

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 MIAMI DIVISION
4 CASE NO. 16-cv-21199-CMA

5 ANDREA ROSSI, et al., Miami, Florida
6 Plaintiffs, June 28, 2017
7 vs. 12:22 p.m. to 4:49 p.m.
8 THOMAS DARDEN, et al., Courtroom 12-2
9 Defendants. (Pages 1 to 184)

10 JURY TRIAL - DAY 1
11 BEFORE THE HONORABLE CECILIA M. ALTONAGA,
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

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8 **FOR THE THIRD-PARTY** **RUDOLFO NUNEZ, ESQ.**
9 **DEFENDANTS:** **Aran Correa & Guarch, PA**
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15 **CHRISTOPHER M. LOMAX, ESQ.**
16 **Thomas Darden,** **Jones Day**
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1 (The following proceedings were held at 12:22 p.m.)

2 COURT SECURITY OFFICER: All rise.

3 THE COURT: Good afternoon, please be seated.

4 And I trust the parties have had the opportunity to
5 read the juror questionnaire forms, as have I. I wanted to
6 ask, if you all wanted to excuse Jurors No. 5 and -- I'm
7 sorry -- 5 and 11, before we bring them in? Excuse them for
8 cause.

9 (Pause in proceedings.)

10 MR. PACE: Your Honor, we would agree as to both.
11 Chris Pace for the Defendants.

12 MR. LUKACS: Good morning, Your Honor. John Lukacs on
13 behalf of the Plaintiffs. We too would agree to the challenge
14 for cause for Jurors 5 and 11.

15 THE COURT: All right. So, Patricia, Jurors 5 and 11
16 are being excused for cause.

17 THE COURTROOM DEPUTY: Okay.

18 THE COURT: We will leave their seats empty.

19 THE COURTROOM DEPUTY: Okay.

20 THE COURT: Any other issues before we bring the jury
21 in?

22 MR. PACE: Your Honor, just one that we had discussed,
23 which is whether it may help if the initial questions are
24 focused on the ability of the jurors to serve at a trial of
25 this length.

1 THE COURT: I always cover that.

2 MR. PACE: Well, what we were thinking is that if
3 those jurors -- if we could address that -- and those jurors
4 who can't serve on a trial of that length, then we'd have a
5 smaller group that we'd have to address with the additional
6 questions.

7 THE COURT: I don't ask that at the beginning because
8 it is an invitation for everyone to say they're unavailable and
9 it is a trickle-down effect. Anything else?

10 MR. PACE: No, Your Honor.

11 MR. LUKACS: No, Your Honor.

12 THE COURT: All right. Let's bring the jury in,
13 please.

14 Please have your witness list handy. I'm going to be
15 asking the parties to read out the names of witnesses, giving a
16 point of reference as to each, where they're from, where they
17 work, anything like that.

18 (Pause in proceedings.)

19 COURT SECURITY OFFICER: Please rise for the jury
20 panel.

21 (Prospective jury panel entered the courtroom at
22 12:29 p.m.)

23 THE COURT: Ladies and gentlemen, let me just make
24 sure you're seated where we think you're supposed to be. When
25 I call out your names, if you could just let us know you're

1 there: Ms. Jean, Mr. Etienne, Mr. Rosado, Mr. Marchiola,
2 Mr. Vargas, Mr. White. Okay. In the top row, do we have
3 Ms. Bennett, Mr. Roque, Fernandez De Castro, Mr. Lopez,
4 Ms. Duquesne, Mr. Blanco, Ms. Ordiz, Ms. Martinez, and
5 Ms. Dingle. Very good.

6 (Pause in proceedings.)

7 THE COURT: Everyone, please be seated.

8 We would just like to, ladies and gentlemen, call out
9 the names of those of you, who are seated in the back to ensure
10 that you are seated where we think you're supposed to be. When
11 I call your names, just raise your hand if you would:
12 Ms. Santofimio, Mr. Bravo, Jomarron-Gomez, Vicent, Castillo,
13 Jimenez, Calhoun, Meilan, Ralph, Morrison, Apezteguia,
14 Kobrossi, Diaz, Chacon, Tano, Rabago, Orozco, Rivero, Alonso,
15 Peachey, Hein, Martinez, Saborio, and Ciocci. Very good.
16 Thank you.

17 Ladies and gentlemen, good afternoon and welcome to my
18 courtroom. My name is Cecilia Altonaga. I'm a United States
19 District Court Judge, and we have all brought you here into the
20 courtroom in order to select a jury for the case that is about
21 to be tried.

22 Can everyone hear me in the back okay? We began the
23 jury selection process a little bit earlier when this morning
24 you were good enough to fill out some written questionnaire
25 forms giving us information about yourselves.

1 During your lunch break, we have taken those
2 questionnaire forms, photocopied them, and distributed them to
3 the several parties, whom you see in the courtroom. The
4 lawyers, the parties, and I have read that information. We
5 continue now with the jury selection process here in the
6 courtroom, and it involves sharing information with you and
7 gathering additional information from you in order to assess
8 whether or not you can serve as a fair and impartial juror in
9 this case. All of the answers that you give to our questions,
10 need to be given to us under oath, and I don't believe you were
11 placed under oath in the jury pool section.

12 So now that you're comfortably seated where you're
13 supposed to be. I would ask that you, please, stand and raise
14 your right hand so that my courtroom deputy may administer your
15 oath as prospective jurors.

16 (Time 12:36 p.m.)

17 (Prospective jury panel was sworn and testified as follows:)

18 JURY VOIR DIRE

19 THE COURTROOM DEPUTY: Thank you, you may be seated.

20 THE COURT: Ladies and gentlemen, let me take a few
21 minutes to introduce you to those who are in the courtroom and
22 briefly explain their roles. My courtroom deputy is Patricia
23 Snead. She is the lady who assisted in getting you inside the
24 courtroom. She just placed you under oath. She assists me
25 with the cases that comprise my docket and is my main point of

1 contact with the jury. So if you have any concerns or
2 questions, apart from questions about the case being tried,
3 please let Ms. Snead know and she, in turn, will let me know
4 that there's an issue or a concern.

5 To my far left, is our court security officer, Alan
6 Latour. He also assisted in getting you to your right places.
7 His primary role is to see to your welfare, to assist in
8 answering questions you might have, and in letting me know that
9 there are questions as well. And during this jury selection
10 process, he will be trying to reach each one of you with a handheld
11 microphone when it comes turn to asking you questions
12 individually as opposed to collectively. So please give
13 Officer Latour a chance to reach you, and when he does, please,
14 take the microphone and don't be afraid to use it.

15 Seated directly in front of me is, the official court
16 reporter, Stephanie McCarn. She is taking down every word I
17 speak. She will also be taking down everything that you say as
18 well. So to assist her in making for a better record, I ask
19 that you keep a few rules in mind. First, use the microphone
20 when it reaches you. Second, give us either your juror number
21 or name so she can identify a speaker with the person who's
22 speaking. And last, please give us audible responses; answers
23 that we can hear and that we don't have to interpret. Like
24 don't use shaking of the head or body language or saying things
25 like uh-huh and uh-uh because that requires interpretation.

1 And if you should forget any of these instructions, please
2 don't be offended if I interrupt and direct you.

3 Seated to Stephanie McCarn's right is one of my law
4 clerks, a lawyer who works and assists me. Her name is
5 Christina Martinez, and she may be here, from time to time,
6 observing and assisting as well.

7 Ladies and gentlemen, you may have gathered from the
8 written questionnaire form that what we start today is a civil
9 case, not a criminal case. In other words, it's a dispute
10 between private parties. There is no crime being charged.
11 There's no one's liberty interest at stake. It's a civil
12 dispute among several parties, and these will be introduced to
13 you at this time.

14 The Plaintiffs in this case are Andrea Rossi and
15 Leonardo Corporation. I would ask the Plaintiffs and their
16 counsel to stand and introduce themselves to you.

17 MR. LUKACS: Good morning -- or good afternoon. My
18 name is John Lukacs, and I have the privilege of representing
19 Dr. Rossi and Leonardo Corporation, the Plaintiffs in this
20 case.

21 MR. ANNESSER: Good morning. My name is John
22 Annesser. I also have the same privilege to represent
23 Dr. Rossi and Leonardo. I'm an attorney with the law firm of
24 Annesser & Chaiken.

25 MR. CHAIKEN: Good afternoon. My name is

1 Brian Chaiken. I also represent Dr. Rossi and
2 Leonardo Corporation.

3 UNIDENTIFIED SPEAKER: This is Dr. Rossi.

4 MR. ROSSI: Good afternoon.

5 MR. BERNSTEIN: Good afternoon, my name is
6 Robert Bernstein. I work with Mr. Annesser and Mr. Chaiken and
7 also represent Andrea Rossi and Leonardo Corporation.

8 THE COURT: Thank you.

9 Now, the Plaintiffs have bought this lawsuit against
10 several Defendants. The named Defendants are: Thomas Darden,
11 John Vaughn, Industrial Heat LLC, IPH International B.V., and
12 Cherokee Investment Partners LLC. I'll ask the Defendants to
13 introduce themselves to you at this time and their attorneys as
14 well.

15 MR. DARDEN: My name is Tom Darden, and I'm the person
16 who founded Cherokee and also Industrial Heat.

17 MR. VAUGHN: My name is J.T. Vaughan. I'm vice
18 president at Industrial Heat.

19 MR. PACE: Good afternoon, everyone. My name is
20 Chris Pace. I'm one of the lawyers in the case. And if I
21 could just introduce some of the lawyers that we have with us,
22 people on our staff. I've got Harvey Moore, sitting here right
23 next to me. Bernie Bell, is right next to Harvey, and right
24 behind them, this gentleman is Chris Lomax, and he'll be here
25 with us today as well. Thank you, Your Honor.

1 THE COURT: Thank you.

2 Now, several of the Defendants, Industrial Heat and
3 IPH International, in particular, have countersued the
4 Plaintiffs, Andrea Rossi and Leonardo Corporation, but they've
5 also sued some additional parties and brought them into the
6 case.

7 Those additional parties are JM Products, Inc.,
8 Henry Johnson, United States Quantum Leap LLC, Fulvio Fabiani,
9 and James Bass. I'm going to ask the third-party Defendants
10 and their attorneys to introduce yourselves at this time.

11 MR. LEON DE LA BARRA: Good afternoon. My name is
12 Francisco Leon De La Barra. I have the privilege of
13 representing JM Products, Inc., its president
14 Mr. Henry Johnson, and Mr. James Bass, who are with me today.

15 MR. NUNEZ: Good afternoon, ladies and gentlemen. My
16 name is Rudy Nunez, and I represent Fulvio Fabiani and
17 United States Quantum Leap. Mr. Fabiani doesn't live in this
18 country. He's traveling here from -- he'll be travelling here,
19 be here next week. Thank you.

20 THE COURT: Thank you.

21 Ladies and gentlemen, let me just pause for a moment
22 to start asking you some questions. Now that you are under
23 oath, going back to that written questionnaire form that you
24 filled out, is all of the information that you wrote in your
25 questionnaire form true and correct?

1 THE PROSPECTIVE PANEL: Yes.

2 THE COURT: Yes? You may hear me and/or some of the
3 lawyers touch upon some of those areas that were addressed in
4 the questionnaire form. You may hear some discussion from your
5 fellow jurors as a result. If any of that discussion causes
6 you to recall that you forgot to write something down or wrote
7 something down incorrectly, please, don't hesitate to raise
8 your hand and supplement or correct what you wrote by telling
9 us here in open court.

10 My next question to you is, do any of you know any of
11 us who have been introduced to you here this afternoon?

12 THE PROSPECTIVE PANEL: No.

13 THE COURT: Do any of you know each other?

14 THE PROSPECTIVE PANEL: No.

15 THE COURT: Have any of you come to this federal
16 courthouse in the last couple of days for jury selection in
17 other courtrooms?

18 THE PROSPECTIVE PANEL: No.

19 THE COURT: How many of you are happy to be here? I
20 knew I'd get you there. All right.

21 Ladies and gentlemen, I do want to thank you for
22 coming. We didn't send you an invitation with an RSVP card and
23 ask you to RSVP and let us know if you'd love to come in and
24 serve. We summoned you, and that's by necessity. All courts
25 summon jurors to come and, in my view, perform the most

1 important civic and public service you can perform for your
2 country, and that is to serve as a juror in trials in
3 courtrooms. And we do it by summons because we are very much
4 aware that this is a true imposition on your time, and you'd
5 probably rather be somewhere else than here. And you've had to
6 find replacements at work and/or at home, and you're all
7 sitting there wondering, if I'm selected, how long do I have to
8 keep coming back to this courtroom, and I will answer that
9 question in due course.

10 But I thank you for responding to summons and for
11 being here. Part of my job is to see to it that the lawyers in
12 this case try the case sufficiently so as to minimize the
13 inconvenience to you, and so as not keep you waiting
14 unnecessarily while we discuss matters. So I will try to
15 structure the trial with that in mind.

16 The most important part of any trial is the time where
17 the lawyers and the parties pick the jury because what they're
18 doing is they're picking the judges of the case. I preside
19 over the trial, I rule on questions of law, I instruct the jury
20 on the law that you must follow, and then I send you back to
21 the jury room at the end of the case to deliberate together and
22 decide the case.

23 You will be the judges of this case, not I. And so
24 what the lawyers want, what the parties want, and what I would
25 like is that we group -- select a group of fair and impartial

1 men and women, who can try this case based solely on the
2 testimony and evidence presented here in the courtroom, who can
3 put biases and prejudices aside, who can follow the law as I
4 instruct. If we fail at seating a group of fair and impartial
5 men and women, then whatever else happens in the case is truly
6 immaterial; we've started out on the wrong foot.

7 So the questions that we ask are meant to give us
8 information from which to gauge whether or not this is an
9 appropriate case for you to serve as a juror on. Some jurors
10 have strong feelings about certain topics or have other things
11 going on in their lives that make it difficult to fulfill that
12 role of being a fair and impartial judge. If any of our
13 questions should make you uncomfortable, and you would prefer
14 to discuss something privately outside the presence of your
15 fellow jurors, please, let us know and we'll bring you in for
16 individualized questioning. We're not trying to make you more
17 uncomfortable than you perhaps are already, but please know the
18 importance of what it is we're doing, and why we're doing it.

19 Ladies and gentlemen, I am going to read to you very
20 briefly, or not so briefly what this case concerns. You can
21 tell from the number of parties and lawyers in the case that
22 it's a rather extensive case. It won't be tried in a week or
23 two. And this is how the parties have described their case.

24 Plaintiffs Andrea Rossi and Leonardo Corporation have
25 brought four claims against Defendants, Tom Darden and

1 J.T. Vaughn, Industrial Heat, and IPH International, as well as
2 Cherokee Investment Partners, LLC. First, the Plaintiffs claim
3 that Industrial Heat and IPH breached a license agreement that
4 the parties had. Specifically, the Plaintiffs Rossi and
5 Leonardo Corporation claim that Industrial Heat and IPH failed
6 to make a required 89 million dollar payment after an agreed
7 upon independent third party validated the underlying
8 technology.

9 Second, in the alternative to their claim for breach
10 of the license agreement, Plaintiffs claim that Industrial Heat
11 and IPH were unjustly enriched by benefits provided to them by
12 the Plaintiffs. Specifically, the Plaintiffs claim that
13 Industrial Heat and IPH successfully sold 4 percent of their
14 company in return for 50 million dollars as a result of
15 Dr. Rossi's efforts in continuing to provide consulting
16 services to Industrial Heat and IPH.

17 Third, the Plaintiffs allege that Defendants
18 Tom Darden and J.T. Vaughn and Cherokee fraudulently induced
19 the Plaintiffs to enter into that license agreement with
20 Industrial Heat by misrepresenting Industrial Heat's ability to
21 pay under the agreement. Plaintiffs claim these Defendants
22 misrepresented that Industrial Heat and Cherokee had funds in
23 excess of 100 million dollars to pay for an E-Cat IP; that upon
24 completion of a guaranteed performance test, Industrial Heat
25 and subsequently IPH would pay the full amount of the license

1 fee; that Industrial Heat and Cherokee are both the same
2 company; and that Industrial Heat was a wholly owned
3 intellectual property holding entity for Cherokee; and that
4 Cherokee would guarantee payment of the license fee by its
5 wholly owned subsidiary Industrial Heat.

6 Last, the Plaintiffs allege that all of the Defendants
7 misappropriated Plaintiff's trade secret and unjustly
8 benefitted.

9 Now for their part, the Defendants,
10 Industrial Heat LLC and IPH International B.V. claim that
11 Andrea Rossi and Leonardo Corporation breached a contract.
12 Specifically, Industrial Heat and IPH claim that the parties
13 entered into a license agreement for certain technology and
14 that it was Plaintiffs who breached the license agreement by
15 failing to show that the technology worked as promised and by
16 failing to deliver all of the know-how about the technology to
17 Industrial Heat and IPH as required by the license agreement.

18 IPH also asserts a separate claim of breach of
19 contract against the Plaintiffs. IPH alleges Plaintiffs also
20 breached the license agreement by disclosing aspects of the
21 E-Cat technology to outsiders, failing to assign certain
22 patents for the technology to IPH, charging Industrial Heat and
23 IPH for patented-related costs that Plaintiffs were supposed to
24 pay, and working on E-Cat technology with companies other than
25 Industrial Heat and IPH.

1 Industrial Heat also asserts a claim for fraudulent
2 inducement against the Plaintiffs and third-party Defendants
3 Henry Johnson and JM Products. This means Industrial Heat
4 claims that Rossi, Leonardo, Johnson, and JM Products convinced
5 Industrial Heat to enter into a contract by making false
6 statements to Industrial Heat. Industrial Heat alleges that
7 Rossi, Leonardo, Johnson, and JM Products convinced Industrial
8 Heat into entering a contract called a term sheet by falsely
9 saying JM Products was a real company operating a production
10 facility in Florida; JM Products had a real commercial use for
11 steam allegedly produced by the E-Cat technology, and that
12 JM Products was associated or affiliated with Johnson Matthey,
13 a large company in England.

14 Industrial Heat and IPH also assert a claim for
15 violation of the Florida Deceptive and Unfair Trade Practices
16 Act against the Plaintiffs and against Johnson, JM Products,
17 James Bass, and Fulvio Fabiani. The Deceptive and Unfair Trade
18 Practices Act is a law that protects people and businesses
19 against deceptive or unfair acts by others. Industrial Heat
20 and IPH allege that Rossi, Leonardo, Johnson, JM Products, Bass
21 and Fabiani violated the law by manipulating Industrial Heat
22 and IPH into sending an E-Cat plant they owned to Florida and
23 then deceiving Industrial Heat and IPH as to what they were
24 doing with the E-Cat plant in Florida.

25 Finally, Industrial Heat asserts a claim for breach of

1 contract against Fabiani and United States Quantum Leap.
2 Industrial Heat entered into a technical consulting agreement
3 with Fabiani and United States Quantum Leap. Industrial Heat
4 claims Fabiani and Quantum Leap breached this agreement by not
5 acting in the best interest of Industrial Heat and not
6 providing Industrial Heat with accurate information and data as
7 they were required to do under a technical consulting
8 agreement.

9 For their part, JM Products and Johnson deny
10 Industrial Heat's claims of fraudulent inducement. They say
11 Industrial Heat negotiated the terms of the agreement and did
12 not include any representations concerning Johnson Matthey in
13 that agreement. JM Products and Johnson say Industrial Heat
14 was aware JM Products was a newly formed entity that was being
15 set up for the purpose of conducting experiments while using
16 the steam generated by the plant.

17 JM Products, Johnson and Bass deny Industrial Heat and
18 IPH's claims that they were engaged in a scheme to deceive the
19 third-party Plaintiffs. JM Products, Johnson, Bass say they
20 did not participate in and are not parties to the license
21 agreement or other agreements between the Plaintiffs and the
22 Defendants. They do not have an interest in the outcome of the
23 testing of the plant and were not responsible for the operation
24 or measurement of the plant. Furthermore, Bass says he did not
25 play any role in Industrial Heat and IPH's decision to move the

1 plant to Florida.

2 Fabiani and Quantum Leap deny they are liable to
3 Industrial Heat and IPH. They assert in defense of the
4 Deceptive and Unfair Trade Practices Act claim that they had no
5 involvement in manipulating Industrial Heat and IPH into
6 sending the plant to Florida. Fabiani and Quantum Leap further
7 say in their defense that while the E-Cat plant was in Florida,
8 they did not engage in any deceptive or improper acts.

9 Fabiani and Quantum Leap also deny they failed to
10 perform in accordance with the duties imposed on them by the
11 technical consulting agreement. They say they properly
12 performed all material terms with Industrial Heat. They also
13 assert they turned over all or substantially all of the data
14 collected during the plant's operation in Doral, and any data
15 not provided was excused by Industrial Heat's failure to make
16 full payment.

17 Ladies and gentlemen, do any of you know anything
18 about this case from anything you may have read, heard or seen?

19 THE PROSPECTIVE PANEL: No.

20 THE COURT: Is there anyone here who, now that you
21 have a very general understanding of what the case is about,
22 believes that you cannot serve as a fair and impartial juror?

23 (No audible response.)

24 THE COURT: Ladies and gentlemen, many of you have
25 served as jurors in other cases. As I emphasized earlier, this

1 is a civil case. It's a dispute among private parties seeking
2 money damages, one from the other and so on.

3 In order to prevail on a claim in a civil dispute such
4 as this one, the party making claim has to prove it by the
5 greater weight of the evidence. Unlike a criminal case where a
6 crime has to be proven beyond all reasonable doubt, here the
7 burden is far less. Here the party asserting the claim has to
8 prove it by 51 percent. So if you are thinking of scales of
9 justice, in order to win on his or her claim or its claim, that
10 party has to persuade you by the greater weight, by 51 percent.

11 Your primary role as judges of the facts will be to
12 judge the credibility and the believability of the witnesses
13 who come before you. It will be up to you to decide whether
14 that witness is telling you the truth. And in doing so, keep
15 in mind a few things, because you judge credibility every day
16 at home and at work, and you make assessments about whether
17 people are being truthful. Ask yourself does that witness
18 stand to gain something from the outcome of this case? Is the
19 witness telling you something now that is different from what
20 he or she may have said on a prior occasion? And if so, why?
21 Is the witness being evasive or difficult in how he or she
22 answers questions? And if so, why? Did the witness have an
23 opportunity to observe everything he or she is talking about or
24 not? I will remind you about some of these factors that are
25 involved in judging credibility, but keep them in mind as you

1 start your service as jurors.

2 There is no room in the role of the jury for feeling
3 sorry for anyone or being angry at anyone or having strong
4 feelings for or against anyone here.

5 Is there anyone here who believes you cannot put
6 biases or prejudices aside if you are asked to serve?

7 (No audible response.)

8 THE COURT: Is there anyone here who has ever heard of
9 the E-Cat or low-energy nuclear reaction?

10 (No audible response.)

11 THE COURT: Is there anyone here who has heard of the
12 term "cold fusion"?

13 I see some hands. All right.

14 Did anyone here see the 60 Minutes episode titled
15 "Cold Fusion, Hot Again"?

16 (No audible response.)

17 THE COURT: Is there anyone here who has any biases or
18 prejudices against people from foreign countries such as Italy?

19 (No audible response.)

20 THE COURT: Is there anyone here who yourself or
21 someone close to you has testified at a trial, provided
22 testimony in a witness chair similar to this one, and given
23 testimony at trial?

24 We have a hand in the back.

25 Yes, ma'am, your juror number or name?

1 PROSPECTIVE JUROR RIVERO: Alexis Rivero.

2 THE COURT: I'm sorry?

3 PROSPECTIVE JUROR RIVERO: Alexis Rivero.

4 THE COURT: Okay. Juror No. 35. Was it you who
5 testified or someone close to you?

6 PROSPECTIVE JUROR RIVERO: I testified.

7 THE COURT: And in what kind of a case was it?

8 PROSPECTIVE JUROR RIVERO: Civil.

9 THE COURT: And was it -- were you a party to the
10 case?

11 PROSPECTIVE JUROR RIVERO: Yes.

12 THE COURT: Okay. And that was the matter involving
13 your niece?

14 PROSPECTIVE JUROR RIVERO: Yes.

15 THE COURT: How long ago did you give that testimony?

16 PROSPECTIVE JUROR RIVERO: That was ten years ago.

17 THE COURT: Okay. Was it before a jury?

18 PROSPECTIVE JUROR RIVERO: Yes, it was.

19 THE COURT: Okay. Were you satisfied with how the
20 case turned out?

21 PROSPECTIVE JUROR RIVERO: Yes.

22 THE COURT: And your case, to be clear, or that case
23 was handled in the state court not the Federal Court?

24 PROSPECTIVE JUROR RIVERO: Correct.

25 THE COURT: Okay. Thank you, ma'am.

1 PROSPECTIVE JUROR RIVERO: You're welcome.

2 THE COURT: Anyone else?

3 Mr. Blanco?

4 PROSPECTIVE JUROR BLANCO: Yes, Felipe Blanco.

5 Not -- I just wanted to clarify, not in a case but in
6 various civil trials as the representative of a bank or a
7 court-appointed guardian of property, I have been deposed in
8 civil cases, but they all settled.

9 THE COURT: All right. So you have been seated in
10 front of a court reporter, you have had to answer questions on
11 direct and cross-examination?

12 PROSPECTIVE JUROR BLANCO: Correct.

13 THE COURT: All right. And while you have the
14 microphone, you also wrote about those matters that you have
15 given testimony in, but you also wrote about an auto accident.
16 Was that your own?

17 PROSPECTIVE JUROR BLANCO: That's correct.

18 THE COURT: And did you testify as well in a
19 deposition there?

20 PROSPECTIVE JUROR BLANCO: No.

21 THE COURT: Okay. And are you satisfied with how it
22 was handled?

23 PROSPECTIVE JUROR BLANCO: Yes.

24 THE COURT: You indicate that you work regularly with
25 plaintiff attorneys in civil lawsuits?

1 PROSPECTIVE JUROR BLANCO: Yes. As a financial
2 advisor over the last 20 years, I have developed a relationship
3 or a niche or a specialty in working with plaintiffs' attorneys
4 typically on either medical malpractice cases, wrongful death,
5 where I assist them in doing the financial calculations when
6 they are prepping for trial. And then I have sat in multiple
7 mediations throughout the years where I have -- always on the
8 side of the plaintiff. In some cases, as I mentioned in my
9 questionnaire, because the person was disabled, the judge, the
10 probate judge named the institution that I worked for at the
11 time as a guardian of the property for -- for the individual
12 that was disabled, and therefore I became -- the institution
13 became the *de facto* plaintiff.

14 THE COURT: Any biases against lawyers who practice
15 defense work?

16 PROSPECTIVE JUROR BLANCO: I have always been -- and I
17 want to be as fair as possible in this statement. I have been
18 involved with the plaintiff side for the last 20 years. In
19 most of the cases that I deal with are catastrophic injury
20 cases, so I'm sure there is lawsuits, frivolous lawsuits that
21 go on in those cases, but in the cases that I have been
22 involved, it was always a catastrophic or a real damage.

23 So I would think that -- I would hope that I would be
24 fair. But in disclosure, I've always been on the plaintiff
25 side for the last 20 years. I just want to be as upfront as

1 possible.

2 THE COURT: Well, the lawyers who are only
3 defending -- certainly the lawyers for the Defendants are also
4 suing, so they are wearing both the Plaintiff hat and the
5 Defendant hat.

6 PROSPECTIVE JUROR BLANCO: Understood.

7 THE COURT: There are some parties here that are only
8 defending.

9 PROSPECTIVE JUROR BLANCO: Understood.

10 THE COURT: Can you be fair to them?

11 PROSPECTIVE JUROR BLANCO: I would think so.

12 THE COURT: Thank you.

13 That's Ms. Duquesne?

14 PROSPECTIVE JUROR DUQUESNE: Yes. I think the
15 question was not just you having been but also someone close to
16 you?

17 THE COURT: Correct.

18 PROSPECTIVE JUROR DUQUESNE: So I think I answered
19 that my father is regularly a defendant, and I honestly don't
20 know if he has testified in a trial, but he has been deposed
21 many times as a defendant in lawsuits related to his job.

22 THE COURT: And what -- can you tell us the name of
23 his business?

24 PROSPECTIVE JUROR DUQUESNE: It's DDA Engineering,
25 structural engineering.

1 THE COURT: Structural engineering firm. All right.
2 And is there anything about his experience in defending suits
3 and being deposed --

4 PROSPECTIVE JUROR DUQUESNE: Yes.

5 THE COURT: -- that makes you biased for or against
6 any of these parties. As I said to Mr. Blanco, the Defendants
7 are also suing, so.

8 PROSPECTIVE JUROR DUQUESNE: Right. I mean, I was
9 just telling him yesterday about where I was coming, I think I
10 got a 15-minute earful about frivolous lawsuits, right. I
11 think I spent my lifetime kind of hearing what a challenge it
12 is to kind of have to deal with defending lawsuits, how
13 expensive it makes his business, how untenable it makes it over
14 time. So I do think there is probably a bit of a bias towards
15 the defendants in the sense that, you know, I think, I've spent
16 forty years of my life, I think, listening to this.

17 THE COURT: Well, if you have a bias in favor of the
18 defendants, you have a bias in favor of everyone there. They
19 are all defendants.

20 PROSPECTIVE JUROR DUQUESNE: I guess that's fair,
21 right? I mean, they are constantly fighting. You know, but
22 definitely I guess I'd say a bias against frivolous lawsuits.

23 THE COURT: All right. Thank you, ma'am.

24 Is there anyone here who, either yourself or someone
25 close to you, has any experience in the valuation of new

1 technologies?

2 That's Mr. Roque?

3 PROSPECTIVE JUROR ROQUE: Yes, ma'am.

4 THE COURT: And can you tell us about your experience?

5 PROSPECTIVE JUROR ROQUE: Well, my -- I have worked
6 for the power company, now, for 44 years. And for the last 14
7 years, I was looking at new technology and evaluating that for
8 emerging markets and also for -- for application on our system.

9 THE COURT: Excellent. Thank you very much.

10 PROSPECTIVE JUROR ROQUE: Okay.

11 THE COURT: Anyone else?

12 Is there anyone here who, either yourself or someone
13 close to you, has solicited investors to invest in business
14 ventures, including new technology?

15 Is there anyone -- oh, Mr. Roque, as well. All right.

16 PROSPECTIVE JUROR ROQUE: Yes, ma'am. Alberto Roque.
17 We invest in new technology, but as part of the Koch
18 corporation.

19 THE COURT: Correct. Thank you.

20 Is there anyone here who has ever tried to break a
21 contract? You entered into a contract and then wanted to break
22 it or did break it?

23 All right. That's Ms. Bennett?

24 PROSPECTIVE JUROR BENNETT: Yes. A cable company. I
25 had a contract with them and cancelled because I couldn't

1 really pay like that, so early termination fees and things like
2 that. I ended up just, like, working out a payment plan to pay
3 it off.

4 THE COURT: Thank you. And while you have the
5 microphone, you wrote about your mother who was involved in a
6 lawsuit as a plaintiff?

7 PROSPECTIVE JUROR BENNETT: Yes.

8 THE COURT: Did you -- did her case go to trial?

9 PROSPECTIVE JUROR BENNETT: No, they are still working
10 with the adjusters.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR BENNETT: Because it was a car
13 accident with a dump truck, so they are still working that out
14 right now.

15 THE COURT: Okay. And is there anything about the
16 experience she is going through that will affect your ability
17 to judge this case fairly?

18 PROSPECTIVE JUROR BENNETT: No, not at all.

19 THE COURT: Thank you.

20 We have a hand in the back.

21 PROSPECTIVE JUROR OROZCO: Hello.

22 THE COURT: Hello. No, you turned it off, I think.

23 PROSPECTIVE JUROR OROZCO: Hello.

24 THE COURT: Oh, there we go.

25 PROSPECTIVE JUROR OROZCO: Okay. That's good.

1 THE COURT: Your name or number?

2 PROSPECTIVE JUROR OROZCO: Yes. Jesus Orozco.

3 THE COURT: All right. Juror No. 34. Yes.

4 PROSPECTIVE JUROR OROZCO: So as an IT consultant, I
5 am always constantly dealing with clients, you know, cancelling
6 services to move to other companies in regards to
7 communications and computer services. So I am always dealing
8 with clients wanting to move to another company, looking for, I
9 don't know, loopholes and try to cancel a contract and such.

10 THE COURT: All right. Thank you very much.

11 Juror number or name?

12 PROSPECTIVE JUROR KOBROSSI: My name is Elizabeth
13 Kobrossi.

14 THE COURT: All right.

15 PROSPECTIVE JUROR KOBROSSI: I don't know if this has
16 any relevance whatsoever, but my sister is an attorney. She is
17 a corporate attorney with Sullivan Cromwell, and she deals with
18 contracts and negotiations all day. So I don't know if that
19 has any bearing on this, whatsoever, but.

20 THE COURT: Thank you. And that's Ms. Kobrossi,
21 Juror 29. So your sister is an attorney.

22 PROSPECTIVE JUROR KOBROSSI: Yes.

23 THE COURT: What's the firm, again, that she works
24 for?

25 PROSPECTIVE JUROR KOBROSSI: Sullivan & Cromwell.

1 THE COURT: Thank you.

2 Is there anyone here who has ever been involved in a
3 lawsuit that involved claims of breach of contract or fraud or
4 deceptive and unfair trade practices?

5 We have a hand up here. We are keeping Officer Latour
6 on his toes today.

7 COURT SECURITY OFFICER: I'm up to it, Judge.

8 THE COURT: Juror No. 7, Mr. White.

9 PROSPECTIVE JUROR WHITE: Yes, I was involved with a
10 class action lawsuit against Bank of America for overdrafts.

11 THE COURT: All right. And were you satisfied with
12 how it was resolved?

13 PROSPECTIVE JUROR WHITE: No.

14 THE COURT: You're not?

15 PROSPECTIVE JUROR WHITE: No.

16 THE COURT: You got very little at the end?

17 PROSPECTIVE JUROR WHITE: The lawyers collected the
18 money, to be honest.

19 THE COURT: And how long ago was that experience that
20 you went through?

21 PROSPECTIVE JUROR WHITE: Maybe 10 years ago.

22 THE COURT: Okay. Thank you very much.

23 PROSPECTIVE JUROR WHITE: Okay.

24 THE COURT: Yes.

25 PROSPECTIVE JUROR BLANCO: Excuse me. When I worked

1 before I was a financial advisor --

2 THE COURT: That's Mr. Blanco, Juror 14.

3 PROSPECTIVE JUROR BLANCO: Correct. I worked for a
4 bank on the commercial lending side. And on numerous
5 occasions, they were claims by the borrower where the bank
6 tried to foreclose or call a loan, and there were accusations
7 on both sides. I guess you could call it a breach of contract
8 or breach of agreement.

9 THE COURT: All right. Thank you.

10 Is there anyone here who, either yourself or someone
11 close to you, owns or has owned a business?

12 All right. We have some hands here.

13 Ms. Bennett, you have? Let's start with you at the
14 end, and we'll just pass the microphone down.

15 PROSPECTIVE JUROR BENNETT: Yes. My older sister owns
16 a beauty salon in Miramar. She still owns it.

17 THE COURT: Thank you.

18 PROSPECTIVE JUROR BENNETT: You're welcome.

19 THE COURT: And that's Mr. Roque?

20 PROSPECTIVE JUROR ROQUE: Yes. My cousin owns a dry
21 clean business, several stores.

22 THE COURT: Thank you. If you would just move the
23 microphone done. Very good.

24 PROSPECTIVE JUROR LOPEZ: Ulysses Lopez.

25 THE COURT: Yes.

1 PROSPECTIVE JUROR LOPEZ: And my father owns a wood
2 floor company.

3 THE COURT: Very good. Thank you.

4 PROSPECTIVE JUROR DUQUESNE: Beatriz Duquesne. My
5 father owns an engineering firm.

6 THE COURT: Correct. All right.

7 PROSPECTIVE JUROR BLANCO: My son-in-law was involved
8 in the real estate business. Him and his father owned a small
9 real estate company.

10 THE COURT: Very good. Thank you.

11 You might want to pass it down to Officer Latour,
12 unless you want to see him walking some more.

13 All right. We have some hands in the back. Lots of
14 folks there.

15 In the first row. Yes, sir, your name?

16 PROSPECTIVE JUROR BRAVO: I'm Alexander Bravo, and I'm
17 No. 19, I think. My father used to own a bicycle shop, like, a
18 few years ago, but then something happened, it wasn't
19 important.

20 THE COURT: Okay. While you have the microphone,
21 Mr. Bravo, you are studying -- you are working as well as
22 studying in college. What major are you pursuing?

23 PROSPECTIVE JUROR BRAVO: Hospitality and tourism.

24 THE COURT: Okay. And are you working full time?

25 PROSPECTIVE JUROR BRAVO: Part, full time, part --

1 part time and full time, it's weird -- a weird combination.

2 THE COURT: Okay. And are you in school during the
3 summer?

4 PROSPECTIVE JUROR BRAVO: No, but I am about to start
5 up, like, in a few weeks.

6 THE COURT: How many -- how few is a few weeks?

7 PROSPECTIVE JUROR BRAVO: Well, I have to decide my
8 classes today, but it's weird -- it's a weird situation. I'm
9 sorry.

10 THE COURT: Okay. So if you were selected as a juror
11 here, would you be able to be with us during the daytime?

12 PROSPECTIVE JUROR BRAVO: Probably not, be to honest.

13 THE COURT: Because of?

14 PROSPECTIVE JUROR BRAVO: Because of work and school.

15 THE COURT: Okay. So are your classes going to be
16 during the day?

17 PROSPECTIVE JUROR BRAVO: Yes.

18 THE COURT: You are going to make sure they are during
19 the day now, right?

20 PROSPECTIVE JUROR BRAVO: I mean, I don't know.

21 THE COURT: All right. You have a plan. All right.
22 Okay. Thank you very much.

23 PROSPECTIVE JUROR JOMARRON-GOMEZ: Hi. My name is
24 Yenja Jomarron-Gomez. I own a small consulting business for
25 medical offices.

1 THE COURT: Okay. You own it now, presently?

2 PROSPECTIVE JUROR JOMARRON-GOMEZ: Yes.

3 THE COURT: Okay. And while you have the microphone,
4 you also wrote about being a defendant in a lawsuit?

5 PROSPECTIVE JUROR JOMARRON-GOMEZ: Yes. And I didn't
6 have to go to court or anything. The attorneys took care of
7 everything.

8 THE COURT: Are you satisfied with how it was handled?

9 PROSPECTIVE JUROR JOMARRON-GOMEZ: Yes.

10 THE COURT: Okay. Thank you, ma'am.

11 PROSPECTIVE JUROR CASTILLO: Good afternoon. My name
12 is Gabriella Castillo. My husband owns a furniture design
13 company, and together we are independent business owners of
14 network marketing.

15 THE COURT: Very good. And while you have the
16 microphone, Ms. Castillo, you did reach a verdict in a civil
17 lawsuit? How long ago was that?

18 PROSPECTIVE JUROR CASTILLO: I believe it was seven
19 years.

20 THE COURT: Okay. Was that in state court?

21 PROSPECTIVE JUROR CASTILLO: Yes.

22 THE COURT: Okay. Is there anything about your jury
23 experience that would affect your ability to do it one more
24 time and be a fair judge?

25 PROSPECTIVE JUROR GOMEZ: No. Not at all.

1 THE COURT: Thank you, ma'am.

2 PROSPECTIVE JUROR CALHOUN: Annette Calhoun. And my
3 husband owns a medical billing company.

4 THE COURT: That's Juror 24. Thank you, ma'am.

5 PROSPECTIVE JUROR MEILAN: Michelle Meilan. My
6 brother-in-law owns a graphic design firm, and my ex-in-laws
7 have a limousine and antique car company.

8 THE COURT: While you have the microphone, Ms. Meilan,
9 you also served on a jury that reached a verdict in state
10 court. How long ago was that?

11 PROSPECTIVE JUROR MEILAN: I would say eight to ten
12 years ago.

13 THE COURT: Is there anything about that jury
14 experience that would affect your ability to judge this case
15 fairly?

16 PROSPECTIVE JUROR MEILAN: No.

17 THE COURT: Thank you, ma'am.

18 Someone else in that row?

19 PROSPECTIVE JUROR KOBROSSI: Elizabeth Kobrossi. My
20 brother-in-law does own a pressure cleaning company. And my
21 entire family is full of cousins who have, you know,
22 contracting businesses, and there are a lot of small business
23 ventures in my family.

24 THE COURT: Thank you very much. That's Ms. Kobrossi,
25 Juror 29.

1 And, sir, your name or number?

2 PROSPECTIVE JUROR OROZCO: Yes. I'm 34, Jesus Orozco.

3 THE COURT: Yes.

4 PROSPECTIVE JUROR OROZCO: I own an IT consulting
5 business.

6 THE COURT: Very good. Thank you.

7 PROSPECTIVE JUROR DIAZ: Ron Diaz. There is a number
8 of things I guess I have to confess here.

9 THE COURT: Well, we know them, but I was waiting to
10 hear from you, Mr. Diaz.

11 PROSPECTIVE JUROR DIAZ: As -- in my -- of course my
12 employment as a claims adjuster, I have been involved in a lot
13 of suits and defense of defendants who've been insured,
14 obviously. And also since then, I've become an underwriter,
15 and now I am in situations where the company gets sued for
16 breach of contract, and I am involved in the arbitration and
17 settlement of those disputes.

18 My family is police officers. That matters to some of
19 you. I don't know if it might in a civil case. I have
20 defended in an assault case for a family member previously. My
21 brother owns a cleaning company, he's an ex-police officer. My
22 brother-in-law is a lawyer. He owns his own business. And my
23 sister-in-law is a physical therapist. She owns her own
24 business. I don't know. My sister-in-law's a judge, my police
25 officer brother's wife. So anyway, so there's a lot of things

1 there.

2 All that said, I believe I can be unbiased and neutral
3 in the case.

4 THE COURT: Would that be Judge Soto? No.

5 PROSPECTIVE JUROR DIAZ: No, it's not here. It's in
6 Essex County, New Jersey.

7 THE COURT: And thank you for all of those
8 disclosures. And now that you have fully disclosed them, can
9 you be fair to all sides in this case?

10 PROSPECTIVE JUROR DIAZ: Yes. I don't have any -- I
11 don't have any dog in this race.

12 THE COURT: Okay. Thank you.

13 PROSPECTIVE JUROR SABORIO: Blanca Saborio. My
14 brother-in-law is an immigration lawyer.

15 THE COURT: Very good. That is Juror No. 40. Thank
16 you.

17 PROSPECTIVE JUROR CIOCCI: Hi. My name is Marisa
18 Ciocci. I'm a special education teacher.

19 I had a case in which I signed a contract with a
20 special education private school. They did not deliver the
21 education that they stated that they were going to give. The
22 owner said that he would be teaching my son directly, and that
23 was not true. We entered into a case in which he tried to sue
24 me, um, for a large amount of money, and we had to settle out
25 of court.

1 My father was also an Italian immigrant, and I am
2 sorry, but I would be biased. I'm sorry. I am proud -- I am
3 very proud of my Italian heritage, so I would be very biased by
4 the deception and by the cultural aspect.

5 THE COURT: Thank you.

6 Okay. Let me just emphasize, ladies and gentlemen,
7 there are no facts that have been presented to you. There is
8 no evidence that has been presented to you. All I have done is
9 summarized the parties' claims and defenses. It will be the
10 job of that jury selected by the parties to decide those facts
11 and decide credibility and believability and whether the claims
12 are, in fact, proven or not by the greater weight of the
13 evidence.

14 I have some additional questions for some of you. I
15 would ask Officer Latour to bring the microphone to Juror
16 No. 3, Mr. Rosado.

17 Mr. Rosado, you wrote about some money owed. Were you
18 a plaintiff in the lawsuit or were you --

19 PROSPECTIVE JUROR ROSADO: Yes. Yes, I was.

20 THE COURT: And is that lawsuit over?

21 PROSPECTIVE JUROR ROSADO: Um, actually it never made
22 it to trial, you know, we settled.

23 THE COURT: Okay. Are you satisfied with how it was
24 handled?

25 PROSPECTIVE JUROR ROSADO: Not exactly, but it could

1 have been worse.

2 THE COURT: Okay. And is there anything about that
3 experience that makes you biased in favor of or against any of
4 the parties here?

5 PROSPECTIVE JUROR ROSADO: No, not really.

6 THE COURT: Thank you.

7 And Juror No. 17, Ms. Dingle. Ms. Dingle, you also
8 served as a juror one time previously. Did you -- did the jury
9 deliberate together at the end of the case and decide a
10 verdict?

11 PROSPECTIVE JUROR DINGLE: Yes.

12 THE COURT: Was it a civil case or a criminal case?

13 PROSPECTIVE JUROR DINGLE: Civil.

14 THE COURT: And how long ago was that, ma'am,
15 approximately?

16 PROSPECTIVE JUROR DINGLE: Twenty years.

17 THE COURT: Okay. Is there anything about that
18 experience that would affect your ability to judge this case
19 fairly?

20 PROSPECTIVE JUROR DINGLE: No.

21 THE COURT: Thank you, ma'am.

22 Juror 21, Ms. Vicent. Ms. Vicent, I was not able to
23 read very clearly the nature of your past work history, but I
24 take it at one point you worked for an attorney's office.

25 PROSPECTIVE JUROR VICENT: Yes. I'm a pharmacist, and

1 it was in my second year of law school, and I worked with these
2 attorneys for like a year and a half.

3 THE COURT: Was that here in --

4 PROSPECTIVE JUROR VICENT: No, in Venezuela.

5 THE COURT: In Venezuela. And did you ever finish
6 your law studies?

7 PROSPECTIVE JUROR VICENT: No.

8 THE COURT: And is there anything about that
9 experience of working with the attorney or attending law school
10 in Venezuela that would affect your ability to judge this case
11 fairly?

12 PROSPECTIVE JUROR VICENT: I'm not completely sure.

13 THE COURT: What causes you concern?

14 PROSPECTIVE JUROR VICENT: I have my doubts about the,
15 you know, criminal justice system and how fair it is.

16 THE COURT: This is not a criminal case.

17 PROSPECTIVE JUROR VICENT: Yes, I know but --

18 THE COURT: Well, you are in a U.S. court, not in a
19 Venezuelan court. Let me start with that. Does that give you
20 any greater comfort?

21 PROSPECTIVE JUROR VICENT: Like I said, I have my
22 doubts.

23 THE COURT: Can you be fair if you are selected as a
24 juror in this case? Can you follow your oath, apply the law
25 that I instruct and hold the parties to their burdens of proof?

1 PROSPECTIVE JUROR VICENT: Yes.

2 THE COURT: Thank you, ma'am.

3 Juror 38, Mr. Hein.

4 PROSPECTIVE JUROR HEIN: Ms. Hein.

5 THE COURT: Oh, Ms. Hein. I'm sorry.

6 Ms. Hein, you wrote about your husband who's a
7 construction superintendent for Cherokee Industries?

8 PROSPECTIVE JUROR HEIN: Right. It's a local
9 construction company here in Miami-Dade County.

10 THE COURT: Okay. And you also wrote about the issue
11 involving the foreclosure.

12 PROSPECTIVE JUROR HEIN: Right.

13 THE COURT: And the other lawsuit. Any -- is there
14 anything about those prior experiences in litigation that would
15 affect your ability to judge this case fairly?

16 PROSPECTIVE JUROR HEIN: Not at all.

17 THE COURT: Thank you, ma'am.

18 Ladies and gentlemen, let me talk to you about the
19 length of the trial. Given what you know already, you know
20 this case cannot be tried in a week or two. As I said before,
21 it's my job to hold the attorneys to being as efficient as
22 possible and not wasting your time. The parties anticipate
23 that we will conclude this case in approximately five weeks.
24 That takes you beyond the two-week period that the jury summons
25 asked you to be available for, certainly.

1 We know we are in the summer, and we know some of you
2 have vacation plans. I can tell you the court is closed next
3 Monday and Tuesday because of the July 4th weekend. So we will
4 not meet on those days. We give you breaks for lunch and
5 morning recess and an afternoon recess. I don't keep you here
6 past 5 p.m., nor do I bring you before 9.

7 Is there anyone here who, now that you understand what
8 the schedule is, believes that you cannot serve for the
9 duration of the trial?

10 Why don't we start in the back of the room since
11 Officer Latour is there.

12 PROSPECTIVE JUROR SABORIO: Blanca Saborio. I have
13 summer vacation. Already I've bought plane tickets.

14 THE COURT: For what dates?

15 PROSPECTIVE JUROR SABORIO: July 17th.

16 THE COURT: July 17th. Thank you, ma'am.

17 PROSPECTIVE JUROR SABORIO: The week of July 17th.

18 PROSPECTIVE JUROR OROZCO: Jesus Orozco.

19 THE COURT: Juror 34.

20 PROSPECTIVE JUROR OROZCO: Yes. I have also a rodeo
21 trip planned for the week of July 15th through the 21st, I
22 believe. I also own a business, and it would be very
23 inconvenient right now because it is very tight right now with
24 the schedule.

25 THE COURT: Thank you, Mr. Orozco.

1 PROSPECTIVE JUROR RIVERO: I'm --

2 THE COURT: I'm sorry. I can't hear you.

3 PROSPECTIVE JUROR RIVERO: Alexis Rivero. I also have
4 a planned vacation from July 15th to the 29th.

5 THE COURT: Thank you, ma'am.

6 That's Juror 35.

7 PROSPECTIVE JUROR DIAZ: Yeah, I have a vacation.

8 THE COURT: Your name and number again?

9 PROSPECTIVE JUROR DIAZ: I'm sorry, Ron Diaz.

10 THE COURT: Juror 30?

11 PROSPECTIVE JUROR DIAZ: 30. Vacation planned from
12 the 14th until the 30th of July. And it is a little bit of a
13 burden on my business, but I could ignore that part. But I
14 have flights for the 14th through the 30th, returning on the
15 30th.

16 THE COURT: Thank you very much.

17 Yes, ma'am.

18 PROSPECTIVE JUROR CALHOUN: And --

19 THE COURT: I'm sorry.

20 24.

21 PROSPECTIVE JUROR CALHOUN: I have vacation planned
22 from Friday for ten days, and my kids are out for summer, so I
23 have everything confirmed.

24 THE COURT: Thank you.

25 PROSPECTIVE JUROR CALHOUN: Thanks.

1 PROSPECTIVE JUROR MORRISON: My name is Lavern
2 Morrison. I work at night. I'm a CNA. And my daughter just
3 had an operation on both arms.

4 THE COURT: That's Juror 27.

5 PROSPECTIVE JUROR MORRISON: Correct. So I have to
6 take care of her.

7 THE COURT: And how old is your daughter?

8 PROSPECTIVE JUROR MORRISON: She is 23.

9 THE COURT: 23. While you are here today, who's
10 taking care of her today?

11 PROSPECTIVE JUROR MORRISON: I have to do it before I
12 leave. I have to dress her arms and everything before I leave.

13 THE COURT: All right. Thank you, ma'am.

14 PROSPECTIVE JUROR MORRISON: You're welcome.

15 PROSPECTIVE JUROR KOBROSSI: I'm Elizabeth Kobrossi.
16 I work for a small commercial insurance agency. We are only
17 five employees. It would be an extreme hardship for me to take
18 five weeks because I handle all of the money coming in and out
19 of our agency. And that's everything from deposits to cutting
20 out customer checks to doing the payroll. Today is Wednesday.
21 I should be doing the payroll right now. So I'm going to have
22 to go after here to get that done.

23 I don't even take two weeks' vacation. I try to
24 schedule all of my vacations with the weekends in the middle so
25 not to take that much time away. It is an extreme hardship,

1 not only for me but my boss and the business.

2 THE COURT: Thank you very much, ma'am.

3 PROSPECTIVE JUROR RABAGO: Yes. I'm Mairelys. I work
4 for a small pharmacy in Miami Beach. They make clear they
5 wouldn't pay me for my stay here. And I'm the one who runs the
6 pharmacy. I'm the pharmacist, the technician who does
7 everything. And right now it is difficult for them to find a
8 pharmacists.

9 THE COURT: All right. Thank you, ma'am.

10 PROSPECTIVE JUROR CASTILLO: And Gabriela Castillo. I
11 am a teacher, and we still have classes in the summer; so I
12 wouldn't get paid for five weeks.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR JOMARRON: Hi, I'm Yenja Jomarron.
15 I am an administrator for a dermatology practice. My doctor,
16 which is a sole practitioner, will be going on vacation this
17 Friday until the 30th of the month, so I will have to be in the
18 office with the rest of the staff because there is no other
19 directions.

20 THE COURT: All right. Thank you.

21 PROSPECTIVE JUROR JIMENEZ: My name is Amaury Jimenez.
22 I the City of protocol. I work from the Tranchuco Company, one
23 of the owners is out of the country. And I am starting every
24 day at 6 a.m. and I don't know the time finishing. I don't
25 know, 6, 7 p.m.

1 THE COURT: I'm sorry. Can you give me your name
2 again? Amaury.

3 PROSPECTIVE JUROR JIMENEZ: Amaury.

4 THE COURT: Amaury Jimenez, 23. Thank you.

5 PROSPECTIVE JUROR JIMENEZ: Thank you.

6 PROSPECTIVE JUROR MARTINEZ: My name is Raiza. I
7 don't know my number.

8 THE COURT: Your last name, please?

9 PROSPECTIVE JUROR MARTINEZ: Martinez.

10 THE COURT: 39.

11 PROSPECTIVE JUROR MARTINEZ: 39, okay. I work in the
12 credit union and we are short-staffed, so --

13 THE COURT: Okay.

14 PROSPECTIVE JUROR MARTINEZ: -- I think they need me
15 to work.

16 THE COURT: Okay. Thank you, ma'am.

17 PROSPECTIVE JUROR JEAN: My name is Ditelia Jean, and
18 I have two kids. I already planned to go to vacation with
19 them.

20 THE COURT: When?

21 PROSPECTIVE JUROR JEAN: On July 19. And next week we
22 have plans to go into Orlando.

23 THE COURT: London?

24 PROSPECTIVE JUROR JEAN: Orlando.

25 THE COURT: Oh, Orlando. Okay. Thank you.

1 PROSPECTIVE JUROR ETIENNE: My name is Etienne. I
2 work as an EMT for American Ambulance. They are short-staffed,
3 and I pay school out of pocket and I don't think I can take
4 five weeks.

5 THE COURT: All right. Thank you.

6 PROSPECTIVE JUROR ROSADO: Hi, my name's Rafael
7 Rosado. I recently requested to be excused from the jury based
8 on the fact that I have a nephew that passed away. He was
9 stationed in Fort Knox. I -- I drove up there and spent two
10 days up there, came down, and I'm here today, but I have plans
11 to go and lay him to rest the 7th of next month. And frankly,
12 I also have to take care of my parents, my father which lives
13 alone in my country, in Puerto Rico, for a week or so until my
14 sisters can go and take care of him so I can fly back.

15 Some -- you know, so this is out of my hands. I don't
16 know exactly when she is going to be back, so I'm thinking
17 week, week and a half.

18 THE COURT: All right. Thank you.

19 PROSPECTIVE JUROR ROSADO: You're welcome.

20 PROSPECTIVE JUROR MARCHIOLA: My name is Don
21 Marchiola, and I fish. I have already canceled one trip from
22 the 29th to the 6th and they are going to want to reschedule
23 that. And I have got like -- I'm semiretired and I have old
24 bosses that call me and want me to go here, there, everywhere
25 for them.

1 THE COURT: All right. Thank you.

2 PROSPECTIVE JUROR MARTINEZ: I think I am No. 16.

3 THE COURT: Yes. Martinez.

4 PROSPECTIVE JUROR MARTINEZ: I have a sister coming
5 from Texas this coming weekend. I haven't seen her in ten
6 years. She is staying in my house for a week.

7 THE COURT: Coming down from?

8 PROSPECTIVE JUROR MARTINEZ: From Texas.

9 THE COURT: Okay. When does she arrive?

10 PROSPECTIVE JUROR MARTINEZ: This weekend.

11 THE COURT: This weekend. And she will be there for
12 one week?

13 PROSPECTIVE JUROR MARTINEZ: For one week. I haven't
14 seen her for ten years.

15 THE COURT: Thank you, ma'am.

16 PROSPECTIVE JUROR DINGLE: Hi. I think I am No. 17,
17 Debra Dingle.

18 THE COURT: Dingle, yes.

19 PROSPECTIVE JUROR DINGLE: Yes. This coming Friday, I
20 have a vacation. I am not trying to get out of serving. I
21 would love to serve. But anyways, I have a vacation Friday but
22 I come back Monday. And July 11, I have a mentally challenged
23 sister that I take to her appointments, and that's it.

24 THE COURT: All right. Thank you, ma'am. And by
25 Friday, you mean you were not planning on -- you were planning

1 on leaving this Friday and being gone somewhere?

2 PROSPECTIVE JUROR DINGLE: Yeah, yes, Friday morning.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR ORDIZ: Hi, my name is Patricia
5 Ordiz. I have vacation from Friday to Tuesday. And also I am
6 accounting/consulting for a public accounting company, and I
7 have a business trip on the week of July 17th out of the
8 country.

9 THE COURT: All right. Thank you.

10 PROSPECTIVE JUROR BLANCO: Two things that I want to
11 mention. One is I had vacation scheduled last week that we
12 were thinking of rescheduling for the week of the 10th due to a
13 medical emergency that happened in my family that I could
14 elaborate but I would rather do it in private.

15 In addition to that, I know what I am about to say
16 sounds a little bit odd, but I work for Bank of America,
17 obviously, a very large company, but within Merrill Lynch how
18 Merrill Lynch works is each individual has a team. We don't
19 get a salary. His income is based on the management of those
20 relationships.

21 Because I work with a lot of families with special
22 needs, guardians and so on and so forth, I'm the only one that
23 really maintains that -- that relationship with those clients.

24 The other person on my team is my daughter, and she is
25 what I would like to explain afterwards, the medical situation

1 that we had that caused -- could cause a potential problem for
2 both.

3 THE COURT: And what was the week that you were on
4 vacation?

5 PROSPECTIVE JUROR BLANCO: Last week. We were
6 scheduled for last week --

7 THE COURT: And now you are scheduled for the week --

8 PROSPECTIVE JUROR BLANCO: We haven't scheduled yet
9 because when I tell you what the situation is, it is contingent
10 upon an issue.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR DUQUESNE: Beatriz Duquesne,
13 Juror 13. I have vacation scheduled from July 21st to
14 July 31st. And then also from a work perspective, I work for a
15 big company, but we're getting to a very busy time where we are
16 presenting strategic plans to our board on July 13th and 14th,
17 and there is a lot of work that has to go into those days. And
18 also quarterly -- quarter end results. So I leave on vacation
19 the day we kind of sign off on all the numbers.

20 THE COURT: Thank you.

21 PROSPECTIVE JUROR LOPEZ: Juror 12. I'm okay. Just
22 want to make sure that August 5th -- hopefully, it doesn't go
23 past that, but that's when I go on vacation.

24 THE COURT: I guarantee that.

25 PROSPECTIVE JUROR LOPEZ: Okay. I'm good.

1 PROSPECTIVE JUROR FERNANDEZ DE CASTRO: Hi, I'm Pablo
2 Fernandez, Juror 10. My issue is that I have a vacation
3 scheduled July 23rd. It's a cruise so it's hard to change.
4 THE COURT: It's hard to hold the ship.
5 PROSPECTIVE JUROR FERNANDEZ: Yes.
6 THE COURT: All right. Okay.
7 PROSPECTIVE JUROR ROQUE: Alberto Roque. And I have
8 scheduled vacation and surgery for my wife starting the week of
9 the 21st.
10 THE COURT: July 21st? Okay.
11 PROSPECTIVE JUROR ROQUE: Yes. Two weeks from that.
12 THE COURT: All right. Thank you.
13 We have some more hands in the back.
14 PROSPECTIVE JUROR MEILAN: The juror that mentioned
15 the work trip triggered that I have a work trip.
16 THE COURT: I'm sorry. Your name and number?
17 PROSPECTIVE JUROR MEILAN: I'm sorry. Michelle
18 Meilan. I'm flying to St. Petersburg for work on July 17th and
19 18th.
20 THE COURT: Just one second.
21 Juror No. 25, you are flying to St. Petersburg,
22 Russia?
23 PROSPECTIVE JUROR MEILAN: No, Florida.
24 THE COURT: Florida. Why do I get these exotic ideas?
25 PROSPECTIVE JUROR MEILAN: I wish.

1 THE COURT: So you are leaving for St. Petersburg,
2 Florida, when?

3 PROSPECTIVE JUROR MEILAN: July 17th and 18th.

4 THE COURT: And that is a trip for what company?

5 PROSPECTIVE JUROR MEILAN: I work for the Early
6 Learning Coalition of Miami-Dade-Monroe.

7 THE COURT: All right.

8 PROSPECTIVE JUROR ALONSO: Hi, I'm Guillermo Alonso
9 and I am Juror number?

10 THE COURT: 36.

11 PROSPECTIVE JUROR ALONSO: 36. Yes, I don't have,
12 vacation but I do have a lot of medical appointments that are
13 coming up, and I can discuss that in a closed session if you
14 like.

15 THE COURT: All right. Thank you.

16 PROSPECTIVE JUROR PEACHEY: My name is William Peachey
17 and I have a closing on my house here in Dade County. I hope
18 to have it sold this week and move out of Dade County in the
19 next two months, which means I have got to do a lot of packing
20 and getting out of this overcrowded city to Gainesville,
21 Florida.

22 THE COURT: Florida. All right. Thank you.

23 Ladies and gentlemen, some of the attorneys will be
24 asking you some follow-up questions. We will take a break in
25 about 20 minutes. We'll begin with the Plaintiffs. They have

1 15 minutes to talk to you.

2 MR. LUKACS: May it please the Court, Counsel, ladies
3 and gentlemen. Good afternoon. Again, I'm John Lukacs. And
4 I'll repeat myself by saying --

5 THE COURT: I can barely hear you, Mr. Lukacs.

6 MR. LUKACS: Excuse me?

7 THE COURT: I can barely hear you.

8 MR. LUKACS: Okay.

9 THE COURT: Thank you.

10 MR. LUKACS: How is that?

11 THE COURT: Better.

12 MR. LUKACS: Is that better? Okay.

13 Good afternoon again. I'm John Lukacs, and again I
14 have the privilege of representing Dr. Rossi and Leonardo
15 Corporation in this matter.

16 I am going to follow up with some brief questions, and
17 I have been allocated 15 minutes to do so; so I will try to be
18 as efficient as possible.

19 Sir, is it Mr. Mathlock? No. 4.

20 PROSPECTIVE JUROR MARCHIOLA: Marchiola.

21 MR. LUKACS: Excuse me?

22 PROSPECTIVE JUROR MARCHIOLA: Marchiola.

23 MR. LUKACS: Marchiola. Okay. Forgive me.

24 You served in the military?

25 PROSPECTIVE JUROR MARCHIOLA: Yes.

1 MR. LUKACS: How long?

2 PROSPECTIVE JUROR MARCHIOLA: Six years.

3 MR. LUKACS: And where were you stationed?

4 PROSPECTIVE JUROR MARCHIOLA: Let's see. That was a
5 long time ago.

6 MR. LUKACS: How long ago was that?

7 PROSPECTIVE JUROR MARCHIOLA: That was like 40 years.

8 MR. LUKACS: No kidding. And your hobby is fishing.
9 Is that offshore --

10 PROSPECTIVE JUROR MARCHIOLA: That's not a hobby.
11 That's my job.

12 MR. LUKACS: Offshore? Back country?

13 PROSPECTIVE JUROR MARCHIOLA: Offshore.

14 MR. LUKACS: Okay. So we're spinning, not
15 fly-fishing, correct?

16 PROSPECTIVE JUROR MARCHIOLA: We are dragging.

17 MR. LUKACS: Okay. What type of fish do you drag in?

18 PROSPECTIVE JUROR MARCHIOLA: Marlin.

19 MR. LUKACS: Nice. South Florida?

20 PROSPECTIVE JUROR MARCHIOLA: Pretty much everywhere.
21 Costa Rica, Puerto Rico, everywhere, back side of the Bahamas.

22 MR. LUKACS: Okay.

23 Mr. White, Juror No. 7, good afternoon. You too
24 served -- served in the United States Air Force for 14 years,
25 correct?

1 PROSPECTIVE JUROR WHITE: Yes, sir.

2 MR. LUKACS: Okay. And where were you stationed?

3 PROSPECTIVE JUROR WHITE: Okinawa, Korea, Philippines,
4 Japan, New Mexico, Panama City Beach.

5 MR. LUKACS: And currently you indicate you are a tour
6 guide and a contract manager, as I read it.

7 PROSPECTIVE JUROR WHITE: That was in the past. I
8 retired in 2012, and I was an Everglades tour guide. I drove
9 airboats and did tours. And contract manager was for Goodwill.
10 I managed five different contracts with probably 130 people
11 working for me, six different supervisors, which included the
12 Juvenile Justice building, the Miami Herald building, that used
13 to be the 7th floor, all three bus depots including all the way
14 out by -- that used to be the Orange Bowl and back to Coral
15 Way. And those are nighttime contracts for Goodwill, probably
16 totalled \$5 million or more, and I was assistant contract
17 manager.

18 MR. LUKACS: And in that capacity, did you have the
19 opportunity to work with and otherwise supervise employees?

20 PROSPECTIVE JUROR WHITE: I had approximately five
21 supervisors working for me and maybe 120 employees. And each
22 night I was required to go to each contract, and I was like the
23 liaison between the job and Goodwill. I met with supervisors
24 and inspected the job that they did and reported back to my
25 boss.

1 MR. LUKACS: You had mentioned being a participant in
2 the class action involving Bank of America and not being very
3 happy with that result. Is that an experience that is going to
4 in any way affect your decision-making in this case?

5 PROSPECTIVE JUROR WHITE: No. Let's regroup on that.
6 That class action lawsuit, I saw it over the Internet, and I
7 had been part of Bank of America, and I had been part of
8 getting those overdrafts, but I had changed banks before that
9 lawsuit came about. I did add my name to it, and the reason I
10 felt it was a very bad decision, out of the maybe 6-, 7-, \$800
11 that the bank actually took from the individual, they might
12 have got back \$35, so that's why I felt it was a bad decision
13 dealing with a class action lawsuit. Nothing against the
14 lawyers or anyone else. I never participated in it. All I did
15 was sign the form.

16 MR. LUKACS: That's a good thing. Okay. Thank you
17 very much.

18 PROSPECTIVE JUROR WHITE: Yes, sir.

19 MR. LUKACS: Mr. Fernandez. Yes, sir, you are a HEAC
20 engineer?

21 PROSPECTIVE JUROR FERNANDEZ: Yes.

22 MR. LUKACS: And how long have you been an engineer?

23 PROSPECTIVE JUROR FERNANDEZ: I have been an engineer
24 for -- I was an engineer. Then I went to mechanical
25 contracting for a little bit, so I would say about 20 years --

1 MR. LUKACS: Okay.

2 PROSPECTIVE JUROR FERNANDEZ: -- that I have been in
3 the industry.

4 MR. LUKACS: You also indicated that you were a
5 project manager.

6 PROSPECTIVE JUROR FERNANDEZ: Yes.

7 MR. LUKACS: In that role, did you have the
8 responsibilities of supervising individuals under you?

9 PROSPECTIVE JUROR FERNANDEZ: Yes, I had
10 superintendents some jobs, and pipefitters and everybody else
11 in the field.

12 MR. LUKACS: Okay. Great. Thank you very much.

13 Ms. Duquesne. You have indicated that you are with
14 Ryder?

15 PROSPECTIVE JUROR DUQUESNE: Yes.

16 MR. LUKACS: And you have a planning and/or pricing
17 function that --

18 PROSPECTIVE JUROR DUQUESNE: Um-hmm.

19 MR. LUKACS: What is that?

20 PROSPECTIVE JUROR DUQUESNE: I am responsible for all
21 the annual budgeting, strategic planning, like month and
22 quarterly -- you know, quarterly kind of results reporting,
23 just kind of -- any financial planning in the office for two of
24 the three divisions within the company. And then pricing, I
25 think, is relatively straightforward. We provide quotes to

1 companies for our supply team services; so I have the group
2 that does that.

3 MR. LUKACS: And as part of that function, you're
4 also -- are you also proposing budgets for future expenditures?

5 PROSPECTIVE JUROR DUQUESNE: Yeah. I do more of the
6 consolidation, so we have operations all over the country,
7 North America, where we kind of take everything, and we do more
8 of the analysis on kind of what the field operations are
9 proposing, and then we pull that out through the analysis and
10 propose it to senior management.

11 MR. LUKACS: Does that involve at all any type of due
12 diligence in terms of investments that may be made in other
13 technologies by Ryder or otherwise?

14 PROSPECTIVE JUROR DUQUESNE: No. It's more tactical
15 around kind of the regular operations.

16 MR. LUKACS: Okay.

17 PROSPECTIVE JUROR DUQUESNE: I'm not in like an M&A or
18 anything.

19 MR. LUKACS: All right. Thank you very much.

20 Mr. Blanco.

21 PROSPECTIVE JUROR BLANCO: Yes.

22 MR. LUKACS: I understood your experience with the
23 legal profession for the better part of over 20 years. I also
24 noted that you mentioned in your form that you had mediation
25 experience as well.

1 PROSPECTIVE JUROR BLANCO: Yes, during -- in the cases
2 where either, A, we were -- the firm that I worked for at the
3 time would be named guardian of the property for the injured
4 party, I would go through mediations leading up to trial.
5 Independent of that, even currently, a lot of the plaintiffs'
6 attorneys will take me to the mediations on the -- in civil
7 cases to assist with when there is a negotiation concerning, is
8 the amount that's being offered sufficient to take care of the
9 individual's needs on a going-forward basis, so I typically go
10 to opine on the financial matters within mediation.

11 MR. LUKACS: Were you also the client representative
12 for purposes of either mediating to a resolution or impasse?

13 PROSPECTIVE JUROR BLANCO: In -- in the plaintiffs'
14 cases, as far as I can -- I don't remember at any one point
15 having to go to trial. All of them were settled before trial.
16 So obviously there was a resolution. There is -- for a certain
17 amount at that time.

18 MR. LUKACS: Okay. Thank you very much.

19 Ms. Meilan, Juror No. 25. Good afternoon.

20 PROSPECTIVE JUROR MEILAN: Hi.

21 MR. LUKACS: I see that you have a master's degree and
22 that you are a director of quality assurance. Can you tell us
23 what that is about?

24 PROSPECTIVE JUROR MEILAN: We -- the Early Learning
25 Coalition subsidizes early childhood for low-income families as

1 well as other educational needs, and basically my team monitors
2 external and internal contracts as well as providers who
3 provide early childhood programs that we subsidize for them.

4 MR. LUKACS: Okay. Thank you.

5 PROSPECTIVE JUROR MEILAN: Um-hmm.

6 MR. LUKACS: Mr. Hein, Juror No. 38.

7 PROSPECTIVE JUROR HEIN: Ms.

8 MR. LUKACS: Excuse me. Ms. Hein. I'm sorry.

9 PROSPECTIVE JUROR HEIN: It's okay. Yes.

10 MR. LUKACS: You had mentioned that -- the
11 construction company Cherokee Industries.

12 PROSPECTIVE JUROR HEIN: Right.

13 MR. LUKACS: Is that a local construction company?

14 PROSPECTIVE JUROR HEIN: Correct.

15 MR. LUKACS: Do you know whether or not that Cherokee
16 entities -- or entity, rather, has any connection whatsoever
17 with Cherokee Partners, Cherokee --

18 PROSPECTIVE JUROR HEIN: I would have no idea.

19 MR. LUKACS: Okay. And who is it that actually works
20 for --

21 PROSPECTIVE JUROR HEIN: My husband, since last
22 September.

23 MR. LUKACS: Since last September.

24 PROSPECTIVE JUROR HEIN: Correct.

25 MR. LUKACS: Great. Thank you very much.

1 Is there anybody here that speaks Italian?

2 (No audible response.)

3 MR. LUKACS: Is there anyone here who has actually
4 worked with an interpreter in the past?

5 (No audible response.)

6 MR. LUKACS: No?

7 Now, I'm guessing that everybody has a computer or
8 some type of a device in which they can access the Internet.
9 Is there anybody here that has their own blog or website? Just
10 a show of hands would work.

11 (No audible response.)

12 MR. LUKACS: Is there anybody here who has studied
13 law?

14 Yes, sir. I do recall your experience. You actually
15 have a JD degree from Rutgers?

16 UNIDENTIFIED JUROR: Yes, I am a member of the
17 New Jersey and New York bar.

18 MR. LUKACS: Okay. But you don't actively practice
19 law.

20 UNIDENTIFIED PROSPECTIVE JUROR: I'm not currently.
21 I've retired.

22 MR. LUKACS: Okay.

23 UNIDENTIFIED PROSPECTIVE JUROR: Stopped paying fees.

24 MR. LUKACS: Is there anybody here who has -- and I
25 think there's a couple who indicated that they had a sister, I

1 think, that was in the legal profession. But anybody that has
2 a member of the family that actually works for a law firm?

3 Mr. Roque.

4 THE COURT: One second. One second, please.

5 Microphone.

6 PROSPECTIVE JUROR ROQUE: My son-in-law.

7 MR. LUKACS: Okay. And do you have occasion to
8 discuss the law with your son-in-law?

9 PROSPECTIVE JUROR ROQUE: I'm sorry, sir?

10 MR. LUKACS: Do you have occasion from time to time to
11 discuss the law with your son-in-law?

12 PROSPECTIVE JUROR ROQUE: Yeah, we speak about it
13 sometimes, yeah.

14 MR. LUKACS: Okay. Do you have a particular view as a
15 result of those discussions that would affect your
16 decision-making in this case?

17 PROSPECTIVE JUROR ROQUE: No.

18 MR. LUKACS: Okay. Thank you.

19 COURT SECURITY OFFICER: We have some in the back,
20 Counsel.

21 PROSPECTIVE JUROR TANO: Hi. Afternoon. Witness name
22 Andres Tano. Just full disclosure, my older brother is an
23 attorney. He does PIP law. I don't think it has anything to
24 do with this case from what I have seen. But we don't really
25 talk about his work anyway, at least nothing specific, so no

1 worries there.

2 MR. LUKACS: Just by way of background, does your
3 brother actually practice law here in South Florida?

4 PROSPECTIVE JUROR TANO: Yes, sir. He is a lawyer in
5 a law firm, I think stationed out in Dadeland.

6 MR. LUKACS: Okay. Thank you very much.

7 PROSPECTIVE JUROR DIAZ: My brother-in-law is a
8 lawyer. He works in Lakeland, Florida, Florida bar. My
9 sister-in-law is an ex-prosecutor, now a judge, Essex County,
10 New Jersey.

11 MR. LUKACS: Okay. Thank you very much.

12 THE COURT: That's Mr. Diaz?

13 PROSPECTIVE JUROR DIAZ: Yes.

14 THE COURT: Thank you.

15 Two minutes.

16 MR. LUKACS: Has anyone here been trained in
17 accounting?

18 UNIDENTIFIED PROSPECTIVE JUROR: Accounting?

19 MR. LUKACS: Accounting. I recall your earlier
20 explanations.

21 Is there anybody else other than --

22 And you are Juror No. 15?

23 PROSPECTIVE JUROR ORDIZ: Yes.

24 MR. LUKACS: Tell me about your training.

25 PROSPECTIVE JUROR ORDIZ: I am a certified fraud

1 examiner, and I've been working in public accounting since
2 2002. I am a -- I do financial state audits, I do internal
3 audits, operational audits, odd audits, and due diligence for
4 my company.

5 MR. LUKACS: Great. Thank you so much.

6 COURT SECURITY OFFICER: We have one in the back also,
7 Counsel.

8 PROSPECTIVE JUROR RIVERO: Alexis Rivero.

9 MR. LUKACS: Yes, ma'am.

10 PROSPECTIVE JUROR RIVERO: I have a degree in business
11 management. I did accounting in my previous job.

12 MR. LUKACS: Okay. And what do you do with that
13 background in accounting? What function do you serve?

14 PROSPECTIVE JUROR RIVERO: I did commercial billing
15 and local billing for our drivers. I worked for a logistics
16 company.

17 MR. LUKACS: Okay. Great. Thank you very much.

18 PROSPECTIVE JUROR RIVERO: You're welcome.

19 MR. LUKACS: Is there anybody here who has any
20 training or experience in the --

21 COURT SECURITY OFFICER: Excuse me, counsel. I'm
22 sorry to interrupt. She is asking what your question was.

23 MR. LUKACS: The question was whether or not anybody
24 have any experience in accounting.

25 Great. I have one more. Yes.

1 PROSPECTIVE JUROR OROZCO: I, actually, through my IT
2 consulting business, I train a lot of business owners to use
3 QuickBooks and, you know, how to operate accounting -- on the
4 software.

5 MR. LUKACS: On the software.

6 PROSPECTIVE JUROR OROZCO: Yes.

7 MR. LUKACS: Great. Thank you so much.

8 THE COURT: Time.

9 MR. LUKACS: Time? Thank you, Your Honor.

10 THE COURT: Thank you.

11 Defense?

12 MR. PACE: Thank you, Your Honor.

13 And good afternoon, everyone. I have to admit that
14 I'm not sure I write quite as fast as everybody else. So I
15 appreciate some of your answers, but there's a couple people
16 who gave an answer, and I apologize, I just wasn't able to
17 capture what was being said.

18 Mr. -- and, certainly, if there is anything that I
19 bring up that you would prefer to address separately with the
20 Court out of the hearing of everyone else, please just let me
21 know. I'm sure the Judge will allow that to occur.

22 Can I start, Mr. Lopez, I believe you had mentioned
23 something about a father owning a business, and I just missed
24 the rest of your answer.

25 PROSPECTIVE JUROR LOPEZ: Yes, he owns a wood floor

1 company.

2 MR. PACE: And I also -- and I also forgot to bring a
3 pen. That would help me as well. So maybe that's why I didn't
4 catch it last time. I'm sorry.

5 PROSPECTIVE JUROR LOPEZ: He owns a wood floor
6 company.

7 MR. PACE: Ah, a wood floor company. Fantastic.

8 And let me see if I can stay in the same area. If I
9 can ask for a Mr. Rosado. Um, you had also -- you had
10 mentioned something -- and I apologize for missing this, but
11 you had been a plaintiff in a lawsuit; is that correct?

12 PROSPECTIVE JUROR ROSADO: That's correct.

13 MR. PACE: And did you say that the case was -- did
14 you say the case settled or the case went to trial?

15 PROSPECTIVE JUROR ROSADO: Yes, we settled -- went
16 without a trial.

17 MR. PACE: And I think you had mentioned that you
18 weren't feeling exactly satisfied, but it could have been
19 worse.

20 PROSPECTIVE JUROR ROSADO: Yes, of course.

21 MR. PACE: Okay. So did you see that the process was
22 handled -- I understand that the end result could have been
23 better or could have been worse, but did you feel comfortable
24 with the legal process?

25 PROSPECTIVE JUROR ROSADO: Yes, I could say that.

1 MR. PACE: And Mr. -- is it Etienne? Am I destroying
2 the name? I truly apologize, sir.

3 PROSPECTIVE JUROR ETIENNE: Etienne.

4 MR. PACE: Etienne?

5 PROSPECTIVE JUROR ETIENNE: Etienne.

6 MR. PACE: Etienne. You had mentioned about having a
7 lot of family and a lot of commitments. Are you a -- do you
8 own your business or do you?

9 PROSPECTIVE JUROR ETIENNE: No. No, I work as an EMT
10 at American Ambulance. It's a company, an ambulance company.

11 MR. PACE: Oh, okay. And then also you mentioned
12 something about teaching hockey?

13 PROSPECTIVE JUROR ETIENNE: No, I didn't teach hockey.

14 MR. PACE: Oh, I'm sorry. I will learn to write much
15 better. I really apologize. Did you say anything -- am I just
16 making this up? Did you say anything about something outside
17 of work that you -- that takes up a lot of your time?

18 PROSPECTIVE JUROR ETIENNE: No.

19 MR. PACE: Then I apologize.

20 PROSPECTIVE JUROR ETIENNE: That's all right. I just
21 do hobbies, and then I work. That's all I do. And I go to
22 college.

23 MR. PACE: Okay. There was questions asked about -- I
24 think I saw a few people, and if you can raise your hand just
25 for a second, those folks who are teachers. I just want to ask

1 a second about what you actually -- that you teach, what
2 classes you teach and what levels you teach.

3 So I have got two back here.

4 PROSPECTIVE JUROR CIOCCI: Marisa Ciocci.

5 THE COURT: One second. One second, please.

6 MR. PACE: One second. I'm sorry.

7 PROSPECTIVE JUROR CIOCCI: I thought I had a big loud
8 voice anyway. I teach middle school.

9 Marisa Ciocci. I teach special education.

10 MR. PACE: Okay. And how long have you been
11 teaching -- and how long has that been?

12 PROSPECTIVE JUROR CIOCCI: 16 grueling years.

13 MR. PACE: Thank you.

14 PROSPECTIVE JUROR CASTILLO: Gabriella Castillo. I
15 used to be a literacy teacher for kindergarten to 8th grade,
16 but now I am a lead infant-room teacher.

17 MR. PACE: I'm sorry, what was that?

18 PROSPECTIVE JUROR CASTILLO: Lead infant-room teacher,
19 babies.

20 MR. PACE: Oh. Okay. Wow.

21 And do we have anyone else? Okay. I think that was
22 the only ones that we had. One second.

23 Now, I understand that it was Mr. Blanco that was
24 involved in some -- his business vaguely involved investment
25 activities. And I apologize if I missed this, but is there

1 anybody else whose business regularly involves either providing
2 advice to or helping people with -- with business investment or
3 some form of investments of their money? I do understand that
4 they are working with QuickBooks but, I guess, I'm -- not just
5 working with the computer program but actually, you know,
6 working with people about how they should invest their money?

7 Can we go over here and.

8 PROSPECTIVE JUROR JOMARRON-GOMEZ: Yenja Jomarron.

9 MR. PACE: Ah.

10 PROSPECTIVE JUROR JOMARRON-GOMEZ: Basically, my
11 business is I go into medical practices and review how doctors
12 are throughout their workday, how they are doing things as far
13 as their staff. And I advise them on how things can be changed
14 for them to have a profit towards their business.

15 MR. PACE: Okay. So you review their -- does that
16 involve what kind of investments they are making with their
17 money?

18 PROSPECTIVE JUROR JOMARRON-GOMEZ: As far as
19 investments, whether they are purchasing equipment or the
20 medical billing or, you know, any adventures they might think
21 of bringing into their practice.

22 MR. PACE: Ah. Okay. Fantastic. Thank you.

23 Is there anyone else that has that involvement?

24 (No audible response.)

25 MR. PACE: All right. Um, I am going to ask for a

1 moment whether anyone has ever filed, let me start with this,
2 if everyone -- anyone has ever filed for a patent, for a
3 copyright, for a trade secret. Filing for a trade secret is
4 not a very good question, but does anyone have a job that
5 involves their working with or dealing with patents or
6 copyrights or trade secrets?

7 (No audible response.)

8 MR. PACE: We have already talked -- oh, I'm sorry.
9 Yes, sir.

10 PROSPECTIVE JUROR ROQUE: Alberto Roque. I don't know
11 whether this qualifies, but we deal continuously with
12 companies. And having nondisclosure agreements with those
13 companies is essentially sharing developments that we don't
14 share with anyone -- anyone else.

15 MR. PACE: Well -- and you have actually very much
16 helped me because that's a much better way of explaining one of
17 the issues I wanted to ask about. I should have said it that
18 way at the beginning, which is how about that. Has anyone else
19 ever entered an agreement where they agreed not to disclose
20 something, the information from somebody else?

21 All right. And thank you for clarifying because my
22 question was terrible. But let me see if I can ask your
23 experience with that.

24 PROSPECTIVE JUROR ROQUE: Well, I have my state
25 license. I don't have no rights to give any medical or any

1 things that I do to a patient. I cannot give any disclosure to
2 talk to anybody.

3 MR. PACE: So that's patient, their health
4 information, things that you can't disclose to others?

5 PROSPECTIVE JUROR ROQUE: Correct.

6 MR. PACE: I do appreciate that.

7 If we can go back here. Mr. Blanco?

8 PROSPECTIVE JUROR BLANCO: Yes. In some of the cases
9 where I have been involved in that eventually settle, there is
10 a confidentiality requirement signed by everybody involved.

11 MR. PACE: And that would be in connection with the
12 resolution of the mediation?

13 PROSPECTIVE JUROR BLANCO: That's correct.

14 MR. PACE: And that's not to discuss what the -- how
15 much was paid or not paid?

16 PROSPECTIVE JUROR BLANCO: The details in the case,
17 the amounts, and so on and so forth.

18 MR. PACE: All right. I understand. I believe I
19 saw -- okay. I did see several hands back here so if we can.

20 PROSPECTIVE JUROR JOMARRON-GOMEZ: Yenia Jomarron. My
21 regular day job, I administer a dermatology practice. But we
22 also do medical research, so we are, you know, in a
23 confidential agreement with all of the researchers, we do --
24 plus the patient, you know, confidentiality.

25 MR. PACE: And the medial research work you do, is

1 that -- is that helping the doctors conducting the medical
2 research and the administrative side of that research, or what
3 is it?

4 PROSPECTIVE JUROR JOMARRON-GOMEZ: Correct. As a
5 research/research coordinator for his practice, we do -- I do
6 most of the paperwork for the research, as far as contracts
7 and, you know, and privacy statements and everything else.

8 MR. PACE: Understood. I appreciate that.

9 UNIDENTIFIED PROSPECTIVE JUROR: I work in the company
10 after contract signing.

11 MR. PACE: Um-hmm.

12 UNIDENTIFIED PROSPECTIVE JUROR: After that be and
13 approve my company, the data comes up for the contract review
14 item to item. And the contract, understand it is a lot of
15 problems back and forth. It's difficult for the -- for the --
16 a big company in the contract.

17 MR. PACE: Okay.

18 UNIDENTIFIED PROSPECTIVE JUROR: I don't do the
19 accounting, you understand, I normally deal with the accountant
20 or contract need approved. Do you understand?

21 MR. PACE: Yes.

22 UNIDENTIFIED PROSPECTIVE JUROR: Before signing.

23 MR. PACE: Yes, I do understand. Thank you.

24 UNIDENTIFIED PROSPECTIVE JUROR: A little about what I
25 do or not. Currently, I said insurance companies, but I

1 currently work for a reinsurer which I consider to be part of
2 the insurance industry.

3 As a reinsurer, I have clients who are insurance
4 companies. We insure insurance companies, for those who don't
5 know what reinsurance is. My markets are Latin America and
6 Middle East Africa, a couple of international markets.

7 I regularly sign NDAs when people come to me with
8 ideas --

9 MR. PACE: And if I can have just one --

10 UNIDENTIFIED PROSPECTIVE JUROR: So then they have
11 ideas they don't want me to share with competitors, because
12 they know that I work with all of their competitors. They are
13 all insurance companies that might be clients of mine; so I
14 sign NDAs on a regular basis.

15 MR. PACE: And just so everyone else knows when they
16 are hearing this, when you refer to an NDA, that's a
17 nondisclosure agreement.

18 UNIDENTIFIED PROSPECTIVE JUROR: Nondisclosure
19 agreement, yes.

20 MR. PACE: I appreciate that.

21 PROSPECTIVE JUROR TANO: I'm Andres Tano. I am a
22 physician's assistant; so, you know, I just have to comply with
23 the HIPAA laws, of course, you know, patient confidentiality.
24 I can't disclose any information.

25 MR. PACE: And that is medical information, you are

1 not allowed to provide somebody's personal medical information
2 to anyone else --

3 PROSPECTIVE JUROR TANO: Correct.

4 MR. PACE: -- that you learned on your job.

5 PROSPECTIVE JUROR TANO: Correct.

6 PROSPECTIVE JUROR OROZCO: Yeah, also, in my business,
7 we also help some financial clients, clients that have to
8 report to SEC and NASD. So with some of these clients, we need
9 to sign NDAs and the confidentiality agreements. And also some
10 of the clients in the medical fields. So depending on the
11 client, is that we have -- abide to their rules.

12 MR. PACE: Right. So sometimes when they ask you to
13 sign the agreement --

14 PROSPECTIVE JUROR OROZCO: Correct.

15 MR. PACE: -- that you're not going to use their
16 information for any other purpose.

17 PROSPECTIVE JUROR OROZCO: Correct. To be able to --
18 to allow to access their servers and information.

19 MR. PACE: Got it. Thank you.

20 THE COURT: Two minutes.

21 MR. PACE: Thank you, Your Honor.

22 PROSPECTIVE JUROR HEIN: I'll make it real quick.

23 Jonel Hein. I work for the Small Business Administration. So
24 as a federal employee, I have access and see many business
25 plans. People talk about their operations, what they are

1 doing. I am not bound by a formal nondisclosure agreement, but
2 the confidentiality is there because I am a federal employee.

3 MR. PACE: Right. And you have information about
4 people's business plans and their new businesses that they are
5 trying to start.

6 PROSPECTIVE JUROR HEIN: Correct, their financials and
7 everything, yes.

8 MR. PACE: I do appreciate that as well.

9 I am almost out of my time; so let me ask just two
10 other issues. One is, you are going to hear during this case
11 about some very successful investors who have invested into a
12 new enterprise. And I want to ask if anyone feels that, ah,
13 ah, they would have any difficulty being involved in or
14 addressing a case that involves wealthy investors, ah, ah,
15 trying make a path in their new enterprise, if that causes any
16 problems for anyone or if they think it would that affect your
17 ability to be fair?

18 And so let me ask my last very broad question which
19 is, is there anything that folks feel that I should know that I
20 just haven't asked the question about, something that as you
21 have been hearing my questions and Mr. Lukacs's questions, you
22 thought that there is something, you know, we should know in
23 terms of evaluating you and being able to talk to you as
24 jurors?

25 (No audible response.)

1 MR. PACE: Thank you, Your Honor.

2 THE COURT: Thank you.

3 Third-party Defendants each have five minutes.

4 MR. LEON DE LA BARRA: I have no questions, Your
5 Honor.

6 MR. NUNEZ: Same, Your Honor. I think it has been
7 very thorough.

8 THE COURT: Very good. Ladies and gentlemen, we are
9 going to end this session by having the lawyers read to you the
10 names of potential witness who may come to testify. At the end
11 of the reading of these lists, I will ask if any of you
12 recognizes any of these witnesses.

13 Plaintiffs?

14 MR. ANNESSER: There are a number of witnesses that we
15 may call, and there is some that we certainly will.

16 The first witness is Mr. Thomas Darden. I believe
17 everyone has answered whether they knew him. The second
18 witness is Mr. John Vaughn, their company Industrial Heat, John
19 Mazzarino, Thomas Dameron. He is from North Carolina
20 affiliated with Cherokee and Industrial Heat. IPH
21 International B.V., a party to this case. Mr. Barry West from
22 North Carolina, associated with Industrial Heat.

23 Ms. Wendy Carter from North Carolina, associated with
24 Cherokee. AmpEnergo Incorporated, the representative is Craig
25 J. Cassarino. Jamie Childress from the Boeing Company.

1 Dr. Andrea Rossi, Mr. James Bass, Mr. Fulvio Fabiani, Mr. John
2 Dewey Weaver, Dr. -- I'm sorry -- Kau-Fui, Vincent Wong, he is
3 a professor in Miami. Dr. Fabio Penon, an Italian doctor. Dr.
4 Levi Giuseppe from the University of Uppsala, Bo Hoistad, Mr.
5 Christopher Pace, Francesco DiGiovanni, an Italian citizen, and
6 Cherokee Investment Partners.

7 Thank you.

8 THE COURT: Defendants?

9 MR. PACE: Thank you, Your Honor. In addition to the
10 various names that have already been mentioned, if I can, one
11 of the individuals that -- Thomas Barker, his name, actually,
12 he normally goes by T. Barker Dameron, to the extent that helps
13 anyone or they might know him.

14 Um, additional names to mention are Rick Smith, now,
15 he is an engineer based in Ohio. So I know that's a pretty
16 common name, but he is somebody who is based in Ohio as an
17 engineer.

18 James Fogleman. He is also somebody from North
19 Carolina. And I am just trying to see if there's any names
20 that Mr. Annesser didn't already mention. We may also have
21 somebody come in, but we don't know the name, somebody who
22 comes in who is a representative of Florida Power & Light. So
23 I believe that's it.

24 Oh, I apologize, there was one more. There is another
25 engineer. I'm sorry about that. His name is Joe Murray, and

1 he also lives in North Carolina.

2 MR. NUNEZ: Your Honor, on behalf of my client, I
3 think they have covered all the potential witnesses, so.

4 THE COURT: Very good.

5 MR. LEON DE LA BARRA: Likewise, Your Honor.

6 THE COURT: Excellent.

7 Ladies and gentlemen, we are going to give you a
8 recess. This should take us about 25 to 30 minutes. Please be
9 patient. Please do not leave this floor. Do not discuss this
10 case with anyone. That includes each other and anyone whom you
11 might be communicating with during this break.

12 And if you see any of the lawyers or parties walk
13 outside or use the restroom, please know that they cannot have
14 any contact with you. So they are not ignoring you; they are
15 just complying with the procedures in court.

16 So we'll be at recess, and we will bring you back in
17 about half an hour. Thank you.

18 COURT SECURITY OFFICER: All rise.

19 (Prospective jury panel exited the courtroom at 2:11 p.m.)

20 THE COURT: Those in the jury box can start walking
21 out as well.

22 (Pause in proceedings.)

23 THE COURT: Everyone, please be seated.

24 COURT SECURITY OFFICER: Excuse me, Judge, one second.

25 THE COURT: Please be seated.

1 (Pause in proceedings.)

2 THE COURT: Mr. Roque, Juror No. 9, just advised that
3 he did know Wendy, and he neglected to raise his hand when her
4 name was called. Wendy whose names I never remember, last name
5 I never remember.

6 MR. PACE: It's actually, the last name is Carter.
7 And I don't know if -- I don't think Mr. Annesser referenced
8 that she is from North Carolina. It might turn out that he
9 doesn't know her. So I apologize, I should have added that.

10 THE COURT: All right. Let's go through some cause
11 challenges of people who definitely cannot serve to narrow your
12 list down, and I'll take a recess while you discuss the
13 remainder of the panel.

14 MR. PACE: Thank you, Your Honor.

15 THE COURT: Do I hear a cause challenge on Juror
16 No. 1? July 19, vacation. Do I hear a cause challenge?

17 MR. PACE: Yes, Your Honor.

18 THE COURT: Any objection?

19 MR. LUKACS: No objection.

20 THE COURT: Stricken.

21 Do I hear a cause challenge on Juror No. 3, Rosado?

22 MR. LUKACS: Yes, Your Honor.

23 THE COURT: Any objection?

24 MR. PACE: No, Your Honor.

25 THE COURT: Stricken.

1 Do I hear a cause challenge on 9, Roque?

2 MR. LUKACS: Yes, Your Honor.

3 THE COURT: Any objection?

4 MR. PACE: Oh, oh, no, no, Your Honor.

5 THE COURT: All right. Cause challenge on Juror 10,
6 Fernandez De Castro? July 23rd, vacation.

7 MR. LUKACS: No, Your Honor.

8 THE COURT: Any objection?

9 MR. LUKACS: No, Your Honor.

10 MR. PACE: No, Your Honor.

11 THE COURT: Stricken.

12 Cause challenge on 13, Duquesne? July 21 to 31
13 vacation.

14 MR. LUKACS: For cause, yes, Your Honor.

15 THE COURT: Stricken for cause.

16 MR. PACE: No objection, Your Honor.

17 THE COURT: All right. Do I hear a cause challenge on
18 Juror 14, Blanco?

19 MR. LUKACS: No, Your Honor.

20 THE COURT: Stricken. Cause challenge on 15, Ordiz,
21 any objection? July 17, vacation.

22 MR. PACE: And I -- Ordiz, no objection, Your Honor.

23 THE COURT: Stricken.

24 Do I hear a cause challenge on 16, Ms. Martinez whose
25 sister comes from Texas for a week, any objection? Stricken.

1 Do I hear a cause challenge on Dingle? Starting
2 vacation on Friday, July 11.

3 MR. LUKACS: Yes, Your Honor.

4 THE COURT: Stricken.

5 Do I hear a cause challenge on Juror 24, Calhoun?
6 Vacation.

7 MR. PACE: Yes, Your Honor.

8 MR. LUKACS: Yes.

9 THE COURT: Stricken. Cause challenge on 25, Meilan,
10 two-day business trip to St. Petersburg, Florida.

11 MR. PACE: Yes, Your Honor.

12 THE COURT: Stricken. Cause challenge on 30, Diaz?
13 July 14 to 30, vacation.

14 MR. LUKACS: Yes.

15 THE COURT: Stricken.

16 Cause challenge on Juror 34, Orozco, her July 15 trip,
17 any objection?

18 MR. LUKACS: Yes.

19 THE COURT: Any objection?

20 MR. PACE: Was -- I'm sorry, was that 34 or 35?

21 THE COURT: 34. 34, Orozco, July 15 trip.

22 MR. PACE: Oh, okay. I had in my notes that there was
23 a trip for 35.

24 THE COURT: There is one, as well.

25 MR. PACE: Oh, I'm sorry. Got it.

1 THE COURT: 34 is stricken.

2 Any objection to 35?

3 MR. PACE: No, Your Honor.

4 THE COURT: Stricken.

5 Any objection to Juror 40, Saborio? Leaving on

6 July 17.

7 MR. PACE: No, Your Honor.

8 THE COURT: Stricken.

9 Any objection to 41 who is biased for the Plaintiff,
10 Ms. Ciocci? Any objection?

11 MR. PACE: No, Your Honor.

12 THE COURT: Stricken.

13 Any other cause challenges, gentlemen?

14 MR. PACE: Can we have -- could I have just a second?

15 THE COURT: Yes.

16 MR. PACE: Thank you.

17 MR. LUKACS: Your Honor, may we impose upon the Court
18 to simply go through those that have been removed so that we
19 are all on the same page?

20 THE COURT: Yes. I will read to you the ones who are
21 no longer under consideration. Jurors 1, 3, 5, 9, 10, 11, 13,
22 14, 15, 16, 17, 24, 25, 30, 34, 35, 40 and 41.

23 MR. LUKACS: Your Honor, may I be excused for two
24 minutes --

25 THE COURT: Certainly.

1 MR. LUKACS: -- for a facilities break?

2 THE COURT: Right back here. Thank you.

3 I am going to be breaking. I just wanted to give you
4 a shorter list to have to work on during this recess.

5 Any other cause challenges, Mr. Pace?

6 MR. PACE: Um.

7 THE COURT: You all can certainly raise them when I
8 come back. This is not an exhaustive list.

9 MR. PACE: I understand. The only one we may want to
10 think about -- I may want to think about before -- when we take
11 a break, but the one that I was thinking about was Mr. Amaury
12 Jimenez.

13 THE COURT: Juror number, please.

14 MR. PACE: Juror No. 23.

15 THE COURT: The one with the small company, yes.

16 MR. PACE: Yes. And I -- I -- I thought there was at
17 least a -- a potential language barrier in terms of the nature
18 of this case and a lot of testimony. That was the only --

19 THE COURT: There are others with small companies,
20 Juror 21 has a small pharmacy; Juror 29, small company; and
21 Juror 23, Mr. Jimenez with a small company; and Juror 22,
22 Ms. Castillo, who won't get paid.

23 MR. PACE: In fact, Your Honor, let me, if I may
24 indulge the Court. If we can use our break to focus on our
25 notes.

1 THE COURT: Why don't you talk about that, yes.

2 MR. PACE: You're right. I hadn't thought about the
3 person said they weren't going to get paid while they were on a
4 break. That might be a cause basis.

5 THE COURT: All right. So I am going to give you all
6 10 minutes, and I will come back.

7 MR. PACE: Yes, Your Honor.

8 THE COURT: Thank you.

9 COURT SECURITY OFFICER: All rise.

10 (A recess was taken from 2:19 p.m. to 2:37 p.m.)

11 COURT SECURITY OFFICER: All rise.

12 THE COURT: Please be seated.

13 I need all attorneys, please.

14 (Pause in proceedings.)

15 THE COURT: I want to take the opportunity to welcome
16 the Defendants who I had not -- I don't believe have been
17 present at prior hearings. If you have, I don't remember.
18 That's Mr. Vaughn and Mr. Darden, welcome. We have Mr. Johnson
19 as well. And I missed the last gentleman's.

20 MR. LEON DE LA BARRA: Mr. Jim Bass.

21 THE COURT: Mr. Bass. Very good. Welcome.

22 Okay. Let us proceed. If there is any cause
23 challenge anyone wants to interpose, we'll do it when you get
24 to the name.

25 I had indicated before there are six peremptories that

1 the Defendants have and eight peremptories that the Plaintiffs
2 share with the third-party Defendants.

3 Juror No. 2, Plaintiff?

4 MR. LUKACS: No hardship?

5 THE COURT: Do you accept or reject?

6 MR. LUKACS: Accept, I'm sorry, Your Honor. I
7 misunderstood.

8 THE COURT: Defendants?

9 MR. PACE: Accept, Your Honor.

10 THE COURT: Third-party Defendants?

11 MR. LEON DE LA BARRA: Accept.

12 THE COURT: Defendants, Juror No. 4, Marchiola?

13 MR. LUKACS: We would challenge for cause.

14 THE COURT: I'm sorry. I said Defendants.

15 MR. LUKAS: Forgive me.

16 MR. PACE: Accept, Your Honor.

17 THE COURT: Third-party Defendants?

18 MR. LEON DE LA BARRA: We challenge for cause, Your
19 Honor.

20 THE COURT: Basis?

21 MR. LEON DE LA BARRA: He said he had work issues.

22 THE COURT: So do many. He is a part-time fisherman.
23 Denied.

24 MR. LUKACS: Your Honor, I would urge the same basis
25 on behalf of Juror No. 4. He indicated he was retired and --

1 THE COURT: Semiretired.

2 MR. LUKACS: Semiretired and that he fishes for a
3 living.

4 THE COURT: Correct.

5 MR. LUKACS: Okay.

6 THE COURT: Denied.

7 Do the Plaintiffs accept?

8 MR. LUKACS: We do not.

9 THE COURT: You do not?

10 MR. LUKACS: We want to exercise a peremptory.

11 THE COURT: Peremptory?

12 Third-party Defendants, Juror No. 6, Vargas?

13 MR. LEON DE LA BARRA: No objection, Your Honor.

14 THE COURT: Plaintiff?

15 MR. LUKACS: No objection.

16 THE COURT: Defendants?

17 MR. PACE: Your Honor, we would like to excuse
18 Mr. Vargas. We will exercise a peremptory as to him.

19 THE COURT: All right.

20 Plaintiffs, Juror No. 7, White?

21 MR. LUKACS: Accept.

22 THE COURT: Defendants?

23 MR. PACE: Accept.

24 THE COURT: Third-party Defendants?

25 MR. LEON DE LA BARRA: Accept.

1 THE COURT: Defendants, Juror No. 6, Bennett?

2 MR. LEON DE LA BARRA: I'm sorry. Juror No. 8?

3 THE COURT: Defendants, Juror No. 6, Bennett?

4 MR. LUKACS: You meant Juror No. 8, Your Honor?

5 THE COURT: I'm sorry. I'm saying Juror No. 6 -- 8,

6 I'm sorry. 8, Bennett.

7 MR. PACE: Defense accepts No. 8.

8 THE COURT: Third-party Defendants?

9 MR. LEON DE LA BARRA: Accept.

10 THE COURT: Plaintiffs?

11 MR. LUKACS: Accept.

12 THE COURT: Third-party Defendants, Juror No. 12?

13 MR. LEON DE LA BARRA: Accept, Your Honor.

14 THE COURT: Plaintiffs?

15 MR. LUKACS: Accept.

16 THE COURT: Defendants?

17 MR. PACE: Accept, Your Honor.

18 THE COURT: Plaintiffs, Juror No. 18?

19 MR. LUKACS: Accept.

20 THE COURT: Defendants?

21 MR. PACE: Accept, Your Honor.

22 THE COURT: Third-party Defendants?

23 MR. LEON DE LA BARRA: Accept, Your Honor.

24 THE COURT: Defendants, Juror No. 19, Bravo?

25 MR. PACE: Your Honor, I think there's a challenge for

1 cause for Mr. Bravo. If I remember him correctly, he said he
2 was signing up for classes and that he would -- both worked and
3 had classes. There was a comment about signing up for day
4 classes. So he has to go back to school, so I would ask to
5 strike him for cause.

6 THE COURT: Any objection?

7 MR. LUKACS: No objection.

8 MR. LEON DE LA BARRA: No. No objection, Your Honor.

9 THE COURT: Stricken for cause.

10 Third-party Defendants, Juror No. 20?

11 MR. NUNEZ: Your Honor, I think that one also could be
12 a cause. I think she worked at a doctor's office, and she's
13 the one -- I may be confused, she is the one that did all the
14 billing and all that -- and I think it would be a hardship for
15 her and her office.

16 THE COURT: I don't think so. She works for a
17 dermatologist, who is going to be out. So I don't see the
18 hardship there.

19 So do you accept or reject?

20 MR. NUNEZ: I'll accept.

21 THE COURT: Plaintiffs?

22 MR. LUKACS: Reject, Your Honor.

23 THE COURT: Plaintiffs, Juror No. 21?

24 MR. LUKACS: I'm sorry, Your Honor. Were you
25 directing the --

1 THE COURT: Correct. Plaintiff, Juror 21.

2 MR. LUKACS: Yes, we believe we have a challenge for
3 cause for Juror 21, as well. This is the individual who
4 indicated no pay for the course for the next five weeks and
5 urged a very significant hardship as a result of that.

6 THE COURT: Any objection?

7 MR. PACE: No, No. 21, no objection.

8 MR. NUNEZ: No objection.

9 THE COURT: All right. Stricken for cause.
10 Defendants, Juror 22?

11 MR. PACE: Accept.

12 THE COURT: Third-party Defendants?

13 MR. LEON DE LA BARRA: I'm sorry, Your Honor, I
14 believe one that was a teacher, and she wasn't going to be paid
15 for the.

16 THE COURT: Correct.

17 MR. LEON DE LA BARRA: I would challenge for cause.

18 THE COURT: Any objection?

19 MR. LUKACS: We would challenge for cause, as well.

20 MR. PACE: I'm sorry. The challenge for cause is
21 being because she's --

22 THE COURT: She won't get paid.

23 MR. PACE: Oh, okay. No.

24 THE COURT: Third-party Defendants, Juror 23?

25 MR. LEON DE LA BARRA: We accept, Your Honor.

1 THE COURT: Plaintiffs?

2 MR. LUKACS: Accept.

3 THE COURT: Defendants?

4 MR. PACE: We accept, Your Honor. And, I'm sorry, I
5 think that makes --

6 THE COURT: That makes six.

7 MR. PACE: Six.

8 THE COURT: That does make six, yes.

9 Let me go over their names once more. Juror No. 2,
10 Etienne; 7, White; 8, Bennett; 12, Lopez; 18, Santofimio; and
11 23, Jimenez.

12 Moving on. Plaintiffs, Juror 26?

13 MR. LUKACS: Accept.

14 THE COURT: Defendants?

15 MR. PACE: Accept.

16 THE COURT: Third-party Defendants?

17 MR. LEON DE LA BARRA: Accept.

18 THE COURT: Defendants, Juror 27, Morrison?

19 MR. PACE: Accept.

20 THE COURT: Third-party Defendants?

21 MR. NUNEZ: Accept.

22 THE COURT: Plaintiffs?

23 MR. LUKACS: Your Honor, we would advance a challenge
24 for cause. This is the juror that expressed the obligation for
25 childcare; over a period of time, it would be a burden upon

1 her.

2 MR. PACE: Your Honor, if I --

3 THE COURT: No, I believe she helps her daughter who
4 had surgery. And the daughter is an adult, and she just has to
5 help her with the arms before she leaves the house.

6 MR. LUKACS: That's the one.

7 THE COURT: Denied.

8 Do the Plaintiffs accept?

9 MR. LUKACS: Yes, Your Honor.

10 THE COURT: Defendants?

11 MR. PACE: Oh, I'm sorry, Your Honor, accept for
12 No. 8.

13 THE COURT: Juror 27, you mean?

14 MR. PACE: Oh, I'm sorry, Juror 27, Morrison.

15 THE COURT: Plaintiffs, Juror No. 28, Apezteguia?

16 MR. LUKACS: Accept.

17 THE COURT: Defendants?

18 MR. PACE: Accept, Your Honor.

19 THE COURT: Third-party Defendants?

20 MR. NUNEZ: Accept.

21 THE COURT: Let's move on to try to get ten.

22 Defendants, Juror 31, Chacon?

23 MR. PACE: I'm sorry, Your Honor, you skipped --

24 THE COURT: I'm sorry. I skipped over 29, Kobrossi,
25 but Kobrossi is the one with significant issues.

1 MR. PACE: I was going to --

2 THE COURT: She is stricken for cause.

3 MR. PACE: Agreed.

4 THE COURT: 31, Chacon?

5 Mr. Pace?

6 MR. PACE: If I could just have one second, Your

7 Honor?

8 (Pause in proceedings.)

9 MR. PACE: No objection, Your Honor.

10 THE COURT: Third-party Defendants?

11 MR. NUNEZ: No objection, Your Honor.

12 THE COURT: Plaintiffs?

13 MR. LUKACS: No objection.

14 THE COURT: All right. That takes us to ten jurors.

15 Let me read out the last ones we have just picked: Juror 26,

16 Ralph; 27, Morrison; 28, Apezteguia; and 31, Chacon.

17 Do the Plaintiffs accept the jury?

18 MR. LUKACS: The Plaintiffs accept the jury, Your

19 Honor.

20 THE COURT: Do the Defendants accept the jury?

21 MR. PACE: Yes, Your Honor.

22 THE COURT: Do the third-party Defendants accept the
23 jury?

24 MR. NUNEZ: Yes, Your Honor.

25 THE COURT: All right. Let's bring them in, please.

1 COURT SECURITY OFFICER: Please rise for the jury
2 panel.

3 (The prospective jury entered the courtroom at 2:49 p.m.)

4 THE COURT: Everyone, please be seated.

5 Ladies and gentlemen, I wish to thank you for your
6 time and your patience.

7 I know you have been here for the better part of
8 today. I am going to call out the names of the jurors who have
9 been selected. If your name is called, it means you stay here
10 with us. I will be excusing the rest of the panel that is not
11 selected with instructions to return to the jury pool section.
12 But if you heard your name and your juror number, it means you
13 are selected and you stay with us. And should you be confused
14 and leave with your fellow jurors, we lock the courthouse down
15 and we get you before you leave.

16 All right. So these are the jurors who are selected.

17 Juror No. 2, Mr. Etienne. Juror No. 7, Mr. White.
18 Juror No. 8, Bennett. Juror No. 12, Mr. Lopez. Juror No. 18,
19 Ms. Santofimio. Juror No. 23, Mr. Jimenez. Juror 26,
20 Mr. Ralph. Juror No. 27, Ms. Morrison. And Juror 28,
21 Apezteguia. Juror 31, Chacon.

22 To the rest of you, thank you very much. And please
23 just return to the jury pool section where you will receive
24 additional instructions.

25 (Prospective jury panel exited the courtroom at 2:52 p.m.)

1 THE COURT: All right. Mr. Etienne, if you would,
2 just move all the way down your row.

3 As well as you, Mr. White, all the way down, if you
4 would, please, sir.

5 And we have Ms. Bennett and Mr. Lopez, if you would
6 join your fellow jurors here in the first row with Ms. Bennett
7 coming in first. And then Mr. Lopez.

8 Ms. Santofimio, if you would please join your jurors
9 in the first row.

10 Mr. Jimenez, if you, sir, would go into the second row
11 all the way down.

12 Mr. Ralph, second row as well, sir, please, all the
13 way down.

14 Ms. Morrison.

15 Reilys Apezteguia. Does anyone ever pronounce your
16 name correctly, Mr. Apezteguia?

17 PROSPECTIVE JUROR APEZTEGUIA: Oh, yes, you did.

18 THE COURT: And, Mr. Chacon.

19 Ladies and gentlemen, I am going to ask that you
20 please stand and raise your right hands at this time. My
21 courtroom deputy will administer your oath as jurors in this
22 case.

23 (Time 2:54 p.m.)

24 (The selected jury panel was sworn.)

25 THE JURY: Yes.

1 THE COURTROOM DEPUTY: Thank you. You may be seated.

2 COURT'S PRELIMINARY JURY INSTRUCTIONS

3 THE COURT: Members of the jury, now that you have
4 been sworn, I need to explain some basic principles about a
5 civil trial and your duty as jurors. These are preliminary
6 instructions. I will give you more detailed instructions at
7 the end of the trial.

8 It is your duty to listen to the evidence, decide what
9 happened, and apply the law to the facts. It is my job to
10 provide you with the law you must apply, and you must follow
11 the law even if you disagree with it.

12 You must decide the case on only the evidence
13 presented in the courtroom. Evidence comes in many forms. It
14 can be testimony about what someone saw, heard or smelled. It
15 can be an exhibit or a photograph. It can be someone's
16 opinion.

17 Some evidence may prove a fact indirectly. Let's say
18 the witness saw wet grass outside and people walking into the
19 courthouse carrying wet umbrellas. This may be indirect
20 evidence that it rained even though the witness did not
21 personally see it rain.

22 Indirect evidence like this is also called
23 circumstantial evidence, simply a chain of circumstances that
24 likely proves a fact. As far as the law is concerned, it makes
25 no difference whether evidence is direct or indirect. You may

1 choose to believe or disbelieve either kind. Your job is to
2 give each piece of evidence whatever weight you think it
3 deserves.

4 During the trial, you will hear certain things that
5 are not evidence, and you must not consider them. First, the
6 lawyers' statements and arguments are not evidence. During
7 their opening statements and arguments, the lawyers will
8 discuss the case. Their remarks may help you follow each
9 side's arguments and presentation of evidence. But the remarks
10 themselves are not evidence and should not play a role in your
11 deliberations.

12 Second, the lawyers' questions and objections are not
13 evidence. Only the witnesses' answers are evidence. Do not
14 decide that something is true just because a lawyer's question
15 suggests that it is. For example, a lawyer may ask a witness,
16 You saw Mr. Jones hit his sister, didn't you?

17 Well, that question is not evidence of what the
18 witness saw or what Mr. Jones did unless the witness agrees
19 with it.

20 There are rules of evidence that control what the
21 Court can receive into evidence. When a lawyer asks a witness
22 a question or presents an exhibit, the opposing lawyer may
23 object if he thinks the rules of evidence do not permit it. If
24 I overrule the objection, then the witness may answer the
25 question, or the Court may receive the exhibit. If I sustain

1 the objection, then the witness cannot answer the question, and
2 the Court cannot receive the exhibit. When I sustain an
3 objection to a question, you must ignore the question and not
4 guess what the answer might have been.

5 Sometimes I may disallow evidence -- this is called
6 striking the evidence -- and order you to disregard or ignore
7 it. That means that you must not consider that evidence when
8 you are deciding the case. I also may allow some evidence for
9 only a limited purpose. When I instruct you that I have
10 admitted an item of evidence for a limited purpose, you must
11 consider it for only that purpose and no other.

12 To reach a verdict, you may have to decide which
13 testimony to believe and which testimony not to believe. You
14 may believe everything a witness says, part of it, or none of
15 it.

16 When considering a witness's testimony, you may take
17 into account the witness's opportunity and ability to see, hear
18 or know the things the witness is testifying about, the
19 witness's memory, the witness's manner while testifying, any
20 interest the witness has in the outcome of the case, any bias
21 or prejudice the witness may have, any other evidence that
22 contradicts the witness's testimony, the reasonableness of the
23 witness's testimony in light of all the evidence and any other
24 factors bearing on believability.

25 At the end of the trial, I will give you additional

1 guidelines for determining a witness's credibility.

2 When a party occupies the position of plaintiff, as
3 Plaintiffs do here and as some of the Defendants do as well,
4 the Plaintiff has the burden of proving his or its case by what
5 the law calls a preponderance of the evidence. That means the
6 Plaintiff must prove that in light of all the evidence, what he
7 or she claims is more likely true than not. So if you could
8 put the evidence favoring the Plaintiff and the evidence
9 favoring the Defendant on opposite sides of balancing scales,
10 the Plaintiff needs to make the scales tip to his or its side.
11 If the Plaintiff fails to meet this burden, you must find in
12 favor of the particular Defendant.

13 To decide whether any fact has been proved by a
14 preponderance of the evidence, you may, unless I instruct you
15 otherwise, consider the testimony of all witnesses regardless
16 of who called them and all exhibits the Court allowed
17 regardless of who produced them.

18 After considering all the evidence, if you decide a
19 claim or fact is more likely true than not, then the claim or
20 fact has been proved by a preponderance of the evidence.

21 On certain issues called affirmative defenses, the
22 Defendant who is making that defense has the burden of proving
23 the elements of a defense by a preponderance of the evidence.
24 I will instruct you on the facts that the various Defendants in
25 this case must prove for any affirmative defense. And after

1 considering all the evidence, if you decide that that
2 particular Defendant has successfully proven that the required
3 facts are more likely true than not, then the affirmative
4 defense is proven.

5 While serving on the jury you may not talk with anyone
6 about anything related to the case. You may tell people that
7 you are a juror and give them information about when you must
8 be in court, but you must not discuss anything about the case
9 itself with anyone.

10 You should not even talk about the case with each
11 other until you begin your deliberations. You want to make
12 sure that you have heard everything, all the evidence, the
13 lawyers' closing arguments, and my instructions on the law
14 before you begin deliberating. You should keep an open mind
15 until the end of the trial as premature discussions may lead to
16 a premature decision.

17 In this age of technology, I want to emphasize that in
18 addition to not talking to face to face with anyone about the
19 case, you must not communicate with anyone about the case by
20 any other means. And this includes e-mails, text messages and
21 the Internet, including social networking websites, such as
22 Facebook, MySpace and Twitter.

23 You also should not Google or search online or offline
24 for any information about the case, the parties or the law. Do
25 not read or listen to any news accounts about the case or

1 research any fact, issue or law related to it.

2 The law forbids jurors to talk with anyone else about
3 the case and forbids anyone else to talk to jurors about it.
4 It is very important that you understand why these rules exist
5 and why they are so important.

6 You must base your decision only on the testimony and
7 other evidence presented in the courtroom. It is not fair to
8 the parties if you base your decision in any way on information
9 you acquire outside the courtroom. For example, the law often
10 uses words and phrases in special ways; so it is important that
11 any definitions you hear come only from me and not from any
12 other source.

13 Only you jurors can decide a verdict in this case.
14 Only you have promised to be fair, and no one else is so
15 qualified.

16 Let's walk through the trial. First, each of the
17 parties may make opening statements, but they do not have to.
18 Remember, an opening statement is not evidence, and it is not
19 supposed to be argumentative. It is just an outline of what
20 that party intends to prove.

21 Next, the Plaintiffs will present their witnesses and
22 ask them questions. After they do so, the Defendants may ask
23 the witnesses questions -- this is called cross-examining the
24 witnesses -- as well as the third-party Defendants. They may
25 do so as well.

1 Then the Defendants present their witnesses, and the
2 Plaintiffs and third-party Defendants may cross-examine them.

3 You should base your decision on all the evidence
4 regardless of which party presented it.

5 After all the evidence is in, the parties' lawyers
6 will present their closing arguments to summarize and interpret
7 the evidence for you and then I give you instructions on the
8 law.

9 We will hear from Plaintiffs.

10 OPENING STATEMENT ON BEHALF OF THE PLAINTIFFS

11 MR. CHAIKEN: Your Honor, thank you very much,
12 esteemed Counsel, ladies and gentlemen of the jury.

13 My name is Brian Chaiken. Together with my cocounsel,
14 John Annesser, John Lukacs, and Rob Bernstein, we represent the
15 Plaintiffs in this case, Dr. Andrea Rossi and the Leonardo
16 Corporation. Sorry. It has been a long day already. Excuse
17 me.

18 Dr. Andrea Rossi, a Plaintiff in this case, is the
19 inventor of an amazing technology. And the Defendants in this
20 case recognized that and sought to enter into an agreement to
21 license that technology. My client agreed to do so, turned
22 over his intellectual property to the Defendants in this case,
23 the Defendants marketed that technology, profited by the
24 technology, and when it came time to pay my client, they
25 refused to do so.

1 The evidence in this case is going to show that for
2 the approximately three years following entering into that
3 license agreement, the Defendants in this case told people that
4 this was a world-changing technology, that it had been
5 independently validated and tested by third parties, and that
6 it was worth in excess of \$2 billion. That's billion with a B.

7 The Defense in this case are going to come to you, and
8 they are going to tell you, the jury, that this technology
9 today is now worth zero. But previously when they were
10 marketing it, they told people it was worth \$2 billion.

11 Let me tell you a little bit about Dr. Rossi.
12 Dr. Rossi was born in Italy, he was educated in Italy. He
13 received his Ph.D. there. He currently lives in Miami,
14 Florida. He has spent much of the last 20 years creating and
15 developing the E-Cat technology. Let me tell you what the
16 E-Cat technology is.

17 You've heard a phrase earlier today called LENR. It
18 stands for low-energy nuclear reactions. What does that mean?
19 That means Dr. Rossi's created a device that creates more
20 energy than it uses. Importantly, this technology also does it
21 in a clean and efficient manner. What does that mean? That
22 means that it doesn't create any radioactive wastes or anything
23 that's harmful to the environment.

24 Dr. Rossi's technology has been patented in the
25 United States, in Europe, in Japan and many other countries

1 around the world.

2 I am going to tell you a little bit about what a
3 leading source who claims to be a leader in LENR technology
4 said about Dr. Rossi and his technology. I'm going to read to
5 you, so I apologize for that. But there are a few quotes that
6 I want you to hear.

7 This leading -- this leader in LENR technology stated,
8 This new energy source produces clean and affordable energy
9 because it emits no radiation, uses no radioactive material,
10 and creates no radioactive waste.

11 Moreover, a minute amount of raw material required is
12 abundantly available. Thus, the cost structure of LENR energy
13 sources is much better than even today's most advanced coal and
14 natural gas energy sources. Commercializing LENR technology
15 would lead to clean abundant energy.

16 To create fusion, to create fusion energy, you have to
17 break the bonds in atoms, and that takes a tremendous amount of
18 force. That's why the big government fusion projects have to
19 use massive lasers or extreme heat, millions of degrees
20 Centigrade to break the bonds. Breaking those bonds at much
21 lower temperatures is inconsistent with the laws of physics as
22 they're now known.

23 However, the E-Cat, that's the device that Dr. Rossi
24 has created, has been tested extensively by an independent
25 committee of Swedish and Italian scientists. Published reports

1 of such tests place its coefficient of performance -- that's a
2 term you are going to hear throughout this case. Coefficient
3 of performance, COP, and I will explain what that means.

4 The COP, the published reports state that COP had been
5 between 2.6 and 5.6.

6 Now, a COP is a very simple mathematical equation.
7 Simply power out divided by power in. So if the power in was
8 one unit of energy and the power out was 5 units of energy, you
9 would have the COP of five. Five times as much energy produced
10 than went in.

11 In December 2012 and March 2013, representatives of
12 the Bologna University, Uppsala University, and the Royal
13 Institute of Technology in Sweden conducted independent tests
14 of high temperature E-Cats. The published report of the tests
15 concluded that E-Cat has an energy density beyond any known
16 battery, fuel or chemical. The E-Cats created excess energy
17 three to five times as much. In a published report of the
18 March 2014 test, indicates the E-Cat produced a COP over 3X
19 over the 32-day period.

20 Dr. Rossi has accomplished two critical things.
21 First, he has a truly novel means of causing the reaction to
22 occur, and the logic or rationale for why this would work is
23 very strong. Said another way, Rossi's system would logically
24 generate more energy than others.

25 The second area in which Rossi has been a leader is

1 with materials. He focused on nickel instead of a hugely more
2 expensive palladium and platinum, which behaves similarly.
3 While success with these would be very valuable, the fact that
4 he could experiment with such an inexpensive material gave him
5 an advantage.

6 With respect to the \$2 billion figure, we will provide
7 a draft of the test report prepared by the Royal Swedish
8 Academy of Scientists, which awards the Nobel Prize in physics.
9 Their report describes a 32-day test conducted by a number of
10 prominent European physicists, apparently, including members of
11 the committee that selects the Nobel Prize winners. And it
12 concludes that Rossi has discovered a new source of energy with
13 properties rivaling nuclear fission but without releasing
14 radiation or producing radioactive waste. So this technology
15 seems to be without precedence and extremely valued.

16 Now, the reference material from which I just read all
17 comes from the same source. And I'm hoping you will be
18 surprised to learn that that source were the Defendants,
19 Mr. Darden, Mr. Vaughn, and their companies. All of those
20 statements, the evidence will show, were made by the Defendants
21 in this case.

22 Ladies and gentlemen, my cocounsel and I intend to
23 create a time line for you to see exactly what happened in this
24 case. Over the course of the trial, we're going to present a
25 large chart, and there is going to be a large line going for

1 the relevant time period in this case, which is 2012 to 2016.

2 Now, that's a long time, and that's a lot of facts.

3 When we show you that time line, we are going to place
4 data points showing statements made by the Defendants in
5 writing to whether it be my client or to the -- or to members
6 of the public. To contrast that, we are going to show data
7 points for statements made by the Defendant or that statement
8 that they claimed they made below the line. Either they claim
9 they made them or they made them internally. And you are going
10 to see that those things contrast.

11 And we're going to tell a story, and that story is
12 going to show a very telling picture, and that picture will be
13 the Defendants believed that the technology was all good and
14 continued to tell my client that the technology was good, that
15 he was honoring the agreement. And there came a point in
16 time --

17 THE COURT: I'm sorry. You will need to use the
18 microphone at the podium.

19 MR. CHAIKEN: I'm sorry.

20 THE COURT: That one keeps coming in and out. It is
21 not very good.

22 MR. CHAIKEN: I apologize.

23 THE COURT: That's all right.

24 MR. CHAIKEN: Is there a handheld I could use?

25 I was saying, that point in time, that's going to be

1 May 2015. What happened in May 2015? The Defendants
2 successfully sold 4 percent of their company for \$50 million.
3 That amounts to a \$1 billion dollar. They sold shares of
4 stock, just 4 percent. They maintained 96 percent and received
5 \$50 million in return.

6 Right after that date, the narrative changed.
7 Suddenly Dr. Rossi wasn't complying. Suddenly Dr. Rossi was
8 being difficult. Suddenly his test results didn't look so
9 valid anymore. Suddenly what we had thought and what my client
10 thought was a very good relationship turned sour.

11 Let me preview a little bit of what the actual written
12 evidence is going to show. You're going to find that in June
13 of 2012 -- and I'm going to walk you through the time line just
14 so you can get a little flavor for what the next several weeks
15 is going to look like.

16 In June of 2012, the Defendants, Mr. Darden and
17 Mr. Vaughn met Dr. Rossi. At that time Mr. Darden and
18 Mr. Vaughn were employees of a company called Cherokee.
19 Mr. Darden was the CEO of Cherokee, and he holds a law degree
20 from Yale Law School. Mr. Vaughn was listed as an investment
21 manager with Cherokee. Cherokee claims to be a sophisticated
22 experienced investment fund that has raised over \$2.2 billion
23 over the last 30 years.

24 Shortly after the initial meeting, Dr. Rossi and
25 Cherokee began negotiating an agreement. Mr. Darden

1 represented himself and his team as Cherokee. Dr. Rossi
2 represented himself as the creator and inventor of the E-Cat
3 technology with his company Leonardo Corporation. At all times
4 during negotiation, Dr. Rossi was negotiating with Cherokee.
5 On April -- excuse me. On October 24th, 2012, two days before
6 the parties entered into their agreement, Mr. Darden created a
7 new entity called Industrial Heat LLC. And you have heard that
8 name before.

9 Industrial Heat LLC is the name of the entity that
10 actually entered into the agreement.

11 The very next day, October 25th, 2012, the Cherokee
12 employees, the Cherokee staff -- I am going to show you my
13 first exhibit, if I can make this work. You know what? I'll
14 just read it to you.

15 The Cherokee staff was given an e-mail. The e-mail
16 stated, Please join Tom Darden and John Mazzarino along with
17 Dr. Andrea Rossi to celebrate and congratulate Cherokee and
18 Leonardo companies on their joint venture.

19 The very next day Dr. Rossi was invited to come and
20 sign the license agreement. He shows up at the office and is
21 told for the first time that Cherokee has created a new entity
22 called Industrial Heat, and he's told that Industrial Heat is
23 fully funded and fully backed by Cherokee.

24 Don't worry. All is good. We have the finances, we
25 have the financial resources. We are going to honor our

1 contract.

2 At that time, Mr. Rossi didn't have an attorney in the
3 room -- excuse me. Dr. Rossi didn't have an attorney in the
4 room, but Cherokee did. But for the representations made at
5 that time, Dr. Rossi would not have entered into a contract to
6 license his technology with a newly formed entity that didn't
7 have a dime in its newly formed bank account. But he does, he
8 signs the contract at that time.

9 Now, let me run through some of the very key
10 provisions of that agreement.

11 The parties understood that there potentially could be
12 disputes in the future with respect to the very same things
13 we're talking about here today, some of the very disputes that
14 you are going to be asked to hear about. And they recognize
15 this. So they agreed in the license agreement to have an
16 independent third party become the referee for purposes of
17 determining two things: Number one, whether or not the
18 technology actually works; number two, whether or not the
19 intellectual property was actually transferred from Dr. Rossi
20 to the Defendants in this case.

21 The agreement called this person the expert
22 responsible for validation or ERV, as in an acronym. And you
23 are going to hear more about the ERV in this case.

24 The parties further agreed that Industrial Heat would
25 pay Leonardo Corporation \$100 million in exchange for the

1 exclusive license of the technology in certain territories.

2 That payment was to be made in three different tranches. Let
3 me explain what those three tranches were.

4 The first tranche was 1 and half million dollars upon
5 the execution of the license agreement. Excuse me a second.

6 After making that one and a half million dollar
7 payment, Industrial Heat would then be the owner of the
8 one-megawatt E-Cat device. And you are going to hear a lot
9 about the one-megawatt E-Cat device during the course of this
10 trial.

11 The second tranche was to be a payment of \$10 million.
12 That \$10 million was predicated upon a one-day validation test.
13 The expert responsible for validation was to design a protocol.
14 He was going to follow that protocol. If the one-megawatt
15 E-Cat performed as the parties agreed upon, then Dr. Rossi
16 would be entitled to a \$10 million payment. After receiving
17 that \$10 million payment, Dr. Rossi would then transfer all of
18 his intellectual property and trade secrets to the Defendants.

19 The third tranche, the last one, was for \$89 million.
20 In order for Dr. Rossi to be entitled to \$89 million, the
21 one-megawatt E-Cat had to perform consistently for 350 out of
22 400 days. The expert responsible for validation had to monitor
23 that test and provide a written report at the end certifying
24 that it had met the requirements under the contract.

25 Now, the day of the contract, let's go back to that

1 date, October 26, 2012, the \$1.5 million was paid.

2 Interestingly enough, \$750,000 of that \$1.5 million was paid
3 for by not Industrial Heat, but was paid for by Cherokee.

4 Let's fast-forward. February 2013, the parties have
5 been working together now for five months. They're starting to
6 get ready for that first test, the validation test that would
7 entitle my client to \$10 million.

8 The Defendants at that time create one of many
9 PowerPoints they would create describing the technology. The
10 Defendants are going to tell you that Cherokee had nothing to
11 do with this contract. But in February 2013, they created a
12 PowerPoint which says specifically that Cherokee is the lead
13 investor of Industrial Heat with more than \$2.5 million
14 invested to date and that Cherokee would continue to invest.

15 A few months later the parties agree upon the expert
16 responsible for validation. They agreed upon a gentleman by
17 the name of Dr. Fabio Penon. Mr. Penon -- excuse me --
18 Dr. Penon is a nuclear engineer, and you are going to hear more
19 from Dr. Penon through the course of this trial. He is going
20 to come and testify about the protocols that he created, why he
21 created them, and the results of the test.

22 On April 29, 2013, the day before that validation test
23 that would entitle my client to \$10 million, Defendant
24 Industrial Heat assigned the rights under the license agreement
25 so that another entity called IPH International BV -- and you

1 heard a little bit about IPH as part of the opening today. The
2 evidence is going to show that IPH International BV was created
3 by Mr. Darden for purposes of holding the intellectual property
4 of my client, Dr. Rossi. It's going to show that IPH has no
5 employees, and the evidence is also going to show that
6 Industrial Heat itself for most of the relevant time period in
7 this case had no employees and that both of those Defendants,
8 Industrial Heat and IPH, were serviced by employees of
9 Cherokee.

10 After the parties agreed to the test protocol provided
11 by Dr. Penon in April 30th, May 1st of 2013, the validation
12 test took place. Five days later Dr. Penon issued his report,
13 said E-Cat worked just fine, it hit the COP that it needed to
14 hit, Dr. Rossi is entitled to \$10 million.

15 Five days after that, another independent third-party
16 expert, another nuclear engineer, took a look at all the
17 intellectual property that Dr. Rossi handed over to Defendant
18 Industrial Heat, affirmed that he in fact did provide all of
19 the intellectual property that he was supposed to provide and
20 confirmed that in writing. Thereafter, \$10 million was paid to
21 my client.

22 Upon conclusion of this test, the Defendants wasted no
23 time in telling investors of the success. They wrote to
24 investors, Our initial technology creates excess energy,
25 between three and 20 times the energy required to operate the

1 device. They wrote -- from May -- excuse me, from April 30th,
2 May 3rd, three performance tests with excess ratios between
3 three and 20, university professors from Italy and Sweden
4 released two tests with affirming results. July 2013, another
5 communication from the Defendants. Defendants claim they
6 successfully operated and built a reactor independent of
7 Dr. Rossi. They are telling investors that the intellectual
8 property has been transferred. We are able to conduct this
9 technology and use this technology as Dr. Rossi asked us to.

10 August 2013, the one-megawatt plans now owned by
11 Industrial Heat is delivered to North Carolina where the
12 Defendants are located. September 2013, Defendants again
13 create an investor PowerPoint stating that they have learned
14 how to build and fuel the reactors for the technology. They
15 claim that experts independently evaluate the E-Cat energy,
16 density, and COP with affirmative results.

17 I know this is repetitive, but I'm telling you, the
18 Defendants continued to communicate to their investors that
19 this technology works and it will continue to work.

20 October 2013, Mr. Darden e-mails a third party. Says
21 that, We have reproduced three reactors and produced
22 significant excess energy. He also states at that time,
23 October 2013, We are getting ready to operate a six-cylinder --
24 excuse me, a six-reactor boiler to use for the 350-day test
25 required by our agreement with Dr. Rossi.

1 Now, this is an important point. The license
2 agreement called for a guaranteed performance test, the 350-day
3 test, to take place immediately after delivery of the
4 one-megawatt units in North Carolina.

5 THE COURT: Either hold the microphone closer to
6 yourself, Mr. Chaiken, or use the microphone at the podium,
7 please.

8 MR. CHAIKEN: I'm sorry.

9 Remember that at this time Industrial Heat owned and
10 controlled the one-megawatt unit, and they could have started
11 the test any time they wanted to. But despite their
12 contractual obligation to start the 350-day test, they didn't
13 do so. The evidence will show they didn't do so for three
14 reasons: One, if the test was successful, they didn't have the
15 money to pay Dr. Rossi. Two, they didn't obtain regulatory
16 approval to conduct the test. This was a low-energy nuclear
17 reactor. My client will testify that there was a significant
18 chance that a regulatory authority could come and stop the test
19 in the middle if he didn't get approval to run it or at least
20 clearance to run a test of this nature. Three, a group of
21 highly renowned scientists in Europe wanted to do an
22 independent test of the E-Cat at that time, and the Defendants
23 understood that such independent validation would be more
24 helpful to their marketing results than allowing Dr. Rossi to
25 start a 350-day test that could possibly cost them \$89 million.

1 Dr. Rossi understood the value of the independent third-party
2 test and agreed to delay it.

3 Defendants are now going to claim that because the
4 guaranteed performance test did not start immediately after it
5 was delivered, my client lost the ability to get the
6 \$89 million. Let me say that again. They are going to claim
7 that because the guaranteed performance test did not start
8 immediately after it was delivered, my client knowingly and
9 willingly gave up his retitlement to collect \$89 million.

10 In fact, Mr. Darden is going to testify that he told
11 Dr. Rossi specifically that. He is going to say, I told
12 Dr. Rossi that the time for the guaranteed performance test had
13 expired and that you no longer have the opportunity to make
14 that money.

15 Now, that testimony is going to be contradicted by
16 several things. First, it's going to be contradicted by
17 Mr. Vaughn. Mr. Vaughn is going to testify and he did testify
18 as the corporate representative of Industrial Heat that
19 Dr. Rossi was never told that, and there was a reason he was
20 never told that. He was never told that because they were
21 afraid if they did, he would stop working on it, and they
22 wouldn't be able to continue to test the machinery, and really
23 they wouldn't be able to continue to raise money.

24 It is also going to be -- Mr. Darden's testimony is
25 also going to be contradicted by the written evidence in this

1 case. During the course of this case, Defendants turned over
2 more than 65,000 documents. Not one of those documents will
3 you find anything in writing stating that the time for the
4 guaranteed performance test had passed, or, Dr. Rossi, you
5 can't earn \$89 million anymore.

6 Not one document. You are going to see a mountain of
7 evidence, written evidence, that the Defendants told their
8 investors and third parties that in fact the guaranteed
9 performance test was going to take place well after it was
10 delivered to North Carolina in August of 2013.

11 In the springtime of 2014 -- we're going to
12 fast-forward a little bit -- that test in Europe with those
13 renowned professors takes place. That test is attended by
14 Dr. Rossi, Mr. Darden, Mr. Vaughn, their chief engineer --
15 excuse me -- their chief engineer, a gentleman by the name of
16 T. Barker Dameron, all attend that test. They come back from
17 the test not knowing what the results are going to be. And
18 Dr. Rossi returns his attention back to performing the
19 guaranteed performance test, the 350-day test that is going to
20 earn him \$89 million. But not before Mr. Darden updates his
21 investors.

22 In March 2014, Mr. Darden e-mails his investors and
23 states, The third independent professor's test, also known as
24 the Lugano test -- and you will hear a little bit more about
25 that during the course of this case -- the professors reported

1 that the new device was generating four to six times as much
2 energy as it's consuming. Again, they're reconfirming, they're
3 reaffirming that this technology works.

4 The very next month, April 2014, Dr. Rossi e-mails
5 Defendants Darden and Vaughn. He says, I don't know what the
6 results of the Lugano test are. I have nothing to do with
7 those results. But I want to start the one-megawatt test. I'm
8 ready to go. Let's go get the necessary authorizations. I'm
9 ready to put this in operation in your facility in North
10 Carolina.

11 And he reiterates something that he's told by Tom
12 Darden at the time. He says, Mr. Darden, you told me that your
13 expert is working on getting those authorizations, I'm ready to
14 go.

15 What's the response? The response isn't, hey, the
16 time for the guaranteed performance test is expired. It's not,
17 hey, I am going to get those authorizations. Let's get started
18 because time is of the essence.

19 He doesn't hear anything in response to his request.

20 In May of 2014, he reiterates the request in writing.
21 He writes another e-mail to Mr. Darden and Mr. Vaughn. He
22 says, I am prepared to start this test. In fact, I will set up
23 a drying operation to make use of the energy from the
24 one-megawatt plant in your facility in Raleigh, North Carolina.
25 Let's go. Let's get it started. And if you can't get it

1 started, if you can't get the necessary authorizations, I'll
2 go -- I'm living in Florida. I will go get it from the State
3 of Florida, and I'll take care of it myself.

4 And then he offers to the Defendants -- he says, you
5 know what, your engineer Mr. Dameron used to work for a
6 pharmaceutical giant, GlaxoSmithKline. Why don't you have him
7 contact GlaxoSmithKline? I'll be happy to set up my
8 one-megawatt plant so that we can drive some of their
9 pharmaceuticals.

10 What does he receive in response? Silence. After
11 getting no feedback from the Defendants for months, Dr. Rossi
12 takes it upon himself to get the necessary authorizations from
13 the state healthcare department here in Florida. Writes an
14 e-mail to the Defendant and says, I've got it. I've found a
15 customer what we can use here in Florida. Let's move the
16 one-megawatt plant to Florida. I'm ready to test.

17 He says, I will operate the plant under the safe terms
18 I told you I would back in April or May.

19 Now, June 2014, you are going to see an e-mail from
20 Mr. Vaughn. Mr. Vaughn is going to write to Mr. Darden that,
21 You know what, Dr. Rossi no longer has contractual obligation
22 to continue to consult with us and to continue to assist us
23 with the one-megawatt technology.

24 You see, the license agreement, a term I didn't tell
25 you about earlier, provides that Dr. Rossi was only obligated

1 to assist Industrial Heat for 12 months following the
2 validation test which took place back in April or May of 2013.
3 So here we are in June of 2014, Dr. Rossi's obligation to
4 continue to consult with Industrial Heat was over, yet he
5 continued to do so.

6 July 2014, Industrial Heat is trying to raise
7 \$200 million. They prepared a confidential investment
8 memorandum for their investors. They discuss their financial
9 obligations. Did they say in their confidential memorandum
10 that Dr. Rossi had no right to collect \$89 million? Nope.

11 In fact, they stated the opposite. They said in July
12 of 2014, they may still be obligated to pay Dr. Rossi
13 \$89 million if the guaranteed performance test is successful.
14 Significantly, they also told their investors that they had
15 some dependence on key personnel. Guess who that key personnel
16 was? That's right. It was Dr. Rossi. In fact, I'm going to
17 read you what they wrote. They wrote to their investors, The
18 future success of Industrial Heat is heavily dependent on one
19 key individual, Dr. Andrea Rossi. And if the services of such
20 individual were no longer to be available to Industrial Heat,
21 its future success would likely be materially and adversely
22 affected.

23 Those aren't my client's words. Those are Defendants'
24 words.

25 August 2014, Industrial Heat, Dr. Rossi and

1 JM Products, represented back here, enter into a term sheet.
2 What does this mean? The term sheet provided for the shipment
3 of the one-megawatt plant to be delivered from North Carolina
4 to Florida for purposes of this test. Significantly, at this
5 time, after it's shipped, Defendant IPH, who earlier had been
6 assigned the rights under the license agreement, starts
7 incurring expenses.

8 Why would IPH, which did not own the physical
9 one-megawatt plant, begin to incur expenses at that time?
10 There's only one reason. Because the contractual test, the
11 contractual guaranteed performance test and the work regarding
12 it was being performed here in Miami, despite Defendants'
13 statements that the time for the guaranteed performance test
14 had expired.

15 Now, the Defendants are going to make a big deal about
16 the term sheet. They are going to tell you that Dr. Rossi and
17 Mr. Johnson made misrepresentations regarding who JM Products
18 was and what JM Products and the business of JM Products.

19 Now, I'll tell you, the evidence is going to show that
20 before the Defendants agreed to ship the one-megawatt plant
21 from North Carolina to Florida, they knew several things. They
22 knew that JM Products was a newly formed entity. They knew
23 that Mr. Johnson, who was also Dr. Rossi's real estate
24 attorney, was going to be the president of JM Products.
25 Mr. Johnson has no manufacturing experience whatsoever. They

1 knew that Dr. Rossi was setting up an entirely new operation at
2 a newly leased facility for purposes of setting up the
3 operations of both JM Products as well as the test of the
4 one-megawatt plant. And they knew that Dr. Rossi was going to
5 direct his operations.

6 The Defendants' own witnesses, Mr. Dameron,
7 Mr. West -- Mr. Jerry West is an electrician of the
8 Defendants -- sent down to assist Dr. Rossi in setting up that
9 plant, they are going to testify in this case. They're going
10 to testify that they saw absolutely no evidence of any
11 manipulation of any test procedures or any test data.

12 Following the agreement to send the one-megawatt unit
13 down to Florida, you're going to find more written evidence
14 that Defendants knew exactly what was going on and that they
15 knew that this was going to be the guaranteed performance test.

16 In September of 2014, Mr. Vaughn e-mails a third party
17 and says that, Dr. Rossi wants to take the one-megawatt unit to
18 Florida to begin operating it continuously pursuant to the
19 requirements of our contract with him.

20 He also writes an internal e-mail to Mr. Darden.
21 Says, Rossi begins working on his one-megawatt unit to prepare
22 it to continue to operate continuously for 350 days pursuant to
23 the agreement with Industrial Heat.

24 October 2014, another PowerPoint presentation is
25 created by Industrial Heat. They create a budget, and they

1 say, Our budget amounts are provisional and subject to change
2 pending the results of the performance of Rossi's one-megawatt
3 plant.

4 And in fact, they put a line item in their budget, a
5 contingent success fee -- for how much money? \$89 million --
6 if Dr. Rossi would be successful with the tests for the
7 one-megawatt plant.

8 Again, these are their written materials created by
9 the Defendants in this case.

10 Later in October, Mr. Darden writes an e-mail
11 explaining how he's going to deal with Dr. Rossi's technology.
12 And he writes, I believe we should pursue Dr. Rossi's
13 technology and maybe use it to complement the technology of
14 others.

15 We believe this e-mail evidence is the Defendants'
16 strategy from the outset. They were going to gain access to
17 Dr. Rossi's technology, they were going to exploit it by
18 sharing it with other LENR technologies that they had invested
19 in to which Dr. Rossi had no interest whatsoever, and then dump
20 Dr. Rossi when he was no longer useful. The evidence will show
21 that that's exactly what they've done in this case.

22 Now, throughout the end of 2014, Dr. Rossi started
23 preparing for and geared up for the guaranteed performance test
24 with the assistance of Industrial Heat and their employees.

25 Let's fast-forward to 2015, February. Dr. Fabio Penon

1 e-mails a test protocol to Dr. Rossi and Mr. Darden and says,
2 Pursuant to the license agreement, I'm going to -- this is the
3 schedule and the plan for the test.

4 Does Tom Darden respond by saying, I don't know what
5 you are talking about, Dr. Penon, The guaranteed performance
6 test can no longer happen?

7 That's not how he responds.

8 February 18, Dr. Rossi e-mails Mr. Darden and says,
9 Yesterday, the ERV engineer Penon has arrived and started the
10 work in the factory of Miami.

11 Does Tom Darden respond and say, I don't know what you
12 are talking about. Why would the ERV be employed or engaged at
13 this time?

14 That's not what he says. He says, instead, Thanks for
15 this update and positive news for us and for the world.

16 The next two days Mr. Darden and Dr. Penon exchanged
17 e-mails with respect to the protocol for that test. Mr. Darden
18 writes to Dr. Penon, Thanks very much for your important work.
19 This evaluation will have the eyes of the world on it once we
20 release any information. He further writes, Congrats on the
21 startup. This demonstration will have a great impact beginning
22 about a month when we have the visitor from overseas.

23 Does that sound like he's trying to tell them the
24 guaranteed performance test can no longer happen and that
25 Dr. Rossi doesn't have the right to achieve an \$89 million

1 payment?

2 I will tell you about the visitor overseas in a few
3 minutes.

4 But in February -- a couple days later, the test
5 begins. Dr. Rossi e-mails Defendants Darden and Vaughn. And
6 he writes, I am having problems with some of the small
7 reactors. However, COP, the coefficient of performance is much
8 higher than expected, but I am working 22 out of 30 hours
9 straight, and I am sleeping in the container -- it is a
10 shipping container that holds the one-megawatt unit -- while it
11 is functioning.

12 Why is this important? It is important because
13 Dr. Rossi is explaining all of the problems that he is having
14 with the test.

15 Now, the Defendants later on in this case are going to
16 get a chance to speak, and they are going to tell you that
17 Dr. Rossi tried -- the test results are bogus and this whole
18 thing was a sham.

19 Why would Dr. Rossi tell them of the problems he was
20 having in the plant if this was a sham?

21 Now, it's around this time, February 2015, March 2015,
22 Mr. Darden is going to testify that he suspected that something
23 was wrong with the plant and that there was some funny business
24 going on in the plant and that he knew it was happening right
25 then and there.

1 THE COURT: Five minutes.

2 MR. CHAIKEN: Thank you, Your Honor.

3 Now, these suspicions didn't stop him from bringing
4 investors into the plant for purposes of seeing how the
5 technology works, for purposes of talking to Dr. Rossi, for
6 purposes of gaining more money. And the evidence will show
7 that the E-Cat was without a doubt during the course of this
8 test producing steam and that Mr. Darden didn't care what was
9 going on in the JM Product side of the facility. And how do we
10 know that? Because we have an e-mail from Mr. Darden saying
11 exactly that.

12 In March 2015, Mr. Darden wrote an e-mail to an
13 investor of his. And he wrote, We definitely are producing
14 steam for a customer. My lack of clarity is just around, one,
15 precisely how much. We cannot definitively represent this.
16 And, two, what is the nature of the customer?

17 Mr. Darden didn't care what was going on in the
18 JM Product side of the facility. What he cared about was
19 raising money. And in fact, in May of 2015, they closed on
20 that \$50 million investment, and they sold, as I told you
21 earlier, 4 percent of their company in exchange for that 50
22 million.

23 Immediate ly after closing on that \$50 million, the
24 narrative changed. And suddenly their communications to
25 investors showed, hey, maybe Dr. Rossi's technology isn't so

1 great. Maybe what's going on in that plant isn't so great.
2 And they wrote, Soon we will negotiate with Rossi regarding
3 audits of the one-megawatt unit's performance by a reputable
4 independent organization.

5 You are not going to see a single e-mail from the
6 Defendants asking Dr. Rossi to submit his test to a different
7 organization. Why? Because Dr. Penon was already doing it.

8 May 28, 2015, Dr. Penon issues a quarterly report to
9 the Defendants in this case setting forth exactly what's going
10 on at the plant and setting forth the results. How did the
11 Defendants respond to that? Did they say, This isn't the test,
12 or, There's a problem with your results?

13 Not at all. Instead, they forward Dr. Penon's e-mail
14 to their attorneys.

15 I know I have only got a few minutes left, Your Honor.

16 THE COURT: Three.

17 MR. CHAIKEN: Three. I will wrap this up.

18 The Defendants are going to provide you -- they are
19 going to get a chance to speak, and they're going to tell you
20 their side of the story. And they're going to say, We have a
21 lot of different reasons, we have a lot of defenses, we have a
22 lot of excuses why we shouldn't have to pay Dr. Rossi.

23 I told you a little bit about some of those pieces.
24 The time for the guaranteed performance test didn't start
25 immediately after it was delivered. They are going to say that

1 there were some shenanigans with JM Products and that Dr. Rossi
2 misrepresented to them what JM Products was. They are going to
3 throw as much mud against the wall as they can, and they're
4 going to hope that something sticks.

5 I am going to tell you right now, there is no excuse,
6 there's no valid excuse to why they refused to pay my client
7 \$89 million. The evidence is going to show they entered into a
8 contract, they received the benefit of that contract, they
9 profited from that contract to the tune of \$50 million. And
10 now, once they were asked to pay, they refused to do so.

11 Thank you.

12 THE COURT: Ladies and gentlemen, we are going to take
13 a 10-minute recess. My courtroom deputy will meet you in the
14 jury room, and she is going to ask that you fill out certain
15 forms giving us your contact information. That is for her use
16 and mine alone, no one else will have access to that.

17 She will also give you -- each one of you my business
18 card which has our direct phone number. Keep hold on to that
19 card and keep it with you throughout the trial. Should you
20 have any emergency situation or if you are running late or you
21 need to reach us, that's the number to call. Then we will
22 resume, and we will hear Defendants' opening statement.

23 COURT SECURITY OFFICER: All rise.

24 (The jury exited the courtroom at 3:49 p.m.)

25 THE COURT: All right. We are in recess.

1 MR. PACE: Thank you, Your Honor.

2 (A recess was taken from 3:49 p.m. to 3:57 p.m.)

3 THE COURT REPORTER: All rise.

4 (Pause in proceedings.)

5 THE COURT: With regard to timing, we will hear the
6 third-party Defendants' opening statements first thing tomorrow
7 morning, just so you gentlemen are aware.

8 (Pause in proceedings.)

9 THE COURT: All right. Let's bring the jury in,
10 please.

11 COURT SECURITY OFFICER: All rise.

12 (The jury entered the courtroom at 3:59 p.m.)

13 THE COURT: Does somebody have a portable microphone
14 or something that's creating all the static?

15 Okay. Mr. Chacon just gave us a note that says he is
16 leaving for vacation on July 13th for two weeks, was notified
17 during the recess. I will let you all address that tomorrow
18 with Mr. Chacon.

19 And Mr. Etienne says, My dad lost his job, and I help
20 at home to pay bills. I work 68 to 72 hours a week. We can
21 also address this with him tomorrow.

22 Let's bring the jury in, please.

23 (The jury entered the courtroom at 4:01 p.m.)

24 THE COURT: Everyone, please be seated.

25 Please proceed.

1 MR. PACE: Thank you, Your Honor.

2 OPENING STATEMENT ON BEHALF OF DEFENDANTS

3 MR. PACE: Ladies and gentlemen, I want to take some
4 time to talk about some of the most important aspects in this
5 case. I want to talk about some of the contract issues that
6 you've heard about. But what we really want to start on is
7 talking about some of those things that Counsel before me
8 simply glossed over, that he dismissed by making a reference to
9 some shenanigans.

10 This is a case about fake customers. This is a case
11 about fake data. This is a case about fake information. This
12 is a case about my clients being lied to in terms of the
13 technology that they were obtaining, in terms of the results
14 that they were supposed to be receiving. It is about my
15 clients investing in the technology, what the -- what my
16 Counsel has referenced so lightly was \$11 million -- over
17 \$11 million that they actually paid out on this technology in
18 the early belief that it was technology that was actually going
19 to work and actually have an impact in the real world, only
20 ultimately to be faced with having to deal with a fake
21 customer, a fake company, fake data, and ultimately fake
22 testing results that lead them to realize that no more money
23 was going to go into this investment. And, in fact, they were
24 entitled to get back the \$11 million that they had already paid
25 out.

1 I do want to address this in terms of a time line for
2 you, and I actually have a time line to present to you. But
3 before I get there, I want to start with this point that I was
4 just making for you, which is to say that there is a time -- my
5 clients had purchased certain technology. They wanted to see
6 it operate in their home base in North Carolina. That's where
7 they were. They wanted to see it work in their backyard. Show
8 me what this can do. Let me see how it operates. And that's
9 what the Plaintiffs, what Mr. Rossi, and his company Leonardo
10 didn't want to have that happen.

11 So -- if we could go to the June 20, 2014, e-mail,
12 Page 10.

13 So when my clients pressed to have this occur, this
14 testing occur in North Carolina, Dr. Rossi came up with an
15 alternative. He said -- he comes and says he has found a
16 solution -- this was in June of 2014 -- he's found a customer
17 that is going to use his technology in a real-world setting, a
18 chemical -- making chemicals and additives, chemical additives
19 and catalyzers. He says that this customer has a factory in
20 Florida.

21 Now, this all sounds very serious, very real, very
22 concrete. Got a real process that you are working on. He's
23 got a factory. And apparently we even have a gender because it
24 is at "his" factory in Florida. And then he makes clear that
25 the customer won't have any access to the technology, but the

1 workers will -- but he has workers, and the workers will be
2 told how to operate the system.

3 Now, none of what is being told to my clients during
4 this time period -- because we will see in a moment that this
5 is actually about a company called JM Products, and it's a
6 company here in June 2014 that had no facility at all. It had
7 no factory at all. It had no chemical additives process at
8 all, had no employees at all, certainly no one to be
9 instructed. And, subsequently, we would be told was actually
10 being run by Andrea Rossi. So as opposed to finding a
11 customer, is not what you say if you talk about yourself. You
12 don't find a customer, you -- if he, in fact, were the
13 customer. He is trying to give the impression purposely,
14 There's somebody in Florida. Let me take my technology away
15 from you in North Carolina. Let me take it down to Florida far
16 away from you, and then let me -- and then I am going to
17 pretend to run a test and pretend to operate it down there in
18 Florida or operate it in Florida. But in either event, I need
19 to get it away from you.

20 Now, who does he team with to do this? He teams with
21 one of the other parties here, Henry John son.

22 If we can go to my next exhibit. Is there 7?

23 And one of the ways that they sell this new company
24 on -- to my clients is they explain to my clients that it's a
25 company that's connected to a very important British company, a

1 very large publicly traded British company called Johnson
2 Matthey, that not surprisingly is involved in the chemical
3 business.

4 So they come and say, Well, this is an affiliate of
5 Johnson Matthey that you are going to be dealing with. That
6 furthers my clients' interest because they think that's a
7 well-known, reputable company. If you are going to be doing
8 something with them in Florida, maybe that's okay for us to
9 send our plant down.

10 And so the parties put together -- my clients put
11 together a document to reflect this. Okay. Here's what you
12 are telling me. We are going send our plant down to Florida,
13 and we are going to go to Florida to work for Johnson Matthey
14 which is the company they thought that they were going to get
15 involved with, they thought they were having activity with.

16 Then what comes along is the Plaintiffs say, oh, well,
17 we can't have the contract signed by Johnson Matthey because
18 they don't want to have themselves too publicly known to be
19 associated with this business, so we are going to use another
20 name. We are going to call it JM Products or, at that time, JM
21 Chemical Products.

22 My clients were certainly a little suspicious or
23 questionable about that activity, and so what they had is they
24 had Henry Johnson certify -- if I can go to my next document.
25 He said, okay, well, you know what, if you are going to tell us

1 that this name is something a little different, it's a
2 subsidiary. At least assure us or guarantee us that this
3 company we are going to contract with is owned by, it says here
4 as you can read, "an entity formed in the United Kingdom."
5 It's another way of saying an English company which, in fact,
6 is what Johnson Matthey was. And then once they had that, they
7 said, okay, we are convinced. You've got the connection. You
8 are not a sham company. They would find out later that they
9 were.

10 And then they, in fact, entered this document that
11 Counsel referred to, I believe as the "term sheet." That's the
12 correct reference to it. They finalized the term sheet for
13 sending their plant that they paid over \$1.5 million for, down
14 to Florida at the request of Andrea Rossi.

15 And then when we -- go to Exhibit 44. So they end up
16 signing a term sheet. But again, as we talked about, that term
17 sheet makes it very clear that there is a company in existence.
18 My clients were never told that there is no real company. We
19 don't even have a factory yet. They didn't even have a
20 location at the time that these documents were sold.

21 At the time that Henry Johnson and Andrea Rossi were
22 trying to convince my client to send their plant down to
23 Florida, they didn't have a warehouse even. Yet, they came in
24 making promises. No, we have got a factory down there in
25 Florida. We need this. We are ready to use your E-Cat

1 technology. And they lure this plant away from my client, away
2 from my client being able to watch it operate, and send it down
3 to Florida out of their, kind of, general supervision.

4 You have also heard they, then, move -- so what they
5 have done, then, is that they moved this plant -- the plant's a
6 container.

7 In fact -- can you do me a favor? Can you put up the
8 two pictures of the E-Cat just so people have an image.
9 Because I know it's so hard for me to talk about these things
10 and you don't get to actually see something. So let me take
11 this down, if I can, just for a second.

12 Okay. So we've -- we've talked about this E-Cat
13 plant. Can I just explain to everyone for a second what we are
14 talking about? You are looking here at the inside of, kind of,
15 a shipping container. An E-Cat plant is a number of -- is a
16 bunch of little devices, each of which put water into, it's
17 supposed to heat it up, turn that water into steam, and then
18 send the steam out.

19 So what you are seeing in your picture here is these
20 boxes made out of blue are a number of different E-Cat options.
21 There is actually about 115 of them in this one little
22 container. That's Dr. Rossi there in the middle of this
23 picture. So this is what an E-Cat plant, the inside of it,
24 looks like.

25 But if I can go to the warehouse photograph. So next,

1 this plant, that container, my clients agree allowed to be
2 shipped down to Florida. And, again, this kind of ruse
3 continues that it's down there in Florida because I have got a
4 real customer that I'm supposed to be working for, that we're
5 providing this steam energy to.

6 Again, the February 27th e-mail. I want to provide
7 you just one example. This is an e-mail you can see here from
8 Andrea Rossi to Tom Darden to J.T. Vaughn. And what we can see
9 here at the very beginning of the e-mail, itself, you can see
10 just a line down there where he says, "Today the director of JM
11 phoned me and said they are satisfied. Monday he will write
12 you a letter with a report of the energy they received from us
13 during the month of February."

14 Again, this is clearly -- this is not Andrea Rossi
15 saying I am just giving you my own information. He's saying,
16 Oh, I've got a real third party who is involved here, somebody
17 who is independent, somebody who is separate, and somebody that
18 I am actually, honestly dealing with. And my clients, of
19 course, are taking comfort and assurance in that, that there is
20 an independent party that's operating here, and, in fact,
21 Andrea Rossi isn't alone in this regard.

22 If I can put up just -- if you can put up just one of
23 the JM Products letters. Henry Johnson is sending letters to
24 my client on behalf of JM Products. And if we can highlight
25 this here for a second. Notice a reference, a connection to a

1 Johnson Matthew instead of Matthey. Clever. Johnson Matthew
2 platinum sponges. And this is Mr. Johnson on behalf of
3 JM Products telling my client how much energy that they've
4 received, how much steam power they have been getting from this
5 E-Cat plant.

6 Unbeknownst to us at the time, what the letter doesn't
7 say is -- and the evidence will show you, however, is that
8 Andrea Rossi actually wrote this letter and that all that Henry
9 Johnson did was sign it, that JM Products had no ability to
10 determine how much steam or energy they were being provided.
11 They simply put whatever Andrea Rossi said because he, in fact,
12 wrote the letter. And they don't tell you that JM Products had
13 absolutely no use for this massive amount of steam that was
14 supposedly being produced.

15 My clients went down and visited this plant on more
16 than one occasion. During that time, they actually met James
17 Bass. James Bass also presented himself as being involved with
18 JM Products and being able to independently provide assurances
19 to my clients that JM Products was a real company that was
20 receiving this steam power.

21 In fact, if we can put up an e-mail from -- between
22 Mr. Rossi -- Andrea Rossi and Mr. Bass from March of 2015.
23 And, in fact, if we can go to the first -- the lower e-mail for
24 just a second.

25 So this is Mr. Bass. He is writing to Andrea Rossi

1 before one of these meetings occurs when somebody is going to
2 come into the warehouse. And he is asking, How do you know how
3 much power is being delivered? Because he has no idea, but
4 he's got to handle a meeting. And so he's saying, I've got to
5 meet with somebody. If I need to tell them, I need to have
6 some idea of what's going on. Somebody tell me something.

7 So we can close that and go up to Andrea Rossi's
8 response. So he's asked, What should I be telling these
9 people? Andrea Rossi, The answer is simple. We need all of
10 this energy for our production. Obviously, we measure the
11 energy input. He knows they don't, but he wants this to be
12 communicated. You are not supposed to give more information.
13 You are sure -- you for sure are not supposed to tell them
14 anything about the plant of JM, that's JM Products, exactly as
15 you did with the IH persons, that's the Industrial Heat
16 persons. In other words, keep everybody -- make sure it is a
17 mystery to everybody. I am going to tell you what to do. You
18 go out and do it and keep the wool pulled over these people's
19 eyes.

20 Now, we're also talking about a test, and he's made
21 several references to a test that's being conducted in Florida.
22 And results of those tests -- remember them referencing an
23 individual named Fabio Penon? Well, let's talk about a few
24 aspects of that test, if we can, for a second because what
25 opposing Counsel said was that Defendants' position is that

1 this testing that supposedly occurred in Florida doesn't count
2 because it started too late under the parties' contract. And
3 that's true.

4 In fact, we will explain to you. I have a time line
5 that I want to talk to you about for a few minutes shortly.
6 But I also want you to understand that that is just a fraction
7 of the problems of what was going on down in this warehouse in
8 Florida and why the results of what were going on in Florida
9 are completely unreliable.

10 So I'll give you one example, if I can start with
11 Exhibit 54. What -- what was being claimed by Andrea Rossi, by
12 Leonardo Corporation, what was being claimed by Henry Johnson,
13 by James Bass, by JM Products, was that a massive amount of
14 water was being turned into steam on an everyday basis and
15 being provided as power over to JM products. This is the basis
16 for this test that you are supposed to be turning all of this
17 water into steam and providing it -- and pushing it out of the
18 E-Cat device, the E-Cat plant.

19 One of the things you are going to see and you are
20 going to hear from our witness's testimony, however, is --
21 actually, let me take a step back, if I can, because I want to
22 give you some perspective.

23 What they claim is every day -- I am probably about 15
24 feet away from you all -- a pool the size of 15 feet, of 20
25 feet, 4 feet deep, it's about 9,000 gallons of water. They

1 claim every day about that much water was going through this
2 E-Cat plant and being turned into steam. And in case you want
3 to know, when water is turned into steam, it expands 17,000 --
4 1700 times. So we are not talking a big pool of water. We are
5 1700 pools of steam being produced in this warehouse on a given
6 day, according to what they are claiming was happening.

7 Now, for those who, I'm sure, people are aware, but
8 just in case for those who are not, steam -- water turns into
9 steam right around 212 degrees Farenheit. You will see a lot
10 of references to Celsius in this case; it's 100 degrees
11 Celsius, extraordinarily hot.

12 If this warehouse was, in fact, producing 1700
13 swimming pools' worth of steam on an everyday basis, day in and
14 day out, it would have turned itself into an oven. The people
15 inside of the container would have been unable to survive, and
16 yet this is exactly what these individuals are claiming.

17 In fact, we have witnesses who have gone back and
18 looked at if as much steam was being produced, how hot would it
19 have gotten in there. And it would have gotten into the
20 hundreds and hundreds of degrees. It would have gotten to,
21 essentially, the boiling point of water.

22 You are also going to hear testimony, people who come
23 into this warehouse and were fine. In fact, they went into the
24 container, the E-Cat plant container while it was supposedly
25 running and were fine.

1 And, in fact, even Plaintiff -- even Dr. Rossi has
2 recognized that if, in fact, all of that heat was really being
3 generated, it really would be dangerous for somebody's health.
4 Now, he claims there's a way of -- that he developed; he
5 designed a way of getting some of this heat or a large part of
6 the heat out of that warehouse. But what you are going to hear
7 about that is, he'll explain this, kind of, elaborate system of
8 pipes and fans that we use to take that heat out of the
9 warehouse. You are going to see a lot of pictures of this
10 warehouse. You are not going to see one picture of those pipes
11 and that fan and any of that stuff operating. You are going to
12 hear about a lot of people who were inside that warehouse, none
13 of whom saw this.

14 You are going to see some third parties. Remember the
15 Judge instructed you, you should particularly give or consider
16 interests of the parties when providing testimony. All right?
17 So parties who are involved in the lawsuit, maybe they've got
18 an interest. But a third party has no interest. The third
19 party is going to come in and say there was no such device in
20 this warehouse. I would have seen it if it was in the
21 warehouse.

22 I've described for you yet another problem with this
23 results that we were being told, the things we were saying were
24 supposedly happening in Florida. And I will stick with my
25 swimming pool example, if I can, for just a second, because

1 that swimming pool, that 20 feet by 15 feet by 4 feet of water,
2 that massive amount of water, well, to turn it into steam, what
3 you have to do is actually get it into these E-Cat devices. It
4 doesn't magically go there. You have these little pumps.

5 Can I -- can you put up just for a second the image of
6 the -- the E-Cat image, and then I will get to the pumps for a
7 second.

8 So I showed you a minute ago what these devices looked
9 like. I don't know how well you can see this picture, but if
10 you can see, there's kind of -- there's four layers here. And
11 in front of each of those layers, you can count them, there are
12 six little devices. Those are called pumps. Those are water
13 pumps. These are the devices that are supposed to take the
14 water from a tank and bring it into these E-Cat devices so that
15 they can turn it into the steam, allegedly. That's what's
16 being claimed.

17 Can I get my close-up of the pumps.

18 The problem is, you just saw a picture of these, there
19 is only 24 of them connected to this one unit that was
20 producing, supposedly producing all the steam. We know the
21 maximum amount of water that those pumps can move in an hour.
22 You can multiply it by 24. You can multiply it by the total
23 number of pumps. What you come up with, what you recognize is
24 even if these pumps were working as hard as they possibly can
25 24/7, doing everything at their maximum capacity, they move

1 about half the water of that swimming pool. So there is no way
2 that they, in fact, as they claimed to us, We were turning a
3 swimming pool worth of water into 1700 swimming pools' worth of
4 steam every day, well, now we know couldn't have been doing it
5 on the steam side, you would have burned everybody out of
6 there. Couldn't have been doing it on the water side because
7 you couldn't have moved the water out of there with the pumps.

8 And, in fact, there is another element that goes in
9 here. In order to make this water into steam, allegedly, you
10 have to use some electricity. You have to put electricity into
11 these E-Cat devices. I am purposely not talking about the
12 details of the technology, but it is just another thing, you've
13 got to use electricity to help heat them up.

14 If we can go to that exhibit, the chart.

15 We've talked about the problem with the steam. We've
16 talked about the problem with the water. What else happens?
17 After this lawsuit is filed, we go get the electrical bills
18 from FPL. And lo and behold, we find a problem with the
19 electricity as well, that what -- the electricity that they are
20 claiming to use is not consistent with what the electricity
21 that FPL is telling us is actually -- was being used at this
22 warehouse. In fact, there's days when they claim that they
23 were using more power than FPL was even selling to them.

24 And so further evidence -- and, in fact, we were
25 getting this data -- the data that they are providing to us is

1 coming not only from Plaintiffs, it's coming from one of the
2 Defendants in this -- third-party Defendants in this case,
3 Fulvio Fabiani and his company U.S. Quantum Leap.

4 And, again, this is -- we are receiving the false
5 information while it is operating. Oh, here's how much
6 electricity we are using. We don't find this out until we
7 actually -- the lawsuit is filed, and we go to FPL and say,
8 Please give us your records. And then we look at the FPL
9 records and say, Well, wait a second. How can you some days be
10 using so much less power than FPL says and then other days
11 miraculously you are using even more power than FPL is
12 supposedly selling to you?

13 Let me -- I have beaten that up enough. I understand.
14 But you are going to hear a lot of evidence about this testing,
15 and you are going to understand, hopefully now, why from my
16 clients' standpoint, by this point in time, they have said that
17 test is not valid. We know it's not valid. We have shown you
18 repeatedly that it's not valid. You can't use that test to
19 claim that you are entitled to any money from us.

20 Now, I did promise you a while ago a time line. So I
21 want to actually show you a time line and take us all the way
22 back. And I do appreciate your patience.

23 So, now, if I can, let me -- I'm going to take you all
24 way back and see if I can kind of walk through some of these
25 events. I'm sorry. I actually didn't even take the time, did

1 I, to tell you a little bit about my clients, and I should
2 have. And I apologize. I was a little fired up when I got up
3 here this afternoon.

4 My client Tom Darden and his colleagues have been
5 successful entrepreneurs in a number of projects, often
6 involving environmental challenges. They have invested, for
7 example, a real estate company -- or real estate entities that
8 buy property that have been contaminated, and then they clean
9 it up, and then they turn around and they sell. They put it
10 back to more productive uses and hopefully possible uses.

11 They have been involved in projects to convert
12 businesses into using clean energy sources as opposed to things
13 like fossil fuels and focusing on those kind of assets and
14 those kind investments that others have shunned and others have
15 turned away from.

16 Now, in 2012, Tom Darden and some of his colleagues
17 developed an interest in a new area, but they're still
18 environmentally related. This was the possibility of
19 alternative energy sources, something that could be a
20 replacement for fossil fuels. And it's in connection with that
21 interest that he met Andrea Rossi in 2012 and what, then, led
22 to a very long series of negotiations and discussions that
23 ultimately led to them entering this license agreement that we
24 are all going to sit down and look here in just a couple
25 minutes. In fact, you can just even look from the time period.

1 They met over the summer. They don't even sign this agreement
2 until October of 2016.

3 There is also another party involved, and that's
4 important -- they are going to become important, and let me
5 explain to you why. This agreement that is entered is not just
6 with Industrial Heat and Andrea Rossi and his company Leonardo.
7 There is also a third company involved Ampenergo, called
8 Ampenergo. We will call it AEG because I keep mispronouncing
9 Ampenergo.

10 But -- and AEG is going to tell you, and they are
11 going to contradict the things that you just heard Counsel come
12 up here and say that was going on before this license agreement
13 was signed. They are actually aligned with Dr. Rossi. They
14 were a company that was formed to helped him market his
15 technology, to try to find somebody like an Industrial Heat to
16 sell his technology to. And their testimony is going to be
17 that they knew when all of this occurred that there was no
18 Cherokee -- my opposing Counsel has made reference to Cherokee
19 Funds or a Cherokee company that was being invested. They knew
20 that.

21 In fact, it was Tom Darden and some of his colleagues,
22 including John Mazzarino, who were going to create a new
23 company to invest in this new technology. It's a risky
24 endeavor, but they were going to pursue it. And not only did
25 they pursue it, you have already heard the evidence, this is

1 not like the JM Products that has no money, that has no
2 employees, that has no funds other than what Leonardo was
3 provided. What have you already heard here today? This
4 Industrial Heat that he wants to make fun of paid \$1.5 million
5 for the E-Cat plant.

6 They had \$10 million then paid after a validation test
7 that we will talk about because it was done inappropriately.
8 It was done to deceive us. But still this is not -- this is a
9 real business with real funds that were being developed and
10 being collected. They were being obtained by people like Tom
11 Darden, by people like J.T. Vaughn, by people like John
12 Mazzarino, who were working hard, not just at this effort but
13 in a lot of other efforts because they were committed to this
14 technology, to trying to find this new technology.

15 In fact, I am going to get -- I need to get back to my
16 time line, but I just feel like I have got to stop here for a
17 second because all I kept hearing was that this money, you
18 heard \$50 million, is that a number that any of you have heard
19 before? He must have said it 10 times. Let's be clear about
20 the money that we are talking about. We'll get to it in a
21 minute because it is well down my time line, but I want to stop
22 and talk about it.

23 None, not a penny of that money went into Tom Darden's
24 pocket. Not a penny of that money went into J.T. Vaughn's
25 pocket. All of that money that was being invested was being

1 put into new technologies, into other technologies. And, in
2 fact, why was it not being put into Dr. Rossi's technology?

3 Well, you've already figured out why. Because it
4 wasn't working. Because it didn't work, and they couldn't get
5 it to work, and so they were going to investigate in other
6 technologies, and they have invested in other technologies.

7 Now, Plaintiffs have made this statement for which
8 there will be zero proof that somehow my clients wanted to get
9 Dr. Rossi's technology, give it to others and then cut
10 Dr. Rossi out. They don't have a shred of evidence of that
11 because it never occurred. My clients never gave Dr. Rossi's
12 technology to anyone else. In, fact they maintained it as
13 confidential and as secret because they owned it.

14 We will talk about the license agreement in just a
15 minute, but they owned it. They got it transferred to them.
16 But they had no desire to share it with anyone else because
17 even though they believed in it initially, even though they did
18 believe it in 2012, they believed it in 2013, they believed in
19 2014, bless their heart, they were still believing it in 2015,
20 but at some point, they realized it is not really where the
21 investment is. It is not the opportunity. It has not proven
22 itself in the real world with real-world applications.

23 So let me turn -- I'm trying to be cognizant of my
24 time here. I have now mentioned a lot with this license
25 agreement, and I haven't even sat down and showed it to you.

1 My opposing Counsel, I don't think showed you very much of it,
2 so let's -- if we can take just a few minutes. Because in my
3 time line, there is a license agreement that has been entered.
4 It's very important. People put their promises in writing.
5 They signed their name to it. They are supposed to follow it.

6 If we could start with the license agreement. And
7 this is the agreement that everyone signed. You heard
8 Plaintiffs' version of what occurred. Let me tell you what, in
9 fact, occurred.

10 Andrea Rossi absolutely knew and had been told that
11 the company that was going to invest in his technology was a
12 new company that was going to be funded and financed by certain
13 individuals, that they were in the process of raising that
14 money, and that's what resulted in this company being formed
15 with Industrial Heat.

16 You are going to see Ampenergo. I told you about
17 them. They are the company that was helping Dr. Rossi market
18 his technology. They are a sophisticated company. They knew
19 absolutely what was going on. I don't believe you heard a
20 firearm next to Dr. Rossi's head, did you? Now, if somebody's
21 also so smart to invent this brilliant technology, if somebody
22 who's owned -- and he will testify to this -- multiple
23 companies, he has been running multiple companies for a large
24 period of time, he is not going to be fooled if somebody
25 surprises him at the last second and says, you know what, I

1 know you thought you were signing a contract with IBM, but you
2 are signing a contract with MBI. Oh, I don't know better, I'm
3 signing it. No. He knew exactly what was going on because the
4 parties had talked about it. He knew exactly the company that
5 was investing in him.

6 What else can I tell you? Mr. Chaiken made a number
7 of references to something called Cherokee. This is a long
8 document. You're going to get a chance to see it. You're
9 going to get a chance to read it all if you want to read it
10 all. What you are not going to find in there is a reference to
11 Cherokee.

12 If that was so important to Dr. Rossi and to Leonardo
13 and to anyone else, it would have been pretty easy to write it
14 in. It's not in there. Never talked about Cherokee
15 guaranteeing any money. Never talking about Cherokee owning or
16 somehow controlling Industrial Heat. It simply doesn't exist.

17 Now, in fact, one of the things that does exist in
18 this agreement -- can we go to 16.8 -- is the provision they
19 put in that says, Hey, everything that matters between us,
20 we've put here in writing. Let's -- I want you to see the
21 actual language because I'm summarizing it.

22 Really what it says here is these things that are in
23 writing, such as this license agreement, contains the entire
24 agreement among the parties. It is everything. There is
25 nothing magical out there somewhere. And then it says that it

1 supersedes, that really means replaces, that means gets rid of,
2 all prior agreements, written or oral. This is the thing you
3 put in an agreement when everyone agrees our deal is put in
4 writing and reflected here. This is what our deal is. I am
5 signing it, and I'm signing it on to this kind of provision.

6 So let me turn everything over to the blank screen for
7 a second. Let me just turn to the license agreement and talk
8 just a little bit more about what my client thought they were
9 getting into.

10 According to -- I'm sorry. I started to get away from
11 the microphone. I can't do that. According to Dr. Rossi, his
12 technology was able to have -- it was not just something that
13 could work in the laboratory, it is something that could work
14 in the real world that you could actually take it and use it to
15 produce something real. That was an important part to my
16 client looking at this endeavor.

17 So what my client -- so the way that this deal was set
18 up -- if I can have 3.2A -- we've talked about this already a
19 little bit. There was a first payment, \$1.5 million. That was
20 for the E-Cat. That was for the plant. That picture you saw
21 earlier with all those funny little boxes. That was
22 \$1.5 million was paid upfront and was paid, no dispute, you
23 heard it. They, then, owned this E-Cat plant, this container.

24 Next, after that, the license agreement provided for a
25 \$10-million payment. But to get that \$10-million payment,

1 Leonardo, Andrea Rossi's company had to do at least two things.
2 One, they had to pass a validation case, which we are going to
3 talk about in a second. And, two, they had to transfer, they
4 had to give all of their intellectual property, all of their
5 technology to Industrial Heat with the idea that, give us
6 everything and then we will be able to use it. We will be able
7 to put it into place. We will be able to do something with it.

8 Those are two very large payments. But the way that
9 the license agreement was set up, it was set up that there was
10 also an additional payment that could be achieved.

11 If you put Section 5.

12 I told you this was supposed to have real-world
13 application. So you pay \$1.5 million, that's lot of money,
14 \$1.5 million, you get the actual device, the plant, this E-Cat
15 plant. You pay 10 million more dollars, you get all of the
16 technology, everything. Everything that's known, the way that
17 the license agreement works.

18 Why would there be any more payment? Well, there is
19 an additional payment if you can show -- if Dr. Rossi and his
20 company could show that this thing could have, essentially, a
21 real-world impact. It is not just something that works in a
22 lab somewhere. Take that plant, that big old plant and run it
23 consecutively -- you know, run it for 350 out of 400 days and
24 achieve certain results out of it. This plant is supposed to
25 do be able to produce a massive amount of energy. Run the

1 entire plant for 350 out of 400 days. That's going to tell --
2 that's something that's commercially sellable.

3 If you can show in a lab that you can do something,
4 that's fine. If you want to make an impact on the world or on
5 the environment, you actually better be able to do something
6 other than that. You have to show you can do something in the
7 real world. And that's what this additional payment was pegged
8 to.

9 Now, I should say, while you have this on the screen,
10 you will note that I said 350 within a 400-day period. I
11 should have made the point here as well where it says
12 commencing on the date immediately following delivery of the
13 plant to the company. You heard Mr. Chaiken tell you that
14 happened in August of 2013.

15 I'm not saying that he is not exactly right. One of
16 our arguments, one of our positions is that they didn't do the
17 test on time. I told you a lot of reasons why what they did in
18 Florida was a -- you know, was an unreliable, was a sham. But
19 you don't even have to get that far because the fact of the
20 matter is there was a time period when this was supposed to be
21 done, and it wasn't.

22 I want to talk to you --

23 THE COURT: Five minutes.

24 MR. PACE: Thank you, Your Honor.

25 So if I can turn just for a second -- well, I'm sorry.

1 Let me change my focus here. I wasn't aware of my time limit.

2 The evidence is going to show, first, that the parties
3 entered this license agreement. Second, that on two different
4 occasions the parties deviated from this written license
5 agreement. And what they did on each occasion is they wrote up
6 the deviation. They wrote down here's how things are
7 different. And they had all the parties sign it. That's the
8 way that it works when you have a contract. If you're not
9 going to follow the contract, you agree, and then you put
10 something in writing that says here's how we changed the
11 contract. That's never -- they have no evidence, there is no
12 evidence that that occurred.

13 Same thing when we are talking here about the testing
14 results. What you heard is certain descriptions that were
15 being made by my clients, one, when they weren't provided all
16 the information, and, two, during time periods before certain
17 things occurred.

18 No doubt, in 2013, in 2014, they were trying to be
19 optimistic. They were trying -- they understood that we are
20 not here to say anything to the contrary. They understood it
21 was a risky endeavor. They understood that there was a
22 possibility that they could be investing in a technology that
23 wouldn't work.

24 What they didn't sign up for was that someone was
25 going to be deceiving them. They didn't sign up for a fake

1 customer called JM Products to be formed. They didn't sign up
2 to get fake testing data from Fabio -- Fulvio Fabiani, out
3 of -- fake measurement data out of Henry Johnson, fake
4 information during plant visits from James Bass. They didn't
5 sign up for testing results that are simply impossible given
6 just the general realities of the operation of that plant.
7 None of that is what they signed up for. None of that
8 obligated them to pay \$89 million.

9 In fact, what the testimony is going to show you here
10 is, not only were they tricked into shipping this plant down to
11 Florida, not only where they deceived into the operations of
12 the plant in Florida, but, in fact, going all the way back to
13 Italy to that initial test period when they paid out the
14 \$10 million. You are going to find out that, again, Andrea
15 Rossi controlling the situation, made false statements to my
16 clients about limitations that were placed on him by an Italian
17 health official that, in fact, weren't true.

18 At the end of the day, ladies and gentlemen, my
19 clients don't owe anybody \$89 million. What the verdict we'll
20 be asking you is that my clients should be paid back all of the
21 money that they paid, well over \$11 million; money paid to
22 Leonardo Corporation, money paid to USQL and Fulvio Fabiani and
23 money paid to a number of other individuals.

24 Thank you, Your Honor.

25 THE COURT: Thank you.

1 Ladies and gentlemen, I know you have been here since
2 early this morning. We will adjourn now for the day.

3 Some of you have written us some notes. The lawyers
4 and I will discuss those notes. I ask that you all return
5 tomorrow morning at 10:00. Please be gathered in the jury room
6 at 10:00.

7 Furthermore, one of your members needs to be
8 fingerprinted tomorrow, so we will stop at 2:00 p.m. to allow
9 you to get to that on time. So your schedule tomorrow is from
10 10:00 to 2:00.

11 Please remember my instructions not to discuss this
12 case with anyone, not to do any reading or research about it,
13 and avoid contact with the parties and the lawyers.

14 We'll see you tomorrow at 10:00. Have a good evening.

15 COURT SECURITY OFFICER: All rise.

16 (The jury exited the courtroom at 4:46 p.m.)

17 THE COURT: A few housekeeping matters. First of all,
18 as I said earlier, the third-party Defendants will present
19 their opening statements tomorrow first thing. You heard me
20 indicate our schedule for tomorrow. It's because one of the
21 jurors has to go be fingerprinted, and he said if he left by
22 2:00, that would be possible.

23 I am going to -- my courtroom deputy will be giving
24 you a revised trial schedule adding additional hours to the
25 schedule as I had gone over with you to make up for the court

1 closure on Monday, July 3rd, so we don't lose time. You will
2 be receiving that, in all likelihood, tomorrow morning.

3 You have seen these juror notes. You all let me know
4 tomorrow what you would like to do as to these two jurors. The
5 one is Etienne, Juror No. 2, and the other one is Chacon, who
6 realized he had a vacation July 13th.

7 I'll see everyone tomorrow morning.

8 MR. PACE: Your Honor, can we raise one thing? The
9 Plaintiffs have subpoenaed Tom Darden.

10 THE COURT: I'm sorry. I can't address it now. If
11 you like, we can address it first thing in the morning.

12 MR. PACE: Oh, yes, if we could do it in the morning,
13 that would be --

14 THE COURT: Stephanie and I are here starting with
15 hearings at 8:15.

16 MR. PACE: All right. Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. LUKACS: Your Honor, can we see the notes?

19 THE COURT: Certainly.

20 MR. LUKACS: Thank you. May we approach?

21 THE COURT: Certainly.

22 (The proceedings adjourned at 4:49 p.m.)
23
24
25

C E R T I F I C A T E

I hereby certify that the foregoing is an
accurate transcription of the proceedings in the
above-entitled matter.

06/28/17

DATE



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