

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ANDREA ROSSI and LEONARDO)	
CORPORATION,)	
)	
Plaintiffs,)	
)	
vs.)	No. 1:16-cv-2119-CMA
)	
THOMAS DARDEN; JOHN T. VAUGHN;)	
INDUSTRIAL HEAT, LLC; IPH)	
INTERNATIONAL B.V.; and)	
CHEROKEE INVESTMENT PARTNERS,)	
LLC,)	
)	
Defendants.)	
INDUSTRIAL HEAT, LLC and IPH)	
INTERNATIONAL B.V.,)	
)	
Counter-Plaintiffs,)	
)	
vs.)	
)	
ANDREA ROSSI and LEONARDO)	
CORPORATION,)	
)	
Counter-Defendants,)	
)	
and)	
)	
J.M. PRODUCTS, INC.; HENRY)	
JOHNSON; FABIO PENON; UNITED)	
STATES QUANTUM LEAP, LLC;)	
FULVIO FABIANI; and JAMES)	
BASS,)	
)	
Third-Party Defendants.)	

Videotaped Deposition of
JOHN THOMAS VAUGHN
(Taken by Plaintiff)
3509 North Haworth Drive, Suite 403, Raleigh, North Carolina
January 19, 2017, 9:04 a.m.

Reported in Stenotype By
Margaret M. Kruse, CSR, RMR, CRR
Transcript produced by computer-aided transcription

1 payments. It states [as read]: The total price for the
2 grant of the license and the purchase of the plant is
3 \$100,500,000.

4 Do you see that?

5 **A. I see that.**

6 Q. And then it goes on to say [as read]: The
7 payment terms will be as follows.

8 **A. Uh-huh.**

9 Q. And is it your understanding that there were
10 three tiers of payments?

11 **A. Correct. And I apologize, I was just reviewing**
12 **it to make sure my recollection wasn't incorrect. But**
13 **correct.**

14 Q. And at the first payment of \$1,500,000 was to be
15 made within two days of the signing of this agreement,
16 correct?

17 **A. That's what it says, yes.**

18 Q. And it states in here [as read]: In the event
19 the plant is not delivered or validation is not achieved
20 within the time period set forth in Section 4, the full
21 \$1,500,000 will be refunded to the company within two
22 business days of its request.

23 Do you see that?

24 **A. I see that, yes.**

25 Q. Did Industrial Heat ever request that that money

1 be returned?

2 A. I don't know. I did -- I don't recall myself
3 requesting that and I don't believe that Tom did. The --
4 we had been provided a report that Dr. Rossi gave us when
5 -- by Levy and other Swedish professors that was very
6 compelling. And so anyway. . .

7 Q. This just says if it's not delivered or achieves
8 the --

9 A. Validation, yeah.

10 Q. -- the validation, the money would be returned.
11 Is that what it says?

12 A. It says [as read]: In the event the plant is not
13 delivered or validation is not achieved within the time
14 period set forth in Section 4, the full 1.5 million will be
15 refunded to the company within two business days of its
16 request.

17 MR. BELL: And his pending question is: Is that
18 what it says?

19 THE WITNESS: That's what it says, yes.

20 MR. BELL: His earlier question was: Did you
21 make a request or whatever. I don't want to rephrase the
22 question.

23 THE WITNESS: I did not make a request.

24 BY MR. ANNESSER:

25 Q. Was validation achieved, sir?

1 MR. LOMAX: Objection to the form of the
2 question.

3 THE WITNESS: I don't see payment of --
4 nonpayment of taxes referenced specifically in
5 paragraph 98.

6 BY MR. CHAIKEN:

7 Q. Okay. Do you have an understanding as to how
8 IPH was damaged as a result of Leonardo and Rossi's
9 failure to pay taxes?

10 A. My understanding of the provision in the
11 contract is to protect the parties from perhaps a claim
12 resulting from nonpayment of tax against perhaps a
13 property, the subject property of the license agreement.

14 Q. Did any such claim take place or happen?

15 A. Not to my knowledge.

16 Q. Okay. Do you have knowledge of any damage that
17 IPH incurred as a result of the allegation that Leonardo
18 and Rossi failed to pay taxes?

19 MR. LOMAX: Objection to the form of the
20 question.

21 THE WITNESS: I'm not aware of that.

22 BY MR. CHAIKEN:

23 Q. Going back to paragraph 135, Page 61. I take
24 it back. Paragraph 134 states, "Rossi and Leonardo, JMP
25 and Johnson, falsely represented to Industrial Heat that

1 BY MR. ANNESSER:

2 Q. Isn't it true that Industrial Heat and yourself
3 were more interested in the results of the Lugano test, the
4 independent test, as it was referred to, than you were of
5 your own test?

6 A. We were very interested in the results of that
7 test. Again, we didn't have -- we clearly had reservations
8 or questions at the end of '13. We also -- while we
9 weren't sure about Rossi's methods and results, we also
10 weren't sure of our own and we questioned our abilities to
11 determine the state-of-the-art. And -- and so we were very
12 interested in what they claimed or their assessment in
13 Lugano.

14 So that was -- I think it's fair to say that we
15 were very eager to hear their analysis.

16 Q. And before the Lugano test, you said you were
17 still concerned about how the testing was carried out and
18 whether those results were verifiable and accurate?

19 A. Correct.

20 Q. Who carried out the Lugano test, to your
21 understanding?

22 A. Rossi was there with Fulvio. And then Levy. I
23 think Faci was there. And then -- I get the Swedish guys
24 mixed up, but I think there were two of three of them
25 there, and they were all there to carry out the test.

1 information from that period of time, and it just --
2 depending on, you know, as I mentioned, it's an evolving
3 process, our view of the technology. But we realized that
4 we had to get much more sophisticated than we were
5 originally to assess accurately whether or not the
6 technology worked.

7 Q. So sitting here today your position is not that
8 it didn't work, it's that you can't affirmatively state
9 with the information that you collected at the time that it
10 does?

11 MR. BELL: Objection to form.

12 BY MR. ANNESSER:

13 Q. Is that fair to -- is that a fair summary?

14 A. **Sitting here today, it is my belief that the**
15 **technology does not work.**

16 Q. Okay. I did not ask you what your belief was.

17 A. **I'm confused about -- the way you're phrasing the**
18 **question is confusing. If you could -- I apologize, but if**
19 **you could restate.**

20 Q. You've used the term "indeterminate." That
21 generally means, at least I take it to mean and correct me
22 if I'm wrong, that you cannot determine whether the results
23 were correct or not?

24 A. **I said we were getting a lot of indeterminate**
25 **information. So if you go back and you review all of these**

1 **A. Right.**

2 Q. I believe the test protocol was proposed prior to
3 that in 2014 or early '15 before Mr. Murray was brought on
4 board. And correct me if that's not true.

5 But did you at any time tell Mr. Rossi prior to
6 the beginning of that test that you did not agree with the
7 protocol?

8 **A. I don't recall telling him that. But I do recall**
9 **that we expressed -- particularly Joe and I when we finally**
10 **made it down there -- our concerns were the deficiencies of**
11 **protocols supplied by Penon.**

12 Q. And when did you supply Dr. Rossi with your
13 perceived deficiencies?

14 **A. I don't recall exactly.**

15 Q. Was that in writing?

16 **A. I don't recall. I know for example, though, that**
17 **we -- as I mentioned, when Joe and I were down there, we**
18 **highlighted this ad nauseam. You were, in fact, there**
19 **yourself.**

20 Q. That was at the conclusion of the test; was it
21 not?

22 **A. What Rossi was claiming to be the conclusion.**

23 Q. Have you ever heard the term "the 350-day test"?

24 **A. I thought it was a 400-day test. Anyway, 350,**
25 **yeah, 350 out of 400, sure.**

1 out of 400 days; is that correct?

2 **A. I think it also requires that test start 60**
3 **days at or --**

4 Q. Sir, can you please answer the question. You
5 keep trying to side track. Answer the question and you can
6 make any statement after that that you want.

7 **A. Sorry about that.**

8 Q. But isn't it correct, sir, that the test that is
9 referenced as a guaranteed performance test in the license
10 agreement requires that it operate 350 out of 400 days?

11 **A. Yes. There's a test -- there's a requirement in**
12 **the operating agreement -- I'm sorry, license agreement**
13 **that a one-megawatt plant -- I guess it's referred to as a**
14 **one-megawatt plant -- be tested for 350 out of 400 days or**
15 **be operated for 350.**

16 Q. And, sir, when you use the term "350-day test" or
17 "400-day test," is it fair to assume that you were
18 referring to the contractual test?

19 MR. BELL: Objection to form.

20 BY THE WITNESS:

21 **A. Clearly Rossi wanted it to be that, right.**

22 BY MR. ANNESSER:

23 Q. Sir, I'm going to ask you again to answer the
24 question.

25 When you use the term "350-day test" or "400-day

1 test," are you referring to the test contemplated in the
2 license agreement? I'm not talking about the Miami test
3 I'm talking about when you use that term.

4 MR. BELL: Objection to form.

5 BY THE WITNESS:

6 **A. Could I show me where the use that term?**

7 BY MR. ANNESSER:

8 Q. We can get there, sir. Let me back you down for
9 a second.

10 Was there more than one test that was required or
11 contemplated anywhere in any agreement that was supposed to
12 run 350 to 400 days?

13 **A. More than one test? Well, Rossi introduced this**
14 **commercial customer down there and he said he wanted to do**
15 **that for 350 days. In the agreement, that test was -- we**
16 **were supposed to conduct the 350-day test. That did not**
17 **require a commercial customer. That was not a requirement**
18 **at all. And it was supposed to start within 60 days of**
19 **delivery of the plant.**

20 I'm going to stand up for a second if that's
21 okay.

22 THE VIDEOGRAPHER: We're off the record at 1:31
23 p.m.

24 (Brief pause.)

25 THE VIDEOGRAPHER: We're back on the record at

1 1:31 p.m.

2 (Whereupon, Vaughn Deposition Exhibit 7 was marked
3 for identification.)

4 BY MR. ANNESSER:

5 Q. Sir, I'm going to show you an email dated
6 October 22, 2013, from you to Mr. Darden. It bears the
7 Bates number IH-000133919 and it has been marked as
8 Exhibit 7.

9 Go ahead and take a moment to read that.

10 **A. Okay.**

11 Q. Sir, at or around this time, October 22, 2013,
12 you were discussing with Mr. Darden the pros and cons of
13 using a six cylinder versus some other model or form of
14 E-Cat for a 350-day test; is that correct?

15 **A. Yes. We were discussing various different
16 designs to accommodate Rossi.**

17 Q. Now, in this, the 350-day test referenced, are
18 you referring to the guaranteed performance test?

19 **A. I am referring to the 350-day test. Presumably I
20 was referring to the guaranteed performance test as
21 referenced in the contract.**

22 **At this time, this was shortly after -- I don't
23 remember exactly when the unit was delivered, but he's
24 still close to that delivery date. And there was -- again,
25 as I mentioned previously, I believe there was talk of, you**

1 things, why do we care if it's a single unit, a six
2 cylinder or a clunky one megawatt. But, clearly, you're
3 your increasing -- as you're moving down the next spectrum,
4 you're increasing the likelihood that we would have to pay
5 Dr. Rossi.

6 In my opinion, it's a great day if we had to pay
7 him because we got something that works, works at a very
8 high real output and a high real COP and we can replicate
9 it. But, you know. . .

10 Q. But you may not want to do it that way because it
11 increases the likelihood of having to pay Dr. Rossi; that's
12 what you're saying?

13 A. What I'm saying --

14 MR. BELL: Objection to form.

15 BY MR. ANNESSER:

16 Q. That's a yes-or-no question, sir.

17 A. It's not a yes-or-no question, John, and you know
18 that. It's a -- you're trying to put words in my mouth.
19 You're saying blah, blah, blah isn't this what you're
20 saying. And I'm trying to tell you -- I already told you
21 what I'm saying.

22 We were trying to be accommodative to Rossi and
23 lower the hurdle in which he would have to be paid. Again,
24 you've got to balance that with actually, you know, having
25 to -- having responsibilities as a manager to lower the

1 chances that a company is going to have to make a big
2 company. I was saying here I'm just as happy. And -- you
3 know, if it's a low hurdle.

4 Q. In fact, I want to correct you, sir. You say [as
5 read]: But if a single cylinder unit passes the 350-day
6 test with a COP of greater than 2.6, then I'm going to be
7 almost as happy, not quite as happy as if we don't have to
8 pay 8.9 million, but almost as happy.

9 A. No, no, you're --

10 Q. These are your words, sir.

11 A. I know these are my words. Absolutely these are
12 my words.

13 But what I'm saying [as read]: But if a single
14 cylinder unit passes the 350-day test with a COP of greater
15 than 2.6 -- what I'm saying is that means we have to pay
16 him. I'm going to be almost as happy, I think. And
17 so. . .

18 Q. Almost as happy as if it fails?

19 A. No. As if it were a one-megawatt unit. Do you
20 want me to read the entire email for the record here so
21 that you don't take it out of context?

22 Q. It's in the record.

23 MR. BELL: It's in the record, so you don't have
24 to worry about it.

25

1 BY MR. ANNESSER:

2 Q. And isn't it true, sir, that Industrial Heat
3 agreed to use the six-cylinder test -- I'm sorry, the
4 six-cylinder E-Cat unit for the 350-day test?

5 MR. BELL: Objection to form.

6 MR. ANNESSER: What specifically is your
7 objection on that one?

8 MR. BELL: You asked him about Industrial Heat
9 and he's testifying about as J.T. Vaughn. Embedded in your
10 question is did they agree to use that unit for the
11 guaranteed performance test under the contract.

12 BY MR. ANNESSER:

13 Q. To your understanding, sir, did Industrial Heat
14 agree to use the six-cylinder unit for the testing?

15 A. There was an amendment that was proposed. I
16 don't remember if Dr. Rossi drafted it first or we drafted
17 it first. We were trying to accommodate his desires. I'm
18 highlighting this in this email.

19 And it was not signed by Rossi's partners, AEG,
20 and so it never went into effect. And both parties, Rossi
21 and us, I believe acknowledge that -- and I believe that's
22 also in emails. But you guys tell me if it's not.

23 Anyway, there was an amendment and it was never
24 signed by all parties.

25 Q. It was signed by Industrial Heat, was it not?

1 Q. Did it have to have a customer to satisfy the
2 350-day test requirements?

3 A. It did not. And we didn't -- again, we were
4 trying to be accommodative and, you know, a good partner to
5 Andrea. And he kept saying it was important to him.

6 And even though we didn't care, we weren't
7 against it. I mean, it wasn't necessarily a negative
8 thing. So we wanted to be accommodative to him on that
9 front because it doesn't necessarily preclude us, we didn't
10 think, from achieving our objectives.

11 Q. Because you could measure it without a customer?
12 You could measure the output without having a customer
13 looked up to the other end of the line?

14 A. Right.

15 Q. Was West Virginia ever proposed?

16 A. West Virginia?

17 Q. Yes, sir.

18 A. I don't recall. You know, I'm trying to
19 remember. I just don't recall.

20 Q. Did you, sir, personally ever attempt to obtain
21 approval to operate the one-megawatt plant in North
22 Carolina?

23 A. Did I ever personally attempt to?

24 Q. Obtain approval from any government agencies or
25 state or federal?

1 **A. Right. I do not know who owns JMC.**

2 Q. Okay. Isn't it true, sir, as of September 11,
3 2014 -- so after the term sheet had been signed -- you were
4 still anticipating the guaranteed performance test?

5 **A. Did you say is that true that we're still**
6 **anticipating the guaranteed performance test --**

7 Q. That the guaranteed performance test would be
8 performed?

9 **A. In September of 2014?**

10 Q. That's correct.

11 **A. I suppose so.**

12 Q. And that the guaranteed performance test would be
13 prepared and performed in Miami; is that correct?

14 **A. Andrea wanted to do the work in Miami for Johnson**
15 **Matthey.**

16 Q. That was not the question.

17 Was it your understanding at that time that the
18 guaranteed performance test, the 350-day test, would be
19 performed in Miami pursuant to the license agreement?

20 **A. Again, you know, you can -- you can ask that a**
21 **million different ways. But, yes, Andrea was doing that**
22 **work in Miami. And, you know, he was running a**
23 **one-megawatt unit in Miami and he did that for a period of**
24 **350 days or thereabouts.**

25 Q. And you understood that to be the 350-day test

1 pursuant to the license agreement; isn't that true, sir?

2 **A. I think that that's debatable. But, clearly, if**
3 **he had performed, we were eager to pay.**

4 Q. So if you were pleased with the results, it was
5 the guaranteed performance test; but if you were not
6 pleased with the result, it was not?

7 **A. That's not at all what I said.**

8 Q. Sir --

9 **A. We were trying to accommodate --**

10 MR. BELL: You've answered the question.

11 **THE WITNESS: I can't answer the question.**

12 MR. BELL: You have answered the question.

13 BY MR. ANNESSER:

14 Q. Go ahead and finish, sir.

15 Go ahead and finish.

16 **A. I was just going to say that's consistent with**
17 **what I've said previously. Our goal has been to**
18 **accommodate Andrea and to determine the state-of-the-art,**
19 **whether or not it really works. And if it does, you know,**
20 **we are happy to pay him.**

21 Q. Do you understand the 350-day test to be carried
22 out in Miami could result in a payment of \$89 million to
23 Dr. Rossi as it was the test contemplated by the license
24 agreement? It's a yes-or-no answer and then you can
25 explain again if you need to.

1 MR. BELL: Objection, asked and answered.

2 BY THE WITNESS:

3 A. The -- could you state the question again,
4 please.

5 BY MR. ANNESSER:

6 Q. As of September 11, 2014, sir, it was your
7 understanding that if Dr. Rossi performed the 350-date,
8 also known as the guaranteed performance test, while in
9 Miami successfully, he would be entitled to payment of the
10 \$89 million pursuant to the license agreement?

11 A. If he were successful, our goal was to pay him.

12 (Whereupon, Vaughn Deposition Exhibit 14 was marked
13 for identification.)

14 BY MR. ANNESSER:

15 Q. Sir, I'm going to show you a document marked as
16 Exhibit 14. You had mentioned that you had prepared a
17 timeline. Is this the timeline you prepared, sir?

18 A. I'm not sure. I'd have to review it.

19 Q. Okay. While you're doing that, I will just read
20 for the record that is an email from J.T. Vaughn to John
21 Mazzarino and Tom Darden dated September 11, 2014, with the
22 Bates number IH-00107550.

23 Sir, specifically I'm going to ask you to look at
24 the second page, the last paragraph on the page where it
25 says May to September of -- I believe that's under 2014; is

1 at the Miami location?

2 **A. Clearly, you know, Tom and Penon traded emails**
3 **about a test protocol. That is -- that's true.**

4 Q. Did at any time you or Mr. Darden, to your
5 knowledge, tell Mr. Penon that he is not the ERV --

6 **A. I'm not sure.**

7 Q. -- responsible for the testing?

8 **A. I'm not sure.**

9 Q. From these emails, would you draw the conclusion
10 that he believed he would be performing a test on the E-Cat
11 in Miami?

12 MR. BELL: That Penon believed.

13 BY MR. ANNESSER:

14 Q. Yes.

15 **A. Penon clearly was planning to perform an analysis**
16 **of Dr. Rossi's E-Cat MW1 as referenced.**

17 Q. And did at any time you tell Dr. Penon that this
18 was not the guaranteed performance test, that you were not
19 the ERV, you were not authorized to do a test?

20 **A. I don't recall.**

21 Q. Now, when the plant was sent down and set up for
22 testing, Mr. Dameron came down in early February after
23 Mr. Penon had sent in his test equipment; is that correct?

24 **A. I believe that's correct.**

25 Q. And did he come to you and tell you, no, this

1 know, those sorts of -- I don't know.

2 Q. So sitting here today, you do not know?

3 A. I do not know?

4 Q. Other than -- other than the number of smaller
5 E-Cats within this one-megawatt plant that were operating
6 at any time, you do not know of any other --

7 A. I don't know if I know of any other.

8 Q. You don't know what you don't know.

9 A. That's right. I'm sorry.

10 Q. Either you know or you don't. If you don't, the
11 answer is no.

12 A. I'd have to go through and review all of this and
13 see if the backup detail exists or not.

14 Q. Did you ever receive statements from J.M. as to
15 the amount of power that they received and requested that
16 you send them an invoice for that power?

17 A. I did.

18 Q. Did you ever send an invoice?

19 A. Not to my recollection.

20 Q. Why?

21 A. Because we -- we could -- that was irrelevant to
22 us. And if, in fact, it were a fraud, we didn't want to
23 participate in that.

24 Q. So you believed at the time it could be a fraud?

25 A. We didn't know.

1 Q. Now, Industrial Heat paid two people to be there,
2 Mr. Fulvio -- I'm sorry, Fulvio Fabiani and Mr. Barry West.
3 They were there --

4 **A. At the request of Dr. Rossi. We were -- Rossi**
5 **should have been paying them. We were, again, being**
6 **generous and accommodative. We paid them.**

7 Q. So you're telling me that you knew this was the
8 350-day test and you didn't think it prudent to put anyone
9 else in that plant to monitor, figure out what's going on,
10 what is he doing that we're not doing?

11 MR. BELL: Objection to form.

12 BY THE WITNESS:

13 **A. Andrea would only allow Barry and Fulvio. And,**
14 **you know, those were the guys that he wanted.**

15 BY MR. ANNESSER:

16 Q. Did you request additional people come on?

17 **A. Yes. I told you I tried to take Joseph Murray**
18 **down there. And we also planned to have other of our staff**
19 **rotate -- excuse me, rotate in and out. So we talked**
20 **amongst our engineering and operational team to -- about**
21 **having people go down there and spend long periods of time**
22 **down there.**

23 Q. Okay. Prior to Joseph Murray coming on board in
24 the middle of 2015, who was your engineering team?

25 **A. As I told you previously, T. Barker Dameron and I**

1 which I believe you're referencing Paul Lamacraft says
2 something that it was a core element or something like
3 that. And pull the email, please. Let's review it.

4 Q. I'm asking you if you've -- if you've got
5 information on an email, he said it was a core element?

6 A. No. He said -- he referenced it as a core
7 element. He didn't say it was the core element. And we've
8 been very clear and I was very clear with Woodford -- well,
9 Lamacraft owned this. But they're investing in a strategy,
10 a portfolio-based approach to the LENR sector.

11 Rossi's technology could turn out to work and it
12 may not. We don't know. It's a variable among many in the
13 portfolio and that's what you're investing in.

14 Q. Do you have any evidence, sir, to support the
15 claims by Industrial Heat and IPH international that
16 Dr. Rossi has not paid appropriate or taxes on the money
17 that he had received?

18 A. I believe that Craig Casserino's accountant was
19 also Andrea's account and had reported to Craig that he
20 never paid?

21 Q. Do you have any personal knowledge, sir?

22 A. Sir, I'm telling you what I have. A conversation
23 with --

24 Q. I'm asking -- I'm not asking who --

25 MR. BELL: He's distinguishing between what

1 somebody told you and what you personally know yourself.

2 **THE WITNESS: I have not personally reviewed**
3 **Andrea's taxes. Your mom may have, but I haven't.**

4 BY MR. ANNESSER:

5 Q. Interesting answer, sir.

6 Now, with respect to that, has Industrial Heat at
7 all been damaged by any payment or failure to pay taxes by
8 Dr. Rossi?

9 **A. It was a requirement of the license agreement**
10 **that he do so.**

11 Q. Okay. There were lots of requirement in the
12 license agreement.

13 **A. Sure.**

14 Q. So what I'm asking is have you been damaged?

15 **A. Sure. I live in the United States and he didn't**
16 **pay his taxes.**

17 Q. And that's the same way that Industrial Heat's
18 been damaged, correct?

19 **A. Industrial Heat is a company in the United**
20 **States. If the tax revenue in the United States decreases,**
21 **it affects the companies and the citizens within that**
22 **territory.**

23 Q. Did you ever tell Dr. Rossi that you wanted to
24 withhold taxes from that payment to assure that those would
25 be paid?