

# **EXHIBIT 13**

CONFIDENTIAL

Page 1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

ANDREA ROSSI AND	:	
LEONARDO CORPORATION,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	Case No.
	:	1:16-CV-21199-CMA
THOMAS DARDEN, ET AL.,	:	
	:	
Defendants.	:	

CONFIDENTIAL VIDEOTAPED DEPOSITION OF  
RICK A. SMITH, P.E.

February 27, 2017  
8:51 a.m.  
VERITEXT LEGAL COURT REPORTING  
41 South High Street  
Suite 210  
Columbus, OH 43215

Reported by: Tracy J. Schell

CONFIDENTIAL

Page 186

1 Penon test plan?  
 2 A. I don't recall.  
 3 Q. An hour?  
 4 A. I just said I don't recall.  
 5 Q. Can you tell me roughly, was it more than ten  
 6 hours?  
 7 A. Less than ten hours.  
 8 Q. Less than ten hours.  
 9 Had you been asked prior to this litigation  
 10 to review the test plan, could you have done so?  
 11 A. Oh, sure. Yes. Yes.  
 12 Q. And you -- it's your belief that you would  
 13 have looked at the same plan and said this isn't  
 14 sufficient, something has to change?  
 15 A. More than likely, yes.  
 16 Q. Did you review the Lugano test reports? Do  
 17 you know what I'm talking about there?  
 18 A. I looked at them. I did not study them in  
 19 depth.  
 20 Q. Okay. Are you aware that a test was  
 21 performed in Lugano by a number of Swedish and/or  
 22 Italian professors?  
 23 A. I'm vaguely aware, yes.  
 24 Q. Okay. Are you opining at all as to the  
 25 validity of the Lugano test reports?

Page 187

1 A. No. The Lugano test did not -- it did not  
 2 play into my opinions, sir.  
 3 Q. Okay. Are you aware of what test plan was  
 4 used in Lugano?  
 5 A. No.  
 6 Q. What about the validation test that was  
 7 performed as part of this, as part of the parties'  
 8 contract?  
 9 MR. LOMAX: Objection to the form of the  
 10 question.  
 11 Q. Are you familiar with what I'm talking about?  
 12 A. Now, are you talking -- are you Lugano or  
 13 back to U.S.?  
 14 Q. I'm asking about a validation test. Are you  
 15 aware that a test was performed in -- in Italy, in  
 16 Ferrara, Italy called the validation test?  
 17 A. I am aware, yes, sir.  
 18 Q. Okay. Did you review the test protocol used  
 19 for that test?  
 20 A. I'm not sure I reviewed it prior to my  
 21 report. I know I reviewed it afterward.  
 22 Q. Are you --  
 23 A. I'm pretty sure.  
 24 Q. Are you opining as to the sufficiency of that  
 25 test?

Page 188

1 A. If it is -- if it's substantially similar to  
 2 the U.S. test, my opinion will be pretty much the same.  
 3 Q. Do you know if it is or isn't?  
 4 A. I'll have to look and study it line by line.  
 5 I haven't dug into that. I haven't drilled down into  
 6 it that deeply.  
 7 Q. You don't plan on testifying, do you, sir,  
 8 that the validation test performed in Ferrara, Italy  
 9 was improper, do you?  
 10 A. Again, I haven't -- I've looked at it. I've  
 11 not studied it in depth. I can't answer your question  
 12 right now.  
 13 Q. Okay. But sitting here today, that's not an  
 14 opinion that you've formed?  
 15 A. Not right now, no.  
 16 Q. Now, in your report, specifically the third  
 17 report on page 10, you state that you have not -- that  
 18 you have seen no documentation of the machine itself,  
 19 is that correct, regarding the E-Cat?  
 20 A. Correct.  
 21 Q. Have you seen any as of this date?  
 22 A. Other than the -- you know, I mentioned that  
 23 picture I saw on the Internet that I couldn't find.  
 24 And, again, I'm -- I'm talking the machine proper, not  
 25 necessarily Dr. Penon's report. So with that caveat,

Page 189

1 no, I have not seen documentation of the machine  
 2 itself.  
 3 Q. Okay. So are you opining as to the operation  
 4 of the machine itself, or just simply Dr. Penon's  
 5 report?  
 6 A. Both.  
 7 Q. Even though you've seen no test plan of the  
 8 machine -- or, I'm sorry, no documentation of the  
 9 machine?  
 10 A. Correct, because I'm a boiler expert, I  
 11 understand boilers. The machine in question is a  
 12 boiler, so I can make -- and I understand  
 13 thermodynamics, so, yes, I can opine.  
 14 Q. As to whether the E-Cat works?  
 15 MR. LOMAX: Objection to the form of the  
 16 question.  
 17 A. Could you be more specific on "works"?  
 18 Q. Are you opining as to whether the E-Cat is  
 19 capable of generating 1 megawatt worth of power?  
 20 A. I am opining on that, yes, sir.  
 21 Q. Even though you have not seen any  
 22 documentation on the machine itself?  
 23 A. The documentation on the machine may be  
 24 fraudulent. The other information I've seen and the  
 25 analysis I've done leads me to believe that it does not

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at [www.veritext.com](http://www.veritext.com).