IT WORKS IN CIVIL
19 DISCOVERY.

20 SO I BELIEVE -- I AGREE WITH THE PLAINTIFFS ASSERTION
21 THAT IF YOU WANT TO KNOW THIS STUFF -- I MEAN, I'LL TELL YOU
22 HOW IT WORKS.

23 HE SENT YOU A REQUEST, ASKED FOR THIRD-PARTY -- YOU
24 KNOW, PAYMENTS TO THIRD-PARTY DEFENDANTS. HE ASKED FOR THE
25 SERVICE PROVIDERS, YOU KNOW, YOU MADE PAYMENTS TO OR WHATEVER

1 REGARDING THE CONTRACT. SO I THINK THAT'S HOW YOU GET STUFF IN
2 DISCOVERY.

3 BUT GENERALLY HERE IS WHAT HAPPENS. IF HE -- IF HE IS
4 ABLE TO COME BACK TO ME AND SAY, LOOK. WE ASKED HIM FOR THE
5 THIRD-PARTY PROVIDERS AND THEY LEFT OUT, YOU KNOW, 16 PAYMENTS,
6 OR A PAYMENT, OR TWO PAYMENTS, OR FIVE PAYMENTS THEN MAYBE HE
7 HAS THE ABILITY TO GO LOOK AT THE BANK ACCOUNTS BECAUSE THAT
8 MEANS THAT YOU'RE NOT DOING YOUR JOB IN PROVIDING THE PROPER
9 DISCOVERY.

10 SO IT'S JUST KIND OF A WARNING THAT YOU SHOULD BE
11 AWARE OF THAT IF YOU -- IF THAT'S WHAT YOU WANT TO DO IS
12 ALERTING HIM TO ASKING ABOUT PAYMENTS TO PARTICULAR INDIVIDUALS
13 YOU'VE GOT TO MAKE SURE THAT YOU COMPLY FULLY.

14 MR. ANNESSER: I AGREE, YOUR HONOR, A HUNDRED PERCENT.

15 THE COURT: OKAY.

16 WHAT DO YOU SAY, MR. PACE? DO YOU HAVE SOMETHING YOU
17 WANT TO ADD TO THAT?

18 MR. PACE: I WOULD, YOUR HONOR, ONLY IN THE POINT OF
19 HOW EXACTLY AM I SUPPOSE TO KNOW THAT THERE THEY ARE EXCLUDED
20 PARTIES?

21 IN OTHER WORDS, IF I HAVE THE BANK RECORDS I CAN SAY,
22 HOW DID YOU NOT GIVE ME THE PAYMENTS TO X?

23 THE COURT: I AGREE WITH YOU. BUT YOU DON'T GET BANK
24 RECORDS IN CIVIL LITIGATION GENERALLY, YOU KNOW, EXCEPT FOR
25 THOSE RECORDS THAT ARE RELEVANT TO THE ISSUE AT HAND.

1 AND, YOU KNOW, YOU'VE GOT TO -- HOW DOES THAT HAPPEN?
2 IT HAPPENS BY -- THROUGH THE DISCOVERY PROCESS. IF THEY'RE NOT
3 BEING STRAIGHT WITH YOU THEN YOU'RE GOING TO GET THE BANK
4 RECORDS. BUT YOU'VE GOT TO COME IN HERE AND SHOW ME SOME PROOF
5 THAT THEY'RE NOT BEING STRAIGHT WITH YOU AND WHY YOU NEED SOME
6 OR ALL OF THOSE BANK RECORDS.

7 BUT YOU JUST DON'T GET TO LOOK AT PEOPLES' BANK
8 RECORDS BECAUSE THERE MIGHT BE STUFF IN THERE THAT THEY'RE NOT
9 TELLING YOU ABOUT, AT LEAST IN HERE THAT'S THE WAY I LOOK AT
10 IT.

11 IF YOU'RE ABLE TO COME IN AND SHOW ME SOME EVIDENCE
12 THAT THEY'RE NOT BEING -- NOT PROVIDING PROPER DISCOVERY THEN
13 THE DISCOVERY WIDENS BECAUSE YOU CAN'T TRUST THE OTHER SIDE. I
14 MEAN, DISCOVERY JUST -- THAT'S THE WAY IT IS. YOU GOT TO --
15 THE LAWYERS HAVE TO LOOK, AND THEY LOOK AT THE STUFF.

16 JUST LIKE YOU CAN'T GET EVERY CORPORATE RECORD THEY
17 EVER HAD SO YOU CAN MAKE SURE THAT THEY PROVIDED ALL THE
18 CORPORATE RECORDS. YOU GET THE CORPORATE RECORDS THAT RELATE
19 TO THE CLAIMS IN THE CASE.

20 SO THE -- THE REQUEST TO QUASH I GUESS THE SUBPOENA --
21 MR. ANNESSER: YES, YOUR HONOR.

22 THE COURT: -- IS GRANTED. AND MAYBE -- I DON'T KNOW
23 WHAT KIND OF RECORD YOU HAVE. IF YOU DON'T HAVE THE RECORDS,
24 YOU THEN ARE GOING TO HAVE THE RESPONSIBILITY OF GOING TO THE
25 BANK AND GETTING THEM.

1 MR. ANNESSER: YES, YOUR HONOR.

2 THE COURT: IN OTHER WORDS, IF THEY -- CHECKS OR
3 WHATEVER ARE NECESSARY. OKAY?

4 MR. ANNESSER: YES, YOUR HONOR.

5 THE COURT: OKAY.

6 WAS THIS A THIRD SUBPOENA?

7 MR. ANNESSER: THERE IS A THIRD SUBPOENA, YOUR HONOR,
8 THAT IS SENT TO A MR. JAMES TRAVIS WHO WAS THE ACCOUNTANT FOR
9 LEONARDO CORPORATION AND DR. ROSSI FOR A NUMBER OF YEARS. HE
10 IS LOCATED IN NEW HAMPSHIRE.

11 SPECIFICALLY FLORIDA STATUTE 90.50551C DECLARES THAT
12 THE RECORDS PROVIDED TO AN ACCOUNT ARE CONFIDENTIAL. THOSE ARE
13 NOT RECORDS THAT ARE INTENDED TO BE DISCLOSED --

14 THE COURT: RECORDS PROVIDED? I DON'T KNOW IF I AGREE
15 WITH THAT.

16 IN OTHER WORDS, IF YOU GIVE YOUR ACCOUNTANT BANK
17 RECORDS THAT DOESN'T -- THERE IS A PRIVILEGE WITHIN FLORIDA
18 LAW. BUT THAT DOESN'T -- THAT DOES NOT -- I BELIEVE THERE IS A
19 LONG STRING OF CASES THAT RELATE TO, FOR INSTANCE, ATTORNEYS.
20 I DON'T THINK ACCOUNTANTS WOULD BE TREATED DIFFERENTLY. THAT
21 IF YOU GET A RECORD -- IN OTHER WORDS, IF YOUR CLIENT GIVES THE
22 BANK RECORDS TO THE ACCOUNTANT, THE BANK RECORD DOESN'T BECOME
23 DISCOVERABLE? THAT PROTECTS IT FROM BEING DISCOVERED?

24 MR. ANNESSER: NO, YOUR HONOR.

25 I'M NOT ARGUING THAT SOMEHOW THE ACCOUNTANT PRIVILEGE

1 SOMEHOW DRIFTS DOWN TO ANYTHING THAT YOU PROVIDE TO HIM. THAT
2 IS NOT WHAT WE'RE ARGUING.

3 BUT IT'S A COMMUNICATION TO THE ACCOUNTANT. WHETHER
4 THAT COMMUNICATION ATTACHES A DOCUMENT SUCH AS A BANK RECORD OR
5 OTHERWISE. THEY MAY BE ABLE TO GET IT FROM SOME OTHER SOURCE.
6 THEY CANNOT GET IT FROM THE ACCOUNTANT.

7 SPECIFICALLY THE STATUTE READS, A COMMUNICATION
8 BETWEEN AN ACCOUNTANT AND THE ACCOUNTANT'S CLIENT IS
9 CONFIDENTIAL --

10 THE COURT: YEAH. I KNOW --

11 MR. ANNESSER: -- IF IT IS NOT INTENDED TO BE
12 DISCLOSED TO A THIRD PERSON.

13 THE COURT: OKAY.

14 MR. ANNESSER: IT FURTHER -- THE STATUTE GOES FURTHER
15 AND DOESN'T LEAVE IT AT JUST CONFIDENTIAL. IT SAYS THAT THERE
16 IS A PRIVILEGE BETWEEN THE COMMUNICATIONS OF AN ACCOUNTANT AND
17 THE CLIENT.

18 THE COURT: RIGHT.

19 MR. ANNESSER: SPECIFICALLY A CLIENT HAS A PRIVILEGE
20 TO REFUSE TO DISCLOSE AND TO PREVENT ANY OTHER PERSON FROM
21 DISCLOSING THE CONTENTS OF CONFIDENTIAL COMMUNICATIONS WITH AN
22 ACCOUNTANT UNLESS SUCH OTHER PERSONS LEARNED OF THE
23 COMMUNICATIONS BECAUSE THEY WERE MADE IN RENDITION OF
24 ACCOUNTING SERVICE TO THE CLIENT. THIS PRIVILEGE INCLUDES
25 OTHER CONFIDENTIAL INFORMATION OBTAINED BY THE ACCOUNTANT FROM

1 THE CLIENT FOR THE PURPOSE OF RENDERING ACCOUNTING SERVICES.

2 THE COURT: OKAY.

3 MR. ANNESSER: IT IS ALL-ENCOMPASSING. THERE ARE
4 EXCEPTION --

5 THE COURT: -- NOT ALL-ENCOMPASSING ALL I --

6 MR. ANNESSER: WELL --

7 (BOTH TALKING AT THE SAME TIME)

8 THE COURT: AGREE WITH THAT.

9 IN OTHER WORDS, IF YOUR COMPANY GIVES YOUR BOOKS TO
10 THE ACCOUNTANT THEY COULD SUBPOENA THE ACCOUNTANT AND SAY, GIVE
11 ME THE BOOKS.

12 THEY CAN'T SAY, GIVE ME THE COMMUNICATION -- I MEAN,
13 THEY CAN SUBPOENA WHATEVER THEY WANT BUT I DON'T THINK I WOULD
14 BE LIKELY TO GIVE THEM THE COMMUNICATIONS THAT RELATED TO THAT.
15 BUT ANY RECORD THAT STANDS -- ANY RECORD THAT HAS A LIFE OF ITS
16 OWN OUTSIDE OF YOUR ACCOUNTANT, I BELIEVE THAT THEY'RE ENTITLED
17 TO UNLESS YOU CAN CONVINC ME OTHERWISE.

18 SO IF YOU SENT THEM BANK RECORDS, YOU SENT THEM THE
19 BOOKS, ALL OF THAT STUFF IS NOT -- IS NOT -- I MEAN, JUST LIKE
20 IF YOU GIVE IT TO YOUR ACCOUNTANT, IT'S NOT PROTECTED. THAT
21 DOESN'T PROTECT IT.

22 WHAT'S PROTECTED IS WHAT THE ACCOUNTANT DID WITH THAT.
23 YOU KNOW, IN IF THE ACCOUNTANT MADE WORKSHEETS THAT WOULD BE
24 PROTECTED. IF THE ACCOUNTANT, YOU KNOW, SENT HIM A LETTER AND
25 SAY, HEY, GET ME SOME MORE BANK RECORDS BECAUSE I THINK YOU

1 HAVE A PROBLEM WITH THE WAY YOU REPORTED YOUR INCOME, THAT'S
2 PROTECTED, OR THE WAY YOU -- YOU KNOW, YOU'RE BOOKS ARE PUT
3 TOGETHER, THAT'S PROTECTED. BUT THE THIRD-PARTY RECORDS IN THE
4 POSSESSION OF THE ACCOUNTANT I DON'T BELIEVE ARE PROTECTED.

5 MR. ANNESSER: WELL, YOUR HONOR, I THINK THAT'S
6 COVERED UNDER THE -- THIS PRIVILEGE INCLUDES OTHER CONFIDENTIAL
7 INFORMATION OBTAINED BY THE ACCOUNTANT FROM THE CLIENT FOR THE
8 PURPOSE OF RENDERING ACCOUNTING --

9 THE COURT: I AGREE WITH THAT. BUT BANK RECORDS ARE
10 NOT CONFIDENTIAL INFORMATION NOR ARE CORPORATE ACCOUNTING
11 RECORDS.

12 MR. ANNESSER: NO. BUT COMMUNICATIONS SUCH AS
13 INFORMATION FROM THE COMPANY PERTAINING TO ANY NUMBER OF
14 THINGS.

15 NOW, THE BOOKS OF THE CORPORATION MAY BE DISCOVERABLE
16 IN A CASE OBVIOUSLY IT HAS TO BE RELEVANT AS WE JUST
17 DISCUSSED --

18 THE COURT: RIGHT.

19 MR. ANNESSER: -- WITH RESPECT TO THE BANK ACCOUNTS,
20 MAY BE DISCOVERY FROM OTHER SOURCES. I DON'T BELIEVE THAT IT
21 IS DISCOVERABLE FROM THE ACCOUNTANT THEMSELVES.

22 THE PURPOSE OF THE STATUS IS TO ALLOW PEOPLE TO BE
23 HONEST WITH THEIR ACCOUNTANTS JUST LIKE THEIR ATTORNEYS --

24 THE COURT: YEAH.

25 MR. ANNESSER: -- AND DISCLOSE ALL THE INFORMATION SO

1 THE ACCOUNTANT CAN PROVIDE ADVICE. AND FLORIDA HAS CODIFIED
2 THAT IN THE STATUTE TO PROTECT THOSE RECORDS.

3 THE COURT: YEAH. THERE IS -- I MEAN, I THINK THERE
4 WAS THE SUPREME COURT CASE. THERE IS AN OLD SUPREME COURT CASE
5 WHERE IT MAKES CLEAR THAT THIRD-PARTY RECORDS IN THE
6 POSSESSION -- I THINK IT WAS NOT AN ACCOUNTING CASE, BUT
7 GENERALLY ACCOUNTANTS -- THE ONLY REASON YOU HAVE ACCOUNTING
8 PRIVILEGE IN THIS CASE IS BECAUSE IT'S A DIVERSITY CASE.
9 FEDERAL LAW GENERALLY DOESN'T PROTECT ACCOUNTANT PRIVILEGE, BUT
10 HERE WE DO RESPECT IT BECAUSE YOU HAVE A DIVERSITY CASE UNLESS
11 I HEAR OTHERWISE. AND THIRD-PARTY RECORDS IN THE POSSESSION OF
12 SOMEONE WHO HAS A PRIVILEGE IS NOT PROTECTED AS FAR AS I KNOW.

13 MR. ANNESSER: WELL --

14 THE COURT: LET ME HEAR FROM THE DEFENDANTS AND SEE
15 WHAT -- THE OTHER DEFENDANTS AND LET ME SEE WHAT THEY SAY.

16 MR. PACE: YOUR HONOR, THE SITUATION I THINK IS EVEN
17 MORE CLEAR HERE.

18 ONE -- FOR A NUMBER OF REASONS. ONE, MR. TRAVIS WAS A
19 OFFICER OF -- THERE ARE TWO LEONARDO CORPORATIONS. THERE IS A
20 LEONARDO CORPORATION FORMED IN NEW HAMPSHIRE AND THERE IS A
21 SAME NAME LEONARDO CORPORATION FORMED IN FLORIDA.

22 THE COURT: WHICH IS OURS?

23 MR. PACE: THE DEFENDANT -- THE PLAINTIFF HERE IS THE
24 LEONARDO CORPORATION FORMED IN FLORIDA.

25 THE COURT: OKAY.

1 MR. PACE: THEY ARE SAYING THAT THE LEONARDO
2 CORPORATION FORMED IN NEW HAMPSHIRE, THEY EXIST AT THE SAME
3 TIME WAS LATER MERGED INTO THEM. THAT'S AN ISSUE IN DISPUTE.

4 BUT HE WAS -- HE WAS A DIRECTOR OF -- LET ME SEE. HE
5 WAS AN OFFICER OF BOTH. HE WAS A DIRECTOR OF AT LEAST ONE OF
6 THEM. HE IS BASED IN NEW HAMPSHIRE. AND SO, THE ISSUE OF --
7 I'M NOT EVEN SURE WHAT THE CORRECT ANSWER OF THE PRIVILEGE --
8 YOU KNOW, THE ACCOUNTANT PRIVILEGE FOR A NEW HAMPSHIRE BASED
9 ACCOUNTANT CONNECTED WITH A NEW HAMPSHIRE BASED CORPORATION.
10 I'M NOT SURE IF THAT (UNINTELLIGIBLE) FLORIDA LAW IN ANY EVENT.

11 BUT THOSE ISSUES IN ALL FAIRNESS, YOUR HONOR, ARE
12 REALLY NOT BEFORE YOU AT THIS TIME. I MEAN, SOMEBODY CAN PUT
13 SOMETHING ON A PRIVILEGE LOG AND WE CAN DEAL WITH IT IN THE
14 CONTEXT OF THAT PRIVILEGE LOG.

15 BUT PARTICULARLY WHEN SOMEBODY IS WEARING MULTIPLE
16 HATS IT DOES BECOME COMPLICATED TO SAY, ANY COMMUNICATION
17 YOU'VE HAD WITH THAT INDIVIDUAL WHO IS -- AS I SAID, HE IS --
18 MAYBE HE IS YOUR ACCOUNTANT BUT HE IS ALSO YOUR OFFICER. HE IS
19 ALSO YOUR DIRECTOR. HE IS AGAIN OFFICER OF ANOTHER COMPANY.

20 THE COURT: RIGHT.

21 MR. PACE: I JUST THINK AGAIN THIS IS TERRIBLY
22 PREMATURE TO TRY TO ADDRESS THE ISSUE OF ARE THERE SOME
23 DOCUMENTS THAT MAY BE COVERED BY A FLORIDA ACCOUNTANT/CLIENT
24 PRIVILEGE.

25 THE COURT: OKAY. WHAT DOES THE PLAINTIFF SAY ABOUT

1 ALL OF THAT?

2 MR. ANNESSER: YOUR HONOR, IN ADDITION TO THE
3 PRIVILEGE, HE STILL HASN'T ESTABLISHED THE RELEVANCE OF THE
4 DOCUMENTS BEING REQUESTED. LIKE THE BANK REQUEST, THIS IS A
5 ALL-ENCOMPASSING --

6 THE COURT: RIGHT. I HAVEN'T HEARD YOU --

7 MR. ANNESSER: SO --

8 (BOTH TALKING AT THE SAME TIME)

9 THE COURT: -- NOT RELEVANT. YOU HAVEN'T MADE THAT
10 ARGUMENT. SO TELL ME THAT.

11 MR. ANNESSER: WELL, YOUR HONOR, THIS AS WITH THE BANK
12 REQUEST WAS ALL-EMCOMPASSING. GIVE US ALL INFORMATION, ALL
13 ESI, ALL DOCUMENTS PERTAINING TO, AND THEN A LIST OF PEOPLE.
14 AND AMONG THAT LIST OF PEOPLE ARE LEONARDO CORPORATION AND
15 DR. ROSSI.

16 AND AGAIN THERE ARE NO CONNECTIONS WHATSOEVER THAT CAN
17 BE MADE THAT WOULD BRING THOSE WITHIN THE SCOPE OF RELEVANCE IN
18 THIS CASE. IT'S A FISHING EXPEDITION TO TRY TO FIND SOMETHING.
19 SPECIFICALLY THEIR REQUEST GOES BACK TO 2010. THAT'S TWO YEARS
20 BEFORE THE LICENSE AGREEMENT IN DISPUTE IN THIS CASE WAS EVEN
21 ENTERED INTO, WHICH WAS SEPTEMBER OF 2012.

22 THEY'RE LOOKING TO FIND SOMETHING BUT THEY DON'T HAVE
23 ANYTHING TO LOOK FOR. IF THEY WERE TO DEFINE SPECIFIC ITEMS
24 THAT THEY WERE SEEKING, PERHAPS THERE COULD BE AN ARGUMENT
25 MADE. BUT WE BELIEVE AS IT'S PHRASED NOW THEY'RE ASKING FOR

1 THE UNIVERSE. THERE IS NO LIMITATION WHATSOEVER.

2 THE COURT: WHAT DO YOU SAY ABOUT THAT, MR. PACE?

3 MR. PACE: YOUR HONOR, I THINK QUITE SIMPLY HE'S THE
4 WRONG PARTY OR PERSON TO RAISE THE ISSUE. THAT'S SOMETHING
5 THAT MR. TRAVIS CAN RAISE. I DO WANT TO ADDRESS THE TIME
6 PERIOD.

7 AS WE -- WE EVEN IDENTIFIED IN OUR SUBPOENA. WE SAY,
8 HERE IS SAY HERE IS WHY WE PICKED THIS TIME PERIOD, BECAUSE THE
9 SECOND LEONARDO CORPORATION, WHILE THE FIRST ONE CONTINUES TO
10 EXIST IN NEW HAMPSHIRE THE SECOND ONE ENDS UP GETTING FORMED IN
11 FLORIDA.

12 THAT IS IN FACT A RELEVANT ISSUE TO THE CASE BECAUSE
13 THEY PLAYED GAMES WITH WHO THE CONTRACTING PARTIES WERE IN
14 TERMS OF, YOU KNOW, WHY EXACTLY DID YOU NEED, WHY NOT MOVE
15 LEONARDO OF NEW HAMPSHIRE TO LEONARDO OF -- YOU KNOW, MOVE IT
16 DOWN TO FLORIDA AS OPPOSED TO CREATING A SEPARATE COMPANY AND
17 CREATING ISSUES CONNECTED WITH THAT.

18 BUT AGAIN ISSUES -- WE DON'T KNOW WHAT DOCUMENTS
19 MR. TRAVIS HAS. WE DON'T KNOW IF HE'S GOT THOUSANDS OF
20 DOCUMENTS, WE DON'T KNOW IF HE HAS JUST A HANDFUL OF PAGES OF
21 DOCUMENTS.

22 AGAIN, MR. TRAVIS CAN BE IN A POSITION IF IN FACT WHAT
23 WE'RE ASKING FOR IS INCREDIBLY BURDENSOME TO RAISE THE ISSUE OF
24 BURDEN. BUT OTHERWISE, YOU KNOW, LEONARDO IS AT THE HEART OF
25 THIS -- HEART OF THIS CASE AND INCLUDING THE TWO DIFFERENT

1 LEONARDO COMPANIES AND WHAT HAS BEEN CONDUCTED.

2 AND AGAIN, COULD THERE BE AN OPPORTUNITY DOWN THE ROAD
3 FOR THIS ISSUE TO BE RAISED JUST LIKE WITH THE ACCOUNTANT
4 PRIVILEGE? YES. IF IT TURNS OUT THAT MR. TRAVIS SAYS, I HAVE
5 A TON OF MATERIAL AND IT WAS GOING TO BE VERY HARD FOR ME TO GO
6 GATHER UP ALL OF THIS STUFF, HE CAN RAISE THAT OBJECTION AND
7 WE'LL HAVE TO DEAL WITH IT.

8 BUT IT SHOULDN'T BE SOMETHING HERE THAT -- YOU KNOW,
9 THAT RESULTS HERE ON A MOTION TO QUASH BY A PARTY THAT'S NOT
10 THE RECIPIENT OF THE SUBPOENA.

11 THE COURT: OKAY. WHAT DO YOU SAY ABOUT ALL OF THAT?

12 MR. ANNESSER: YOUR HONOR, AS TO STANDING. THE
13 PLAINTIFFS HAVE A PERSONAL RIGHT AND PRIVILEGE WITH RESPECT TO
14 THEIR FINANCIAL RECORDS. AND THE COURT'S, SPECIFICALLY THE
15 SOUTHERN DISTRICT COURT HAS FOUND IN KIND V. ADF MID-ATLANTIC,
16 LLC, THAT THE PERSON WHOSE FINANCIAL RECORDS ARE BEING SOUGHT
17 HAS STANDING TO CHALLENGE A DEFENDANT'S SUBPOENA TO A
18 THIRD-PARTY. SO THE CASE LAW IS CLEAR THAT WE HAVE STANDING TO
19 RAISE THESE ISSUES.

20 THEY HAVE REQUESTED DOCUMENTS TO BE SENT DIRECTLY TO
21 THEM WITHOUT ANY REVIEW OR OTHERWISE. THERE IS A PRIVILEGE
22 THAT WE WOULD HOPE THAT MR. TRAVIS WOULD NOT BREACH BY
23 DISCLOSING DOCUMENTS THAT ARE COVERED BY THE PRIVILEGE, BUT
24 THERE IS NO FILTER.

25 SO IF MR. PACE WANTS TO TAKE THE RISK OF HAVING

1 POTENTIALLY PRIVILEGED DOCUMENTS DELIVERED TO HIS OFFICE, THAT
2 IS CERTAINLY A RISK. BUT I DON'T BELIEVE THAT IT WOULD BE
3 APPROPRIATE. I DO BELIEVE THAT WE HAVE STANDING TO PROTECT
4 THOSE FINANCIAL RECORDS IRRESPECTIVE OF WHERE THEY'RE KEPT.
5 AND THE LAW IN FLORIDA IS CLEAR THAT WE HAVE THE RIGHT EVEN IF
6 THE SUBPOENA IS TO A THIRD-PARTY TO CONTEST THE --

7 THE COURT: DO YOU KNOW THE -- WHAT ABOUT HIM BEING A
8 NEW HAMPSHIRE ACCOUNTANT?

9 MR. ANNESSER: I'M SORRY, YOUR HONOR?

10 THE COURT: WHAT ABOUT HIM PRACTICING IN NEW HAMPSHIRE
11 AND BEING A NEW HAMPSHIRE ACCOUNTANT DOES THE PRIVILEGE IN
12 FLORIDA APPLY TO HIM?

13 MR. ANNESSER: YOUR HONOR, THE STATUTE DOESN'T
14 DIFFERENTIATE. AND I WAS UNABLE TO FIND ANY CASE LAW THAT
15 DOES.

16 THE STATUTE SPECIFICALLY SAYS, ANY INFORMATION
17 PROVIDED TO THEIR ACCOUNTANT. THEY DON'T SAY ACCOUNTANT IN
18 FLORIDA, OR FLORIDA ACCOUNTANT, OR ANYTHING TO THAT EFFECT. I
19 HAVE BEEN UNABLE TO FIND CASE LAW THAT GOES ONE WAY OR ANOTHER.

20 THE COURT: OKAY.

21 MR. ANNESSER: SO THE PLAIN READING I BELIEVE IS THAT
22 IT APPLIES TO ANY ACCOUNTANT THAT THEY CHOOSE TO USE.

23 THE COURT: ALL RIGHT. I'M GOING TO QUASH THAT
24 SUBPOENA AS WELL WITH LEAVE FOR THE -- WELL, WHAT I WOULD
25 SUGGEST IS THAT YOU ALL TALK ABOUT IT AND TRY -- BECAUSE I

1 THINK THAT THERE MAY BE SOME DOCUMENTS THAT THE ACCOUNTANT HAS
2 THAT RELATES TO, YOU KNOW, FOR INSTANCE, HOW LEONARDO FLORIDA
3 OR NEW HAMPSHIRE MERGED INTO LEONARDO FLORIDA WHICH MAY BE
4 PRIVILEGE OR MAY NOT BE PRIVILEGE. I DON'T KNOW.

5 BUT I THINK HE HAS -- I THINK MR. PACE MAKES A GOOD
6 POINT THAT HE SHOULD BE PERMITTED -- MY PROBLEM IS I THINK -- I
7 THINK IT'S TOO BROAD RIGHT NOW. SO IT'S GOT TO BE NARROWED TO
8 RELEVANT DOCUMENTS.

9 ONCE THAT RELEVANT DOCUMENT REQUEST IS MADE THEN YOU
10 NEED TO RESPOND TO THAT. AND IF YOU HAVE DOCUMENTS THAT ARE
11 PRIVILEGED YOU PUT IT ON THE PRIVILEGE LOG AND THEN YOU ALL CAN
12 COME BACK HERE AND MAKE THE ARGUMENT TO ME OF WHETHER OR NOT --
13 YOU KNOW, I DON'T KNOW THE ANSWER.

14 IF IT'S, AS YOU SAY IT'S THE COMPANY THAT'S IN FLORIDA
15 THAT ASSERTS THE PRIVILEGE, NO MATTER WHERE THEIR ACCOUNTANT IS
16 THEN YOU WOULD BE CORRECT. IF IT'S LIKE -- MR. PACE I THINK
17 SAYS HE'S NOT SURE. BUT IF IT'S THAT WHERE THE ACCOUNTANT IS
18 LOCATED THEN IT MAY NOT APPLY. BUT THAT'S SOMETHING THAT WE
19 HAVE TO DISCUSS LATER, PLUS -- BUT YOU HAVE TO PROVIDE A
20 PRIVILEGE LOG IF YOU'RE GOING TO ASSERT A PRIVILEGE AT THAT
21 TIME.

22 MR. PACE: YOUR HONOR, AS TO ONE POINT OF
23 CLARIFICATION.

24 THE COURT: YES.

25 MR. PACE: WHAT YOU'RE SAYING IS QUASHING. AND THEN

1 -- BUT YOU THEN TALKING ABOUT NARROWING. AND SO, ARE YOU
2 QUASHING -- USUALLY I THINK IF A NARROWING IS SOMETHING WOULD
3 NOT BE DONE AT THE QUASHING STAGE, RIGHT? THAT WOULD BE DONE
4 WHEN THEY OBJECT AND WE RESPOND AND WE FIGHT IT OUT.

5 THE COURT: WELL, I THINK --

6 MR. PACE: IT'S NOT BECAUSE --

7 (BOTH TALKING AT THE SAME TIME)

8 THE COURT: -- THIRD-PARTY TO OBJECT TO THE SOMEBODY.

9 MR. PACE: NOT TO THE -- I MEAN, HE CAN MAYBE ON
10 PROTECTING HIS CONFIDENTIAL INFORMATION. BUT HE CERTAINLY
11 CAN'T OBJECT, AND THESE CASES DON'T SAY HE HAS A STANDING TO
12 OBJECT TO SAY, YOU'RE ASKING FOR TOO MANY DOCUMENTS VERSUS NOT
13 ENOUGH.

14 THE COURT: NO. NO. NO. HE'S OBJECTING TO THE --
15 HE'S OBJECTING TO THE RELEVANCE. I THINK HE HAS THE ABILITY TO
16 OBJECT TO RELEVANCE.

17 MAYBE HE CAN'T OBJECT TO BURDEN BECAUSE HE'S -- THE
18 OTHER GUY HAS GOT TO COME IN AND SAY, HEY, YOU KNOW, THIS IS
19 GOING TO BE A BURDEN, OR AT LEAST SUBMIT AN AFFIDAVIT OR
20 SOMETHING. BUT HE CAN OBJECT TO RELEVANCE AND HE CAN OBJECT TO
21 PRIVILEGE.

22 MR. PACE: OH. AND -- YOUR HONOR, I'M SORRY. I'M NOT
23 TRYING TO ASK YOU TO REVERSE YOUR RULING, I'M JUST TRYING TO
24 UNDERSTAND JUST ONE ISSUE OF IT, WHICH IS -- IN QUASHING THE
25 SUBPOENA --

1 THE COURT: YEAH. I UNDERSTAND. IT IS KIND OF
2 CONFUSING.

3 MR. PACE: WHAT YOU'RE SAYING IS WE SHOULD BE --
4 YOU'RE TELLING US WE HAVE TO SEEK THE INFORMATION FIRST FROM
5 THE PARTIES, AND THEN IF THERE IS --

6 THE COURT: NO. NO. I'M NOT TELLING YOU THAT
7 ACTUALLY.

8 MR. PACE: OKAY.

9 THE COURT: I'M TELLING YOU, YOU CAN SEEK THE
10 INFORMATION FROM THE ACCOUNTANT IF YOU WOULD LIKE TO. IT MIGHT
11 BE EASIER JUST TO TRY TO SEEK IT FROM THE PARTIES. BUT IF YOU
12 WANTED TO SEEK -- I'M NOT GOING TO PREVENT YOU FROM SEEKING IT
13 FROM A THIRD-PARTY.

14 MR. PACE: THAT'S WHAT I'M SAYING.

15 SO IF WE PROVIDE A DIFFERENT SUBPOENA THAT IS MORE
16 FOCUSED --

17 THE COURT: EXACTLY.

18 MR. PACE: -- THEN YOUR RULING IS ONLY LIMITED TO THE
19 FACT THAT THIS SUBPOENA GIVEN --

20 THE COURT: RIGHT. I'M NOT RULING THAT HE'S AN
21 UNSUBPOENABLE PARTY. I'M -- OR HE'S NOT A PARTY BUT A PERSON.
22 BUT RATHER THAT THE SUBPOENA IN THIS CASE IS TOO BROAD. AND I
23 THINK THE BETTER WAY TO GO ABOUT IT IS TO NARROW THE SUBPOENA
24 BY TALKING AMONGST YOURSELVES AND HOPEFULLY COMING AT LEAST TO
25 SOME AREAS THAT YOU CAN BE IN AGREEMENT AND OTHERS IF YOU CAN'T

1 THEN, YOU KNOW, COME BACK TO ME.

2 MR. PACE: THAT'S THE CLARIFICATION I WANTED --

3 THE COURT: OKAY.

4 MR. PACE: -- TO MAKE SURE THAT WE COULD STILL GO BACK
5 AND ISSUE ANOTHER SUBPOENA IF WE FOCUSED IT DOWN.

6 THE COURT: YEAH. YEAH. DO YOU UNDERSTAND?

7 MR. ANNESSER: YES, YOUR HONOR.

8 THE COURT: OKAY. ANYTHING ELSE I CAN HELP ANYBODY
9 WITH?

10 MR. PACE: NO, YOUR HONOR.

11 MR. ANNESSER: NOT TODAY. THANK YOU VERY MUCH.

12 MR. LEON DE LA BARRA: YES, YOUR HONOR.

13 THE COURT: YES.

14 MR. LEON DE LA BARRA: THERE IS THE SUBPOENA FOR
15 RECORDS FROM T MOBILE HAS THE RIGHTS TO A CELLPHONE NUMBER THAT
16 IS OWNED BY MY CLIENTS.

17 THE COURT: OKAY.

18 MR. LEON DE LA BARRA: WE WOULD LIKE TO REQUEST THE
19 COURT TO QUASH THAT SUBPOENA AS WELL AS WITH A LOT OF THE
20 ARGUMENTS THAT MR. ANNESSER HAS MADE.

21 THE SUBPOENA IS OVERLY BROAD. IT'S NOT RELATED TO
22 ANYTHING REALLY IN THE CASE. IT'S -- YOU KNOW, IT'S NOT GOING
23 TO LEAD TO THE DISCOVERY OF ANY ADMISSIBLE EVIDENCE AND IT'S
24 CELLPHONE RECORDS. AND IT'S PRETTY ALL ENCOMPASSING. THE
25 REQUEST, LOGS OF ALL TELEPHONE CALLS, WHEN INITIATED, WHO

1 CALLED, THE LOCATION OF THE CELLPHONE WHEN THE CALL WAS MADE --
2 EXCUSE ME, YOUR HONOR -- THE DURATION OF THE CALL AS WELL AS
3 ANY AND ALL TEXT MESSAGES WITH THE SAME KIND OF INFORMATION
4 REQUESTED.

5 THEY ALSO REQUEST DOCUMENTS SUFFICIENT TO SHOW THE
6 SUBSCRIBER INFORMATION RELATED TO THE PHONE NUMBER AND ANY AND
7 ALL COMMUNICATIONS BETWEEN T MOBILE AND THE SUBSCRIBER AND/OR
8 HENRY JOHNSON OR JAMES BASS.

9 WE BELIEVE THAT THERE IS A REASONABLE EXPECTATION OF
10 PRIVACY AS IT RELATES --

11 THE COURT: WHO DO YOU REPRESENT?

12 MR. LEON DE LA BARRA: J.M. PRODUCTS AND HENRY
13 JOHNSON.

14 THE COURT: OKAY. AND YOU NAMED SOMEONE ELSE'S NAME,
15 BASS? WHO IS THAT?

16 MR. LEON DE LA BARRA: JAMES BASS IS, AS MR. ANNESSER
17 SAID, IT'S A THIRD-PARTY THAT THEY CLAIM WAS -- DOESN'T EXIST
18 YET THEY'VE NAMED THEM IN THE COMPLAINT, IN THEIR THIRD-PARTY
19 COMPLAINT.

20 SO WE'RE REALLY HERE AS IT RELATES TO HENRY JOHNSON
21 AND J.M. PRODUCTS. BUT IN ANY EVENT, YOU KNOW, THE
22 CELLPHONE -- THE T MOBILE NUMBER IS OWNED BY J.M. PRODUCTS, WE
23 BELIEVE. SO WE WOULD REQUEST THAT THEIR SUBPOENA BE QUASHED
24 BECAUSE IT'S, YOU KNOW, A LITTLE PREMATURE.

25 THE COURT: OKAY. WHAT DO YOU SAY ABOUT THAT

1 MR. PACE?

2 MR. PACE: THIS WASN'T ACTUALLY PROPERLY RAISED, BUT I
3 RATHER HANDLE IT NOW THAN COME BACK TO ANOTHER DATE.

4 SO, AS WE'VE PLED IN THE COMPLAINT, WE'VE PROVIDED AN
5 EXHIBIT, EXHIBIT 20, THAT PROVIDES THE CARD OF JAMES BASS.
6 THIS IS THE PHONE NUMBER THAT JAMES BASS USED, DIRECTOR -- HE'S
7 SUPPOSED TO BE THE DIRECTOR OF ENGINEERING OF J.M. PRODUCTS.
8 I'LL TAKE A STEP INTO THE FACTS SO TO GIVE THE COURT SOME
9 CONTEXT.

10 THE PARTIES ON THE OTHER SIDE -- YOU KNOW, PLAINTIFFS
11 AND THIRD-PARTY DEFENDANTS, MY SHORT VERSION OF PARTIES ON THE
12 OTHER SIDE, PRESENTED TO MY CLIENT THE PICTURE THAT THIS J.M.
13 PRODUCTS WAS A COMPANY THAT WAS WORKING FOR -- WAS A SUBSIDIARY
14 OF A MAJOR PUBLICLY TRADED U.K. CORPORATION AND THAT THEY WERE
15 GOING TO PROVIDE SERVICES TO THIS COMPANY, AND AS A RESULT THAT
16 WAS GOING TO BE SIGNIFICANT TO SHOW THAT THEY COULD PROVIDE A
17 CERTAIN LEVEL OF POWER TO THIS SUBSIDIARY OF A MAJOR U.K.
18 PUBLICLY TRADED COMPANY.

19 IT TURNS OUT THAT THAT'S NOT THE CASE, THAT J.M.
20 PRODUCTS IS JUST A SHELL COMPANY. IT'S RUN BY AND OWNED BY
21 HENRY JOHNSON AND/OR OTHERS.

22 THERE WAS AN INDIVIDUAL WHO PRESENTED HIMSELF AS JAMES
23 BASS, DIRECTOR OF ENGINEERING. AGAIN YOU WOULD THINK IF THERE
24 WAS A REAL COMPANY WITH REAL OPERATIONS THEN MAYBE THEY WOULD
25 REQUIRE A DIRECTOR OF ENGINEERING.

1 AS WE SUBSEQUENTLY DISCOVERED THERE ARE NO SUCH REAL
2 OPERATIONS AND AS A RESULT NO NEED FOR A DIRECTOR OF
3 ENGINEERING. IN FACT, THERE IS NO SUCH JAMES BASS, YOU KNOW,
4 THAT'S -- GOT AN ENGINEERING BACKGROUND ANYWHERE IN THE STATE
5 OF FLORIDA. WE'RE TRYING TO FIND THIS PERSON.

6 HIS BUSINESS CARD HAS HIS PHONE NUMBER. HE APPEARED
7 AT MEETINGS WITH DR. ROSSI, OR AT LEAST IN DR. ROSSI'S
8 PRESENCE, IN HENRY JOHNSON'S PRESENCE. SO THEY'RE AWARE OF HIM
9 BUT NO ONE HAS TOLD US.

10 AS YOU NOTICED HERE TODAY, EVEN WE'VE HAD THIS KIND
11 EVER DANCE, NO ONE HAS COME UP AND SAID THAT JAMES BASS DOES
12 WORK OR DOESN'T WORK FOR J.M. PRODUCTS. NO ONE REFUSES TO.

13 THE PLAINTIFFS DID THEIR INITIAL DISCLOSURE, THEY
14 LISTED A NUMBER OF WITNESSES. INTERESTINGLY ENOUGH, THE MAIN
15 CUSTOMER TO WHICH THEY WERE SELLING POWER HAD A DIRECTOR OF
16 ENGINEERING NAMED JAMES BASS YOU WOULD THINK HE MIGHT GET
17 INCLUDED AS A WITNESS. HE DIDN'T.

18 SO WE'RE GETTING THESE TELEPHONE RECORDS IN AN EFFORT
19 TO TRY TO IDENTIFY THE INDIVIDUAL AND SAY, HERE IS THE PHONE
20 NUMBER HE'S PROVIDED US. THAT'S THE WAY FOR GETTING IN CONTACT
21 WITH HIM --

22 THE COURT: WHAT TIME PERIOD ARE YOU LOOKING AT?

23 I DON'T THINK THE PHONE COMPANIES INCLUDE ANY GPS
24 RECORDS (INAUDIBLE)

25 MR. PACE: IT'S -- I DON'T KNOW EXACTLY WHAT THEY DO

1 HAVE. I MEAN, OBVIOUSLY IF THEY DON'T HAVE IT, THEY DON'T HAVE
2 IT.

3 THE COURT: RIGHT.

4 MR. PACE: YOUR HONOR, CERTAINLY IF THERE IS A TIME --
5 OH. HERE IT IS. JUST 1, 2004 -- 2014. I APOLOGIZE. JUNE 1,
6 2014. AND IF THAT'S -- IF THAT -- I HAVE TO BE HONEST, IF THAT
7 WERE THE ISSUE I'M SURE WE COULD NARROW IT SOME.

8 THE REASON WE PICKED THAT, THAT WAS WHEN WE FIRST
9 STARTED TO HAVE INTERACTIONS WITH THIS SUPPOSED -- WHEN J.M.
10 PRODUCTS COMPANY WAS IDENTIFIED TO US, BACK THEN CALLED J.M.
11 CHEMICAL PRODUCTS COMPANY.

12 THE COURT: ALL RIGHT.

13 WHAT DO YOU SAY ABOUT THAT?

14 MR. LEON DE LA BARRA: YES, YOUR HONOR.

15 IN ADDITION TO THE OBJECTIONS I PREVIOUSLY RAISED, ONE
16 OF THE BIG ISSUES IS THAT THEY ARE NOT LIMITING ANY
17 CELLPHONE -- ANY PHONE CALLS TO PARTICULAR NUMBERS OR
18 PARTICULAR INDIVIDUALS. THEY'RE JUST -- THEY WANT EVERYTHING,
19 AND THAT --

20 THE COURT: THEY WANT EVERYTHING RELATING TO AT LEAST
21 AS TO JAMES BASS -- YOU'VE IDENTIFIED A NUMBER THAT WAS ON A
22 BUSINESS CARD OF THEIR COMPANY THAT HAD JAMES BASS'S PHONE
23 NUMBER ON IT, RIGHT?

24 MR. PACE: YES, YOUR HONOR. IT'S EXHIBIT 20 IN THE
25 PUBLIC RECORD. IT'S EXHIBIT 20 TO OUR --

1 MR. LEON DE LA BARRA: YES, YOUR HONOR. BUT IF THAT
2 TELEPHONE NUMBER PERTAINS TO THE COMPANY THERE IS GOING TO BE
3 SEVERAL COMMUNICATIONS THAT WEREN'T JUST MADE BY JAMES BASS.
4 AND FURTHERMORE, IT RISKS DISCLOSING TRADE SECRET --

5 THE COURT: HOLD ON. HOLD ON.

6 CELLPHONE NUMBERS USUALLY ARE ASSIGNED TO A PARTICULAR
7 INSTRUMENT. SO IT'S NOT LIKE THE -- IT'S A T MOBILE PHONE,
8 IT'S A CELLPHONE THAT MAYBE THE COMPANY PAID FOR BUT IT'S ON
9 JAMES -- THAT'S -- JAMES BASS WOULD ANSWER IF HE'S -- IF THAT'S
10 THE PHONE ON HIS CARD.

11 I MEAN, THIS IS COMPLETELY DIFFERENT THAN THE OTHER
12 ARGUMENTS. THIS IS -- YOU KNOW, HE'S TRYING TO DETERMINE
13 WHETHER JAMES BASS IS A REAL PERSON. NOBODY --

14 MR. LEON DE LA BARRA: TO THE EXTENT --

15 THE COURT: WAS JAMES BASS A REAL PERSON?

16 MR. LEON DE LA BARRA: TO THE EXTENT THAT HE WANTS THE
17 SUBSCRIBER INFORMATION I THINK WE CAN -- YOU KNOW, WE CAN
18 APPEASE HIM WITH THAT AND --

19 THE COURT: HE ALSO WANTS TO FIND HIM SO HE CAN
20 SUBPOENA HIM --

21 MR. LEON DE LA BARRA: PROVIDE THE ACCOUNT INFORMATION
22 WHICH WOULD PROVIDE AN ADDRESS AND STUFF. BUT, I MEAN,
23 AGAIN --

24 THE COURT: IS JAMES BASS A PERSON? I MEAN, SOMEBODY
25 GOING TO ASK YOU THAT QUESTION. THIS IS LITIGATION. DOES HE

1 EXIST OR DOESN'T HE?

2 MR. ANNESSER: YOUR HONOR, I CAN STATE THAT HE DOES
3 EXIST. AND IF COUNSEL REQUESTED HIS CONTACT INFORMATION OF ANY
4 OF THE THIRD-PARTY DEFENDANTS, OR EVEN THE PLAINTIFFS IN THIS
5 CASE WE LIKELY WOULD BE ABLE TO ASSIST HIM IN DOING SO IN
6 FINDING THAT PERSON.

7 THE COURT: WHAT DO YOU SAY ABOUT THAT?

8 MR. PACE: YOUR HONOR, I STILL THINK WE'RE ENTITLED TO
9 GET THESE RECORDS AND THIS INFORMATION ABOUT SOMEBODY WHO HAS
10 KIND OF DISAPPEARED AND GONE TO THE FOUR WINDS.

11 BUT IF YOUR HONOR -- AND IT STILL TROUBLES ME THAT
12 WE'RE NOT GETTING REALLY A DIRECT ANSWER TO THESE THINGS. BUT
13 IF WHAT YOUR HONOR WANTS TO DO IS TO HAVE US -- WHAT IS THE
14 DATE HERE, SEPTEMBER 2ND? I'M HAPPY TO CONTACT T MOBILE AND
15 ASK THEM TO HOLD OFF FOR A WEEK AND THEN HAVE A CONVERSATION IF
16 YOUR HONOR FEELS THAT WOULD BE A BETTER WAY OF DOING IT.

17 THE COURT: OKAY. WELL, HERE IS THE THING.

18 HE'S GOING TO GET THE RECORD RELATING TO THAT PHONE
19 NUMBER UNLESS YOU PROVIDE HIM WITH A -- WITH A GOOD ADDRESS AND
20 PHONE NUMBER FOR MR. BASS THAT HE CAN, YOU KNOW, USE TO CONTACT
21 HIM WITHIN -- I'M GOING TO GIVE YOU TWO WEEKS.

22 SO YOU CAN EITHER DO THAT OR ELSE HE'S GOING TO -- YOU
23 KNOW, HE'S GOING TO GO OUT AND GET THE PHONE RECORDS AND TRY TO
24 FINDS HIM HIMSELF. SO IF YOU DON'T THINK HE SHOULD GET THE
25 PHONE RECORDS THEN TELL HIM WHERE MR. BASS IS.

1 DO YOU HAVE CONTACT WITH HIM?

2 MR. LEON DE LA BARRA: YOUR HONOR, I PERSONALLY DO
3 NOT.

4 THE COURT: DOES YOUR CLIENT?

5 MR. LEON DE LA BARRA: I WOULD ASSUME SO.

6 THE COURT: OKAY. WELL, I'M GOING TO REQUIRE YOU TO
7 GET THAT INFORMATION TO OPPOSING COUNSEL WITHIN ONE WEEK. AND
8 THEN YOU WILL HAVE A WEEK TO, YOU KNOW -- HOPEFULLY YOU'RE
9 GOING TO GO BACK, TALK TO YOUR CLIENT, AND YOUR CLIENT IS GOING
10 TO SAY, YEAH. HERE IS HIS ADDRESS, HERE IS HIS PHONE NUMBER.
11 LET ME GET HIM ON THE PHONE AND, YOU KNOW, AND THEN GET
12 MR. PACE ON THE PHONE AND GO, HERE HE IS.

13 YOU KNOW, HERE IS WHERE YOU SERVE HIM WITH A SUBPOENA
14 OR YOU'LL TAKE A SUBPOENA FOR HIM. BUT IF THAT DOESN'T HAPPEN
15 THEN HE GETS THE RECORDS.

16 SO IN TWO WEEKS -- SO I'M GOING TO GIVE YOU A WEEK,
17 EVEN THOUGH IT SHOULDN'T TAKE THAT LONG TO GIVE IT TO MR. PACE.
18 THEN MR. PACE A WEEK TO TRY TO FIND HIM OR HOPEFULLY TALK TO
19 HIM AND THEN YOU'LL KNOW IT'S NOT AN ISSUE. IF IT STILL IS AN
20 ISSUE THEN HE'S ENTITLED TO THE PHONE RECORDS.

21 MR. LEON DE LA BARRA: UNDERSTOOD, YOUR HONOR.

22 MR. PACE: UNDERSTOOD.

23 THE COURT: ALL RIGHT. ANYTHING ELSE I CAN HELP YOU
24 ALL WITH?

25 (NO RESPONSE)

1 THE COURT: NO?

2 ALL RIGHT. I'M GOING HAVE THE PLAINTIFF WRITE THE
3 ORDER ON THIS. OKAY? I DON'T KNOW IF YOU WANT TO DO TWO
4 ORDERS, ONE SEPARATELY FOR MR. BASS OR -- HOW YOU WANT TO DO
5 IT? YOU GUYS DECIDE --

6 MR. ANNESSER: I'LL CONFER WITH COUNSEL AND WE'LL --

7 THE COURT: OKAY. EITHER DO -- PASS IT BY OPPOSING
8 COUNSEL --

9 MR. ANNESSER: YES, YOUR HONOR.

10 THE COURT: -- AND THEN LET ME KNOW OR SEND IT HERE.
11 WHEN DO YOU WANT TO GET IT TO ME BY? I'M NOT IN ANY
12 BIG RUSH BUT I JUST WANT TO HAVE A DATE.

13 MR. ANNESSER: I CAN HAVE A DRAFT OUT TO EVERYBODY
14 TODAY. SO IT DEPENDS ON --

15 MR. PACE: IF WE COULD JUST HAVE A COUPLE OF DAYS ONLY
16 BECAUSE I HAVE KIND OF A CRAZY SCHEDULED --

17 THE COURT: OKAY.

18 MR. PACE: -- ON SOME OTHER MATTERS, YOUR HONOR. BUT
19 I'M SURE BY THE END OF THE WEEK YOU'LL DEFINITELY HAVE IT.

20 THE COURT: ALL RIGHT. WHAT'S TODAY, TUESDAY? SO BY
21 FRIDAY AT FOUR P.M. SEND IT IN. OKAY?

22 WHEN ARE YOU WORKING --

23 (INAUDIBLE)

24 THE COURT: MAKE IT BY THREE P.M. ON FRIDAY. OKAY?

25 MR. ANNESSER: YOUR HONOR.

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MR. PACE: YES, YOUR HONOR.

THE COURT: OKAY. GOOD SEEING EVERYBODY.

MR. PACE: THANK YOU, YOUR HONOR.

MR. ANNESSER: THANK YOU, YOUR HONOR.

THE COURT: GOOD LUCK.

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C E R T I F I C A T E

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF FLORIDA

I, CARL SCHANZLEH, OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, DO HEREBY CERTIFY THAT THE FOREGOING 43 PAGES CONSTITUTE A TRUE TRANSCRIPT OF THE PROCEEDINGS HAD BEFORE THE SAID COURT HELD IN THE CITY OF MIAMI, FLORIDA, IN THE MATTER THEREIN STATED.

IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON THIS 6TH DAY OF SEPTEMBER 2016.

/S/CARL SCHANZLEH
CARL SCHANZLEH, RPR-CM
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