

# **Composite Exhibit 9**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA )  
3 ANDREA ROSSI and LEONARDO )  
CORPORATION, )  
4 Plaintiffs, )  
5 VS. ) No. 1:16-cv-2119-CMA  
6 THOMAS DARDEN; JOHN T. VAUGHN; )  
INDUSTRIAL HEAT, LLC; IPH )  
7 INTERNATIONAL B.V.; and )  
CHEROKEE INVESTMENT PARTNERS, )  
8 LLC, )  
9 Defendants. )  
INDUSTRIAL HEAT, LLC and IPH )  
10 INTERNATIONAL B.V., )  
11 Counter-Plaintiffs, )  
12 Vs. )  
13 ANDREA ROSSI and LEONARDO )  
CORPORATION, )  
14 Counter-Defendants, )  
15 And )  
16 J.M. PRODUCTS, INC.; HENRY )  
17 JOHNSON; FABIO PENON; UNITED )  
STATES QUANTUM LEAP, LLC; )  
18 FULVIO FABIANI; and JAMES )  
BASS, )  
19 Third-Party Defendants. )  
20  
21 Videotaped Deposition of  
THOMAS DARDEN  
22 (Taken by Plaintiff)  
3509 North Haworth Drive, Suite 403, Raleigh, North Carolina  
23  
February 16, 2017  
24 Reported in Stenotype By  
Leslie Christian  
25 Transcript produced by computer-aided transcription

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<p>1 APPEARANCES:</p> <p>2 ON BEHALF OF PLAINTIFFS:</p> <p>3 PERLMAN, BAJANDAS, YEVOLI &amp; ALBRIGHT, P.L.</p> <p>4 BRIAN CHAIKEN, ESQ.</p> <p>5 JOHN W. ANNESSER, ESQ.</p> <p>6 283 Catalonia Avenue</p> <p>7 Second Floor</p> <p>8 Coral Gables, Florida 33134</p> <p>9 (305)337-0781</p> <p>10 bchaiken@pbylaw.com</p> <p>11 jannesser@pbylaw.com</p> <p>12 FOR THE DEFENDANTS:</p> <p>13 MILLER FRIEL, PLLC</p> <p>14 BERNARD P. BELL, ESQ.</p> <p>15 1200 New Hampshire Ave, NW</p> <p>16 Suite 800</p> <p>17 Washington, D.C. 20036</p> <p>18 (202)760-3158</p> <p>19 BellB@MillerFriel.com</p> <p>20 ON BEHALF OF THIRD-PARTY DEFENDANTS</p> <p>21 J.M. PRODUCTS, INC., HENRY JOHNSON, and JAMES BASS:</p> <p>22 ARAN, CORREA &amp; GUARCH, P.A.</p> <p>23 FERNANDO S. ARAN, ESQ. (Via teleconference)</p> <p>24 225 University Drive</p> <p>25 Coral Gables, Florida 33134-6732</p> <p>(305)665-3400</p> <p>aran@acg-law.com</p> <p>ON BEHALF OF THIRD-PARTY DEFENDANTS</p> <p>FULVIO, and UNITED STATES QUANTUM LEAP, LLC:</p> <p>RUDOLFO NUNEZ, P.A.</p> <p>RUDOLFO NUNEZ, ESQ.</p> <p>255 University Drive</p> <p>Coral Gables, Florida 33134-6732</p> <p>(305)665-3400</p> <p>rnunez@acg-law.com</p> <p>ALSO PRESENT:</p> <p>MICHAEL KIRBY, CLVS</p> <p>DR. ANDREA ROSSI</p>		<p>1 TABLE OF CONTENTS</p> <p>2 EXAMINATIONS - ATTORNEY PAGE</p> <p>3 Direct - Mr. Chaiken 6</p> <p>4 Cross - Mr. Aran 287</p> <p>5 Recross - Mr. Nunez 308</p> <p>6 EXHIBITS</p> <p>7 NO. PAGE</p> <p>8 Exhibit 1 IH Holdings Structure 9</p> <p>9 Exhibit 2 E-mail chain 32</p> <p>10 Exhibit 3 E-mail chain 36</p> <p>11 Exhibit 4 High Temperature Catalyzer Test 37</p> <p>12 Exhibit 5 E-mail chain 49</p> <p>13 Exhibit 6 Industrial Heat, LLC document 58</p> <p>14 Exhibit 7 E-mail chain 61</p> <p>15 Exhibit 8 Industrial Heat, LLC document 65</p> <p>16 Exhibit 9 E-mail chain 70</p> <p>17 Exhibit 10 E-mail chain 73</p> <p>18 Exhibit 11 License Agreement 81</p> <p>19 Exhibit 12 E-mail chain 84</p> <p>20 Exhibit 13 Amendment to License Agreement 94</p> <p>21 Exhibit 14 E-mail chain 101</p> <p>22 Exhibit 15 E-mail chain 114</p> <p>23 Exhibit 16 Amendment to License Agreement 116</p> <p>24 Exhibit 17 Myers Bigel letter 121</p> <p>25 Exhibit 18 E-mail 131</p> <p>26 Exhibit 19 Confidential Memorandum 133</p> <p>27 Exhibit 20 E-mail chain 139</p> <p>28 Exhibit 21 E-mail chain 143</p> <p>29 Exhibit 22 Industrial Heat 18-Month Bus. Plan 144</p> <p>30 Exhibit 23 E-mail chain 148</p> <p>31 Exhibit 24 E-mail chain 152</p> <p>32 Exhibit 25 E-mail chain 162</p> <p>33 Exhibit 26 E-mail chain 167</p> <p>34 Exhibit 27 E-mail 181</p> <p>35 Exhibit 28 Term Sheet 185</p> <p>36 Exhibit 29 E-mail chain 190</p> <p>37 Exhibit 30 E-mail chain 203</p> <p>38 Exhibit 31 E-mail chain 204</p> <p>39 Exhibit 32 E-mail 210</p> <p>40 Exhibit 33 E-mail chain 213</p> <p>41 Exhibit 34 E-mail 216</p> <p>42 Exhibit 35 E-mail 217</p> <p>43 Exhibit 36 E-mail chain 220</p> <p>44 Exhibit 37 E-mail chain 221</p> <p>45 Exhibit 38 Fourth Amended Answer 234</p> <p>46 Exhibit 39 E-CAT Energy Plant in Miami 250</p> <p>47 Exhibit 40 E-mail chain 258</p> <p>48 Exhibit 41 E-mail chain 261</p> <p>49 Exhibit 42 Feasibility Report 264</p>	

  

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<p style="text-align: right;">Page 98</p> <p>1 Q. Okay. And it's because you think that that 2 test was not performed properly?</p> <p>3 A. I think it was --</p> <p>4 MR. BELL: Objection to form.</p> <p>5 THE WITNESS: I think the test was not 6 performed properly, but I think it was part of an 7 overall -- overall setup to fool us.</p> <p>8 (BY MR. CHAIKEN)</p> <p>9 Q. Okay. And does Industrial Heat contend 10 that it's also entitled to keep the license to the 11 E-CAT IP, sitting here today?</p> <p>12 MR. BELL: Objection to form. You 13 know he's not here to testify as to Industrial Heat.</p> <p>14 THE WITNESS: I haven't --</p> <p>15 MR. CHAIKEN: That's okay.</p> <p>16 THE WITNESS: I haven't thought about 17 that in relation to the return of the initial capital. 18 I don't know about it legally.</p> <p>19 (BY MR. CHAIKEN)</p> <p>20 Q. Do you think the E-CAT IP has any value?</p> <p>21 A. It's clear that it does not have the value 22 that we were told that it had or that we perceived it 23 had. If you could easily replicate these reactors 24 using that IP then it would be extremely valuable. It 25 clearly does not have that kind of value. Whether</p>	<p style="text-align: right;">Page 99</p> <p>1 anyone ever could produce any energy with this IP is 2 not clear.</p> <p>3 It's hard to prove a negative. It's sort 4 of hard to say this could not have any value 5 whatsoever. It's hard to say. But we -- we don't see 6 that this technology has value at all materially 7 relative to the kinds of numbers we were talking about 8 then.</p> <p>9 Q. Do you think it has any value -- based on 10 that and based on what you know sitting here today, do 11 you think it has any value whatsoever?</p> <p>12 A. We don't know. It's an option on future 13 value. Is it possible that someone in the future might 14 be able to do something with this IP. We can't; Rossi 15 can't. But is it possible that somebody might or that 16 occasionally at some point it might work. We don't 17 know.</p> <p>18 MR. CHAIKEN: We can stop here. Off 19 the record.</p> <p>20 THE VIDEOGRAPHER: We're off the 21 record at 11:14 a.m.</p> <p>22 (Whereupon a break was taken.)</p> <p>23 THE VIDEOGRAPHER: We are back on the 24 record at 11:26 a.m.</p> <p>25 (BY MR. CHAIKEN)</p>
<p style="text-align: right;">Page 100</p> <p>1 Q. Mr. Darden, I had asked you some questions 2 about the license agreement prior to taking a break. I 3 believe one of the conditions in order for Leonardo to 4 earn that 10 million dollar payment was to transfer the 5 composition of the fuel he used as the catalyst to you. 6 Did that happen?</p> <p>7 A. It's not clear. I mean, the requirement 8 was to transfer all of the information needed to build 9 a replicated technology and for Dr. Rossi to work with 10 us to build and successfully produce these machines, 11 have them work, be able to sell them.</p> <p>12 And so he transferred information to me 13 about the fuel that he described as being the IP of the 14 company or the IP of the devices. He also gave us some 15 drawings that showed some of the mechanism of some of 16 the plants that were being built at that point. That 17 then evolved over time.</p> <p>18 However, none of that ever worked. We were 19 never able to build devices that successfully produced 20 energy. So did he transfer some formulas or a formula 21 to me. The answer is yes. Was it the transfer of the 22 IP needed to build these devices, no.</p> <p>23 Q. That's your opinion though, right? You 24 don't believe it was the fuel or the catalyst that was 25 required or it didn't work?</p>	<p style="text-align: right;">Page 101</p> <p>1 A. I don't know whether it was the fuel and 2 the catalyst that didn't work or the device that didn't 3 work or the whole thing doesn't work. I don't know 4 which parts of it don't work, but something doesn't 5 work.</p> <p>6 (Whereupon Exhibit 14 was marked for 7 identification as of this date.)</p> <p>8 Q. I'll show you what's been marked as 9 Exhibit 14. Exhibit 14 has been bates stamped IH-81230 10 through 1234. This is a series of e-mails from 11 September of 2014.</p> <p>12 A. Um-hm.</p> <p>13 Q. And the one I'm most concerned with is the 14 one on -- it starts on page 81231. And it looks like a 15 forwarded e-mail from John Mazzarino to Joe Pike, 16 yourself and John Mazzarino. And the paragraph I want 17 to refer to is on actually the third page, 81232.</p> <p>18 A. Um-hm.</p> <p>19 Q. And you're describing the IH investment in 20 -- or to Paul Lamacraft.</p> <p>21 A. Um-hm.</p> <p>22 Q. And you're talking about a two billion 23 dollar evaluation, and you describe that evaluation. 24 Do you see that?</p> <p>25 A. Um-hm.</p>



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<p style="text-align: right;">Page 154</p> <p>1 Mr. Darden consulted in November of 2015.</p> <p>2 MR. CHAIKEN: All right. Let me ask</p> <p>3 -- I'm going to ask not about this e-mail but about</p> <p>4 Mr. Zali.</p> <p>5 MR. BELL: That's fair.</p> <p>6 (BY MR. CHAIKEN)</p> <p>7 Q. Who is Zali?</p> <p>8 A. It's Jaffee actually. So his name is Zali</p> <p>9 Jaffee. And he's an attorney in Israel, and he works</p> <p>10 with a -- someone that I know who invested in some</p> <p>11 energy plants that were in Europe and ended up hiring</p> <p>12 Zali to represent him. And I'm an investor in that</p> <p>13 transaction. That's how I came to know Zali.</p> <p>14 Q. And you're telling me that Industrial Heat</p> <p>15 retained him for legal services?</p> <p>16 A. Yes, we did.</p> <p>17 Q. What type of legal services did you retain</p> <p>18 him to do?</p> <p>19 A. We wanted advice about -- oh, international</p> <p>20 fraud.</p> <p>21 Q. What type of international fraud?</p> <p>22 A. Whether we might be a victim of an</p> <p>23 international fraud.</p> <p>24 Q. And what jurisdictions or what territories</p> <p>25 was Mr. Zali licensed to practice law in?</p>	<p style="text-align: right;">Page 155</p> <p>1 A. I don't know.</p> <p>2 Q. Do you know if he was licensed to practice</p> <p>3 law in the United States?</p> <p>4 A. I don't know.</p> <p>5 Q. Did you ask him that question?</p> <p>6 A. I don't remember.</p> <p>7 Q. Is there a retention agreement between</p> <p>8 Industrial Heat and Mr. Zali?</p> <p>9 A. I don't know if he sent us an engagement</p> <p>10 agreement or not. We definitely worked with him</p> <p>11 regularly in this other transaction.</p> <p>12 Q. Did you ask for legal advice with respect</p> <p>13 to the license agreement at issue in this case?</p> <p>14 A. Say it again.</p> <p>15 Q. Did you ask for him to provide you with</p> <p>16 legal services with respect to the license agreement in</p> <p>17 this case?</p> <p>18 A. Yes, we did.</p> <p>19 Q. What type of legal service did you ask him</p> <p>20 to perform?</p> <p>21 MR. BELL: I think that's privileged.</p> <p>22 MR. CHAIKEN: I don't think this is a</p> <p>23 privileged document.</p> <p>24 MR. BELL: Well, I think we're back to</p> <p>25 the point where under the -- under the protective order</p>
<p style="text-align: right;">Page 156</p> <p>1 the remedy is to rip it up, throw away all your notes</p> <p>2 and make a motion to compel. I'm happy to, you know,</p> <p>3 add this to the list and put this in camera with the</p> <p>4 judge if he wants to see it. I think this is an</p> <p>5 appropriate procedure.</p> <p>6 It's not really -- the way a</p> <p>7 protective order works isn't that you scrutinize the</p> <p>8 document and make your own determination whether it's</p> <p>9 privileged.</p> <p>10 MR. CHAIKEN: Well, we can agree to</p> <p>11 disagree or not. Maybe -- can we go off the record for</p> <p>12 a second.</p> <p>13 THE VIDEOGRAPHER: We are off the</p> <p>14 record at 1:35 p.m.</p> <p>15 (Whereupon a break was taken.)</p> <p>16 THE VIDEOGRAPHER: We are back on the</p> <p>17 record at 1:46 p.m.</p> <p>18 MR. CHAIKEN: We have made an attempt</p> <p>19 to reach out to Judge O'Sullivan to see if we can get a</p> <p>20 quick ruling on this document. While we wait to see if</p> <p>21 we can get him on the line we're going to proceed with</p> <p>22 the deposition.</p> <p>23 (BY MR. CHAIKEN)</p> <p>24 Q. At some point in time, Mr. Darden, did</p> <p>25 Industrial Heat agree to allow the one megawatt plant</p>	<p style="text-align: right;">Page 157</p> <p>1 to be shipped to Florida?</p> <p>2 A. Yes.</p> <p>3 Q. And why did it do that?</p> <p>4 A. We felt like it would be beneficial for us</p> <p>5 and it would be beneficial for Andrea if we could use</p> <p>6 that as a way to see if the tech --</p> <p>7 MR. CHAIKEN: Hello. Someone just</p> <p>8 joined?</p> <p>9 MR. ANNESSER: I just -- this is John</p> <p>10 Annesser.</p> <p>11 MR. CHAIKEN: Oh, hey, John.</p> <p>12 (BY MR. CHAIKEN)</p> <p>13 Q. I'm sorry.</p> <p>14 A. We could use the -- the operation of the</p> <p>15 unit as a way of seeing if, in fact, the technology</p> <p>16 might work. In other words, we're still at a point of</p> <p>17 not knowing which was true. Does it never work, can it</p> <p>18 never work or has he simply concealed from us how to</p> <p>19 make it work.</p> <p>20 And so to see the technology operate would</p> <p>21 be -- we were willing -- it was interesting enough to</p> <p>22 us to see it operate -- if we could actually see it and</p> <p>23 measure it -- that we were willing to let the plant go.</p> <p>24 In addition, he could sell licenses off of it; he could</p> <p>25 advocate for or promote the technology as he would.</p>



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<p>Page 158</p> <p>1 That was beneficial to him. He wanted to do it. If it  2 were credibly instrumented and measured then we would  3 have found the results important to note.  4 Q. Did you have discussions with Dr. Rossi  5 prior to agreeing to let it go to Florida?  6 A. Sure.  7 Q. And was there a discussion about doing a  8 six cylinder test or a one megawatt test in Florida?  9 A. We would do either one.  10 Q. And were there --  11 A. We wanted to see any device operate,  12 preferably at our location, but if he would only do it  13 at his location, while we felt extorted by that, we  14 were willing to let that happen.  15 Q. Did you ever put in writing, "Hey, we think  16 the tests should take place in North Carolina. We  17 don't want to move it to Florida"?  18 MR. BELL: Objection to form.  19 THE WITNESS: I don't remember that.  20 I wouldn't be surprised if we did.  21 (BY MR. CHAIKEN)  22 Q. Was the issue of having a customer be a  23 part of that test something raised by Industrial Heat  24 or was it raised by Dr. Rossi?  25 MR. BELL: Objection to form.</p>	<p>Page 159</p> <p>1 THE WITNESS: We felt that having a  2 bona fide customer would be an additional way of being  3 able to measure energy output. That if someone  4 credible were receiving the energy then that would be  5 one added way to ratify the power production. So, as I  6 said earlier when we were talking about measurement,  7 the problem with measurement is if you have only one  8 way of doing it with a new device or something that's  9 not well characterized, it's hard to know what the  10 output is.  11 So what you want to do in a setting  12 like that is to set up as many different measurement  13 systems as you can. Measure input, measure output.  14 Measure output lots of different ways. And so having  15 someone honest receiving the energy, measuring the  16 energy, was a way to ratify or show how much was being  17 produced. You wouldn't need it if you had really good  18 instruments.  19 In other words, an instrument in front  20 of a radiator or something would also work. But absent  21 that, having a very credible customer would be  22 beneficial in terms of verification.  23 (BY MR. CHAIKEN)  24 Q. So getting back to that, was it IH's or was  25 it your idea or was it Dr. Rossi's idea to have that</p>
<p>Page 160</p> <p>1 customer?  2 MR. BELL: Objection to form.  3 THE WITNESS: I think it was Rossi's  4 idea.  5 (BY MR. CHAIKEN)  6 Q. And do you know when he brought that up?  7 A. He mentioned it from very early on that he  8 felt like a customer would make a difference.  9 Q. Was there any other benefit other than the  10 ability to measure it that you saw to having a customer  11 be a part of the testing?  12 A. Well, if the operation were where we were I  13 would say no. We could measure the steam energy  14 output. But if it was -- if we didn't have good access  15 to the machine then to have a credible customer  16 measuring how much was coming from it would have been a  17 benefit.  18 Q. Was --  19 A. So the only benefit to me was -- was -- the  20 only benefit I cared about was third-party  21 ratification. And that was an indirect way of doing  22 that. I guess if there were some famous customers  23 saying that they were using the steam and it was a  24 credible company and it worked great, that there could  25 be some advantage to that as well.</p>	<p>Page 161</p> <p>1 Q. And what kind of advantage would that be?  2 A. Well, let's say we had a device, the device  3 worked, and the device had been in operation in the  4 plant of, you know, a credible entity. That would be a  5 great testimonial.  6 Q. Did you think that being able to tell that  7 to investors would help raise money for Industrial  8 Heat?  9 A. It wouldn't have mattered.  10 Q. Why not?  11 A. Well, everything matters a little bit but,  12 I mean, if we had a successful device that was  13 well-characterized and honestly monitored and we knew  14 we had built it, the device we built operated, we could  15 replicate it, then raising money was a complete  16 non-issue. We didn't need anything to sell investors.  17 Q. So really at the end of the day it didn't  18 matter to you who the customer was, if any?  19 MR. BELL: Objection to form.  20 THE WITNESS: No, it depends. If the  21 device were sufficiently instrumented, if you had  22 enough measurement, if you had an honest measurement  23 system set up and us having full access to it, us being  24 able to put on it whatever instruments we wanted, us  25 being able to get credible professionals -- you know,</p>



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<p style="text-align: right;">Page 162</p> <p>1 Duke University. I don't know. Bureau Veritas --</p> <p>2 people like that to come in and set up a system for</p> <p>3 measurement, we would have said we're happy not having</p> <p>4 a customer. But absent that, a customer was sort of an</p> <p>5 added way of ratifying the power.</p> <p>6 (BY MR. CHAIKEN)</p> <p>7 Q. Putting aside the issue of the time of</p> <p>8 performance, the license agreement itself didn't</p> <p>9 provide that a customer was required for the guaranteed</p> <p>10 performance test, did it?</p> <p>11 MR. BELL: Objection to form.</p> <p>12 THE WITNESS: I believe that that's</p> <p>13 correct that it did not.</p> <p>14 (BY MR. CHAIKEN)</p> <p>15 Q. Okay. I'll show you what's been marked as</p> <p>16 Exhibit 25.</p> <p>17 (Whereupon Exhibit 25 was marked for</p> <p>18 identification as of this date.)</p> <p>19 Q. Exhibit 25 is -- have been marked IH-7126</p> <p>20 through 7127. It's a series of e-mails dated July</p> <p>21 10th, 2014 between you and Dr. Rossi. Have you seen</p> <p>22 these e-mails before?</p> <p>23 A. Um-hm, yes.</p> <p>24 Q. Specifically I'm going to point you to the</p> <p>25 first e-mail from you to Dr. Rossi. Paragraph ten of</p>	<p style="text-align: right;">Page 163</p> <p>1 this e-mail -- and I guess these are terms pursuant to</p> <p>2 an agreement that you were negotiating at the time; is</p> <p>3 that correct?</p> <p>4 A. The moving of the plant down to Florida.</p> <p>5 Q. Right.</p> <p>6 A. Allowing the plant to go.</p> <p>7 Q. Right. That's what's being negotiated in</p> <p>8 these e-mails?</p> <p>9 A. Um-hm.</p> <p>10 Q. And paragraph ten states -- this is your</p> <p>11 e-mail to Dr. Rossi -- "Attached to this contract is</p> <p>12 the letter of the Healthcare Office of Miami allowing</p> <p>13 the operation of the one megawatt plant." Do you see</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. Did you think that that was a requirement</p> <p>17 to allow the plant to go to Florida?</p> <p>18 A. No.</p> <p>19 Q. Did you have a discussion with Dr. Rossi</p> <p>20 about it?</p> <p>21 A. I don't remember talking to him about that.</p> <p>22 Q. Do you know why it was included in the --</p> <p>23 in these negotiations?</p> <p>24 MR. BELL: Objection to form.</p> <p>25 THE WITNESS: I did not include it in</p>
<p style="text-align: right;">Page 164</p> <p>1 this.</p> <p>2 (BY MR. CHAIKEN)</p> <p>3 Q. My question is do you know why it was?</p> <p>4 A. I don't know why. But, to elaborate, I</p> <p>5 think consistently we saw a pattern of trying to get</p> <p>6 some type of certification, some type of stamp of</p> <p>7 approval, something like that from some other entity as</p> <p>8 a way of giving credibility to the technology.</p> <p>9 It didn't matter to us, but I think it</p> <p>10 mattered a lot to Andrea. Meanwhile, in addition to</p> <p>11 that, you know, given the sort of profile that Rossi</p> <p>12 had out there -- has -- I think the possibility of --</p> <p>13 you know, I think the more kind of external ways of</p> <p>14 saying, you know, some big company, some government</p> <p>15 entity, some certifier, some professors have looked at</p> <p>16 this and said it's okay was something that he liked.</p> <p>17 But that's me -- you know, I'm speculating about his</p> <p>18 motivations.</p> <p>19 Q. Did it -- so as part of this the</p> <p>20 negotiation included, you know, a customer to be using</p> <p>21 the steam; is that correct?</p> <p>22 A. Yes. I mean, it was something that he</p> <p>23 represented was going to exist. And as we were</p> <p>24 thinking should we let this machine go --</p> <p>25 Q. Right.</p>	<p style="text-align: right;">Page 165</p> <p>1 A. -- you know, meanwhile, we thought we could</p> <p>2 get paid a lot of money for it too. So the whole thing</p> <p>3 looked pretty good when it was Johnson Matthey.</p> <p>4 Q. And at this time June-July of 2014 was it</p> <p>5 -- did it matter to you what that customer did with the</p> <p>6 steam that was going to be produced?</p> <p>7 A. We wanted to be sure that they measured it</p> <p>8 and that we could use them as a way of knowing how much</p> <p>9 steam was produced. So to have a third-party</p> <p>10 sophisticated, you know, technical company that needed</p> <p>11 steam and that could measure it was important to us.</p> <p>12 Q. Okay. And did you include provisions in</p> <p>13 the agreement which provided for the method and means</p> <p>14 by which the third-party customer would, in fact,</p> <p>15 measure that?</p> <p>16 A. No. I think we would have been happy with</p> <p>17 almost any way that a credible company would have</p> <p>18 measured it.</p> <p>19 Q. Did you ask for any way? Did you put some</p> <p>20 writing where they said, "They're required to measure</p> <p>21 it using any means possible"?</p> <p>22 A. I don't think so.</p> <p>23 Q. Why not?</p> <p>24 A. Well, they weren't going to pay us money</p> <p>25 unless they were getting the steam.</p>



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<p style="text-align: right;">Page 166</p> <p>1 Q. Right.</p> <p>2 A. So obviously they were going to measure it.</p> <p>3 Q. Okay. Was there a provision in that deal</p> <p>4 which required them to provide you with -- with those</p> <p>5 measurements?</p> <p>6 A. I don't know if there was a requirement</p> <p>7 that they do so, but if they were going to pay for it</p> <p>8 then we would have known from the fact that they were</p> <p>9 paying for it that they were getting it.</p> <p>10 MR. BELL: You could always show him</p> <p>11 the agreement.</p> <p>12 MR. CHAIKEN: I can't.</p> <p>13 (BY MR. CHAIKEN)</p> <p>14 Q. I asked you a question about whether it</p> <p>15 mattered to you what they did with the steam and you</p> <p>16 gave me an answer. I'm sorry if I'm asking you again.</p> <p>17 But did it matter to you what they did with the steam?</p> <p>18 A. You mean what kind of -- are you asking</p> <p>19 would it matter to me what type of product they were</p> <p>20 producing with it?</p> <p>21 Q. Yeah, exactly.</p> <p>22 A. I think any product that Johnson Matthey</p> <p>23 would have been producing we probably would have been</p> <p>24 happy to have them producing with that steam, I</p> <p>25 suspect.</p>	<p style="text-align: right;">Page 167</p> <p>1 Q. Let's assume that you weren't negotiating</p> <p>2 -- well, let's assume you didn't know the name of the</p> <p>3 customer. Would you have needed to know the name of</p> <p>4 the customer prior to agreeing to allow the test to go</p> <p>5 forward in Florida?</p> <p>6 MR. BELL: Objection to form.</p> <p>7 THE WITNESS: I think that if we had</p> <p>8 perceived it was a credible bona fide third-party</p> <p>9 company we would have felt a lot of comfort from that.</p> <p>10 Knowing who it was, we felt even more comfort from</p> <p>11 that. I think it's a -- our interest was in a whole</p> <p>12 blend of different circumstances surrounding this. So</p> <p>13 any one attribute would we have compromised on? Maybe</p> <p>14 so in terms of letting it go, but everything mattered.</p> <p>15 (Whereupon Exhibit 26 was marked for</p> <p>16 identification as of this date.)</p> <p>17 (BY MR. CHAIKEN)</p> <p>18 Q. I'll show you what's been marked as</p> <p>19 Exhibit 26. Exhibit 26 is an e-mail dated June 22nd,</p> <p>20 2014, and it is bates stamped 117296 through 297. And</p> <p>21 the first e-mail which is on the second page -- it's an</p> <p>22 e-mail chain.</p> <p>23 First, on the second page Dr. Rossi writes</p> <p>24 to you and several other people about a meeting on</p> <p>25 June 17th talking about what happened in August. And,</p>
<p style="text-align: right;">Page 168</p> <p>1 in fact, his paragraph number two on that page states,</p> <p>2 "Since August 2013 it has been impossible to</p> <p>3 communicate to us the where to install and make</p> <p>4 operative the plant." Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you disagree with his statement?</p> <p>7 A. Absolutely.</p> <p>8 Q. Do you think you had communicated where you</p> <p>9 were going to make the plant operative at that time at</p> <p>10 or around August 2013?</p> <p>11 A. We said straight away, right where it is.</p> <p>12 Q. Did you tell him in your response that you</p> <p>13 disagreed with him?</p> <p>14 A. I don't know how we responded to this</p> <p>15 but --</p> <p>16 Q. Well, your response is on the next page.</p> <p>17 A. Oh, I see.</p> <p>18 MR. BELL: Technically that's a draft</p> <p>19 of the actual responses.</p> <p>20 MR. CHAIKEN: I think you're right,</p> <p>21 Bernie.</p> <p>22 (BY MR. CHAIKEN)</p> <p>23 Q. Did you, in fact, respond to Dr. Rossi's</p> <p>24 e-mail?</p> <p>25 A. I don't remember, but I see a draft here or</p>	<p style="text-align: right;">Page 169</p> <p>1 if this went then perhaps so.</p> <p>2 Q. Why did you think you needed to forward</p> <p>3 this to your attorneys?</p> <p>4 A. Well, this e-mail --</p> <p>5 MR. BELL: Just -- I'm going to allow</p> <p>6 him -- you can answer the question or allow -- I'll</p> <p>7 instruct him not to answer the question. Otherwise,</p> <p>8 I'll instruct you not to disclose the substance of any</p> <p>9 attorney-client communications coming back to you or</p> <p>10 emanated from you.</p> <p>11 THE WITNESS: So this was an</p> <p>12 outrageous e-mail, the one that he sent. You know, it</p> <p>13 said all kinds of things that were not true. And we</p> <p>14 were trying to figure out among ourselves -- and how do</p> <p>15 we respond to this. I mean, this is so ridiculous, but</p> <p>16 does it matter, on the other hand. Like, why do we</p> <p>17 care about whether it says these things that are</p> <p>18 ridiculous if they're not true then what difference</p> <p>19 does it -- does it make a difference and what is our</p> <p>20 goal.</p> <p>21 Our goal is to see the plant operate,</p> <p>22 to see if it might work. And maybe we could credibly</p> <p>23 instrument the plant. So that was our primary goal.</p> <p>24 Plus, it was beneficial for him.</p> <p>25 (BY MR. CHAIKEN)</p>



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<p>Page 170</p> <p>1 Q. You state in your -- in this draft e-mail 2 at least. "Your e-mail refers to contract sections, 3 but I haven't read them since we signed. I will need 4 to get a copy of the document and read it." After you 5 received his e-mail on June 20th did you, in fact, get 6 a copy of the document and read it? 7 A. I don't remember. On June 20th? 8 Q. Yeah. 9 A. I don't remember. You know, I'm sure that 10 -- I'm sure that at some point we began to read these 11 things. I think that -- I don't know when I first 12 began reading these sections. 13 Q. As of June 22nd, 2014 had you previously 14 read the contract sections anytime between June 22nd, 15 2014 and October 26th, 2012? 16 A. I would think that I probably had. 17 Q. Were you in or around June of 2014 pushing 18 Dr. Rossi to start testing the one megawatt plant? 19 A. We were -- around June of '14? 20 Q. Yeah. 21 A. We were always pushing to start testing 22 almost anything. We wanted to operate any machines 23 that he had built. If we had built a machine we wanted 24 to operate it and see it operate and see whether it 25 might work, whether he had transferred the technology</p>	<p>Page 171</p> <p>1 to us. 2 Q. Were those -- did you ever put those 3 requests in writing? 4 A. I suspect that we did, but I don't 5 remember. 6 Q. Is there a reason why you wouldn't have put 7 them in writing? 8 A. Well, just because, you know, we're talking 9 by phone or -- excuse me -- in the other office. You 10 know, I saw him most days for a long period of time. 11 Q. Now -- 12 A. I tend not to send e-mails to people who I 13 communicate with verbally so -- 14 Q. Did you have a meeting in Raleigh in July 15 of 2014 with Dr. Rossi and Henry Johnson? 16 A. I know that we had a meeting in Raleigh 17 with -- when he brought Henry Johnson to a restaurant, 18 but I don't remember the date. 19 Q. Who was present at that meeting? 20 A. J.T. was there. I was there. Andrea, 21 Johnson. I don't know who else was there from our 22 side. I can't remember. 23 Q. And what was the purpose of that meeting? 24 A. He was introducing us to the president of 25 the Johnson Matthey subsidiary.</p>
<p>Page 172</p> <p>1 Q. And did he say specifically that the 2 purpose of the meeting was to do that? 3 A. The purpose -- yes. 4 Q. Did he say that in writing or orally? 5 A. I don't remember. 6 Q. Did he ever tell you that he was working 7 with a Johnson Matthey subsidiary at any point in time? 8 A. Yes. 9 Q. When was that? 10 A. He told us that that's who the customer 11 was. 12 Q. And when did he tell you that? 13 A. Several times. I mean, I don't remember 14 the specific dates but it was Johnson Matthey. 15 Q. Did he tell you that -- 16 A. He told us he previously worked for Johnson 17 Matthey, that he had done business with them. He 18 repeatedly said that. 19 Q. Did he tell you that orally or did he tell 20 you that in writing? 21 A. I don't know if he said it in writing, but 22 I know he said it orally. 23 Q. Okay. Did he tell you that he was 24 purchasing products from Johnson Matthey? 25 A. He said that he had previously purchased</p>	<p>Page 173</p> <p>1 products from Johnson Matthey. He said Johnson Matthey 2 was going to be operating the plant. 3 Q. Okay. And who else was present when he 4 made those statements? 5 A. I don't remember which conversation and who 6 was present at which conversation but -- 7 Q. Let's go to the -- 8 A. He said Johnson Matthey would -- after the 9 plant had operated for a brief period of time and they 10 were sure that it was working and everything was 11 effective, that Johnson Matthey wanted to announce that 12 they were the customer. 13 Q. And let's go back to the meeting with Henry 14 Johnson. You said it was held in a restaurant in 15 Raleigh? 16 A. Yes. 17 Q. And there was J.T. Vaughn, yourself, Dr. 18 Rossi and Henry Johnson, right? 19 A. Yes. I'm not sure if anybody else was 20 there. 21 Q. And what was said at that meeting? 22 A. It was a formalistic kind of a meeting to 23 introduce the customer and to talk about, you know, the 24 circumstances of bringing the plant down to Miami. 25 And, you know, we wanted to build a -- have some</p>



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<p style="text-align: right;">Page 174</p> <p>1 communication with who was going to be using this thing 2 and try to get some feel for it. 3       You know, we just wanted to call Johnson 4 Matthey and talk to them. We wanted to go meet with 5 Johnson Matthey. You know, those were all our initial 6 -- I don't remember the chronology here so I say 7 "initial," but those were recommendations that we were 8 making. And so I suspect that what happened is Andrea 9 said, "Well, I'll just bring the president of Johnson 10 Matthey, you know, to this subsidiary to meet with 11 you." 12   Q. And what happened at that meeting? 13   A. We had lunch. It was -- it was kind of 14 awkward. It -- you know, it was -- he didn't seem like 15 a Johnson Matthey kind of guy. Not that I know what 16 that is necessarily. But, you know, somebody who's an 17 industrial facility operator kind of person. I'm 18 trying to remember when it came up that we put two and 19 two together and figured out that he was Rossi's 20 lawyer. And so that was weird. 21       Again, I'm kind of mixing together 22 different conversations and what we talked about at 23 which time. But I do remember a conversation where we 24 were saying, you know, why would a lawyer be doing 25 this. And either Rossi or Johnson was saying, "Well,</p>	<p style="text-align: right;">Page 175</p> <p>1 you know, they needed to set up a subsidiary for this 2 purpose. This is a special project. They're going to 3 move some of their production from somewhere else in 4 Miami or somewhere nearby over there to produce -- to 5 run this plant, to produce in this plant." 6       They wanted it to be a separate subsidiary. 7 They didn't want their name on it. They wanted it to 8 be, you know, registered by some attorney. And so, you 9 know, here's an attorney. Rossi knew this attorney. I 10 don't know what the connection was to this attorney. 11 So he was going to do it. 12       But I remember saying, "So you're going -- 13 you know, this is what you're going to do or you're 14 going to work with this or you're -- you know, so 15 you're going to run this operation" or something like 16 that. He said, "Yeah, I'm going to run the operation." 17   Q. Did they tell you what products they were 18 going to be producing? 19   A. No, they wouldn't. 20   Q. Did they tell you what they were going to 21 do with the steam? 22   A. Hm? 23   Q. Did they tell you how they were going to 24 measure the steam? 25   A. Well, they said they were going to produce</p>
<p style="text-align: right;">Page 176</p> <p>1 -- 2       MR. BELL: I just want to make sure 3 she gets your -- 4       THE WITNESS: Okay. They didn't tell 5 us what products they were going to produce, and they 6 didn't tell us specifically what they were going to do 7 with the steam except to use it in producing their 8 products. They said they were going to move products 9 from another plant into this plant. 10 (BY MR. CHAIKEN) 11   Q. And did they tell you where that plant was 12 located? 13   A. I recall that they said it was in or 14 somewhere around Miami, but I can't say that for sure. 15   Q. And did you do any due diligence into Henry 16 Johnson at that time? 17   A. Yes. I mean, somewhere in there we figured 18 out this is a lawyer and, you know, we figured out this 19 was Rossi's lawyer. So at some point we figured that 20 out. That's why we were kind of surprised. 21   Q. And -- 22   A. How this guy was going to go do this or 23 this guy is going to run this thing or -- it must be an 24 important operation. He must really be a believer. He 25 must really think this is going to be great.</p>	<p style="text-align: right;">Page 177</p> <p>1   Q. And did they tell you they were forming a 2 new company for the purposes of doing it? 3   A. Yes. 4   Q. And did they tell you who the officers and 5 directors of that company were going to be? 6   A. I don't remember that. Well, Henry 7 Johnson. 8   Q. And they told you that they were going to 9 be opening up a new facility in -- 10   A. Yes. 11   Q. Was there any reason why you were prevented 12 from calling Johnson and Matthey directly to confirm 13 any of this? 14   A. Rossi made us promise we wouldn't do that. 15 He said, "Please don't do that. Then they won't use 16 it. They'll be scared. They'll come out as soon as 17 it's run for 90 days. Everything is going great and 18 they'll come out. You know, they'll be proud to be 19 associated with it at that point. Right now they don't 20 want that to happen." 21       In fact, we knew people in England who knew 22 people at Johnson Matthey, and it would have been very 23 easy to simply -- you know, I was thinking, well, let 24 me call them up. And he said, "No, no. You can't do 25 that. It'll -- you know, they'll get spooked or they</p>



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<p style="text-align: right;">Page 178</p> <p>1 don't want any publicity until they know that 2 everything is working great."</p> <p>3 Q. Based on your prior due diligences into Dr. 4 Rossi and based on what you had learned about Henry 5 Johnson, didn't this all start to put red flags up and 6 say, hey, maybe this isn't legit? We need to start 7 doing more due diligence?</p> <p>8 A. Well, our loss of confidence in the 9 technology and in Rossi was kind of a continuous slide. 10 So, you know, we tend to be hopeful and optimistic 11 people. Being in the businesses that we're in you need 12 to be maybe a little bit slower to be suspicious than 13 we should be. Certainly this was not -- it didn't feel 14 as good as it should have.</p> <p>15 Q. But here you are in June-July 2014. You're 16 unable to replicate. You had doubts at the start this 17 might be a fraud. Dr. Rossi shows up with his attorney 18 as a so-called customer for Johnson Matthey. And who 19 is Johnson Matthey, by the way?</p> <p>20 A. It's a large British, I think, 21 headquartered company that makes -- oh, products -- 22 industrial supply products mostly for the medical or 23 high-tech industry. Very sophisticated company.</p> <p>24 Q. Is it publicly traded?</p> <p>25 A. I'm 90 percent sure it is. I'm not sure.</p>	<p style="text-align: right;">Page 179</p> <p>1 I believe so.</p> <p>2 Q. So you've got all that going on, and you're 3 about to ship a piece of equipment they had paid \$1.5 4 million for and you're not going to check to see if, in 5 fact, Johnson Matthey has anything to do with it?</p> <p>6 MR. BELL: Objection to form.</p> <p>7 (BY MR. CHAIKEN)</p> <p>8 Q. I mean, I understand the thinking in that.</p> <p>9 MR. BELL: Objection to form.</p> <p>10 THE WITNESS: Are you saying that we 11 should have been worried about the value of the plant 12 and losing access to the value of this plant? I mean, 13 we weren't getting value from the plant as it was so we 14 didn't care about that at that point.</p> <p>15 (BY MR. CHAIKEN)</p> <p>16 Q. So it really wasn't -- this was, "Hey, we 17 just want to see it work. We don't really care about 18 the logistics of it"?</p> <p>19 A. Well, we absolutely --</p> <p>20 MR. BELL: objection to form.</p> <p>21 THE WITNESS: So we absolutely 22 believed that someone associated with Johnson Matthey 23 was producing products on the other side of that wall.</p> <p>24 (BY MR. CHAIKEN)</p> <p>25 Q. I'm sorry. Say that one more time.</p>
<p style="text-align: right;">Page 180</p> <p>1 A. So we absolutely believed that somebody 2 associated with Johnson Matthey was producing something 3 on the other side of that wall.</p> <p>4 Q. But you didn't do any due diligence to 5 confirm that?</p> <p>6 MR. BELL: Objection to form.</p> <p>7 THE WITNESS: We talked to -- we 8 talked to a lawyer -- a licensed lawyer -- in Florida. 9 I mean, somebody who's presumably not a scam artist who 10 said, "I'm the president of this company. We're going 11 to use this steam. We're going to make products from 12 it." I mean, sure, it wasn't comforting. I wish that 13 it had been somebody who was coming that had a British 14 accent and worked for 20 years at Johnson Matthey. I 15 would have felt much better. But it also was credible 16 that a company like Johnson Matthey would have been 17 worried about being associated with this technology.</p> <p>18 (BY MR. CHAIKEN)</p> <p>19 Q. But was it credible to think that Johnson 20 Matthey was going to be associated with Dr. Rossi's 21 personal attorney, and his personal attorney was going 22 to be the CEO of that subsidiary?</p> <p>23 A. Well, you could imagine --</p> <p>24 MR. BELL: Objection to form.</p> <p>25 THE WITNESS: I mean, if the goal of</p>	<p style="text-align: right;">Page 181</p> <p>1 Johnson Matthey was to stay completely behind the 2 scenes or incognito relative to this, that would be a 3 good way to do it.</p> <p>4 (BY MR. CHAIKEN)</p> <p>5 Q. Did you ask Henry Johnson what his 6 experience was in manufacturing?</p> <p>7 A. Yeah, we did. We said, "Have you ever run 8 a plant or have you ever done anything like this." He 9 said, "No. It's a new thing for me." We assumed that 10 the operational requirements of managing this operation 11 -- this facility, you know, for him would not call for 12 a lot of technical expertise. And that was obvious. 13 We figured that there would be technical people running 14 this thing.</p> <p>15 Q. Isn't it true that Dr. Rossi told you that 16 he was going to be running this plant?</p> <p>17 A. No.</p> <p>18 Q. He never did?</p> <p>19 A. I don't remember that.</p> <p>20 (Whereupon Exhibit 27 was marked for 21 identification as of this date.)</p> <p>22 Q. I'll show you what's been marked as 23 Exhibit 27. Exhibit 27 has been bates stamped 24 1H-12026. It's an e-mail from Andrea Rossi to you and 25 J.T. Vaughn and other persons dated June 10th, 2014.</p>



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<p style="text-align: right;">Page 182</p> <p>1 It states, "I have completed the 2 organization of my plan to put the one megawatt in 3 operation. I confirm all I already said: We have a 4 customer who pays \$1,000 a day to rent the one megawatt 5 plant, put it in his factory in Miami, produce 6 catalyzers that he sells; I will direct the operation 7 of the plant for the first year, the contract will be 8 for three years, renewable." Did you ever have any 9 conversation with Dr. Rossi about that? 10 A. I believe we generally did, but this is 11 consistent with what I just said. I think they're 12 questioning that he was not going to operate the 13 customer's facility. 14 Q. You didn't take this sentence to mean that 15 he was going to direct the operation of the customer's 16 facility? 17 A. Well, he's going to rent the one megawatt 18 plant, put it in the factory in Miami -- the factory in 19 Miami -- "produce catalyzers that he sells; I will 20 direct the operation of the plant" -- the one megawatt 21 plant in my mind -- "for the year." And then every day 22 or whenever, Rossi would report either to us or via the 23 blogs that he was working hard in the container -- I 24 mean, running the steam plant. 25 Q. But couldn't have you read it a different</p>	<p style="text-align: right;">Page 183</p> <p>1 way meaning he was going to be operating at the 2 customer's plants given the fact that he uses the -- 3 the contract will be for three years renewable? 4 Doesn't that suggest to you that he's talking about the 5 customer's plant and not the one megawatt plant? 6 A. No. 7 MR. BELL: Objection to form. 8 (BY MR. CHAIKEN) 9 Q. Because why would you need a three-year 10 renewable contract for the one megawatt plant? 11 A. Well -- 12 MR. BELL: Objection to form. 13 THE WITNESS: Because we were -- 14 MR. BELL: This is referencing the 15 contract. Why don't you show him the contract instead 16 of this. This is not the contract. 17 MR. CHAIKEN: Because I don't think he 18 was referring to a term sheet. 19 (BY MR. CHAIKEN) 20 Q. So you can answer my question. 21 A. Well, I remember that Rossi told us that 22 they would rent the plant for more than one year. And 23 so we actually thought we would be getting paid 24 whatever that is -- \$265,000 a year for -- I thought it 25 was two years. Maybe it was three years. But that it</p>
<p style="text-align: right;">Page 184</p> <p>1 was a longer term contract than that. 2 So I think this says that it was a -- it's 3 a renewable plant. The contract will be for three 4 years to run the steam plant. I mean, to buy steam 5 from us. 6 Q. Did you ever have a conversation with him 7 after sending this e-mail regarding this e-mail? 8 A. I don't remember. 9 Q. So who negotiated the -- and you're 10 familiar with a document called the Term Sheet? 11 A. Yes. 12 Q. Who negotiated that term sheet with J.M. 13 Products? 14 A. Rossi. 15 Q. Who on the Industrial Heat side? 16 A. I don't remember. 17 Q. Who represented Leonardo in those 18 negotiations? 19 A. I don't remember. 20 Q. Do you know who represented J.M. Products 21 in those negotiations? 22 A. No, I don't remember. 23 Q. Do you know if it was Dr. Rossi who did? 24 A. I don't know. I don't remember that. 25 Q. Did your -- I say "your," did Industrial</p>	<p style="text-align: right;">Page 185</p> <p>1 Heat's attorneys review the term sheet before it was 2 executed? 3 A. I don't remember much about that term 4 sheet. Maybe if I looked at it I could get a feel for 5 it. 6 Q. Your wish is granted. Here's the term 7 sheet. 8 (Whereupon Exhibit 28 was marked for 9 identification as of this date.) 10 Q. Exhibit 28 has been marked, and that is the 11 term sheet. It's stamped IH-11496 through 11497. Does 12 this refresh your recollection as to whether or not 13 your attorneys -- IH's attorneys reviewed this prior to 14 it being executed? 15 A. I don't remember whether they did or not. 16 I would assume that they did, but I don't know that 17 they did. 18 Q. Does the word or name Johnson Matthey 19 appear anywhere in this contract? 20 A. J.M.C. J.M. Chemical Products, Inc. And 21 then later, J.M.C. 22 Q. But that doesn't say "Johnson Matthey," 23 does it? 24 A. Right. This was a separate subsidiary of 25 Johnson Matthey.</p>



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<p style="text-align: right;">Page 186</p> <p>1 Q. And --</p> <p>2 A. We were told.</p> <p>3 Q. Was that --</p> <p>4 A. And I believe, in fact -- I think we looked</p> <p>5 at this. I believe that there's a Johnson Matthey</p> <p>6 Chemical Products, Inc. I think that there actually is</p> <p>7 a company called that. So it was a logical name.</p> <p>8 That's a recollection.</p> <p>9 Q. Did you -- do you have anything in writing</p> <p>10 that you asked, whether it be J.M. Chemical Products,</p> <p>11 Inc., or Dr. Rossi or Henry Johnson, where they stated</p> <p>12 specifically, "We represent that J.M. Chemical</p> <p>13 Products, Inc., is, in fact, the subsidiary of Johnson</p> <p>14 Matthey"?</p> <p>15 A. I don't remember that specifically. And</p> <p>16 whether it was subsidiary or affiliate or part of the</p> <p>17 group or some of the language, clearly they represented</p> <p>18 that.</p> <p>19 Q. In writing?</p> <p>20 A. I don't know. We would have to search.</p> <p>21 Q. If it wasn't produced in discovery in this</p> <p>22 case would you agree that it doesn't exist?</p> <p>23 MR. BELL: In writing.</p> <p>24 THE WITNESS: So is there nothing --</p> <p>25 is there nothing -- I don't know that there is nothing</p>	<p style="text-align: right;">Page 187</p> <p>1 that has the name Johnson Matthey in it that -- that</p> <p>2 was produced in discovery.</p> <p>3 (BY MR. CHAIKEN)</p> <p>4 Q. Did you ever receive anything in writing</p> <p>5 from Dr. Rossi where he said specifically that he was</p> <p>6 purchasing products from Johnson Matthey?</p> <p>7 A. I don't remember that.</p> <p>8 Q. In the course of this case defendants have</p> <p>9 produced over 65,000 pages of documents. I haven't</p> <p>10 seen one which says specifically anything to the effect</p> <p>11 of J.M. Chemical Products, Inc., is a subsidiary or</p> <p>12 affiliate of Johnson Matthey. Is it your contention</p> <p>13 that such a written document exists?</p> <p>14 A. I know -- I don't know whether such a</p> <p>15 written document exists.</p> <p>16 Q. Okay. If it did exist it would have been</p> <p>17 produced, correct?</p> <p>18 A. I would assume that it would have.</p> <p>19 Q. Okay. Now, you mentioned that pursuant to</p> <p>20 this agreement, Industrial Heat would have been</p> <p>21 entitled to \$365,000 per year, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Did Industrial Heat ever seek to collect</p> <p>24 that money?</p> <p>25 A. After the plant got it -- no, we did not.</p>
<p style="text-align: right;">Page 188</p> <p>1 After the plant got installed in Florida and we saw</p> <p>2 that Rossi had removed all of the instrumentation and</p> <p>3 the monitoring access that we had, and as we realized</p> <p>4 that he was restricting access to it so it was not</p> <p>5 going to be a fully transparent bona fide test, at that</p> <p>6 point we became very suspicious.</p> <p>7 We realized that it was -- something bad</p> <p>8 was going on down there. And we don't want to get</p> <p>9 thrown in jail for participating in some kind of fraud</p> <p>10 so we said we don't want to receive payment from them.</p> <p>11 Q. What measurement equipment did you --</p> <p>12 A. I don't know the details of it, but we had</p> <p>13 put on access ports on places where instruments could</p> <p>14 be put so that we could put our own instruments on it</p> <p>15 and cut it all off.</p> <p>16 Q. Who -- who knows more about that than you?</p> <p>17 A. T. Barker knows about it.</p> <p>18 Q. Anybody else?</p> <p>19 A. Barry probably knows something about it.</p> <p>20 Q. Did you ever inform Dr. Rossi and said,</p> <p>21 "Hey, why are you removing all this measuring</p> <p>22 equipment"?</p> <p>23 A. We did talk about that.</p> <p>24 Q. You talked about it. Did you ever send him</p> <p>25 an e-mail and say, "Hey, why are you moving all this</p>	<p style="text-align: right;">Page 189</p> <p>1 stuff"?</p> <p>2 A. I don't remember sending an e-mail. I</p> <p>3 remember talking directly about it.</p> <p>4 Q. Was there -- did you ever give an</p> <p>5 instruction to -- whether it be T. Barker Dameron or</p> <p>6 Berry West where you told him, "Hey, you know, dance</p> <p>7 carefully around Dr. Rossi. Don't say anything that</p> <p>8 might upset him. Don't tell him if you think something</p> <p>9 is wrong with the plant"? Anything of that -- anything</p> <p>10 of that nature?</p> <p>11 A. Well, we definitely -- I definitely don't</p> <p>12 remember saying don't tell if there's something wrong</p> <p>13 with the plant. I mean, I don't know the definition of</p> <p>14 "wrong with the plant." But they knew that they needed</p> <p>15 to be careful in their communication with Rossi</p> <p>16 generally because he was so volatile and he would get</p> <p>17 very angry at them. So if they -- if they asked</p> <p>18 questions or if they tried to get information, you</p> <p>19 know, they knew that Rossi was likely to get very</p> <p>20 angry.</p> <p>21 Q. Let me ask it a different way. Did you</p> <p>22 ever give any instruction to T. Barker Dameron as to</p> <p>23 what topics of conversation he should not have with Dr.</p> <p>24 Rossi?</p> <p>25 A. I don't remember but could have.</p>



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<p style="text-align: right;">Page 190</p> <p>1 Q. What about Barry West?</p> <p>2 A. I don't remember but maybe.</p> <p>3 Q. Now, you would agree with me that this term</p> <p>4 sheet provides for a test of the one megawatt plant,</p> <p>5 right?</p> <p>6 MR. BELL: Objection to form.</p> <p>7 THE WITNESS: For selling steam from</p> <p>8 the one megawatt plant.</p> <p>9 (BY MR. CHAIKEN)</p> <p>10 Q. Got it. For selling steam.</p> <p>11 THE VIDEOGRAPHER: You have seven</p> <p>12 minutes left.</p> <p>13 MR. CHAIKEN: Okay.</p> <p>14 (BY MR. CHAIKEN)</p> <p>15 Q. I'll show you what's been marked as</p> <p>16 Exhibit 29.</p> <p>17 (Whereupon Exhibit 29 was marked for</p> <p>18 identification as of this date.)</p> <p>19 Q. Exhibit 29 has been bates stamped 80561</p> <p>20 through 80567. The very first e-mail at the top of the</p> <p>21 page is an e-mail from you to Joe Pike and Daniel Pike.</p> <p>22 A. Um-hm.</p> <p>23 Q. Do you recall sending that e-mail?</p> <p>24 A. I don't -- I mean, it looks like I did. I</p> <p>25 don't recall specifically sending it.</p>	<p style="text-align: right;">Page 191</p> <p>1 Q. This exhibit is an e-mail chain</p> <p>2 approximately March 23rd, 2015.</p> <p>3 A. Um-hm.</p> <p>4 Q. And you're responding to -- you're having</p> <p>5 some conversations about what's going on in the plant.</p> <p>6 In fact, this very first page you state on March 23rd</p> <p>7 at 9:54 a.m., "I'm torn about calling it a commercial</p> <p>8 customer or about representing the output at this time.</p> <p>9 We only have Rossi's words so far."</p> <p>10 And then at the top in response to an</p> <p>11 e-mail from Joe Pike you state, "My lack of clarity is</p> <p>12 just around 1) precisely how much. We cannot</p> <p>13 definitively represent this yet." Referring to the</p> <p>14 steam. "And 2) what is the nature of the customer."</p> <p>15 And then you state, "But these are picky nuances, not</p> <p>16 related to the core issue."</p> <p>17 A. Yes.</p> <p>18 Q. The nature of the customer in March of 2015</p> <p>19 was not a core issue, was it?</p> <p>20 MR. BELL: Objection to form.</p> <p>21 THE WITNESS: Well, the nature of the</p> <p>22 customer and the measurement of the steam were core</p> <p>23 issues for us in deciding how the technology worked.</p> <p>24 They were not core issues around the question of</p> <p>25 whether it was producing any steam for some kind of</p>
<p style="text-align: right;">Page 192</p> <p>1 customer. That's the distinction.</p> <p>2 (BY MR. CHAIKEN)</p> <p>3 Q. Got it.</p> <p>4 A. They were important issues to us.</p> <p>5 Q. Maybe I didn't -- I'm sorry if I</p> <p>6 misunderstood. It seems to me that this e-mail states</p> <p>7 the nature of the customer is not a core issue to you.</p> <p>8 Am I wrong? Maybe I just missed it.</p> <p>9 A. So I would have to read more of it.</p> <p>10 Q. Yeah.</p> <p>11 A. But I believe that he must have written</p> <p>12 something to somebody in China saying Industrial Heat</p> <p>13 is producing, you know, a megawatt of steam or lots of</p> <p>14 steam for, you know, a great customer or something like</p> <p>15 -- I don't know.</p> <p>16 Let's say if he had said that, I would have</p> <p>17 said, well, I don't know. I don't know how much we're</p> <p>18 producing. We can't definitively represent this yet.</p> <p>19 And I don't know the nature of the customer. Now,</p> <p>20 maybe they said something about the nature of the</p> <p>21 customer that it's a big industrial company or it's a</p> <p>22 -- you know, they're making wonderful products or -- I</p> <p>23 don't know what it said.</p> <p>24 But, you know, I was saying I don't want to</p> <p>25 do anything dishonest. I don't want to overrepresent</p>	<p style="text-align: right;">Page 193</p> <p>1 anything, you know. But, again, I would have to look</p> <p>2 at the e-mail and see what it was exactly he said.</p> <p>3 Q. Do you want to take a look and do that?</p> <p>4 A. Yeah. Let me take a look at it. Where</p> <p>5 does he refer to the customer?</p> <p>6 Q. Well, right in this e-mail right below</p> <p>7 yours.</p> <p>8 A. I know but where -- I want to see what it</p> <p>9 was that he said that I think I must have objected to.</p> <p>10 MR. ANNESSER: Pardon me. What's the</p> <p>11 number? The bates number for Exhibit 29?</p> <p>12 MR. CHAIKEN: I'm sorry. 80561</p> <p>13 through 80567.</p> <p>14 MR. ANNESSER: 05612?</p> <p>15 MR. CHAIKEN: Through 80567.</p> <p>16 MR. ANNESSER: Thank you.</p> <p>17 MR. CHAIKEN: You're welcome.</p> <p>18 THE WITNESS: Maybe -- I don't know.</p> <p>19 There's a sentence in here that says, "Since then we</p> <p>20 have installed our first beta customer device." A beta</p> <p>21 device -- a beta customer is -- you know, that's a</p> <p>22 customer that's really using a -- I'm trying to think</p> <p>23 of an example.</p> <p>24 A beta product is something that --</p> <p>25 it's really kind of ready to go. You know, it's -- and</p>



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<p style="text-align: right;">Page 198</p> <p>1 "We've got to have an in-person meeting and talk about 2 this. It's really important." So I said I'm coming 3 down there. And so I flew down there and met him in a 4 restaurant. And actually he brought Madelana and her 5 mother. And I said, "Andrea, that unit was fueled 6 with a dummy as producing great energy. So unless 7 something else is going on here we've got a serious 8 problem with measurement." No, no, it's impossible. 9 It can't be. You know, the charge got stolen. You 10 know, somebody came in and took it out. 11 And the way this was built, it was molded 12 into it. I mean, it was totally sealed up. So it was 13 not -- I don't know if you could pull it out and stick 14 something else in there. I said, "Look, I haven't 15 taken it apart, but I know which ones I have and that's 16 the only one that I don't have in my physical 17 possession so, therefore, it's in that unit and so 18 we've got a serious problem." 19 And so he agreed to come up to North 20 Carolina. And he and I together drilled it out. You 21 know, like, drilled into it to see if there was 22 anything in it. There was nothing in it. And he 23 stormed out and, you know, the Russians came and stole 24 the charge. I mean, you know, who knows. You know, "I 25 know it was charged. It had to have been charged. How</p>	<p style="text-align: right;">Page 199</p> <p>1 could it not be charged." 2 And so that was just an example of instead 3 of saying, "Wait, a second. Oh, wow. We have an 4 instrumentation error here. We've got a problem. We 5 need to really bore into this and try to figure out, 6 you know, what's going on. What's wrong with the way 7 we're measuring." You know, it was just like, you 8 know, we're going to ignore that or kind of carry on 9 notwithstanding that or not use multiple ways of 10 measuring. 11 So that's an example. I think the tests 12 that were done with the professors were not thoroughly 13 really instrumented. As an example, the one in 14 Switzerland. There was a thermocouple in that device 15 so -- but they didn't give the information from the 16 thermocouple to the professors. So the professors were 17 only allowed to put a thermal camera on the device, not 18 to in addition put a -- run a thermocouple on it the 19 whole time. 20 If it had run a thermocouple the whole 21 time, you could have been comparing two things against 22 one another and saying, you know, gee, you know -- 23 which is, do they match up. Does this kind of make 24 good logical sense. You know, why is that. You know, 25 why not put 25 thermocouples on it two different -- you</p>
<p style="text-align: right;">Page 200</p> <p>1 know, multiple ways of measuring it. 2 Is it a search for truth or is it a goal to 3 sort of trick something or to find some way to -- it 4 looks like -- looked like it worked but maybe it didn't 5 really work. And so, you know, you look backwards and 6 you just see a pattern of this consistently. How about 7 running the -- you know, running the fraction of the 8 units and -- you know, running the fraction of the 9 units in the Ferrara test. You know, what's that 10 about. I mean, we thought it was all legitimate like, 11 okay, well, I guess there's some law that says you 12 can't -- you know, you can't run an energy device 13 larger than whatever the size was. But, you know, what 14 was that about. I mean, why -- why -- why do that. 15 It's just weird. 16 Q. Did you -- did you put any of these issues 17 in writing to Dr. Rossi saying, "Hey, you're hiding the 18 ball. You're not letting us measure with two different 19 devices"? Did you say anything like that in writing? 20 A. I don't remember our communication in 21 writing. We talked to him, you know, daily about 22 measurement, how to measure. He was extremely volatile 23 and extremely dismissive of anyone challenging anything 24 about measurement. Just like, no, you're wrong. 25 You're an idiot. And early on we believed him. We</p>	<p style="text-align: right;">Page 201</p> <p>1 thought, okay, we're idiots. I mean, I guess we don't 2 really know about this stuff. It was really over time 3 as the accumulation of all these things we're thinking 4 -- you know, looking backwards in particular like this 5 was so outrageous. But we weren't catching it then. 6 Q. If there was such a plethora of data like 7 this or instances like this, why wasn't there a paper 8 trail made to say, "Hey, look, starting way back when, 9 you know, we asked for duplicate ways to measure these 10 tests and you've denied here; you denied it here; you 11 denied it here"? Why don't I see that in the documents 12 you've provided? 13 A. How would it help us? 14 Q. It would validate your claim. 15 A. Our claim for our ten million back? 16 Q. That, your claim against -- your claim 17 against or defending against his claim for the 18 \$89 million. 19 A. So at that point we don't know. It depends 20 on which point it is. But at that point we don't know 21 that the technology never works. And some of these 22 tests were compelling. You get these professors who 23 are really smart guys coming in saying, "Wow, look at 24 this. This works." And we're thinking, "Well, damn, 25 maybe it does work."</p>



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<p style="text-align: right;">Page 226</p> <p>1 Anything like that?</p> <p>2 A. The real motivation was to take the</p> <p>3 technology to China. They might have been interested</p> <p>4 in or willing to invest in a U.S. company as well. But</p> <p>5 their primary motivation was to be the partners for</p> <p>6 developing the technology in China. And we said to</p> <p>7 them, "We don't know if we have a technology that works</p> <p>8 that we could use in China, but you're welcome to come</p> <p>9 see it."</p> <p>10 Q. I'm going to show you what's been marked as</p> <p>11 Exhibit 38. Exhibit 38 is a copy of Industrial Heat's</p> <p>12 -- it's a long-titled document so bear with me.</p> <p>13 Supplemental -- Supplement to Defendant Industrial Heat</p> <p>14 LLC's Amended Responses and Objections to Plaintiff</p> <p>15 Andrea Rossi's Second Requests for Production -- that's</p> <p>16 the wrong document. I'm sorry. They gave me the wrong</p> <p>17 document.</p> <p>18 A. Do you want it back?</p> <p>19 Q. Yeah. Let me have it back. It's not what</p> <p>20 I meant to hand you. Sorry about that.</p> <p>21 MR. BELL: No worries.</p> <p>22 (BY MR. CHAIKEN)</p> <p>23 Q. They're all the same.</p> <p>24 A. Hm?</p> <p>25 Q. I said they're all the same. They're all</p>	<p style="text-align: right;">Page 227</p> <p>1 wrong.</p> <p>2 MR. BELL: Are you looking for the one</p> <p>3 that lists the visitors?</p> <p>4 MR. CHAIKEN: Yeah, exactly. That's</p> <p>5 okay.</p> <p>6 (BY MR. CHAIKEN)</p> <p>7 Q. So you brought Woodford to the facility,</p> <p>8 and you brought Chinese investors to the facility. Do</p> <p>9 you remember the timeframe?</p> <p>10 A. No, I don't remember the dates. Sorry.</p> <p>11 Q. Did you --</p> <p>12 MR. BELL: Object to the form of the</p> <p>13 question.</p> <p>14 (BY MR. CHAIKEN)</p> <p>15 Q. Did you ask Dr. Rossi to speak to --</p> <p>16 whether it be Woodford or the Chinese investors?</p> <p>17 A. I'm sure that we would have assuming he was</p> <p>18 there. I mean, I'm sure he was there. I assume he was</p> <p>19 for any visits that we made, and I'm sure he would have</p> <p>20 said, "Hey, tell them what's going on here."</p> <p>21 Q. And did you ask -- do you know who James</p> <p>22 Bass is?</p> <p>23 A. Yes.</p> <p>24 Q. Who is James Bass?</p> <p>25 A. James Bass was the plant manager for the</p>
<p style="text-align: right;">Page 228</p> <p>1 Johnson Matthey plant. J.M. plant.</p> <p>2 Q. Did you ever speak with him?</p> <p>3 A. Yes.</p> <p>4 Q. And what did you speak with him about?</p> <p>5 A. We met him in his capacity as the operator</p> <p>6 of the -- of the J.M. plant.</p> <p>7 Q. Okay. I understand you met him in that</p> <p>8 capacity, but what did you speak to him about?</p> <p>9 A. Oh, oh; I'm sorry. We asked him how it was</p> <p>10 going. You know, how is production. How is the energy</p> <p>11 supply. How do you feel about this. Is it working</p> <p>12 well. It was a general conversation that, you know,</p> <p>13 somebody might have with a plant manager, somebody</p> <p>14 operating a plant, to try to get information about, you</p> <p>15 know, was it a good customer supply relationship, how</p> <p>16 were they feeling about it, was it operating</p> <p>17 effectively. He said it was producing lots of steam.</p> <p>18 He said their utility bills have been</p> <p>19 reduced compared to what they were before because they</p> <p>20 weren't having to use so much electric energy and now</p> <p>21 they were using this energy. He said the form of the</p> <p>22 steam was great. You know, the temperature or</p> <p>23 whatever, the nature of it, and production was going</p> <p>24 well.</p> <p>25 Q. When did you have that conversation with</p>	<p style="text-align: right;">Page 229</p> <p>1 him?</p> <p>2 A. I don't remember the dates. And I believe</p> <p>3 I met him on two separate occasions so I could be</p> <p>4 blending two conversations together. Although, I think</p> <p>5 they were the same. But it was in the conference room</p> <p>6 at J.M. Products.</p> <p>7 Q. Do you know if it was February 2015? After</p> <p>8 that time?</p> <p>9 A. I don't remember.</p> <p>10 Q. Do you know if he was by himself or was he</p> <p>11 with other people?</p> <p>12 A. Well, we had -- we had visitors so, I mean,</p> <p>13 it was in a conference room with visitors. So I don't</p> <p>14 know -- I don't remember meeting him alone, for</p> <p>15 example.</p> <p>16 Q. Do you know if Dr. Rossi was present when</p> <p>17 that conversation took place?</p> <p>18 A. Yes, yes; he was there.</p> <p>19 Q. Did James Bass speak to any of the people</p> <p>20 -- visitors that Industrial Heat brought?</p> <p>21 A. Well, they were there in the room.</p> <p>22 MR. BELL: I'm sorry. I lost focus.</p> <p>23 What was the question, please?</p> <p>24 (Requested portion was read.)</p> <p>25 THE WITNESS: When I saw James Bass I</p>



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<p style="text-align: right;">Page 246</p> <p>1 A. I haven't seen the tax return, and I don't 2 have anything clearly documented that says he didn't 3 pay taxes except my recollection that he said that. 4 Q. "He" being someone from Ampenergo? 5 A. Well, Andrea. 6 Q. Andrea told you directly that he didn't pay 7 his taxes? 8 A. He said either he didn't pay the taxes or 9 he wasn't going to owe the taxes. And I couldn't 10 figure out how that could be the case because it was a 11 U.S. company. 12 Q. And how, in fact, has IH or IPH been harmed 13 as a result? 14 A. Well, our credibility is, unfortunately, 15 tied to Rossi's credibility. And so if Rossi has legal 16 problems or credibility problems associated with 17 compliance then it affects us. 18 Q. But sitting here today you don't know if 19 that's true or not? 20 A. I don't know if -- if it has been 21 manifested at this point. I don't know. 22 Q. And have you done anything to count -- to 23 compute what your actual damages are as a result of any 24 failure to pay taxes? 25 A. I don't believe that any of us -- I have</p>	<p style="text-align: right;">Page 247</p> <p>1 not, and I don't believe that others of us have made 2 such a computation. 3 MR. CHAIKEN: Anybody just join the 4 call? 5 MR. ARAN: Fernando here. I'm still 6 here. I'm not sure -- 7 MR. CHAIKEN: We're going to keep 8 going. Somebody just join now? 9 MR. ANNESSER: This is John. I got 10 disconnected. 11 MR. CHAIKEN: Okay. Thanks for 12 announcing yourself. 13 (BY MR. CHAIKEN) 14 Q. Back -- back to my questions. I forgot to 15 ask Mr. Darden with respect to the third category, 16 "Failing to inform or consult with Industrial Heat and 17 IPH on the existence of certain patent applications." 18 How has -- or let me ask it this way. Has IP -- IH or 19 IPH computed how it's -- what its actual damages are as 20 a result of that allegation? 21 A. I don't believe that we've computed that. 22 We know how much money we've spent pursuing this 23 technology. If it jeopardized that then certainly it 24 would be the value of the money that we spent. 25 Q. Okay. There's one last paragraph there.</p>
<p style="text-align: right;">Page 248</p> <p>1 One last allegation. It states, "Failing to keep the 2 original Leonardo entity active." Have you made any 3 attempts to compute what your damages are as a result 4 of that failure? 5 A. I don't believe so. I'm not aware of that. 6 Q. And in response to all of these allegations 7 contained in this fourth defense -- when I say "you" I 8 know I'm talking to Tom Darden, but you as an officer 9 or director of the company, do you know if IH or IPH 10 has computed damages for any of these items? 11 A. I'm not aware that the companies have 12 computed damages for those other than knowing how much 13 money we spent on it and the possible jeopardy of that. 14 Q. Okay. Did you during the course of the 15 tests in 2015 that was taking place in Florida, did you 16 receive copies of reports from Fabio Penon? 17 A. Yes, I did. 18 Q. And did you review them? 19 A. I did. 20 Q. And did you send them to Joe Murray? 21 A. I believe that I sent them around to people 22 inside Industrial Heat. I assume I sent them to Joe. 23 Q. And did anybody ever respond to either 24 Penon or Dr. Rossi and say that they thought the 25 results were not valid?</p>	<p style="text-align: right;">Page 249</p> <p>1 A. I don't remember the specific conversations 2 that we had about that. 3 Q. Well, I wasn't asking about a conversation. 4 I was asking about -- 5 A. I'm sorry. I don't know. 6 Q. Okay. 7 A. I don't remember. 8 Q. Is there a reason you wouldn't have said -- 9 sent an e-mail or report and said, "Hey, look, these 10 are the problems with the report"? 11 A. If it was so bad that we felt that it was 12 just completely unprofessional and not remediable, we 13 might have just said never mind. 14 Q. Okay. Did you end up paying Penon for his 15 time? 16 A. We did end up paying Penon for his time. 17 Q. And why did you? 18 A. Well, we didn't know if we might have 19 agreed to pay Penon for his time, and so we didn't want 20 to not pay Penon if we had told him that we would. 21 Q. Do you think he honored the contract -- the 22 agreement? 23 A. No. 24 Q. And how did he not honor it? 25 A. I don't think he complied with the testing</p>



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<p>Page 290</p> <p>1 Q. Not before that one.</p> <p>2 A. I believe that I met him before that with</p> <p>3 some Chinese visitors.</p> <p>4 Q. Okay. And if we -- if we look at the</p> <p>5 listing, I believe, only by reading the names, that</p> <p>6 perhaps the first time that any one of the Chinese</p> <p>7 defendants visited would have been March 27th, 2015?</p> <p>8 A. I see that. Wait a second. March 27th. I</p> <p>9 see that.</p> <p>10 Q. Would that refresh your recollection?</p> <p>11 A. Well, it would mean that I could not have</p> <p>12 met him with the Chinese before the visit when we met</p> <p>13 him with Paul Lamacraft. So, yes, that would refresh</p> <p>14 my recollection. Are we saying the --</p> <p>15 Q. February 9th, 2015, would I be correct in</p> <p>16 stating that the plant had not commenced operations</p> <p>17 yet? The testing phase yet?</p> <p>18 A. I don't remember the dates but let's say</p> <p>19 that's the case.</p> <p>20 Q. So if that's the case, Mr. Bass at that</p> <p>21 point in time could not have been making any</p> <p>22 representations to you concerning the performance or</p> <p>23 the power, if you will, being produced by the plant,</p> <p>24 correct?</p> <p>25 A. I understand what you're saying. If the</p>	<p>Page 291</p> <p>1 plant was not running then he could not have been</p> <p>2 representing that.</p> <p>3 Q. So now if you could take a second, I read</p> <p>4 through the rest of the visit and in none of those</p> <p>5 visits was it indicated that you, Mr. Vaughn or anyone</p> <p>6 else met with Mr. Bass.</p> <p>7 A. I see that.</p> <p>8 Q. So that's -- based on your recollection</p> <p>9 you're telling me that this is probably inaccurate then</p> <p>10 that you met with him on more than that occasion?</p> <p>11 A. I remember him talking about the</p> <p>12 performance of the plant.</p> <p>13 Q. Okay. And if I could ask you when you met</p> <p>14 and he talked about the performance of the plant, who</p> <p>15 else was with him?</p> <p>16 A. Well, I'm not remembering the different</p> <p>17 trips. So I thought I met with him with some of the</p> <p>18 Chinese visitors. So I'm -- but I'm not remembering</p> <p>19 the details of who was in the room at the time.</p> <p>20 Q. And could it be fair for me to state that</p> <p>21 by the time those Chinese visitors went to the plant in</p> <p>22 Doralee -- by then the plant was operational?</p> <p>23 A. I believe that that's the case. I believe</p> <p>24 that's the case.</p> <p>25 Q. The plant was producing?</p>
<p>Page 292</p> <p>1 A. Yeah, I believe that's the case. But let</p> <p>2 me -- let me note something that in August there was</p> <p>3 another visit when Paul Lamacraft came and so perhaps</p> <p>4 we met with him at that point. I don't know. I don't</p> <p>5 know whether it was the second trip with Paul Lamacraft</p> <p>6 that we met with him again or whether it was one of the</p> <p>7 Chinese trips.</p> <p>8 Q. But you do recall meeting with him when the</p> <p>9 Chinese folks were at Doralee?</p> <p>10 A. I don't want to make such a definitive</p> <p>11 statement as that. So I thought that I remembered</p> <p>12 meeting with him with the Chinese visitors, but perhaps</p> <p>13 I met him twice with Lamacraft.</p> <p>14 Q. Okay. And if that were the case then we</p> <p>15 would follow the dates here that would have been then</p> <p>16 in August of 2015?</p> <p>17 A. That's when we apparently came with Paul</p> <p>18 Lamacraft, yes.</p> <p>19 Q. And by then the test that was being</p> <p>20 performed on the one megawatt plant was well underway,</p> <p>21 correct?</p> <p>22 A. That would be correct.</p> <p>23 Q. Now, did Mr. Bass have an obligation to you</p> <p>24 -- and by that I mean you or IH or IPH -- to present</p> <p>25 you with reports of data concerning measurements of the</p>	<p>Page 293</p> <p>1 COP of the one megawatt plant?</p> <p>2 A. I seem to recall that they did.</p> <p>3 Q. When you say "they," was it Mr. Bass that</p> <p>4 was sending you a report?</p> <p>5 A. Well, Bass or J.M. I have it in my mind.</p> <p>6 I'm trying to remember something that -- where they had</p> <p>7 committed to do that. I can't remember, but I seem to</p> <p>8 recall that.</p> <p>9 Q. Does the term sheet permit J.M. Products or</p> <p>10 any of its employees to provide IH with any data at</p> <p>11 all?</p> <p>12 A. Can we get it out and let me take a look at</p> <p>13 it because this is -- I'm making these comments</p> <p>14 from memory.</p> <p>15 Q. Could you please.</p> <p>16 A. Sure. We're looking.</p> <p>17 MR. BELL: I'm putting in front of</p> <p>18 Mr. Darden what was previously marked as Exhibit 28.</p> <p>19 (Witness peruses document.)</p> <p>20 THE WITNESS: Well, I see here on the</p> <p>21 second page 19, "J.M.C. will keep records of the</p> <p>22 operation of the one megawatt plant as reasonably</p> <p>23 requested by Leonardo or IH and will provide copies of</p> <p>24 such records to Leonardo and IH upon request."</p> <p>25 (BY MR. ARAN)</p>



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<p>1 Q. Okay. Do you have any recollection of ever 2 having made such a request of J.M. Products? 3 A. I don't remember doing that, but we would 4 like to see them. 5 Q. Well, was a request made? 6 A. I don't remember. I'm sure that we said to 7 them, "How is it going. How much are you getting. How 8 is the output." 9 Q. Okay. But you did not make -- am I correct 10 in stating you did not make any formal request of J.M. 11 to keep track of any particular type of measurement, 12 correct? 13 MR. BELL: Objection to form. 14 THE WITNESS: Well, except via the 15 term sheet where we assumed that they were and the fact 16 that they were sending us bills. Other than that, I'm 17 not aware of one. 18 (BY MR. ARAN) 19 Q. So you're aware of them sending you an 20 invoice. Let me backtrack. What you're aware is that 21 they sent you a letter saying, "Please invoice me 22 because the one megawatt plant this month produced X 23 amount of COP"? 24 A. I don't remember exactly what they 25 communicated but something like that.</p>	<p>1 Q. Okay. And then did you ever send them the 2 invoice to collect on the supposed debt or payment? 3 A. I believe that we never sent one. I 4 believe that we made a decision early on that we were 5 worried about whether the -- the -- there was some type 6 of a fraud going on and we didn't want to be 7 participating in it, that it would be used to 8 communicate to the outside world. But I don't remember 9 the timing of when we came to that conclusion. 10 Q. And that would be specific -- do you recall 11 that it was Mr. Bass that did that or was that under 12 somebody else's signature? 13 A. I don't remember. I thought it may have 14 been from Henry Johnson. 15 Q. Okay. If I would tell you that it was 16 Henry Johnson do you have any reason to believe it was? 17 A. No. In fact, that was my -- that's what 18 kind of popped into my brain. 19 Q. So my question is really precise. Did 20 Mr. Bass communicate to you in writing -- and to "you" 21 I mean you or IH in writing -- any type of data 22 concerning performance of the one megawatt plant? 23 A. I don't remember getting any writing from 24 him about that. 25 Q. Now, what you do recall is being in Doral</p>
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<p>1 with other persons. It could have been Mr. Lamacraft 2 or it could have been both him and another occasion, 3 both from China, and having a conversation generally 4 saying, "Hey, how is it going." And he's saying, 5 "Yeah. We're comfortable with the performance. We're 6 comfortable with the power. We're getting -- we're 7 comfortable with the steam" or receiving words to that 8 effect; am I correct? 9 MR. BELL: Objection to form. 10 THE WITNESS: It is correct that we -- 11 that I remember a meeting where he said those things. 12 Things similar to that. 13 (BY MR. ARAN) 14 Q. And I'm trying to characterize what I heard 15 before. If you think that I didn't characterize your 16 testimony before please let me know how. 17 A. I think you're -- 18 MR. BELL: Objection to form. 19 (BY MR. ARAN) 20 Q. Okay. So did I characterize it more or 21 less correctly? 22 A. I believe so. 23 Q. Okay. And this is well after the plant has 24 been transferred to Doral and became operational? 25 A. I believe so.</p>	<p>1 Q. Okay. I'll try to be brief because I know 2 the other counsel needs to ask his questions. If I 3 could direct you to the Fourth Amended Answer to the 4 Pleadings. And that would be Exhibit 38. 5 A. Yep, yep. 6 Q. And then if you could find page 62. 7 A. I have turned to 62. 8 Q. Thank you. I'm going to ask you to focus 9 on Count IV and initially paragraph 140. 10 A. Yeah. 11 Q. It indicates that, "As described in greater 12 detail above" -- meaning the other preceding paragraph 13 -- "Rossi, Leonardo, Johnson JMP, Fabiani, USQL, and 14 Bass were engaged in a common scheme," correct? 15 A. Yes. 16 Q. So under this Count IV, Industrial Heat and 17 IPH are suing Mr. Bass, correct? 18 A. Correct. 19 Q. Now, I'm going to ask you to direct your 20 attention now to paragraph 141. 21 A. Yes. 22 Q. And it indicates, "The first part of the 23 scheme was to manipulate Counter-Plaintiffs into 24 allowing the plant to be sent from the Industrial Heat 25 facilities in North Carolina to Florida," correct?</p>



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<p>1 CERTIFICATE OF REPORTER</p> <p>2 STATE OF NORTH CAROLINA )</p> <p>3 COUNTY OF WAKE )</p> <p>4</p> <p>5 I, Leslie Christian, the officer before whom</p> <p>6 the foregoing videotaped deposition was taken, do</p> <p>7 hereby certify that the witness whose testimony appears</p> <p>8 in the foregoing videotaped deposition was duly sworn</p> <p>9 by me; that the testimony of said witness was taken by</p> <p>10 me to the best of my ability and thereafter reduced to</p> <p>11 typewriting under my direction; that I am neither</p> <p>12 counsel for, related to, nor employed by any of the</p> <p>13 parties to the action in which this videotaped</p> <p>14 deposition was taken, and further that I am not a</p> <p>15 relative or employee of any attorney or counsel</p> <p>16 employed by the parties thereto, nor financially or</p> <p>17 otherwise interested in the outcome of the action.</p> <p>18 This the 28th day of February, 2017.</p> <p>19 <i>Leslie Christian</i></p> <p>20</p> <p>21 LESLIE CHRISTIAN</p> <p>22 Notary Public in and for</p> <p>23 County of Wake</p> <p>24 State of North Carolina</p> <p>25 Notary Public No. 201221300088</p>	<p>1 WITNESS'S CERTIFICATE</p> <p>2</p> <p>3 I, Thomas Darden, MD, do hereby certify</p> <p>4 that I have read and understand the foregoing</p> <p>5 transcript and believe it to be a true, accurate, and</p> <p>6 complete transcript of my testimony, subject to</p> <p>7 the attached list of changes, if any.</p> <p>8</p> <p>9</p> <p>10 Thomas Darden, MD</p> <p>11</p> <p>12 This deposition was signed in my presence by</p> <p>13 _____, on the _____ day of</p> <p>14 _____, 2017.</p> <p>15</p> <p>16</p> <p>17 Notary Public</p> <p>18 My commission expires:</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 CaseWorks, Inc.</p> <p>2 811 Ninth Street, Suite 260 (Page 1 of 2)</p> <p>3 Durham, North Carolina 27705</p> <p>4 E R R A T A S H E E T</p> <p>5 Re: Andrea Rossi, et al. vs. Thomas Darden, et al.</p> <p>6 Deposition of: Thomas Darden, MD</p> <p>7 Please read this transcript with care, and if</p> <p>8 you find any corrections or changes you wish made, list</p> <p>9 them by page and line number below. DO NOT WRITE IN</p> <p>10 THE TRANSCRIPT ITSELF. Return the</p> <p>11 Certificate and Errata Sheet to this office after</p> <p>12 it is signed. We would appreciate your prompt</p> <p>13 attention to this matter.</p> <p>14 To assist you in making any such corrections,</p> <p>15 please use the form below. If supplemental or</p> <p>16 additional pages are necessary, please furnish same and</p> <p>17 attach them to the errata sheet.</p> <p>18 Page _____ Line _____ should</p> <p>19 read: _____</p> <p>20 Page _____ Line _____ should</p> <p>21 read: _____</p> <p>22 Page _____ Line _____ should</p> <p>23 read: _____</p> <p>24 Page _____ Line _____ should</p> <p>25 read: _____</p>	<p>1 Page _____ Line _____ should (Page 2 of 2)</p> <p>2 read: _____</p> <p>3 Page _____ Line _____ should</p> <p>4 read: _____</p> <p>5 Page _____ Line _____ should</p> <p>6 read: _____</p> <p>7 Page _____ Line _____ should</p> <p>8 read: _____</p> <p>9 Page _____ Line _____ should</p> <p>10 read: _____</p> <p>11 Page _____ Line _____ should</p> <p>12 read: _____</p> <p>13 Page _____ Line _____ should</p> <p>14 read: _____</p> <p>15 Page _____ Line _____ should</p> <p>16 read: _____</p> <p>17 Page _____ Line _____ should</p> <p>18 read: _____</p> <p>19 Page _____ Line _____ should</p> <p>20 read: _____</p> <p>21 Page _____ Line _____ should</p> <p>22 read: _____</p> <p>23 Page _____ Line _____ should</p> <p>24 read: _____</p> <p>25</p>