

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 30, 2017
7 vs. 10:31 a.m. to 3:00 p.m.
8 THOMAS DARDEN, et al., Courtroom 12-2
9 Defendants. (Pages 1 to 214)

10 JURY TRIAL - DAY 3
11 BEFORE THE HONORABLE CECILIA M. ALTONAGA,
12 UNITED STATES DISTRICT JUDGE

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MARKED

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1 (The following proceedings were held at 10:31 a.m.)

2 THE COURT: Good morning.

3 ALL PARTIES: Good morning, Your Honor.

4 THE COURT: There is one juror I wanted to know if you
5 all wanted to excuse before we begin, and that is Juror 38.

6 MR. PACE: Yes, Your Honor, for cause for medical.

7 MR. LUKACS: Plaintiffs agree.

8 MR. NUNEZ: Agreed.

9 MR. LEON DE LA BARRA: Agreed.

10 THE COURT: Juror 38 is excused for cause.

11 Bring them in please.

12 THE COURTROOM DEPUTY: 38 is the only one that you
13 don't want?

14 THE COURT: Correct.

15 THE COURTROOM DEPUTY: Okay.

16 (Pause in proceedings.)

17 THE COURT: We're ready.

18 THE COURTROOM DEPUTY: You're ready?

19 THE COURT: Yes.

20 (Prospective jury panel entered the courtroom at 10:35 a.m.)

21 JURY VOIR DIRE

22 THE COURT: Good morning, ladies and gentlemen. While
23 we have other members of the jury coming in, let me just
24 double-check and make sure you are seated where we believe you
25 are supposed to be. When I call your name, please just raise

1 your hand.

2 Ms. Jean Baptiste, Ms. Clayton, Mr. Romanik,
3 Mr. Francisque, Mr. Marks and Mr. Ginoris. Mr. Lazier,
4 Mr. Kappelman, Mr. Gonzalez, Ms. Smith, Ms. Shannon,
5 Ms. Cochran and Mr. Morin.

6 Mr. Ruiz, Mr. Palmer, Ms. Essinger, Mr. Mumford,
7 Ms. Aldarondo, Ms. Noche. If you two ladies could switch
8 seats, please. Thank you. Ms. Centeno, Mr. Ulysse,
9 Ms. Phillips, Ms. Choy.

10 In the back of the room, Ms. Fleite, Ms. Auguste,
11 Mr. Diaz, Mr. Mena, Ms. Bolus, Mr. Corti, Ms. Grant,
12 Mr. Franklin, Ms. McFarland, Mr. Perez.

13 PROSPECTIVE JUROR PAEZ: Paez.

14 THE COURT: Where's Ms. McFarland? And where is
15 Mr. Perez? Oh, all right.

16 PROSPECTIVE JUROR PAEZ: Paez. Paez, not Perez.

17 THE COURT: Paez, I'm sorry.

18 Mr. Barrantes. So I think, Ms. McFarland, you and
19 Mr. Paez are seated in the incorrect positions, please. Thank
20 you.

21 Belfort, Gross, Prentice, Zepeda, Reyes, Hill, Solis,
22 Robinson, Olivo, Ramirez, Indorf, Belbusti, Deutsch, Medina,
23 Alvarado, Nunez.

24 Moving on to the other side of the room, Mr. Moreno,
25 Aleman, Karow, O'Neil, King, Moreda, Koliwala, Byrd, Diaz.

1 Very good. Thank you.

2 Everyone, please be seated.

3 Ladies and gentlemen, good morning and welcome to my
4 courtroom. My name is Cecilia Altonaga. I'm a United States
5 District Court judge. And we have brought you here this
6 morning in order to select the jury for a case that is about to
7 be tried.

8 We began the jury selection process earlier this
9 morning when, in the jury room, you filled out some written
10 questionnaire forms. What has transpired from that time till
11 now is that we have photocopied them, we have distributed them
12 to many parties, as you can see in the courtroom, and we have
13 all reviewed that information and taken note. And now we bring
14 you here in the courtroom to continue with the jury selection
15 process.

16 This process involves sharing information with you and
17 gathering information from you in order to assess whether or
18 not this is an appropriate case for you to serve as a juror on.

19 All of your answers to the questions we ask of you
20 need to be given to us under oath. And I don't believe you
21 were placed under oath in the jury pool section. So now that
22 you are all here and seated, I would ask that you please stand
23 and raise your right hands so that my courtroom deputy may
24 administer your oath as perspective jurors.

25 (Time 10:42 a.m.)

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

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

3 THE COURT: Ladies and gentlemen, let me just take a
4 few minutes to introduce you to those who are in the courtroom.
5 Patricia Snead is my courtroom deputy. She just placed you
6 under oath and assisted in getting you in the courtroom in your
7 seats. She assists with the cases that comprise my docket.
8 She is also my main point of contact with the jury. So if you
9 have any questions or concerns that need to reach my ears,
10 please let Ms. Snead know, and she, in turn, will let me know.

11 We have with us here this morning two court security
12 officers. We have Officer Jerome Lee in the far back, and we
13 have Officer Alan Latour to my left here in the front. The
14 court security officers are here to see to your welfare and to
15 assist, as well. During the jury selection process, they will
16 be reaching you with handheld microphones when it comes time to
17 asking you individual questions. Please wait for the court
18 security officer to reach you and then take the microphone and
19 use it, please. If you have any concerns, again, that need to
20 reach my ears, you can also let the court security officers
21 know.

22 Seated directly in front of me is the official court
23 reporter Stephanie McCarn, she takes down every word that is
24 spoken in the courtroom. Every word I speak as well as every
25 word that you speak. So to assist her in making for a better

1 record, I ask that you keep a few rules in mind: First, use
2 the handheld microphone when it reaches you; second, please
3 give us your name or juror number so that she can identify the
4 speaker; and last, please give us audible responses, like and
5 no instead of uh-huh and uh-uh and using body language. And if
6 you forget any of these instructions, please, don't be
7 surprised if I interrupt, and it is to get some clarification
8 and to assist again.

9 As you may have gathered from the written
10 questionnaire form, what we begin today is a civil case, not a
11 criminal case. It is a case of Andrea Rossi and
12 Leonardo Corporation as Plaintiffs, who are suing
13 Thomas Darden, John Vaughn, Industrial Heat, LLC,
14 IPH International B.V., and Cherokee Investment Partners, LLC
15 as Defendants.

16 Defendants, Industrial Heat, LLC and
17 IPH International B.V. are, in turn, suing Andrea Rossi and
18 Leonardo Corporation as well as JM Products Incorporated;
19 Henry Johnson; United States Quantum Leap, LLC; Fulvio Fabiani;
20 and James Bass.

21 I'm going to ask the attorneys and the parties to
22 introduce themselves to you at this time. We'll begin with the
23 Plaintiffs, at Plaintiffs' table.

24 MR. LUKACS: Thank you, Your Honor. Good morning. My
25 name is John Lukacs, and together with my colleagues

1 John Annesser, Brian Chaiken, and Robert Bernstein, we
2 represent Dr. Andrea Rossi and Leonardo Corporation.

3 THE COURT: Thank you.

4 Defendants.

5 MR. PACE: Thank you, Your Honor. Good morning,
6 everyone. My name is Chris Pace. I want to introduce to you
7 first my clients Tom Darden, right here, and J.T. Vaughn. And
8 assisting us during this case -- little tricky, we've got a lot
9 of folks in here -- are Harvey Moore, Bernie Bell, Chris Lomax,
10 and Erika Handelson. Thank you.

11 THE COURT: Thank you.

12 Third-party Defendants?

13 MR. LEON DE LA BARRA: Good morning, ladies and
14 gentlemen. My name is Francisco Leon De La Barra. I have the
15 privilege of representing Mr. Henry Johnson, who is the
16 president of my other client, JM Products, and Mr. James Bass.

17 MR. NUNEZ: Good morning. My name is Rudy Nunez, and
18 I'm here representing Fulvio Fabiani, and his company
19 United States Quantum Leap. Mr. Fabiani does not live in this
20 country, he will be traveling here and will be here next week.
21 Thank you.

22 THE COURT: Thank you.

23 Ladies and gentlemen, let me just pause to ask some
24 questions. Going back to the written questionnaire forms that
25 you filled out in the jury pool section, now that you are under

1 oath, is all of the information that you wrote in your form
2 true and correct?

3 THE PROSPECTIVE PANEL: Yes.

4 THE COURT: Yes? You may hear me and/or some of the
5 lawyers touch upon some of those areas in questioning of your
6 fellow jurors. If any of that discussion causes you to recall
7 something that you forgot to write down, please, don't hesitate
8 to raise your hand and supplement what you wrote by telling us
9 here in the courtroom.

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

12 THE PROSPECTIVE PANEL: No.

13 THE COURT: No. I know we have two teachers from
14 Ransom Everglades here today; is that right?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Do you know each other?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: All right. Are there any other jurors,
19 who know fellow jurors on this panel?

20 We have a hand in the far back, Officer Lee, please.

21 PROSPECTIVE JUROR OLIVO: Does it count meeting the
22 person here?

23 THE COURT: I'm sorry. I can't hear you. You need to
24 wait for the microphone.

25 PROSPECTIVE JUROR OLIVO: Does it count as an

1 acquaintance or a friend, somebody that you just met here in
2 the juror room?

3 THE COURT: No. Not someone whom you just met, and
4 can you give us your name, please?

5 PROSPECTIVE JUROR OLIVO: Olivo, Juror 44.

6 THE COURT: Thank you. Anyone else here have family
7 members or friends or coworkers on the same jury?

8 (No audible response.)

9 THE COURT: At this time, I'm going to ask the
10 attorneys to read to you the names of potential witnesses.
11 These are people who may, during the course of this trial, come
12 into Court to testify. What we want to know is, if you know
13 any of them?

14 MR. LUKACS: Your Honor, if I may, various witnesses
15 that may be called in this case.

16 THE COURT: Perhaps you could look at everyone, just
17 give your back to me and look at everyone. That might be
18 better for them to hear you as well, Mr. Lukacs.

19 MR. LUKACS: May I stand here?

20 THE COURT: Yes.

21 MR. LUKACS: Thank you. Various witnesses that may be
22 called to testify in this case are the following:

23 Thomas Darden; John Vaughn, Industrial Heat; John Mazzarino;

24 Thomas Dameron; IPH International B.V., Slocum Fogleman;

25 Barry West; Wendy Carter; AmpEnergo, Inc., Corporation, Craig

1 Cassarino; The Boeing Company, James Childress; Dr. Andrea
2 Rossi; James Bass; Fulvio Fabiani; John Dewey Weaver;
3 Dr. Kau-Fui Vincent Wong; Fabio Penon; Levi Guiseppe
4 conversely, Guiseppe Levi; Bo Hoistad; Francisco Digiovani;
5 Cherokee Investment Partners. Thank you.

6 THE COURT: Thank you.

7 Mr. Pace, any additional names?

8 MR. PACE: Just a few, Your Honor. And also if I can,
9 just a little bit of additional information, Wendy Carter
10 fairly common name, lives in North Carolina; so if you know a
11 Wendy Carter who's down here, that's not the same person. I'm
12 going to give you another common name, Rick Smith will be a
13 witness. He's an engineer based in Ohio. Again, common name,
14 but does not live anywhere nearby here. Another engineer,
15 Joseph Murray based in North Carolina. And then if I can,
16 just to make sure that there's no issue, you heard a reference
17 to Thomas Dameron, he actually goes by T. Barker Dameron, but
18 he's based in North Carolina. You heard a difficult name of
19 Slocum Fogleman, he actually goes by Jim Fogleman, but he's
20 also based in North Carolina. Thank you, Your Honor.

21 THE COURT: Thank you.

22 Mr. Nunez, any additional names?

23 MR. NUNEZ: No, Your Honor. No additional names.

24 THE COURT: Mr. Leon De La Barra?

25 MR. LEON DE LA BARRA: No, Your Honor.

1 THE COURT: Thank you.

2 Ladies and gentlemen, do any of you recognize any of
3 those witnesses names?

4 (No audible response.)

5 THE COURT: Okay. Ladies and gentlemen, what we're
6 doing here, of course, is selecting a jury for the case that is
7 about to be tried. This is the most important part of any
8 trial because what the lawyers, the parties, and I are doing is
9 trying to pick the judges for the case. You see, I have the
10 title of judge, and I preside over the trial, but I don't
11 decide its outcome. It is that group of men and women,
12 selected by the parties with their lawyers, who will decide its
13 outcome. So what we're interested in doing is finding a group
14 of fair and impartial men and women, who can try the case based
15 solely on the testimony and evidence received here in the
16 courtroom, who can put aside biases and prejudices you may
17 have, and who can follow the law as I instruct and render a
18 fair verdict at the end.

19 So that is the purpose for the questioning that we're
20 about to engage in and have started already. For example, if
21 you knew some of these witnesses, you might not be able to be a
22 fair juror, or if you knew some of the parties, you wouldn't be
23 able to be fair.

24 The only correct answer to give to the questions we
25 ask of you is a truthful response. You are under oath. The

1 only thing we ask is that you give us a truthful response. If
2 any of the questioning makes you uncomfortable and you would
3 prefer to discuss something privately outside the presence of
4 your fellow jurors, please, let us know, and we will bring you
5 in for individualized questioning. Please know we're not
6 trying to pry into your personal lives but remember the
7 importance of what it is we're doing.

8 Ladies and gentlemen, is there anyone here who has any
9 difficulty reading, speaking, or understanding the English
10 language?

11 (No audible response.)

12 THE COURT: Is there anyone here with any medical
13 condition-- I'm sorry. I have a hand in the back.

14 PROSPECTIVE JUROR BONILLA: I understand, but it's
15 difficult for me understand very well or sustain it one
16 conversation in English.

17 THE COURT: Okay. Could you --

18 PROSPECTIVE JUROR BONILLA: I no write, I no write
19 English.

20 THE COURT: Can you stand, please, ma'am? Thank you.
21 And can you give us your juror number or name?

22 PROSPECTIVE JUROR BONILLA: My name is Bernarda
23 Bonilla. My juror name -- number is 40.

24 THE COURT: 40. Thank you very much.

25 PROSPECTIVE JUROR BONILLA: Okay.

1 THE COURT: Anyone else?

2 PROSPECTIVE JUROR ANA DIAZ: My name is an Ana Diaz.
3 I'm not too much English.

4 THE COURT: Thank you, ma'am.

5 Is there anyone here who has -- we have a hand in the
6 first row, Juror No. 1, Ms. Jean Baptiste. Yes, ma'am?

7 PROSPECTIVE JUROR JEAN BAPTISTE: So I don't
8 understand quick -- I don't understand English, like, somewhat
9 at a distance. So I don't speak English, like --

10 THE COURT: So you have some difficulty with English?

11 PROSPECTIVE JUROR JEAN BAPTISTE: Yes. And I have
12 issues to write English too.

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

14 Anyone else? We have another hand.

15 PROSPECTIVE JUROR MORENO: 52.

16 THE COURT: Thank you.

17 PROSPECTIVE JUROR MORENO: Orlando Moreno.

18 THE COURT: Yes, Mr. Moreno?

19 PROSPECTIVE JUROR MORENO: Sometimes I have some
20 difficulty understanding when people talk too rapidly, and then
21 that is the only thing.

22 THE COURT: All right. Thank you.

23 Could I ask that gentleman to sit over here on the far
24 right so that the officers can move freely about the back
25 there? Thank you.

1 Ladies and gentlemen, is there anyone here who has any
2 health-related concern, health issues, difficulty sitting for
3 extended periods of time, difficulty hearing, or any health
4 issues that you think may prevent you from serving as a juror
5 in this case?

6 We have a hand in the far back.

7 PROSPECTIVE JUROR OLIVO: Olivo, No. 44.

8 THE COURT: Yes, sir.

9 PROSPECTIVE JUROR OLIVO: I just had -- I just had an
10 implant in one of my upper molars, and it hurts.

11 THE COURT: Is the pain going to get better or worse;
12 do you think?

13 PROSPECTIVE JUROR OLIVO: I'm going to have to go back
14 to the dentist, sometime either today or in the next week.

15 THE COURT: All right. Thank you.

16 COURT SECURITY OFFICER: Judge, we have one here.

17 THE COURT: Yes, ma'am?

18 PROSPECTIVE JUROR CHOY: Yamile Choy.

19 THE COURT: Yes.

20 PROSPECTIVE JUROR CHOY: I cannot be in a closed room
21 with a closed door for such a long time. It gets me, like, not
22 being myself, and it gets me hyper, it gets me nervous. That's
23 all.

24 THE COURT: Thank you, ma'am.

25 PROSPECTIVE JUROR CHOY: You're welcome.

1 MR. LUKACS: Juror number?

2 THE COURT: Juror No. 23, Yamile Choy.

3 Yes, sir, in the back?

4 PROSPECTIVE JUROR STEVEN DIAZ: Not necessarily --
5 Steven Diaz.

6 THE COURT: Thank you.

7 PROSPECTIVE JUROR STEVEN DIAZ: -- a medical
8 condition, but I have a very important procedure on July 5th at
9 the University of Miami, and so I just wanted to give you a
10 heads up on that.

11 THE COURT: All right. Thank you.

12 PROSPECTIVE JUROR STEVEN DIAZ: Okay.

13 THE COURT: I have another hand here in the jury box.

14 PROSPECTIVE JUROR MUMFORD: Ronnie Mumford.

15 THE COURT: Yes. Juror 17.

16 PROSPECTIVE JUROR MUMFORD: 17. Okay. It's not
17 really that serious, but I have diabetes, and occasionally I
18 have to go to the restroom because of water.

19 THE COURT: All right.

20 PROSPECTIVE JUROR MUMFORD: So that's basically it.

21 THE COURT: Thank you.

22 PROSPECTIVE JUROR MUMFORD: I'm okay usually --

23 THE COURT: So with breaks, you're fine?

24 PROSPECTIVE JUROR MUMFORD: Fine.

25 THE COURT: Okay. Thank you.

1 Ladies and gentlemen, I've mentioned before, and
2 you're aware that this is a civil case. It's a civil case in
3 which we have several Plaintiffs, and we have several
4 Defendants, and we have several third-party Defendants. So a
5 Plaintiff is a party that files a lawsuit and is requesting
6 some relief, in this case money damages.

7 So this case started out with two Plaintiffs suing for
8 money damages. Leonardo Rossi -- I'm sorry -- Andrea Rossi and
9 Leonardo Corporation, and so these Plaintiffs are suing several
10 Defendants. I started naming them, Thomas Darden, J.T. Vaughn.
11 So the Plaintiff that brings a lawsuit has the burden of
12 proving his or its claims by what we call the greater weight of
13 the evidence.

14 This is not a criminal case. In a criminal case, the
15 Government brings criminal charges against a person and is
16 accusing the person of committing crimes. And what the
17 Government is generally asking for is punishment, imprisonment.
18 So under our legal system in a criminal case, the Government
19 must prove the crime charged beyond all reasonable doubt. A
20 very high burden.

21 The law is different in civil cases such as this one,
22 and a Plaintiff that is seeking money damages and the recovery
23 of money from a Defendant or Defendants, must prove its claims
24 by the greater weight of the evidence. So if you were thinking
25 of scales of justice, in order to win, a Plaintiff has to tip

1 those scales by 51 percent.

2 And as I've said before, we have several Plaintiffs
3 because all of the Defendants -- I'm sorry -- two of the
4 Defendants, Industrial Heat and IPH are also Plaintiffs because
5 they're also suing back Andrea Rossi and Leonardo Corporation.
6 And those Defendants have also brought in other parties, the
7 JM Products, Henry Johnson, and so forth. And to the extent
8 that those Defendants are also Plaintiffs, they have that
9 burden of proof on the claims that they are bringing, to prove
10 those claims by the greater weight of the evidence.

11 And then we have something else that's called
12 affirmative defenses. So a lot of the parties in this case
13 that are being sued have raised affirmative defenses, and they
14 carry the burden of proof on their affirmative defenses. I
15 will give you instructions on all of this later. That's to
16 give you a general sense.

17 It is the duty of the jury selected, to listen to and
18 weigh all the evidence and to judge credibility. The primary
19 role of the jury is to judge the credibility of the witnesses,
20 who come before you. You already come to court equipped with
21 life experience. You judge credibility every day. You judge
22 it at home. You judge it at work. When people communicate to
23 you and tell you something, you're weighing whether they're
24 being truthful or not and bring that common sense with you as
25 well if you are selected as a juror.

1 Ask yourself as to each witness, does he or she stand
2 to gain something by the outcome of the case? Did the witness
3 give a prior statement different from the statement he or she
4 is giving you here in court, and if so, why? Did the witness
5 seem to have a good memory and the opportunity to observe
6 clearly and accurately those things he or she is testifying
7 about? Does the witness's testimony differ from the testimony
8 of another witness on the very same point, and if so, why? You
9 are the judges of the facts, and you will judge credibility.
10 So keep this in mind.

11 I want to give you a summary, an overview of how the
12 parties in this case describe their case.

13 Andrea Rossi and Leonardo Corporation are asserting
14 four claims against Tom Darden, J.T. Vaughn, Industrial Heat,
15 IPH International, and Cherokee Investments. The Plaintiffs
16 claim Industrial Heat and IPH breached a license agreement that
17 the parties had. The Plaintiffs claim Industrial Heat and IPH
18 failed to make a required 89 million dollar payment after an
19 agreed-upon, independent third party had validated the
20 underlying technology.

21 An alternative -- as an alternative to that claim, the
22 Plaintiffs claim that Industrial Heat and IPH were unjustly
23 enriched by benefits given to them by the Plaintiffs. The
24 Plaintiffs claim Industrial Heat and IPH successfully sold
25 4 percent of their company in return for 50 million dollars as

1 a result of Dr. Rossi's efforts in continuing to provide
2 consulting services to Industrial Heat and IPH.

3 Third claim, Plaintiffs allege Tom Darden,
4 J.T. Vaughn, and Cherokee fraudulently induced the Plaintiffs
5 to enter into that license agreement with Industrial Heat by
6 misrepresenting Industrial Heat's ability to pay under the
7 agreement. Plaintiffs claim the Defendants misrepresented that
8 Industrial Heat and Cherokee had funds in excess of 100 million
9 dollars to pay for the technology; that upon completion of a
10 guaranteed performance test that Industrial Heat and IPH would
11 pay the full amount of the license fee; That Industrial Heat
12 and Cherokee are both the same company and Industrial Heat was
13 a wholly owned intellectual property holding entity for
14 Cherokee; and that Cherokee would guarantee payment of the
15 license fee by its subsidiary Industrial Heat.

16 Last, the Plaintiffs claim that all of the Defendants
17 misappropriated the Plaintiffs' trade secrets and unjustly
18 benefitted.

19 For their part, Defendants, Industrial Heat and IPH
20 claim that Rossi and Leonardo Corporation breached a contract.
21 They claim the parties entered into a license agreement for
22 technology and that it was Plaintiffs who breached it by
23 failing to show the technology worked as promised and failing
24 to deliver all of the know-how about the technology to
25 Industrial Heat and IPH as required under the agreement.

1 IPH also asserts a separate claim for breach of
2 contract against the Plaintiffs and states the Plaintiffs
3 breached the license agreement by disclosing aspects of the
4 technology to outsiders; failing to assign patents for the
5 technology to IPH; charging Industrial Heat and IPH for
6 patent-related costs that the Plaintiffs were required to pay;
7 and working on the technology with companies other than
8 Industrial Heat and IPH.

9 Industrial Heat also brings a claim for fraudulent
10 inducement against the Plaintiffs as well as Henry Johnson and
11 JM Products. Industrial Heat claims, Rossi, Leonardo, Johnson,
12 and JM Products convinced Industrial Heat to enter into a
13 contract by making false statements to Industrial Heat.
14 Industrial Heat says Rossi, Leonardo, Johnson, and JM Products
15 convinced Industrial Heat into entering a contract called a
16 "term sheet" by falsely saying JM Products was a real company
17 with a production facility in Florida; that JM Products had a
18 real commercial use for the technology; and that JM Products
19 was affiliated with Johnson Matthey, a large company in
20 England.

21 Industrial Heat and IPH also bring a claim for
22 violation of Florida's Deceptive and Unfair Trade Practices Act
23 against the Plaintiffs, as well as Johnson, JM Products, James
24 Bass, and Fulvio Fabiani. They say that those Defendants
25 violated the Florida law by manipulating Industrial Heat and

1 IPH into sending a plant they own to Florida and then deceiving
2 Industrial Heat and IPH as to what they were doing with the
3 plant in Florida.

4 Finally, Industrial Heat states a claim of breach of
5 contract against Fabiani and United States Quantum Leap.
6 Industrial Heat entered into a technical consulting agreement
7 with Fabiani and Quantum Leap. Industrial Heat claims Fabiani
8 and Quantum Leap reached the agreement by not acting in the
9 best interest of Industrial Heat and not providing Industrial
10 Heat with accurate information.

11 Now, JM Products and Johnson deny Industrial Heat's of
12 fraudulent inducement. They assert Industrial Heat negotiated
13 the terms of the agreement and did not include any
14 representations concerning Johnson Matthey in it. JM Products
15 and Johnson say Industrial Heat was aware JM Products was a
16 newly formed entity that was being set up for the purpose of
17 conducting experiments while using steam generated by the
18 plant. JM Products, Johnson, and Bass deny Industrial Heat and
19 IPH's claim that they were engaged in a scheme to deceive them.

20 Fabiani and Quantum Leap deny they're liable to
21 Industrial Heat and IPH for violating Florida's Deceptive and
22 Unfair Trade Practices Act. They say they have no involvement
23 in manipulating Industrial Heat and IPH into sending the plant
24 to Florida. And while the plant was in Florida, they did not
25 engage in any deceptive acts.

1 Fabiani and Quantum Leap deny they failed to perform
2 in accordance with the technical consulting agreement they had
3 with Industrial Heat. They say they properly performed under
4 the contract and turned over all or substantially all of the
5 data collected during the plant's operation in Doral.

6 Ladies and gentlemen, is there anyone here who knows
7 anything about this case, from anything you may have read,
8 heard, or seen?

9 (No audible response.)

10 THE COURT: Is there anyone here who, now that you
11 have truly a very general idea about what the case is about,
12 believes that you cannot serve as a fair and impartial juror in
13 this case?

14 (No audible response.)

15 THE COURT: Is there anyone here who has ever heard of
16 the term "cold fusion?"

17 (No audible response.)

18 THE COURT: Is there anyone here who has watched the
19 *60 Minutes* episode called "*Cold Fusion Hot Again.*"

20 MR. PACE: Your Honor, to the prior question there
21 were three hands.

22 THE COURT: There were. There were indeed. Yes.

23 Has anyone heard of E-Cat or low-energy nuclear
24 reactions?

25 (No audible response.)

1 THE COURT: Is there anyone here who has any
2 understanding of thermal engineering or thermal dynamics?

3 All right. If we could have the two hands in the far
4 back, Officer Lee, if you could take the microphone to them,
5 please.

6 PROSPECTIVE JUROR OLIVO: Besides being a computer --

7 THE COURT: I'm sorry. Your name and number again,
8 please.

9 PROSPECTIVE JUROR OLIVO: Olivo, 44. Besides being a
10 computer engineer, I'm also an electric mechanical engineer.
11 So thermodynamics and physics, mathematics is my field.

12 THE COURT: Thank you very much.

13 The next juror?

14 PROSPECTIVE JUROR INDORF: Hello. My name is
15 Jane Indorf. I'm assistant professor at the University of
16 Miami in biology. And during my studies as a biology graduate
17 student, I'm familiar with thermodynamics and some physics.

18 THE COURT: Thank you very much.

19 We did have some hands -- oh, we have another person
20 in the far back. Could you please stand?

21 PROSPECTIVE JUROR MOREDA: My name is Osvaldo Moreda.
22 When I was a nursing major at Miami-Dade College, I had to take
23 the -- I had to understand thermodynamics while I was taking
24 physics, also.

25 THE COURT: Thank you. That's Juror 57?

1 PROSPECTIVE JUROR MOREDA: 57, yes.

2 THE COURT: We did have, I believe, several hands when
3 I asked a question about cold fusion. Could I see those hands
4 again? Could I ask this juror in the jury box -- oh, here
5 first row, Juror No. 3, Mr. Romanik?

6 PROSPECTIVE JUROR ROMANIK: Yes. I just have a
7 general layman's understanding, having read some general
8 publications about the research and development, but no
9 technical expertise.

10 THE COURT: What is your general knowledge?

11 PROSPECTIVE JUROR ROMANIK: Well, you know, they're
12 working on it, and fusion is -- fusion creates energy, but
13 doesn't use as much energies.

14 THE COURT: All right. Very good.

15 PROSPECTIVE JUROR ROMANIK: Embarrassing.

16 THE COURT: No, not at all, not at all. While you
17 have the microphone, Mr. Romanik, I did have a follow-up
18 question for you. You served as a juror in another federal
19 case, I believe. How long ago was that?

20 PROSPECTIVE JUROR ROMANIK: I bet it was ten years
21 ago.

22 THE COURT: Okay. And it was also a business lawsuit.

23 PROSPECTIVE JUROR ROMANIK: Business lawsuit.

24 THE COURT: We have you on that special list of jurors
25 who come in for civil cases. I'm kidding.

1 Did you enjoy -- is there anything about that prior
2 experience that would affect your ability to judge this case
3 fairly?

4 PROSPECTIVE JUROR ROMANIK: I don't believe so.

5 THE COURT: All right. Thank you.

6 PROSPECTIVE JUROR ROMANIK: Sure.

7 THE COURT: We had some other hands with cold fusion
8 in the -- right in the jury box. Behind Mr. Romanik, we
9 have --

10 PROSPECTIVE JUROR KAPPELMAN: Kappelman.

11 THE COURT: Kappelman, Juror No. 8. Yes, sir.

12 PROSPECTIVE JUROR KAPPELMAN: I teach physical
13 science. I have some basic knowledge of cold fusion.

14 THE COURT: All right.

15 PROSPECTIVE JUROR KAPPELMAN: Or at least a concept of
16 what it is.

17 THE COURT: All right. And you agree with Mr. Romanik
18 in his general statement?

19 PROSPECTIVE JUROR KAPPELMAN: Yes.

20 THE COURT: All right. That's a safe answer.

21 While you have the microphone, Mr. Kappelman, you did
22 serve as a juror in a prior case. Was it a civil case or a
23 criminal; do you recall?

24 PROSPECTIVE JUROR KAPPELMAN: Civil, I believe.

25 THE COURT: And how long ago was that?

1 PROSPECTIVE JUROR KAPPELMAN: Five or six years ago.

2 THE COURT: Is there anything about that prior jury
3 experience that would affect your ability to serve fairly here?

4 PROSPECTIVE JUROR KAPPELMAN: No, ma'am.

5 THE COURT: Thank you.

6 Mr. Mumford?

7 PROSPECTIVE JUROR MUMFORD: Yes.

8 THE COURT: Juror No. 17.

9 PROSPECTIVE JUROR MUMFORD: Okay. I am basically
10 familiar with cold fusion, thermodynamics, basically from
11 studying it in college this stuff. But I am not a professor in
12 it, but I do understand it.

13 THE COURT: All right. I did have a question for you,
14 Mr. Mumford. You wrote that you were retired from the medical
15 field. What was the --

16 PROSPECTIVE JUROR MUMFORD: No, retired from AT&T.

17 THE COURT: AT&T.

18 PROSPECTIVE JUROR MUMFORD: Yeah.

19 THE COURT: Okay. And you also served as a juror, I
20 believe, two times before?

21 PROSPECTIVE JUROR MUMFORD: Correct.

22 THE COURT: Did the jury reach a decision both times?

23 PROSPECTIVE JUROR MUMFORD: Both times.

24 THE COURT: Is there anything about that prior jury
25 experience that would affect your ability to judge this case

1 fairly?

2 PROSPECTIVE JUROR MUMFORD: No, Your Honor.

3 THE COURT: And you had -- you wrote about that
4 lawsuit against Ford Motor Company.

5 PROSPECTIVE JUROR MUMFORD: Correct.

6 THE COURT: Is there anything about that prior
7 experience that would affect your ability to judge this case
8 fairly?

9 PROSPECTIVE JUROR MUMFORD: No, ma'am.

10 THE COURT: Thank you.

11 PROSPECTIVE JUROR MUMFORD: Okay.

12 THE COURT: Is there anyone here who has experience
13 with trade secrets, patents, or copyrights?

14 Okay. And that's Juror 44, Mr. Olivo?

15 PROSPECTIVE JUROR OLIVO: Yes, we have experience
16 registering rights for computer programming.

17 THE COURT: Okay. Thank you.

18 Professor Indorf, do you as well, ma'am, or no?

19 PROSPECTIVE JUROR INDORF: No.

20 THE COURT: No. Okay.

21 We have some hands over here on the far right.

22 PROSPECTIVE JUROR O'NEIL: My name is Allison O'Neil,
23 Juror 55.

24 THE COURT: 55.

25 PROSPECTIVE JUROR O'NEIL: I've been involved in a

1 couple of writing projects and artistic projects. Ah, and I
2 have done a very minimal amount of research into intellectual
3 property things for those purposes, individual purposes, and
4 have helped collaborators, um, like, send off to the Library of
5 Congress for copyrights on -- for artistic projects.

6 THE COURT: Excellent. Thank you.

7 And while you have the microphone.

8 PROSPECTIVE JUROR O'NEIL: Yes.

9 THE COURT: You were the foreperson in a prior trial,
10 correct?

11 PROSPECTIVE JUROR O'NEIL: Yes.

12 THE COURT: How long ago was that?

13 PROSPECTIVE JUROR O'NEIL: Several years ago.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR O'NEIL: More than seven.

16 THE COURT: And that was a criminal case?

17 PROSPECTIVE JUROR O'NEIL: Yes.

18 THE COURT: All right. Is there anything about that
19 prior experience that would affect your ability to judge this
20 case fairly?

21 PROSPECTIVE JUROR O'NEIL: No.

22 THE COURT: And you wrote about the class action that
23 someone close to you was involved in. Is there anything about
24 his case that would affect your ability to judge this case
25 fairly?

1 PROSPECTIVE JUROR O'NEIL: No.

2 THE COURT: Thank you, ma'am.

3 And I believe your fellow juror also raised her hand.

4 PROSPECTIVE JUROR KAROW: 54, Elizabeth Karow.

5 THE COURT: Yes, ma'am.

6 PROSPECTIVE JUROR KAROW: Just my husband was filing a
7 patent on, like, an agricultural structure that didn't end up
8 going through. That's my only experience.

9 THE COURT: All right. And while you have the
10 microphone, Ms. Karow, you wrote about being -- was it an extra
11 juror or grand juror?

12 PROSPECTIVE JUROR KAROW: No, it was -- I was an extra
13 juror.

14 THE COURT: And that was in Indiana?

15 PROSPECTIVE JUROR KAROW: Yes.

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

19 PROSPECTIVE JUROR KAROW: No.

20 THE COURT: And what type of law does your father
21 practice?

22 PROSPECTIVE JUROR KAROW: Corporate law.

23 THE COURT: Here or?

24 PROSPECTIVE JUROR KAROW: In Indiana.

25 THE COURT: Indiana. Does he work in a law firm?

1 PROSPECTIVE JUROR KAROW: Yeah, for a law firm.

2 THE COURT: Okay. Is there anything about the type of
3 work that he does or your discussions with him about his work
4 that would affect your ability to judge this case fairly?

5 PROSPECTIVE JUROR KAROW: I don't think so.

6 THE COURT: Thank you, ma'am.

7 Ladies and gentlemen, is there anyone here who has any
8 experience in valuation of new technology or business
9 valuation?

10 Okay. We have one here in the jury box.

11 That's Mr. Gonzalez, Juror No. 9.

12 PROSPECTIVE JUROR GONZALEZ: Yeah, hi. Good morning,
13 everyone. My name is Jesse Gonzalez, Juror No. 9. I am an
14 auditor with KPMG. So in our various audits as a public
15 accounting firm, we are sometimes engaged to perform audits for
16 mergers and acquisitions, business combinations. I have
17 experience in looking at forecasted financial information,
18 valuation of certain intangible assets, franchise rights,
19 things of that nature.

20 THE COURT: Excellent. Thank you.

21 Anyone else?

22 (No audible response.)

23 THE COURT: Is there anyone here who has any bias
24 against people from foreign countries? One of the parties
25 here, Dr. Rossi, is from Italy. I believe we have witnesses

1 who may also be from other countries.

2 Anyone with a bias or prejudice?

3 (No audible response.)

4 THE COURT: Is there anyone here who has ever tried to
5 break a contract; you had a contract with someone and you tried
6 to get out of it or did get out of it?

7 PROSPECTIVE JUROR OLIVO: Your Honor.

8 THE COURT: Yes.

9 PROSPECTIVE JUROR OLIVO: Would a verbal contract
10 count?

11 THE COURT: Let me just go back. Wait for the
12 microphone, please, Mr. Olivo, Juror 44.

13 The question is a verbal contract?

14 PROSPECTIVE JUROR OLIVO: A verbal contract, does it
15 count?

16 THE COURT: Yes, it does.

17 PROSPECTIVE JUROR OLIVO: Then I have a problem of
18 that.

19 THE COURT: All right.

20 PROSPECTIVE JUROR OLIVO: I was deceived by a bank.
21 They denied me a payment of \$5,000 on the work that I did in
22 computers. And I told you that happening in this room because
23 I left my country because of that.

24 THE COURT: And what country is that?

25 PROSPECTIVE JUROR OLIVO: Dominican Republic.

1 THE COURT: Thank you very much.

2 Is there anyone here who has ever given testimony at
3 trial or in a deposition? Several hands.

4 Why don't we start over here. Mr. Kappelman?

5 PROSPECTIVE JUROR KAPPELMAN: Yes. I gave a
6 deposition.

7 THE COURT: In what kind of a case?

8 PROSPECTIVE JUROR KAPPELMAN: If I remember correctly,
9 an injury. A former athlete of mine had been involved in an
10 accident, and I was given a deposition about his abilities
11 before he was injured.

12 THE COURT: All right. Thank you.

13 And in the back. All right. We have Ms. Essinger.
14 Yes, ma'am?

15 PROSPECTIVE JUROR ESSINGER: Yes.

16 THE COURT: That's Juror 8 -- 16. Yes.

17 PROSPECTIVE JUROR ESSINGER: About a month and a half
18 ago, I was deposed because the attorneys wanted information
19 about a child of mine who had problems from birth -- the
20 student of mine that had problems from birth. And their
21 parents were suing the hospital and the nurses and the doctors.

22 THE COURT: All right. So you were a fact witness?
23 Right.

24 PROSPECTIVE JUROR ESSINGER: Um-hmm. I only had the
25 child a couple months.

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

2 If could you pass the microphone to Mr. Mumford,
3 Juror 17.

4 PROSPECTIVE JUROR MUMFORD: I was deposed against the
5 Ford Motor Company. So I was -- their lawyers, my lawyers and
6 I think there was a third-party lawyer.

7 All right.

8 PROSPECTIVE JUROR MUMFORD: So.

9 THE COURT: Very good. Thank you.

10 All right. Just two more down, if you could, I think
11 it's Ms. Noche, Juror 19.

12 PROSPECTIVE JUROR NOCHE: I had to give a deposition
13 on an altercation that I separated with two of my students, and
14 a lawsuit ensued. And I had to give a deposition on the -- one
15 parent tried to attack a student, so I had to give a deposition
16 on it.

17 THE COURT: All right. And while you have the
18 microphone, Ms. Noche, you wrote about a lawsuit that was
19 settled out of court. Were you a party to that?

20 PROSPECTIVE JUROR NOCHE: I was not.

21 THE COURT: All right. Is there anything about the
22 experience that that person went through in that case that
23 would affect your ability to judge this case fairly?

24 PROSPECTIVE JUROR NOCHE: I didn't have a very good
25 experience with the lawyers in either party.

1 THE COURT: Right.

2 PROSPECTIVE JUROR NOCHE: They prolonged it to the
3 point where we just kept on giving money and money and money.
4 I think, something that could have been settled out of court
5 within a few months took, you know, years.

6 THE COURT: All right. But will you carry that
7 displeasure with those lawyers and hold it against these
8 lawyers whom you don't know?

9 PROSPECTIVE JUROR NOCHE: I can't say for sure. I --

10 THE COURT: You just don't like lawyers.

11 PROSPECTIVE JUROR NOCHE: Due to my experience, I
12 didn't have a very good experience, I would say.

13 THE COURT: All right.

14 PROSPECTIVE JUROR NOCHE: Not so much.

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

16 PROSPECTIVE JUROR NOCHE: Okay.

17 THE COURT: Is there anyone else here who has that,
18 sort of, feeling, I don't want to put words in your mouth, but
19 that sort of not too happy with lawyers type of feeling?

20 I see we have a hand in the back. And that is?

21 PROSPECTIVE JUROR RAMIREZ: Alma Ramirez.

22 THE COURT: All right. Juror No. 45. Yes, ma'am.

23 PROSPECTIVE JUROR RAMIREZ: About ten years ago, I
24 worked for the Post Office and for a -- a carrier ran over a
25 child and killed it, killed the child. And I had to go to

1 court and give my experience on that route.

2 THE COURT: Right. Is that -- do you hold any biases
3 or do you just dislike lawyers because of that or?

4 PROSPECTIVE JUROR RAMIREZ: No.

5 THE COURT: Oh, all right.

6 PROSPECTIVE JUROR RAMIREZ: No, I don't.

7 THE COURT: Oh, I see.

8 PROSPECTIVE JUROR RAMIREZ: It was just something that
9 happened, and it was very --

10 THE COURT: Difficult.

11 PROSPECTIVE JUROR RAMIREZ: -- traumatizing.

12 THE COURT: Yes. While you have the microphone,
13 ma'am, you wrote about serving about eight years ago on a jury?

14 PROSPECTIVE JUROR RAMIREZ: It was a civil.

15 THE COURT: Correct. And is there anything about that
16 experience that would affect your ability to judge this case
17 fairly?

18 PROSPECTIVE JUROR RAMIREZ: I hope not.

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

20 PROSPECTIVE JUROR OLIVO: No. 44, Olivo. I was called
21 to talk on behalf of a fellow friend in Fort Lauderdale in a
22 courtroom of law. It was a charge -- he was charged and
23 convicted, and he is right now in jail for killing three people
24 in a car accident, and he was under the influence. So I -- I
25 was called in to talk about what I knew of him, which is good,

1 and it was good, and it is still good.

2 THE COURT: All right. Thank you.

3 Other hands in the back row?

4 PROSPECTIVE JUROR MEDINA: Hello. I'm Juror No. 49.

5 Name's Alexis. I was called as a witness in a case of a cousin
6 of mine and the wife in Tampa. But then the wife dismissed the
7 case, so I wasn't --

8 THE COURT: So you never testified?

9 PROSPECTIVE JUROR MEDINA: I never had to testify so.

10 THE COURT: While you have the microphone, Mr. Medina,
11 you also wrote about a car accident or lawsuit?

12 PROSPECTIVE JUROR MEDINA: Yeah, that was when I used
13 to work for Embassy Suites. And they actually -- okay, they
14 actually went after the company, not after me, so.

15 THE COURT: All right. Not you personally?

16 PROSPECTIVE JUROR MEDINA: No.

17 THE COURT: Okay. Thank you.

18 PROSPECTIVE JUROR MEDINA: Yeah.

19 THE COURT: If you could pass the microphone down.

20 PROSPECTIVE JUROR NUNEZ: No. 51.

21 THE COURT: Ms. Nunez. Yes.

22 PROSPECTIVE JUROR NUNEZ: I was deposed while I was
23 working at Florida Department of Transportation on a
24 construction claim.

25 THE COURT: All right. Thank you.

1 We had another hand up in the front row back there.

2 Yes.

3 PROSPECTIVE JUROR MENA: Eddie Mena. I think I was
4 27. I am not sure. I was just deposed during my divorce.

5 THE COURT: Yes. That is 27. And let me see here.

6 And, Mr. Mena, you also served as a foreperson in a
7 criminal case?

8 PROSPECTIVE JUROR MENA: Yes.

9 THE COURT: Is there anything about that experience
10 that would affect your ability to judge this case fairly?

11 PROSPECTIVE JUROR MENA: No, I don't believe so.

12 THE COURT: And as a result of being deposed in your
13 own divorce, would that affect your ability to judge the case
14 fairly?

15 PROSPECTIVE JUROR MENA: No.

16 THE COURT: Thank you.

17 Yes?

18 PROSPECTIVE JUROR CENTENO: I'm Glenda Centeno. I
19 don't know the number.

20 THE COURT: I'm sorry, your name again?

21 PROSPECTIVE JUROR CENTENO: Glenda Centeno.

22 THE COURT: All right.

23 PROSPECTIVE JUROR CENTENO: I had to give a deposition
24 for an accident that I was involved in.

25 THE COURT: Juror No. 20.

1 PROSPECTIVE JUROR CENTENO: 20.

2 THE COURT: All right. And were you sued personally,
3 as well, or not?

4 PROSPECTIVE JUROR CENTENO: I was suing the person
5 who.

6 THE COURT: Okay. And is there anything about that
7 experience that would affect your --

8 PROSPECTIVE JUROR CENTENO: I'm not a fan of lawyers
9 either.

10 THE COURT: Not a fan, but do you dislike them for any
11 particular reason?

12 PROSPECTIVE JUROR CENTENO: Just because of that
13 experience.

14 THE COURT: All right. But do you like any of us
15 here?

16 PROSPECTIVE JUROR CENTENO: No.

17 THE COURT: I'm a lawyer too.

18 PROSPECTIVE JUROR CENTENO: No.

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

20 Other? Yes, ma'am?

21 PROSPECTIVE JUROR COCHRAN: My name is Britney
22 Cochran. I am currently in the process of a lawsuit where the
23 other party is going after my mother and I. We were involved
24 in a car accident. Well, I was involved in a car accident in
25 December 2013.

1 THE COURT: Right. Okay. And that's going on right
2 now?

3 PROSPECTIVE JUROR COCHRAN: Yes, the trial is actually
4 set for some time in September.

5 THE COURT: Okay. And you are being represented by
6 insurance counsel?

7 PROSPECTIVE JUROR COCHRAN: Yes.

8 THE COURT: All right. Is there anything about that
9 experience that you are going through now that would affect
10 your ability to serve fairly here?

11 PROSPECTIVE JUROR COCHRAN: Honestly, yes, it is
12 making me a little anxious, especially since my mother is older
13 and her having to go through the process, as well.

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

15 We have another hand in the back. Oh, all right.
16 Let's start over there.

17 PROSPECTIVE JUROR MOREDA: Juror No. 57.

18 THE COURT: Yes.

19 PROSPECTIVE JUROR MOREDA: Osvaldo Moreda. I had to
20 testify against my best friend in a criminal case.

21 THE COURT: Thank you.

22 PROSPECTIVE JUROR KING: Hi, No. 56.

23 THE COURT: Yes, ma'am.

24 PROSPECTIVE JUROR KING: I was involved in a lengthy
25 divorce; it took years. And I also forgot that, I guess, my

1 roofer sued me for additional moneys, went to court for that.
2 And, recently, I had a car accident, and I guess that's still
3 pending.

4 THE COURT: And, Ms. King, is there anything about
5 those prior experiences that would affect your ability to be a
6 fair and impartial juror in this case?

7 PROSPECTIVE JUROR KING: No, I don't believe so.

8 THE COURT: Thank you.

9 COURT SECURITY OFFICER: We have one here, Judge.

10 THE COURT: Ms. O'Neil.

11 PROSPECTIVE JUROR O'NEIL: Yes. I was deposed
12 regarding an injury that a friend of mine sustained in a car
13 accident, and I testified as to his condition and what I
14 observed. Also, I believe I have an association with
15 Mr. Kappelman. As he was speaking, my --

16 THE COURT: I'm sorry. You turned off the microphone.

17 PROSPECTIVE JUROR O'NEIL: I did?

18 THE COURT: Yes.

19 PROSPECTIVE JUROR O'NEIL: Okay. My brother was a
20 student at Ransom Everglades. Joseph Romey (phonetic). And I
21 believe was -- coached along with him very closely and spoke of
22 him often. So I don't know him personally, but he knows my
23 brother very well.

24 THE COURT: Thank you, ma'am.

25 PROSPECTIVE JUROR O'NEIL: Okay.

1 THE COURT: Someone over here.

2 COURT SECURITY OFFICER: Yes.

3 THE COURT: Yes, ma'am?

4 PROSPECTIVE JUROR CHOY: Hi. Yamile Choy. I went one
5 time to court because one boss from one company that I worked
6 for, he sued his partner, and they took me just to testify to
7 see what I knew about their partnership one for the other, but
8 then the case was closed.

9 THE COURT: Thank you, ma'am.

10 PROSPECTIVE JUROR CHOY: Okay.

11 THE COURT: Yes, ma'am?

12 PROSPECTIVE JUROR BOLUS: I was in a car accident --

13 THE COURT: I'm sorry. Name or number?

14 PROSPECTIVE JUROR BOLUS: Rosette Bolus.

15 THE COURT: Juror No. 28. Yes, ma'am.

16 PROSPECTIVE JUROR BOLUS: I was in a car accident a
17 long time ago, but we did not go to court or anything. They
18 fixed my expenses out of court and everything.

19 THE COURT: Thank you.

20 All right. Thank you.

21 Ladies and gentlemen, I have some follow-up questions
22 for some of you, and then the attorneys may have some
23 additional questions.

24 I will begin over here in the front, Officer Latour,
25 with Juror No. 2.

1 Ma'am, could you tell us what type of work you have
2 done in past?

3 PROSPECTIVE JUROR CLAYTON: Worked for AT&T.

4 THE COURT: AT&T. All right. And you said you were
5 on call for two weeks with the Federal Courts and Dade County
6 Court for a day. Were you ever selected as part of the jury?

7 PROSPECTIVE JUROR CLAYTON: No.

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

9 PROSPECTIVE JUROR CLAYTON: You're welcome.

10 THE COURT: Juror No. 5, Mr. Marks.

11 And, Mr. Marks, you are attending the university now?

12 PROSPECTIVE JUROR MARKS: No, I graduated.

13 THE COURT: Okay. And what did you study?

14 PROSPECTIVE JUROR MARKS: It was anthropology.

15 THE COURT: Okay. And I see that you are applying for
16 the Air Force.

17 PROSPECTIVE JUROR MARKS: Yes.

18 THE COURT: And in the meantime, what do you do with
19 your time?

20 PROSPECTIVE JUROR MARKS: I take care of my
21 grandmother.

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

23 Juror No. 7, Mr. Lazier. So, Mr. Lazier, you were the
24 foreperson on another jury; is that right?

25 PROSPECTIVE JUROR LAZIER: Civil case, yes.

1 THE COURT: Civil case. Did the jury reach a verdict?

2 PROSPECTIVE JUROR LAZIER: Yes, we did.

3 THE COURT: And how long ago was that?

4 PROSPECTIVE JUROR LAZIER: About 10 years ago.

5 THE COURT: And is there anything about that prior
6 jury experience that would affect your ability to serve fairly
7 once more?

8 PROSPECTIVE JUROR LAZIER: No, it wouldn't.

9 THE COURT: Thank you, sir.

10 Juror 14, Mr. Ruiz. Mr. Ruiz, you have been involved
11 in some civil suits from car accidents?

12 PROSPECTIVE JUROR RUIZ: That is correct.

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

15 PROSPECTIVE JUROR RUIZ: In no way at all.

16 THE COURT: Thank you. Juror No. 18, Ms. Aldarondo.

17 PROSPECTIVE JUROR ALDARONDO: Yes.

18 THE COURT: And, Ms. Aldarondo, can you tell us what
19 type of work you have done in the past?

20 PROSPECTIVE JUROR ALDARONDO: I am unemployed, but I
21 used to babysit my sister's child.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR ALDARONDO: And I used to take care
24 of their dogs.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR ALDARONDO: My sister has set up an
2 interview in Tallahassee this July for me.

3 THE COURT: Okay. And what type of work are you
4 looking for or would you like to do?

5 PROSPECTIVE JUROR ALDARONDO: Well, I like drawing, so
6 something with animation.

7 THE COURT: Okay. Excellent. Thank you.

8 And Juror 25, Ms. Auguste.

9 Ms. Auguste, could you stand? I'm sorry. I can't
10 see. Oh, very good.

11 Ma'am, you work as an administrator for what company?

12 PROSPECTIVE JUROR AUGUSTE: Ross University School of
13 Medicine.

14 THE COURT: All right. And before that, you worked as
15 a legal assistant?

16 PROSPECTIVE JUROR AUGUSTE: Yes.

17 THE COURT: With a law firm?

18 PROSPECTIVE JUROR AUGUSTE: Yes, he was a solo
19 practitioner, I guess.

20 THE COURT: Okay. And what type of law practice was
21 it, plaintiffs' work, defendants, criminal?

22 PROSPECTIVE JUROR AUGUSTE: Well, he mainly did
23 probate, and then he would do other things such as traffic or
24 personal injury.

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

1 Juror 29, Mr. Corti. If you could stand please,
2 Mr. Corti, it is just easier for us see you.

3 Mr. Corti, your wife is a paralegal?

4 PROSPECTIVE JUROR CORTI: Yes, ma'am.

5 THE COURT: And do you know what type of law office
6 she works in?

7 PROSPECTIVE JUROR CORTI: She works for a solo
8 practitioner, civil.

9 THE COURT: Okay. All right. And do you know if that
10 solo practitioner handles mostly plaintiffs' work?

11 PROSPECTIVE JUROR CORTI: Defense.

12 THE COURT: Defense.

13 PROSPECTIVE JUROR CORTI: Yes.

14 THE COURT: All right. Thank you.

15 Juror 32, Ms. McFarland. And, Ms. McFarland, you
16 served as a juror once before in Baltimore?

17 PROSPECTIVE JUROR McFARLAND: Yes.

18 THE COURT: How long ago was that?

19 PROSPECTIVE JUROR McFARLAND: 20 years ago.

20 THE COURT: And was it a civil case?

21 PROSPECTIVE JUROR McFARLAND: It was a medical
22 malpractice.

23 THE COURT: Okay. Is there anything about that prior
24 jury experience that would affect your ability to judge this
25 case fairly?

1 PROSPECTIVE JUROR McFARLAND: No.

2 THE COURT: Thank you.

3 And, Mr. Paez, Juror 33.

4 PROSPECTIVE JUROR PAEZ: Good morning.

5 THE COURT: Mr. Paez, you served back in '93 in
6 Federal Court. Here in Miami?

7 PROSPECTIVE JUROR PAEZ: Correct.

8 THE COURT: Is there anything about that prior jury
9 experience that would affect your ability to judge this case
10 fairly?

11 PROSPECTIVE JUROR PAEZ: No.

12 THE COURT: And you also wrote about something that
13 occurred in 2016, and the case settled just a few months ago.

14 PROSPECTIVE JUROR PAEZ: Recently, yes, settled.

15 THE COURT: Yes.

16 PROSPECTIVE JUROR PAEZ: California.

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

20 PROSPECTIVE JUROR PAEZ: Absolutely not.

21 THE COURT: Thank you.

22 Juror 35, Belfort. And, Mr. Belfort, you served as a
23 juror in a medical malpractice case as well and were the
24 foreperson. Is there anything about that prior jury experience
25 that would affect your ability to judge the case fairly?

1 PROSPECTIVE JUROR BELFORT: Not at all.

2 THE COURT: Thank you.

3 Ms. Gross, Juror 36. Ms. Gross, I know you didn't
4 remember when you were filling out the written questionnaire
5 form, but do you have any better recollection now?

6 PROSPECTIVE JUROR GROSS: Maybe about six years ago,
7 medical malpractice.

8 THE COURT: Okay. Did the jury reach a verdict?

9 PROSPECTIVE JUROR GROSS: Yes, guilty.

10 THE COURT: And were you the foreperson?

11 PROSPECTIVE JUROR GROSS: No, ma'am.

12 THE COURT: Anything about that prior experience that
13 would affect your ability to judge fairly once more?

14 PROSPECTIVE JUROR GROSS: No.

15 THE COURT: Thank you, ma'am.

16 Juror 37, Prentice, Mr. Prentice.

17 PROSPECTIVE JUROR PRENTICE: Yes, Your Honor.

18 THE COURT: And, Mr. Prentice, you were also in
19 Federal Court as a juror one time before. Do you recall how
20 long ago?

21 PROSPECTIVE JUROR PRENTICE: Basically, like two years
22 ago.

23 THE COURT: Oh, recently.

24 PROSPECTIVE JUROR PRENTICE: Yes, ma'am.

25 THE COURT: Is there anything about that prior

1 experience that would affect your ability to judge fairly once
2 more?

3 PROSPECTIVE JUROR PRENTICE: No, Your Honor.

4 THE COURT: Thank you. Juror 39, Ms. Zepeda.

5 PROSPECTIVE JUROR ZEPEDA: Yes, Your Honor.

6 THE COURT: And, Ms. Zepeda, you were also a member of
7 a jury in a state case. How long ago was that?

8 PROSPECTIVE JUROR ZEPEDA: About a year or two ago.

9 THE COURT: Was that a criminal case?

10 PROSPECTIVE JUROR ZEPEDA: Yes.

11 THE COURT: Okay. Is there anything about that prior
12 jury experience that would affect your ability to judge fairly
13 once more?

14 PROSPECTIVE JUROR ZEPEDA: No.

15 THE COURT: Thank you, ma'am.

16 Juror 47, Ms. Belbusti. And, Ms. Belbusti, you were
17 also a member of a jury where the jury did reach a verdict. Is
18 there anything about that prior jury experience that would
19 affect your ability to judge fairly once more?

20 PROSPECTIVE JUROR BELBUSTI: Honestly, it extended a
21 couple nights, and right back then I wasn't a mom. Now I am.
22 I have to leave at 5:00, so it would affect my input in
23 deliberations and --

24 THE COURT: Right. But I don't keep my jurors past
25 5:00.

1 PROSPECTIVE JUROR BELBUSTI: Okay. Then it works
2 fine.

3 THE COURT: I never have.

4 PROSPECTIVE JUROR BELBUSTI: Okay. Thank you.

5 THE COURT: All right. Thank you.

6 Okay. Juror 53, Ms. Aleman. Ms. Aleman, you have
7 been working with interpreters in the area of human resources?

8 PROSPECTIVE JUROR ALEMAN: I work for a company that
9 has interpreters and translators. I started out 18 years ago
10 as an interpreter, and then I progressed to being supervisor,
11 examiner, recruiter. I have done every position. Trainer.
12 Right now, I am an examiner. I test people's language skills
13 and interpretation skills.

14 THE COURT: Did you ever work as an interpreter in
15 court?

16 PROSPECTIVE JUROR ALEMAN: Not in court, but over the
17 phone, yes, for court.

18 THE COURT: Okay. And does your company do that?

19 PROSPECTIVE JUROR ALEMAN: Yes.

20 THE COURT: And you were on a jury once before. How
21 long ago?

22 PROSPECTIVE JUROR ALEMAN: That was probably a little
23 over a year ago.

24 THE COURT: Was it a criminal case?

25 PROSPECTIVE JUROR ALEMAN: No, civil.

1 THE COURT: Is there anything about that prior jury
2 experience that would affect your ability to judge fairly once
3 more?

4 PROSPECTIVE JUROR ALEMAN: No, Your Honor.

5 THE COURT: Thank you very much.

6 Ladies and gentlemen, I am going to turn the
7 questioning over to the attorneys. I am giving them a little
8 bit of time each.

9 We'll begin with the Plaintiff.

10 MR. LUKACS: May it please the Court, Counsel, ladies
11 and gentlemen, good morning again.

12 Let me follow up with respect to litigation
13 experience, itself. Is it Ms. -- Juror No. 20, is it
14 Ms. Centeno.

15 PROSPECTIVE JUROR CENTENO: Centeno.

16 MR. LUKACS: Centeno?

17 PROSPECTIVE JUROR CENTENO: Centeno.

18 MR. LUKACS: Okay. And you were involved in a
19 lawsuit, as well.

20 PROSPECTIVE JUROR CENTENO: Correct.

21 MR. LUKACS: Okay. And did your experience in that
22 lawsuit influence you -- or will it influence your
23 decision-making at all in this case?

24 PROSPECTIVE JUROR CENTENO: No.

25 MR. LUKACS: Okay. Good. You also indicated you were

1 employed over at FIU, as well as your husband.

2 PROSPECTIVE JUROR CENTENO: Correct.

3 MR. LUKACS: Okay. In what capacity is your husband
4 working with -- at FIU?

5 PROSPECTIVE JUROR CENTENO: Can you repeat the
6 question? I'm sorry.

7 MR. LUKACS: In what capacity is your husband working?

8 PROSPECTIVE JUROR CENTENO: He's the assistant
9 registrar there.

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

11 Juror No. 11, Ms. Shannon.

12 PROSPECTIVE JUROR SHANNON: Good morning.

13 MR. LUKACS: Good morning. You indicated you worked
14 for the Department of Corrections.

15 PROSPECTIVE JUROR SHANNON: Yes.

16 MR. LUKACS: At some point you worked in corporate
17 America. Tell me about that.

18 PROSPECTIVE JUROR SHANNON: Well, when I first
19 graduated college, I worked for IBM, but that was years ago.
20 So I have been working for the Department of Corrections for 14
21 years, now, as a counselor.

22 MR. LUKACS: Okay. Thank you so much.

23 Now, I know that Mr. Martinez and Mr. Gonzalez, Juror
24 Nos. 38 and No. 9 have a business background, particularly with
25 auditing and finance and management and the like. And this is

1 a question for all of us. Is there anybody here, other than
2 you gentlemen, who have taken any courses in business ethics
3 finance, management and the like?

4 Yes, ma'am?

5 PROSPECTIVE JUROR ALEMAN: I've worked for eleven
6 years --

7 THE COURT: I'm sorry. One second. Please wait for
8 the microphone.

9 MR. LUKACS: May I have your juror number, please?

10 PROSPECTIVE JUROR ALEMAN: Yes. Madeline Aleman, 53.

11 MR. LUKACS: Yes, ma'am.

12 THE COURT: The microphone is not on.

13 PROSPECTIVE JUROR ALEMAN: I worked eleven years for a
14 Canadian bank. And I did different positions, including --

15 THE COURT: I'm sorry. It turned off. The acoustics
16 are really bad here, so we can't hear you without a microphone.

17 COURT SECURITY OFFICER: They are both out.

18 PROSPECTIVE JUROR ALEMAN: I worked 11 years for a
19 Canadian bank, and in that Canadian bank, I did many different
20 positions, including accounting, I was in finance. I was in
21 all those departments, the controllers department and human
22 resources.

23 I also -- back then, I started the first affirmative
24 action program for the bank. And the bank that -- the branch
25 that I was in was in San Juan, Puerto Rico.

1 MR. LUKACS: Okay. In the -- in your experience with
2 the bank, were you involved at all with investment banking?

3 PROSPECTIVE JUROR ALEMAN: Not with investment
4 banking, no.

5 MR. LUKACS: Okay. Has anybody -- and this is again a
6 group question. Is there anybody here who has ever publicly
7 marketed any type of new business venture or any new technology
8 in the hopes of soliciting investors? Anybody?

9 PROSPECTIVE JUROR ALEMAN: I didn't, but my husband
10 works for Bank of America, and he's been there for over 30
11 years, and he's got experience in all of those fields. He's a
12 audit manager, vice president in Bank of America.

13 MR. LUKACS: Is -- is Mr. Aleman currently employed at
14 Bank of America?

15 PROSPECTIVE JUROR ALEMAN: Yes.

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

17 Now, for those of you who have actually been --

18 COURT SECURITY OFFICER: We have one more.

19 MR. LUKACS: Oh, excuse me. Yes, ma'am.

20 PROSPECTIVE JUROR SHANNON: Juror No. 11. My
21 undergrad is in business administration.

22 MR. LUKACS: That's right. And you would have taken a
23 number of courses in that --

24 PROSPECTIVE JUROR SHANNON: Yes.

25 MR. LUKACS: -- curriculum, correct?

1 PROSPECTIVE JUROR SHANNON: Yes.

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

3 Yes, sir.

4 PROSPECTIVE JUROR PAEZ: Juror 33. I'm a human
5 resource manager. I've taken management courses in college and
6 stuff, so I have had numerous positions throughout my years in
7 human resources.

8 MR. LUKACS: Have you ever had any occasion to work
9 with investment bankers?

10 PROSPECTIVE JUROR PAEZ: No.

11 MR. LUKACS: Okay. Thank you, sir.

12 PROSPECTIVE JUROR STEVEN DIAZ: Steve Diaz. I'm not.
13 Not familiar with my juror number. But just generally, in
14 college, I did take some management courses, and some of them
15 involved business ethics. And you asked a question about that,
16 so --

17 MR. LUKACS: Yes, I did. So thank you.

18 PROSPECTIVE JUROR STEVEN DIAZ: So I did, I'm not an
19 expert on it, but I took a course in college.

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

21 Juror No. 44, Mr. Olivo, you had your hand up? Yes,
22 sir.

23 PROSPECTIVE JUROR OLIVO: Yes. In my line of work,
24 I'm a computer project leader, and I deal with inventories,
25 accounting. So I'm familiar with bookkeeping and general

1 ledgers and general balance sheets, also the P&L and everything
2 that has to do with general accounting, that's exactly what I
3 do. I work for a company that has an ERP program that serves
4 that --

5 MR. LUKACS: Okay. But you've not had any specific
6 experience in actually soliciting new technology or new
7 projects for purpose of enticing either companies or
8 individuals and making those investments, have you?

9 PROSPECTIVE JUROR OLIVO: No, I have not, sir.

10 MR. LUKACS: Okay. Thank you, sir.

11 UNIDENTIFIED PROSPECTIVE JUROR: You were asking
12 earlier about business, business ethics, and at work we're
13 required every year to take online a half-hour brief course on
14 business ethics.

15 MR. LUKACS: Okay. Great. Thank you so much.

16 COURT SECURITY OFFICER: We have two here.

17 PROSPECTIVE JUROR GINORIS: Number 6. I currently --
18 I currently manage a service department for an HVAC company in
19 South Florida.

20 MR. LUKACS: Okay. Which company is that?

21 PROSPECTIVE JUROR GINORIS: Kendale Air Conditioning.

22 MR. LUKACS: Okay. Great. And how long have you been
23 there?

24 PROSPECTIVE JUROR GINORIS: Twenty years.

25 MR. LUKACS: Excellent.

1 Yes, sir. Mr. Romanik?

2 PROSPECTIVE JUROR ROMANIK: Number 3.

3 MR. LUKACS: Number 3.

4 PROSPECTIVE JUROR ROMANIK: As a technical writer, I
5 run across ethics and the explanation of ethics and reading and
6 researching ethics and put together some slide programs for
7 ethics for nonprofits.

8 MR. LUKACS: Okay. How long have you been involved in
9 that -- that type operation?

10 PROSPECTIVE JUROR ROMANIK: Technical --

11 MR. LUKACS: Technical writing.

12 PROSPECTIVE JUROR ROMANIK: -- writing?

13 MR. LUKACS: Yes, sir.

14 PROSPECTIVE JUROR ROMANIK: Well, before I retired, I
15 did that about the last -- on and off the last seven years of
16 my life.

17 MR. LUKACS: Okay. Great. Thank you, sir.

18 Is there anybody else?

19 PROSPECTIVE JUROR NUNEZ: 51. I have a master's in
20 business administration and --

21 MR. LUKACS: I'm sorry. Can you speak louder?

22 PROSPECTIVE JUROR NUNEZ: Master's in business
23 administration, and I take ethics courses every year required
24 by my employer.

25 MR. LUKACS: Okay. You also have an engineering

1 degree as well?

2 PROSPECTIVE JUROR NUNEZ: I do.

3 MR. LUKACS: And you mentioned, I think, working with
4 Florida Department of Transportation?

5 PROSPECTIVE JUROR NUNEZ: Correct.

6 MR. LUKACS: Okay. And how long have you been with
7 DOT?

8 PROSPECTIVE JUROR NUNEZ: I was -- I was with DOT for
9 23 years. I'm currently working at Jackson.

10 MR. LUKACS: Okay. In your civil engineering
11 experience with the DOT, were your -- were you focused more on
12 the transportation and traffic analysis component of civil
13 engineering?

14 PROSPECTIVE JUROR NUNEZ: It was really in
15 construction.

16 MR. LUKACS: Okay. Great. Thank you.

17 COURT SECURITY OFFICER: We have two up here.

18 PROSPECTIVE JUROR CENTENO: So in reference to your --
19 No. 20, Glenda Centeno. In reference to your question about
20 the courses, I did my bachelor's in management information
21 systems, so I took various business courses.

22 MR. LUKACS: And that too would have involved taking
23 courses in business management, ethics and the like?

24 PROSPECTIVE JUROR CENTENO: Correct.

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

1 PROSPECTIVE JUROR CENTENO: You're welcome.

2 MR. LUKACS: Mr. Mumford. Yes, sir.

3 PROSPECTIVE JUROR MUMFORD: Yes. My minor in college
4 was business administration and major in computer science. And
5 I worked for AT&T, and yearly, several times a year, we had to
6 take courses in business ethics. So I'm familiar with that.

7 MR. LUKACS: Okay. Great. Thank you.

8 For those of you who have purchased a home, as opposed
9 to renting a condominium or leasing, is there anybody here that
10 doesn't understand the distinction between having the right to
11 use and ownership? Anybody here that doesn't understand the
12 distinction between the two?

13 (No audible response.)

14 MR. LUKACS: Okay. For those of you who have actually
15 purchased a home or purchased a car or made another type of
16 investment, is there anybody here that doesn't think that
17 getting an appraisal or doing the necessary due diligence prior
18 to engaging in that purchase or lease or investment is the
19 right thing to do?

20 (No audible response.)

21 MR. LUKACS: Now, Your Honor asked about whether or
22 not anybody spoke Italian. Let me ask you here, does anybody
23 understand Italian?

24 Yes, ma'am.

25 UNIDENTIFIED PROSPECTIVE JUROR: Some.

1 MR. LUKACS: Okay. Have you ever had the opportunity
2 to work by and through an interpreter as it relates to the
3 Italian language?

4 UNIDENTIFIED PROSPECTIVE JUROR: No.

5 MR. LUKACS: Is there anybody here that has any
6 experience with the Italian culture?

7 Yes, sir. Your juror number?

8 PROSPECTIVE JUROR PAEZ: 33.

9 MR. LUKACS: Mr. Paez?

10 PROSPECTIVE JUROR PAEZ: Yes.

11 MR. LUKACS: Yes, sir.

12 PROSPECTIVE JUROR PAEZ: I was a flight attendant
13 prior to my HR experience. I used to fly to -- out of Kennedy
14 to Switzerland, and I used to go a lot to Northern Italy.

15 MR. LUKACS: Great. Thank you for that.

16 Your Honor, how much time do I have remaining? Couple
17 minutes?

18 THE COURT: Four minutes.

19 MR. LUKACS: Okay. Thank you. Let me take my notes
20 and try to wrap this up.

21 THE COURT: That's not working. You'll need to use
22 the other microphone.

23 MR. LUKACS: You've already heard a brief description
24 of this case. And you've heard that, in this case,
25 Dr. Andrea Rossi and Leonardo Corporation are going to ask for

1 a jury verdict in the amount of \$89 million arising from a
2 breach of contract and other conduct on the part of the
3 Defendants.

4 Is there anybody here that has any beliefs or any
5 feelings that would make it uncomfortable or difficult for you
6 to compensate Dr. Rossi and his company with money damages in a
7 substantial amount, if the evidence justified it?

8 (No audible response.)

9 MR. LUKACS: We've spoken quite a bit, and Mr. Pace is
10 going to have an opportunity to ask you some questions as well.
11 But let me ask you if you can think of any beliefs, any
12 experiences, any feelings at all -- I apologize for my back --
13 that might affect the way you look at the evidence in this
14 case?

15 (No audible response.)

16 MR. LUKACS: Does everybody here realize that in this
17 case, you're going to hear evidence that is going to consist of
18 both documents, that is the written word, and then, of course,
19 oral testimony, that's when you're spoken to by witnesses
20 themselves?

21 (No audible response.)

22 MR. LUKACS: Is there anything you would like to share
23 before I conclude and let me know something about yourself that
24 might in some way affect your ability to render a fair and
25 impartial verdict in this matter?

1 (No audible response.)

2 MR. LUKACS: I thank you very much.

3 Your Honor.

4 THE COURT: Thank you.

5 Mr. Pace.

6 MR. PACE: Thank you, Your Honor. And almost good
7 afternoon, but still good morning to everybody.

8 I, just as with Mr. Lukacs, I apologize if I'm ever
9 turning my back to one group or another. I'm trying not to.

10 I do have a number of questions. I think one that I
11 really need to start off with, though, is that this is going to
12 be a several-week-long trial and --

13 THE COURT: I will be addressing the length of the
14 trial.

15 MR. PACE: I apologize, Your Honor.

16 THE COURT: That's all right.

17 MR. PACE: Then I will skip that entirely.

18 Has anyone -- I want to see if anyone here who's ever
19 bought a product that they've returned because it didn't work?
20 Can I -- can I ask for a second about that? I'm probably not
21 going to go through everybody, but can we pass the microphone
22 just for a second?

23 And -- I'm sorry -- let me start off just by with your
24 juror name and number, please.

25 PROSPECTIVE JUROR CENTENO: 20, Glenda Centeno.

1 MR. PACE: And what type of product was it?

2 PROSPECTIVE JUROR CENTENO: A steamer.

3 MR. PACE: I'm sorry?

4 PROSPECTIVE JUROR CENTENO: A clothing steamer.

5 MR. PACE: A clothing steamer. And were you able to
6 get -- and you returned it because it failed to work?

7 PROSPECTIVE JUROR CENTENO: Correct.

8 MR. PACE: Did you get a replacement for it, or did
9 you get your money back?

10 PROSPECTIVE JUROR CENTENO: Money back.

11 MR. PACE: Did you want -- I'm sorry.

12 PROSPECTIVE JUROR CENTENO: I did not want a
13 replacement. I don't know if that was your question.

14 MR. PACE: That's perfect. I appreciate that.

15 Can we hand the microphone -- do you mind -- do you
16 mind just passing it down this way?

17 Yes, sir.

18 PROSPECTIVE JUROR RUIZ: Juror No. 14. I had
19 purchased a drone. The drone did not function properly. I
20 returned it, and I got my money back.

21 MR. PACE: And was it just that model of the drone, or
22 was it a -- was it a broken model, or did the drone type did
23 not work?

24 PROSPECTIVE JUROR RUIZ: The drone tech did not work.

25 MR. PACE: Thank you.

1 I -- I know we saw some hands back here, if we can.

2 Yes, right here in the corner, if I can?

3 PROSPECTIVE JUROR SOLIS: My number is 42,

4 Gisell Solis, and I returned a steamer too.

5 MR. PACE: Ah, there's problems with steamers in

6 Miami. Was -- did you get a replacement, or did you just

7 simply get your money back?

8 PROSPECTIVE JUROR SOLIS: I just got my money back.

9 MR. PACE: Okay. And right back here in the corner,

10 if we can? Thank you.

11 PROSPECTIVE JUROR: I bought a queen-sized mattress,

12 one of those memory mattresses, and it didn't inflate like it

13 was supposed to, so the company told me I had to take pictures

14 and send it to them, and they would replace it, and they did.

15 MR. PACE: So it was a replacement as opposed to

16 getting your money back?

17 PROSPECTIVE JUROR: Well, I would presume that if it

18 didn't -- they brought me the next one, and it didn't work,

19 they would probably give me my money back.

20 MR. PACE: But the next one did?

21 PROSPECTIVE JUROR: Yes.

22 MR. PACE: Excellent.

23 PROSPECTIVE JUROR MOREDA: Juror No. 57,

24 Osvaldo Moreda. I brought a firearm once that malfunctioned

25 really bad. It almost blew my hand off. I gave it back to the

1 company, and they serviced it, and I got it fixed, so yeah.

2 MR. PACE: Serviced it, got it fixed, and now it's
3 okay?

4 PROSPECTIVE JUROR MOREDA: Yeah, it's fine, it's fine.
5 It works. I don't shoot it as much anymore though because I'm
6 very scared of it, but, yeah.

7 MR. PACE: Can I ask while we have the microphone over
8 here, only because I don't believe, Ms. Aleman, I heard what --
9 what language you translate?

10 PROSPECTIVE JUROR ALEMAN: Spanish?

11 MR. PACE: Or when you were translating.

12 PROSPECTIVE JUROR ALEMAN: I was interpreting Spanish.
13 Spanish and English.

14 MR. PACE: I appreciate that. I'm sorry. You may
15 have said that, too, and I just might have missed it.

16 I think this was touched on a little bit, but I want
17 to make sure I ask about it again. I have just a handful of
18 very specific questions. This is kind of my last general one.

19 Has anyone here been involved in a contract dispute,
20 contract where you entered a contract with somebody, maybe even
21 a close family member of yours entered a contract with
22 somebody, had a disagreement, and had to find a way of
23 resolving it? Does that experience -- is it about a steamer?

24 PROSPECTIVE JUROR CENTENO: No.

25 MR. PACE: If you are talking about the steamer. I

1 hope you don't feel I'm picking on you.

2 PROSPECTIVE JUROR CENTENO: No, no, it's okay.

3 Okay. So currently I work at FIU, and we're having
4 issues with a company, who said that we had a contract that was
5 out of renewing. And we didn't, because the way the university
6 works, when we go under contract, we have to go through our
7 contract process, and we did initially have a contract with
8 them, maybe in 2011, but contracts in the State university
9 cannot last for more than three years. They definitely can't
10 just auto-renew. We're now in 2017. At a certain point during
11 that time, we had -- or back, I guess maybe in 2012, we had
12 told the company, um, to use the purchase order terms and
13 agreement to be able to -- to get the service from them. So we
14 technically haven't been under contract with them because the
15 PO terms is something that every year they would invoice us,
16 and then we would go ahead and use the terms as an agreement,
17 and then just for one year, next year, but the company is
18 saying that because of a contract that they're talking about
19 that was years ago that we're auto-renewing.

20 So we're having issues with that. The general counsel
21 is involved. So we still -- we're still working on -- on that
22 issue.

23 MR. PACE: So it's still ongoing, and it's not in
24 court?

25 PROSPECTIVE JUROR CENTENO: It is not in court yet.

1 MR. PACE: Okay.

2 PROSPECTIVE JUROR CENTENO: Yet.

3 MR. PACE: Your -- your dislike for lawyers might
4 grow.

5 PROSPECTIVE JUROR CENTENO: I'm sorry?

6 MR. PACE: I said you're dislike -- your general
7 dislike for lawyers might grow if that goes into court as well.

8 PROSPECTIVE JUROR CENTENO: I hope not.

9 MR. PACE: I hope not too.

10 I think I saw some other hands. Did I or am I kidding
11 myself? Over here? Please, it doesn't involve your hand, does
12 it?

13 PROSPECTIVE JUROR MOREDA: No, no.

14 MR. PACE: Okay, good. Fantastic.

15 PROSPECTIVE JUROR MOREDA: I had a bit of a dispute
16 with LA Fitness because I kept trying to terminate my contract
17 with them to switch to another gym. And they just wouldn't
18 break the contract no matter how many fees I paid to break the
19 contract.

20 MR. PACE: Now, in connection with that, did you have
21 a -- do you have a copy of the contract?

22 PROSPECTIVE JUROR MOREDA: Yes, I do at home.

23 MR. PACE: All right. And then in trying to resolve
24 the matter, did you rely on what was said in that contract to
25 try to talk to the other side to --

1 PROSPECTIVE JUROR MOREDA: Yes, I did. I ended up
2 just calling the corporation and speaking to, like, you know,
3 the top person, and we were able to resolve it over the phone
4 with no problem.

5 MR. PACE: Oh, fantastic.

6 And then I thought I saw a hand over here -- oh, I'm
7 sorry. I saw a hand right in front.

8 PROSPECTIVE JUROR: Yeah. I forgot, the last question
9 you asked, had I exchanged anything?

10 MR. PACE: Uh-huh.

11 PROSPECTIVE JUROR: I've done it successfully. Gone
12 through the company, yes, I have. It was a Weed Eater leaf
13 blower.

14 MR. PACE: And -- and -- and was it -- did you get
15 your money back, or did they give you a new one?

16 PROSPECTIVE JUROR: They sent me a second one.

17 MR. PACE: Second one that works?

18 PROSPECTIVE JUROR: They sent me a replacement.

19 MR. PACE: I'm about to finish up. I did -- and --
20 I'm sorry. I probably did not, but did I see somebody else
21 raise their hand about involvement in a contract dispute, or am
22 I wrong about that? Ah, here we are. Two folks here.

23 PROSPECTIVE JUROR OLIVO: I did before ask -- No. 44,
24 Olivo -- if a verbal contract counts. And the Judge says it
25 did, so I do have a bitter memory of somebody breaking a

1 contract to me, verbally. No -- no lawyer saying it.

2 MR. PACE: No lawyer. Is this what you had with the
3 bank --

4 PROSPECTIVE JUROR OLIVO: Yes. I already mentioned
5 that.

6 MR. PACE: It was an oral contract?

7 PROSPECTIVE JUROR OLIVO: Yes.

8 MR. PACE: And then it led you to actually moving to
9 the United States --

10 PROSPECTIVE JUROR OLIVO: Yes, sir. You work for the
11 best.

12 MR. PACE: Ah.

13 PROSPECTIVE JUROR OLIVO: It did.

14 MR. PACE: And then we have one here in the front, I
15 believe.

16 PROSPECTIVE JUROR KOLIWALA: Maria Koliwala, Juror
17 No. 58. I don't know if this applies, so I'm just going to
18 mention it. I do have a friend who has been in a contract
19 dispute regarding business. Um, it's nothing related to me,
20 but it's just information that's come through me regarding the
21 contract between him and -- and the party that he has a
22 contract with.

23 He had a dispute -- um, it hasn't gone to litigation
24 or anything like that because, um, it's regarding, um, a
25 business and its property that he had purchased. And it's an

1 agreement between him and the -- the owners of the property,
2 and that he is using the property as -- as like a partnership,
3 and it's regarding moneys that -- that he agreed to -- would be
4 paid to the first party. And there was like a dispute as to
5 the amount that he was due to pay them, uh, based on the
6 earnings of the business.

7 As far as I know, it's -- I haven't heard much more of
8 it, but the -- you know, the business is still ongoing as to
9 the agreements of whatever, if he's, you know, completed that
10 or not. I'm not aware.

11 MR. PACE: Well, it sounds to me like whoever has this
12 dispute, they -- they view you as a counselor, as someone who's
13 helpful to them. You know a lot of great details about this
14 matter. Is it something you've helped talk him through how to
15 resolve the dispute?

16 PROSPECTIVE JUROR KOLIWALA: No. It's -- it's friends
17 of ours, and he's been talking to my husband about it, and I've
18 just been hearing about it. And I know how he functions,
19 and -- and he's not very thorough in reading contracts.

20 MR. PACE: Ah.

21 PROSPECTIVE JUROR KOLIWALA: So my husband is trying
22 to advise him as well as other, you know, close friends. You
23 shouldn't sign something if you haven't, you know, gone through
24 it completely, and if you don't understand it, you know, you
25 shouldn't -- he's been advised not to go through this, but he

1 went ahead anyway. So now he's having a little bit of issues,
2 so --

3 MR. PACE: Your husband's advice is you should read a
4 contract before you sign the contract?

5 PROSPECTIVE JUROR KOLIWALA: He shouldn't even have
6 gone -- involved into this business or even signed the
7 contract.

8 MR. PACE: I -- I do appreciate that.

9 PROSPECTIVE JUROR KOLIWALA: Okay.

10 MR. PACE: I am actually almost done, if I can have
11 just one second, Your Honor.

12 (Pause in proceedings.)

13 MR. PACE: Ms. Nunez, can I just ask, from an
14 engineering perspective, what do -- what do you do -- oh, I'm
15 sorry, Ms. Nunez, I was looking at you, and I apologize. What
16 kind of work do you do for Jackson now in terms of engineering
17 work?

18 PROSPECTIVE JUROR NUNEZ: I manage the -- the
19 facility's design and construction department.

20 MR. PACE: Ah, okay.

21 THE COURT: Three minutes.

22 MR. PACE: Your Honor, I -- Your Honor, I have no
23 further questions.

24 THE COURT: Thank you.

25 Third-party Defendants.

1 MR. LEON DE LA BARRA: Thank you, Your Honor. It is
2 officially, good afternoon.

3 I just have a couple questions. Mr. Francisque, I
4 believe you raised your hand with respect to knowledge about
5 thermodynamics?

6 PROSPECTIVE JUROR FRANCISQUE: Yes.

7 MR. LEON DE LA BARRA: Can you briefly discuss your
8 general knowledge --

9 PROSPECTIVE JUROR FRANCISQUE: Yes, that's correct.

10 MR. LEON DE LA BARRA: What is your knowledge of
11 thermodynamics?

12 PROSPECTIVE JUROR FRANCISQUE: Sorry about that.
13 Repeat the question, please.

14 MR. LEON DE LA BARRA: What is your knowledge of -- or
15 understanding of thermodynamics?

16 PROSPECTIVE JUROR FRANCISQUE: From my understanding,
17 after -- I had to take the course because my bachelor's is --
18 it's in mechanical engineering.

19 MR. LEON DE LA BARRA: Okay. And I believe you listed
20 a hobby as auto engine building. Is there a specific engine
21 that you like to build, a V6, V8?

22 PROSPECTIVE JUROR FRANCISQUE: Usually,
23 first-generation General Motors.

24 MR. LEON DE LA BARRA: Okay. You do that for -- you
25 have your own cars?

1 PROSPECTIVE JUROR FRANCISQUE: Yes.

2 MR. LEON DE LA BARRA: I'm a car head too, that's why
3 I asked.

4 Generally, by a show of hands, how many of you have in
5 your careers a boss? A boss. Sorry. Someone you -- a
6 supervisor. Okay. And by a show of hands, how many of you
7 have ever been reprimanded by a third party for something you
8 did -- something that your boss told you to do?

9 By a show of hands, who here has been reprimanded by a
10 third party for something that you did that was in the scope of
11 your employment, something that your employer or your boss
12 asked you or told you to do?

13 We have one in the back, two in the back.

14 Juror No. 44, I believe?

15 PROSPECTIVE JUROR OLIVO: 44. It happens every day.

16 In my regular line of business, we serve people, and
17 we write programs to resolve daily issues in their businesses.
18 And it's common behavior, human behavior, not to be satisfied
19 and call the boss. And the boss get to you, and you know what
20 happened after that. Never been fired for that, though.

21 MR. LEON DE LA BARRA: Thank you for that.

22 Was there another hand over here?

23 PROSPECTIVE JUROR GRANT: Hi. Ellen Grant. Sure,
24 it -- as the gentleman said, it happens all the time. You're
25 asked by a department chair, for example, to follow up on

1 something, and follow up on something. And then higher-ups
2 say, Why did you that? And that wasn't your prerogative. And
3 I was simply following instruction.

4 MR. LEON DE LA BARRA: Okay. And would you -- would
5 you expect to be sued over that?

6 PROSPECTIVE JUROR GRANT: No.

7 MR. LEON DE LA BARRA: Thank you.

8 Is there one more?

9 PROSPECTIVE JUROR ALEMAN: In the interpretation
10 world, we have to serve as invisible -- we have to relay
11 everything that is said, and so we're invisible. It's two
12 people talking to each other, and I serve as the interpreter.
13 And on one occasion, I was interpreting everything that the
14 Spanish speaker was saying, and she got mad at me and started
15 yelling at me and cursing. Don't repeat everything I say,
16 etc., etc. And she didn't understand my role. I don't
17 discriminate, you know, what I should interpret or shouldn't
18 interpret, I interpret everything I hear. So that was a third
19 party that was telling me what not to do.

20 MR. LEON DE LA BARRA: Okay. And how did that make
21 you feel?

22 PROSPECTIVE JUROR ALEMAN: I felt that there -- there
23 is not enough education out there as far as how interpreters
24 work. And so I just -- I was okay with it because I know that
25 not everybody knows how to work with an interpreter.

1 MR. LEON DE LA BARRA: Thank you very much. That's
2 all the questions.

3 MR. NUNEZ: No additional questions, Your Honor.

4 MR. LEON DE LA BARRA: Sorry, one more.

5 PROSPECTIVE JUROR O'NEIL: Hi. Alison O'Neil,
6 Juror 55.

7 I'm a Dade County public school teacher, so I have a
8 lot of bosses. I served as department chair for -- or I have
9 served in the capacity as department chair for gifted students,
10 which is -- falls under the umbrella of exceptional student
11 education. And we're required to do a lot of documentation
12 regarding that and have additional training to make sure that
13 all that documentation is done correctly and according to the
14 law and according to making sure that students are receiving
15 appropriate services in the appropriate manner.

16 And there's a lot of paperwork that goes along with
17 that. And so we are trained by specialists in that area in
18 order to carry out that purpose and that directive that comes
19 from State law. And sometimes other people, such as perhaps
20 administrators, want things to be handled differently or aren't
21 as familiar with the specifics of that area as we are and don't
22 necessarily want to -- we're getting it from different sides
23 and are not -- are really obligated to follow one set of rules
24 and are being asked to follow another set of rules.

25 MR. LEON DE LA BARRA: Got it.

1 PROSPECTIVE JUROR O'NEIL: Sometimes.

2 MR. LEON DE LA BARRA: Thank you for that.

3 That's all the questions I have, Your Honor.

4 THE COURT: Thank you.

5 Ladies and -- you had no questions.

6 MR. NUNEZ: No additional questions.

7 THE COURT: Ladies and gentlemen, let me discuss the
8 length of the trial, and with that discussion, we'll just close
9 this portion of the voir dire, this is voir dire examination of
10 a -- of a panel of jurors, and give you a lunch break.

11 You may have gathered that the case is -- involves
12 many parties, many claims, many defenses, and will take some
13 time to try. The jury summons that you were kind enough to
14 observe and come here in response to only asks you to be
15 available for two weeks, I believe. Not all trials take two
16 weeks. This one will not. This trial we anticipate will
17 conclude the week of July 24. Next week we don't meet on
18 Monday or Tuesday either because of July 4th weekend. The
19 court is closed on Monday as well as on Tuesday.

20 I know we're in the summer. And I know some of you
21 may have vacation plans. So I would ask Officer Latour to
22 start over here in the front of the room and let me just direct
23 my question to this portion of the room and ask, is there
24 anyone in this portion of the room who cannot serve for the
25 duration of the trial as we anticipate it?

1 In the first row, Juror No. 3, Mr. Romanik?

2 PROSPECTIVE JUROR ROMANIK: Yes. Self-employed, and
3 my wife is my boss, and I do her backup and back office work
4 for her. And for two weeks, she would be very unhappy. And it
5 would probably -- it would make very tough on her, and she
6 might miss some opportunities that she might not -- that she
7 otherwise could have taken advantage of if I was there to do a
8 lot of the grunt work and back work, computer research for her.

9 THE COURT: Thank you, Mr. Romanik.

10 Anyone else in this first row? All right. Please
11 pass the microphone down.

12 Mr. Marks.

13 PROSPECTIVE JUROR MARKS: Aaron Marks, Juror 5. I'm
14 going through enlistment with the Air Force, and as it stands
15 right now, I kind of have a scheduled date for a physical.

16 THE COURT: What date is that?

17 PROSPECTIVE JUROR MARKS: It is -- I believe it's the
18 15th of July.

19 And also due to my grandmother moving in with me and
20 my mom, and my mom working most of the time, I kind of have to
21 look after her at some points. I can only get someone to kind
22 of look after her at certain days.

23 THE COURT: Thank you.

24 Mr. Ginoris.

25 PROSPECTIVE JUROR GINORIS: Yes, um, being in my line

1 of work, this is our busy season right now where we are
2 swamped, and I do run the managing department, and I can be out
3 for at least --

4 THE COURT: And what company do you work for?

5 PROSPECTIVE JUROR GINORIS: Air conditioning.

6 THE COURT: I'm sorry?

7 PROSPECTIVE JUROR GINORIS: Air conditioning.

8 THE COURT: What is the company, though?

9 PROSPECTIVE JUROR GINORIS: Kendale Air Conditioning.

10 THE COURT: Kendale Air Conditioning.

11 PROSPECTIVE JUROR GINORIS: Yeah.

12 THE COURT: All right. Thank you.

13 Second row.

14 PROSPECTIVE JUROR KAPPELMAN: Juror 8, Kappelman.

15 July 21st to the 28th, I'm taking a group of runners
16 to North Carolina for a running camp.

17 THE COURT: Thank you.

18 All right. Mr. Lazier.

19 PROSPECTIVE JUROR LAZIER: Yes, I need one day, and
20 that's July the 13th, I have a doctor's appointment.

21 THE COURT: Okay. Thank you.

22 Mr. Gonzalez.

23 PROSPECTIVE JUROR GONZALEZ: Yes. Hi. Good morning.

24 I work for PP&G, so we're a public accounting firm.

25 One of my main clients is a Fortune 200 client. July is a very

1 busy month for us. We have a lot of deadlines coming up, and
2 the week of July 24th, I'll be in Detroit for an audit
3 committee meeting. So I'm traveling with our partner, I'm the
4 lead engagement manager on the job and going to be traveling
5 that week. And several deadlines the weeks before, so next
6 week is already going to start to ramp up for us. And the
7 first week of August, after I come back from the audit
8 committee presentation, our main client files their quarterly
9 filing. I am going to Siesta Key for vacation with my family.

10 THE COURT: All right. Thank you.

11 Ms. Smith.

12 PROSPECTIVE JUROR SMITH: Juror No. 10. I am
13 currently a adult education administrator. I work 12 months.
14 We are in the process right now of master scheduling. I do
15 have other colleagues that can take over my building in the
16 evening, but one of my colleagues, her mother has colon cancer,
17 so the duration of this trial is going to affect my job
18 performance, unfortunately.

19 THE COURT: And who is your employer?

20 PROSPECTIVE JUROR SMITH: Miami-Dade County Public
21 Schools.

22 THE COURT: Thank you, ma'am.

23 PROSPECTIVE JUROR SMITH: Thank you.

24 PROSPECTIVE JUROR SHANNON: Good afternoon, Juror
25 No. 11, Babette Shannon. I'm currently the senior counselor

1 with the Department of corrections, and my unit right now,
2 we're already short-staffed, so we're in the process of going
3 through various audits. We have another audit coming up on
4 July 10th. The audits, as you know, can -- would assume, we
5 have to pass those for our units to stay open. So it's just a
6 really critical time right now.

7 THE COURT: Thank you.

8 PROSPECTIVE JUROR SHANNON: Thank you.

9 PROSPECTIVE JUROR COCHRAN: Juror No. 12. On the week
10 of July 21st, I am scheduled to move out of my apartment along
11 with my elderly mother, so that's a bit much. And then also
12 the following week, I'm scheduled to go out of town to Alabama.

13 THE COURT: Thank you, ma'am.

14 PROSPECTIVE JUROR CENTENO: Okay. So next week I
15 am --

16 THE COURT: Juror name or number.

17 PROSPECTIVE JUROR CENTENO: Oh, sorry. 20,
18 Glenda Centeno. I'm supposed to go on vacation because it will
19 be my five-year wedding anniversary. But what concerns me a
20 lot, too, is the -- beginning the week of July 12th, my
21 youngest child is going to be starting school, and I would --
22 I'm going to be the one that's going to be taking him during
23 those times.

24 THE COURT: Thank you.

25 Ms. Noche -- oh, I'm sorry. Yes.

1 PROSPECTIVE JUROR NOCHE: I have --

2 THE COURT: I can't hear you. Yes, ma'am.

3 PROSPECTIVE JUROR NOCHE: I have a medical condition
4 that I would like to discuss in private, if possible.

5 THE COURT: Okay. All right. Once we excuse the rest
6 of the jury.

7 PROSPECTIVE JUROR NOCHE: Thank you.

8 THE COURT: All right. Mr. Ulysse.

9 PROSPECTIVE JUROR ULYSSE: Juror 21. My wife just
10 have a newborn. And then during the day, I stay with the kids,
11 and I work night also. I work eight to four in the morning.

12 THE COURT: All right.

13 PROSPECTIVE JUROR ULYSSE: And then on the July 20th,
14 I'm traveling overseas, I already plan with ticket.

15 THE COURT: Thank you.

16 Ms. Aldarondo.

17 PROSPECTIVE JUROR ALDARONDO: Yes. My father had got
18 in a days off prior to me getting the notice, and we had --
19 we're going to Tallahassee because my sister had set up an
20 interview after July 8 for -- for Party City where she used to
21 work at, see if I can get a job there.

22 THE COURT: All right. Thank you.

23 Ms. Essinger.

24 PROSPECTIVE JUROR ESSINGER: Yes, I was just hired for
25 ES White student school year for special education. And it

1 runs -- it starts Wednesday. The work days were yesterday and
2 today. It begins on Wednesday, and it ends on August 1st.

3 THE COURT: That's for the -- that's the school board?

4 PROSPECTIVE JUROR ESSINGER: Yes.

5 THE COURT: All right.

6 PROSPECTIVE JUROR ESSINGER: Dade County Public
7 Schools. And half of the program -- it's not at my school;
8 however, half of the program and many of the children are my
9 former students, and we collaborate together and work together
10 in order to accommodate and modify what we need to help our
11 kids, so.

12 THE COURT: All right. Thank you.

13 I believe there were other hands here.

14 COURT SECURITY OFFICER: Right here, Judge.

15 THE COURT: Yes, ma'am.

16 PROSPECTIVE JUROR CHOY: Hi. Yamile Choy, 23.

17 THE COURT: Yes. 23.

18 PROSPECTIVE JUROR CHOY: I work for a small company,
19 which I am the one in charge of the whole office. I am the
20 receptionist, I'm the secretary, I'm bookkeeping. I have to
21 deal with all the agents of the office in a daily basic. And
22 they don't have nobody to replace me. One of my boss, she's on
23 jury duty as we speak. And my other boss, which is her
24 husband, he is out of town for two weeks. So I don't have
25 nobody can replace me. They practically -- nobody can handle

1 the matters in the office, and I have like 40 agents in my
2 office --

3 THE COURT: Thank you.

4 PROSPECTIVE JUROR CHOY: -- that I have to deal with
5 on a daily basic.

6 THE COURT: All right. Thank you.

7 Yes. Ms. Phillips.

8 PROSPECTIVE JUROR PHILLIPS: Yes. Juror No. 22. I
9 work at Bascom Palmer in the medical records department, and
10 we're already short-staffed. So the month of July, we have
11 various people taking off vacation time, so I need to be there.

12 THE COURT: All right. Thank you.

13 All right. In the back of the room, that section,
14 please.

15 PROSPECTIVE JUROR ROBINSON: Barbara Robinson, 43.

16 THE COURT: Yes.

17 PROSPECTIVE JUROR ROBINSON: I am retired. I have
18 doctors' appointments. I have made travel plans. And I cannot
19 sit for extended lengths of time. So that would be a lot on
20 me.

21 THE COURT: Thank you.

22 PROSPECTIVE JUROR OLIVO: No. 44. Besides my
23 toothache that I already mentioned, I'm leading a two years
24 go-live right now. And I have a letter here from my boss just
25 in case you need to substantiate this claim, but being here

1 will hurt the company that I work for, Gormitak (phonetic)
2 Associates, because it is right now at this point that this
3 customer went live with the programs, and they cannot put in
4 invoices, and you know what that means.

5 THE COURT: All right. Thank you.

6 PROSPECTIVE JUROR RAMIREZ: Alma Ramirez. I have
7 airfare, I'm leaving on the 20th of July out of the country.

8 THE COURT: Thank you, ma'am.

9 PROSPECTIVE JUROR GROSS: Yes, Janis Gross, No. 36.
10 Miami-Dade County public employee, 12-month employee. No one's
11 in the office. Summer school is getting ready to start. I'm
12 the only one in the office that registers the children, and I
13 need to be there because I do payroll and registration, and
14 it's nobody there.

15 THE COURT: Thank you.

16 PROSPECTIVE JUROR GROSS: Thank you.

17 PROSPECTIVE JUROR INDORF: Juror 46, Jane Indorf. I'm
18 a single mother of a 20-month-year-old, who is in day care.
19 Day care doesn't start until 8:30. He needs to be picked up
20 between 5:00 and 5:30. I could make arrangements for the
21 father to be there to pick him up, but it would be a hardship.

22 Also, I'm scheduled to be at a professional conference
23 from the 9th to the 16th, up in Massachusetts. These plans
24 have been made for months, and it's integral to my career and
25 my professional development.

1 THE COURT: Thank you, ma'am.

2 PROSPECTIVE JUROR DEUTSCH: Mary Deutsch, Juror
3 No. 48. I run the office for a private school. I'm the only
4 one in the office. I do registration, report cards, closing up
5 the school year, and registration for the upcoming school year.

6 THE COURT: What school is it, please?

7 PROSPECTIVE JUROR DEUTSCH: It's called the Mechina
8 South Florida of Miami Beach.

9 THE COURT: Can you spell that?

10 PROSPECTIVE JUROR DEUTSCH: M-E-C-H-I-N-A.

11 THE COURT: Thank you.

12 PROSPECTIVE JUROR DEUTSCH: It's the junior high and
13 high school.

14 THE COURT: Thank you.

15 PROSPECTIVE JUROR AUGUSTE: Juror 25. I have a
16 planned trip from July 8th to the 12th. And when I return,
17 it's peak season at my job.

18 THE COURT: Thank you, ma'am.

19 PROSPECTIVE JUROR STEVEN DIAZ: Steven Diaz. I have a
20 schedule, been approved vacation time starting July 4th, going
21 through the weekend, so I believe it's the 9th or something
22 like that.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR STEVEN DIAZ: Okay. Thank you.

25 PROSPECTIVE JUROR NUNEZ: 51. I have a -- I'm

1 scheduled to do a quarterly update to the board of -- to the
2 public health trust board now at the end of July, but I'm --
3 it's quarterly update for the whole capital program.

4 I also have a long weekend planned between the -- one
5 of the two weekends between the 9th and the 29th to New York.
6 My daughter will be up in a precollege, so I was going to fly
7 up there and take her to college tours.

8 THE COURT: Thank you.

9 PROSPECTIVE JUROR GRANT: I'm Ellen Grant.

10 THE COURT: I can't hear you.

11 PROSPECTIVE JUROR GRANT: Hello.

12 THE COURT: Yes.

13 PROSPECTIVE JUROR GRANT: Hi, I'm Ellen Grant. Yes, I
14 have travel plans beginning on the 13th and --

15 THE COURT: Juror 30. I'm sorry. Go ahead.

16 PROSPECTIVE JUROR GRANT: Thought that I would be done
17 by that time. Following that, I've got to check in on my
18 parents -- we rotate siblings -- up in New Hampshire.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR GRANT: And that all falls in July.

21 THE COURT: Thank you, ma'am.

22 PROSPECTIVE JUROR ALVARADO: Hi. My name is Glenda.
23 I'm a dietitian in a health center. I have admissions every
24 day. I am in charge of the fifth floor, so I don't have
25 anybody to cover for me.

1 THE COURT: That's Juror 50. And who is your
2 employer, ma'am?

3 PROSPECTIVE JUROR ALVARADO: Riviera Health Resort.

4 THE COURT: Thank you.

5 Yes.

6 PROSPECTIVE JUROR MENA: Eddie Mena. My sales -- my
7 job is in sales, so 80 percent of my income is sales-related,
8 so three weeks would severely impact that kind of income.

9 THE COURT: Juror 27. Thank you.

10 And on that side of the room.

11 PROSPECTIVE JUROR O'NEIL: Allison O'Neil, Juror 55.

12 I have a root canal on Monday. And I have two follow-up
13 appointments, I believe, which are July 12th and 14th, which
14 perhaps could be somewhat rescheduled. And then the following
15 week, I have travel plans, flight for the following week.

16 THE COURT: Thank you, ma'am.

17 PROSPECTIVE JUROR KAROW: Hi. Elizabeth Karow, 54.

18 I'm a nurse practitioner for a pediatric office, and I have
19 patients scheduled, you know, the next few weeks to see me,
20 three to four days a week. And now is our very busy time of
21 year. All the kids need their physicals and their forms to go
22 back to school. In addition, I have travel plans to Colorado
23 the 12th through the 16th to be in my friend's wedding. And I
24 also have travel plans on July 26th.

25 THE COURT: Thank you, ma'am.

1 PROSPECTIVE JUROR ALEMAN: Madeline Aleman, No. 53. I
2 am a lung cancer patient. And I have appointments coming up,
3 which I can reschedule; I wouldn't mind.

4 THE COURT: Thank you, ma'am.

5 PROSPECTIVE JUROR BYRD: I'm Juror 59. I have
6 mandatory work scheduled for July 9th through 11th.

7 THE COURT: And who is your employer?

8 PROSPECTIVE JUROR BYRD: Levy Restaurants.

9 THE COURT: I'm sorry?

10 PROSPECTIVE JUROR BYRD: Levy Restaurants.

11 THE COURT: And what do you mean by mandatory work
12 schedule?

13 PROSPECTIVE JUROR BYRD: We have an event coming up
14 that I have been scheduled for, for those days.

15 THE COURT: Thank you, ma'am.

16 All right. We will ask Ms. Noche to stay with us,
17 Juror 19. The rest will now take a break.

18 During this break, please do not -- oh, there's one
19 more person?

20 PROSPECTIVE JUROR MOREDA: Osvaldo Moreda, Juror
21 No. 57.

22 THE COURT: Yes.

23 PROSPECTIVE JUROR MOREDA: My grandmother has terminal
24 cancer, and she's nearing her time.

25 THE COURT: Okay. Thank you.

1 During this lunch break, please do not discuss this
2 case with anyone. Please avoid contact with the parties and
3 the lawyers. They cannot have contact with you. Please don't
4 do any reading or research about the case. And please return
5 and be gathered outside the courtroom doors by 1:30. Please
6 come back by 1:30.

7 Have a good lunch.

8 COURT SECURITY OFFICER: All rise.

9 (Prospective jury panel exited the courtroom at 12:28 p.m.)

10 THE COURT: Ms. Noche, if you would just stay here
11 with us, please, ma'am.

12 (Pause in proceedings.)

13 (Prospective Juror No. 19 present.)

14 THE COURT: Everyone, please be seated.

15 Ms. Noche, you can just take a seat there, ma'am.

16 There was something you wanted to discuss with us privately.

17 PROSPECTIVE JUROR NOCHE: Thank you. It is nothing
18 drastic, but it's a little bit embarrassing. I suffer from
19 irritable bowel syndrome, diarrhea. I get bouts, they can be
20 five, seven bouts a day or none a day. So it's very
21 unpredictable.

22 THE COURT: I understand. Thank you, ma'am.

23 PROSPECTIVE JUROR NOCHE: You're welcome.

24 (Prospective Juror No. 19 not present.)

25 THE COURT: I know you all need a break as well, but

1 we are going to plow right ahead and address these cause
2 challenges, and then you are going to take your break. All
3 right?

4 MR. PACE: Yes, ma'am.

5 THE COURT: If anyone needs to use the restroom, you
6 can come behind me. But we are moving forward while you have
7 other Counsel here.

8 All right. All right. Do I hear a cause challenge on
9 Juror No. 1?

10 MR. PACE: Yes, Your Honor.

11 THE COURT: Any objection?

12 MR. LUKACS: No, Your Honor.

13 THE COURT: Stricken. Cause challenge on Juror 3?

14 MR. LUKACS: No.

15 THE COURT: Any objection?

16 MR. LUKACS: I'm sorry. A cause challenge, yes.

17 THE COURT: All right.

18 MR. LUKACS: Forgive me.

19 THE COURT: Thank you.

20 Do I hear cause a challenge on Juror 5?

21 MR. PACE: Yes.

22 THE COURT: Any objection?

23 MR. LUKACS: No. No objection.

24 THE COURT: Stricken. Cause challenge on Juror 6?

25 MR. LUKACS: Yes.

1 THE COURT: Any objection?

2 MR. LEON DE LA BARRA: No.

3 THE COURT: Stricken. Cause challenge on Juror 7?

4 MR. PACE: Yes.

5 THE COURT: Any objection?

6 MR. LUKACS: No.

7 THE COURT: Stricken. Cause challenge on 8,

8 Kappelman?

9 MR. LUKACS: Yes.

10 MR. PACE: Yes, I know. Yes.

11 THE COURT: Stricken. Cause challenge on Juror 9?

12 MR. LUKACS: Yes.

13 MR. PACE: Yes.

14 THE COURT: Stricken. Cause challenge on Juror 12?

15 MR. LUKACS: Yes, Your Honor.

16 THE COURT: Any objection?

17 MR. PACE: Oh, no, Your Honor.

18 THE COURT: Stricken. Cause challenge on Juror 18?

19 MR. LUKACS: Yes.

20 MR. PACE: Oh.

21 THE COURT: Any objection?

22 MR. PACE: No, Your Honor.

23 THE COURT: Stricken. Cause challenge on 19?

24 MR. PACE: No, Your Honor.

25 THE COURT: Stricken. Cause challenge on 20?

1 MR. LUKACS: Yes.

2 THE COURT: Stricken. Cause challenge on Juror --

3 MR. PACE: Your Honor, can I ask, you went past
4 Juror 16. Didn't she say she has the school board?

5 THE COURT: She works for the Dade County Public
6 Schools.

7 MR. PACE: But -- okay.

8 Cause challenge on Juror 21?

9 MR. PACE: Yes, Your Honor.

10 THE COURT: Any objection?

11 MR. LUKACS: No.

12 THE COURT: Stricken. Cause challenge on Juror 23?

13 MR. LUKACS: If I may just look at my notes for a
14 moment, Your Honor?

15 THE COURT: Can't be in a closed room. Works for a
16 small company.

17 MR. PACE: Oh, yes.

18 MR. LUKACS: Oh, yes.

19 THE COURT: Stricken. Cause challenge on 25?

20 MR. PACE: Yes, Your Honor.

21 THE COURT: Stricken. Cause challenge on 26?

22 MR. LUKACS: Yes.

23 MR. PACE: Yes, Your Honor.

24 THE COURT: Stricken. Cause challenge on 27?

25 MR. LUKACS: Yes.

1 THE COURT: Stricken. Cause challenge on 30?

2 MR. PACE: Yes, Your Honor.

3 THE COURT: Stricken.

4 Cause challenge on 40?

5 MR. PACE: Yes, Your Honor.

6 THE COURT: Stricken. Cause challenge on 43?

7 MR. LUKACS: Yes.

8 THE COURT: Stricken. Cause challenge on 44?

9 MR. LUKACS: Yes.

10 THE COURT: Stricken. Cause challenge on 45?

11 MR. PACE: Yes.

12 MR. LUKACS: Yes.

13 THE COURT: Stricken. Cause challenge on 46?

14 MR. LUKACS: Yes.

15 MR. PACE: Yes.

16 THE COURT: Stricken. Cause challenge on 51?

17 MR. NUNEZ: Yes, Your Honor.

18 THE COURT: Stricken. Cause challenge on 52?

19 MR. LUKACS: Yes.

20 THE COURT: Stricken. Cause challenge on 53?

21 MR. LUKACS: Yes.

22 THE COURT: Stricken.

23 MR. PACE: Your Honor, did she say she could

24 reschedule? I thought she said she could reschedule the

25 vacation.

1 THE COURT: She is the lung-cancer patient with
2 appointments.

3 MR. PACE: Oh, jeez, my apologies.

4 THE COURT: That's all right. Cause challenge on 54?

5 MR. LUKACS: Yes.

6 MR. PACE: All right. Yes, Your Honor.

7 THE COURT: Stricken. Cause challenge on 55?

8 MR. PACE: Yes, Your Honor.

9 MR. LUKACS: Yes.

10 THE COURT: Stricken. Cause challenge on 59?

11 MR. NUNEZ: Yes, Your Honor.

12 THE COURT: Stricken. Let me go back to Moreda 57.

13 Cause challenge on 57?

14 MR. NUNEZ: Yes, Your Honor.

15 MR. LUKACS: Yes.

16 THE COURT: Stricken. Cause challenge on 60?

17 MR. PACE: Yes.

18 THE COURT: Stricken. Any others?

19 MR. PACE: Give me just one second, Your Honor.

20 THE COURT: Yes.

21 (Pause in proceedings.)

22 MR. LUKACS: Your Honor, with regard to Juror No. 48,
23 she is the administrator of the school over in Miami Beach that
24 indicated a hardship as a result of planning, and these are the
25 months in which -- that's when they do their planning for the

1 following year. I know it could be extreme.

2 THE COURT: Any objection?

3 MR. NUNEZ: No, Your Honor.

4 THE COURT: Stricken.

5 Any others?

6 MR. NUNEZ: Your Honor, number -- I thought Nos. 10

7 and 11.

8 THE COURT: One works for the school board, the other
9 one works for Department of Corrections.

10 MR. PACE: Your Honor, my only other one would be
11 Juror No. 15, Christopher Palmer. I noticed on the form the
12 repeated spelling errors. I am not sure that the handling of a
13 case with a lot of documents, so we would --

14 THE COURT: That might disqualify a lot of lawyers
15 from the process of law. And on that happy note, gentlemen,
16 why don't we take our lunch break.

17 MR. PACE: Okay.

18 MR. LUKACS: Thank you, Your Honor.

19 THE COURT SECURITY OFFICER: All rise.

20 (A lunch recess was taken at 12:37 p.m.)

21

22

23

24

25

A F T E R N O O N S E S S I O N

THE COURT: Let's begin, please.

All right, Plaintiffs. Juror No. 2, Clayton?

MR. LUKACS: Fine.

THE COURT: Defense?

MR. PACE: I'm sorry, Your Honor. For Clayton,
accept.

THE COURT: Third Parties?

MR. NUNEZ: Accept.

THE COURT: Defense, Juror 4, Francisque?

MR. PACE: Accept.

THE COURT: Third Parties?

MR. NUNEZ: Accept.

THE COURT: Plaintiffs?

MR. LUKACS: Strike, peremptory.

THE COURT: Third-party Defendants, Juror No. 10,
Smith?

MR. NUNEZ: Accept.

THE COURT: Plaintiffs?

MR. LUKACS: Accept.

THE COURT: Defendants?

MR. PACE: Accept, Your Honor.

That was Juror No. 10, correct, Your Honor?

THE COURT: 10.

1 MR. PACE: Thank you, Your Honor.

2 THE COURT: Plaintiffs, Juror 11?

3 MR. LUKACS: I believe Juror 11, Your Honor, expressed
4 a hardship. She is the Department of Corrections officer.

5 THE COURT: I didn't find it sufficed for that.

6 MR. LUKACS: Okay.

7 THE COURT: Do Plaintiffs accept?

8 MR. LUKACS: Accept.

9 THE COURT: Defendants?

10 MR. PACE: Accept.

11 THE COURT: Third-parties?

12 MR. NUNEZ: Accept.

13 THE COURT: Defendants, Juror 13?

14 MR. PACE: We would exercise a peremptory as to
15 Juror 13.

16 THE COURT: Third-party Defendants, Juror 14?

17 MR. NUNEZ: Accept.

18 THE COURT: Plaintiffs?

19 MR. LUKACS: Peremptory, strike.

20 THE COURT: Plaintiffs, Juror 15?

21 MR. LUKACS: Accept.

22 THE COURT: Defendants?

23 MR. PACE: Strike.

24 THE COURT: Defendants, Juror 16?

25 MR. PACE: Accept.

1 THE COURT: Third-party Defendants?

2 MR. NUNEZ: Strike.

3 THE COURT: Third-party Defendants, Juror 17?

4 MR. NUNEZ: Accept.

5 THE COURT: Plaintiffs?

6 MR. LUKACS: Accept.

7 THE COURT: Defendants?

8 MR. PACE: Accept.

9 THE COURT: Plaintiffs, Juror 22?

10 MR. LUKACS: Accept.

11 THE COURT: Defendants?

12 MR. PACE: I'm sorry, Judge. No. 22, strike.

13 THE COURT: Defendants, Juror 24?

14 MR. PACE: Accept.

15 THE COURT: Third-party Defendants?

16 MR. NUNEZ: Accept.

17 THE COURT: Plaintiffs?

18 MR. LUKACS: Accept.

19 THE COURT: Third-party Defendants, Juror 28?

20 MR. NUNEZ: Accept.

21 THE COURT: Plaintiffs?

22 MR. LUKACS: Accept.

23 THE COURT: Defendants?

24 MR. PACE: Strike, Your Honor.

25 THE COURT: Plaintiffs, Juror 29?

1 MR. LUKACS: Strike.

2 THE COURT: Defendants, Juror 31?

3 MR. PACE: Strike, Your Honor.

4 THE COURT: Third-party Defendants, Juror 32?

5 MR. NUNEZ: Accept.

6 THE COURT: Plaintiffs?

7 MR. LUKACS: Accept.

8 THE COURT: Defendants?

9 MR. PACE: Accept.

10 THE COURT: That gives us six. I'll go over them.

11 Juror No. 2, Clayton; 10, Smith; 11, Shannon; 17, Mumford; 24,
12 Fleite; 32, McFarland.

13 MR. LUKACS: Your Honor, where are we on the strikes
14 at this time?

15 THE COURT: Plaintiffs have used four. Defendants
16 have used five.

17 MR. LUKACS: Thank you.

18 THE COURT: And I say four for you because the
19 third-party Defendants used one.

20 MR. LUKACS: Yes, Your Honor. Are we going to seek a
21 panel of ten as we did yesterday?

22 THE COURT: I am going try for more.

23 MR. LUKACS: Okay.

24 THE COURT: Plaintiffs, Juror No. 33, Paez?

25 MR. LUKACS: Accept.

1 THE COURT: Defendants?

2 MR. PACE: Accept.

3 THE COURT: Third parties?

4 MR. NUNEZ: Accept.

5 THE COURT: Defendants, Juror 34, Barrantes?

6 MR. PACE: Accept.

7 THE COURT: Third-party Defendants?

8 MR. NUNEZ: Accept.

9 THE COURT: Plaintiffs?

10 MR. LUKACS: Strike.

11 THE COURT: Plaintiffs, Juror 35, Belfort?

12 MR. LUKACS: Accept.

13 THE COURT: Defendants?

14 MR. PACE: Accept, Your Honor.

15 THE COURT: Third-party Defendants?

16 MR. NUNEZ: Accept.

17 THE COURT: Defendants, Juror 36, Gross?

18 MR. PACE: Accept, Your Honor.

19 THE COURT: Third parties?

20 MR. NUNEZ: Accept.

21 THE COURT: Plaintiffs?

22 MR. LUKACS: Accept.

23 THE COURT: Third-party Defendants, Juror 37,

24 Prentice?

25 MR. NUNEZ: Accept.

1 THE COURT: Plaintiffs?

2 MR. LUKACS: Accept.

3 THE COURT: Defendants?

4 MR. PACE: Accept.

5 THE COURT: Plaintiffs, Juror 38, Martinez -- I'm
6 sorry. Juror 39, Zepeda?

7 MR. LUKACS: Strike.

8 THE COURT: Defendants, Juror 41, Hill?

9 MR. PACE: We'll strike Ms. Hill.

10 THE COURT: Third-party Defendants, Juror 42, Solis?

11 MR. NUNEZ: Accept.

12 THE COURT: Plaintiffs?

13 MR. LUKACS: Accept.

14 THE COURT: Defendants?

15 MR. PACE: Accept, Your Honor.

16 THE COURT: Plaintiffs, Juror 47, Belbusti.

17 MR. LUKACS: I recall this being a hardship as well,
18 Your Honor, if I'm not mistaken. Peremptory.

19 MR. NUNEZ: Your Honor, I'm sorry. I also had her as
20 travel.

21 MR. LEON DE LA BARRA: She had to travel July 6th to
22 July 16th.

23 THE COURT: Belbusti?

24 MR. NUNEZ: That's what I have in my notes.

25 MR. PACE: You might have had it for 46. You might

1 have written over. I don't have any travel in my notes for 47.

2 THE COURT: Neither do I.

3 MR. LUKACS: I have, actually -- oh, for 47?

4 THE COURT: Correct. We are on 47, Jennifer Belbusti.

5 She is the database administrator at FedEx.

6 MR. LUKACS: Peremptory, Your Honor.

7 THE COURT: All right. Defendants, Juror 49, Medina?

8 MR. PACE: Accept, Your Honor.

9 THE COURT: Oh, I'm sorry. I skipped over Deutsch,
10 48?

11 MR. PACE: I think that Deutsch is out.

12 THE COURT: I'm sorry. She is out.

13 So the Defendants accepted Medina? Third-party
14 defendants? Accept?

15 MR. NUNEZ: I'm sorry, that's 49?

16 THE COURT: 49.

17 MR. NUNEZ: Yes, Your Honor, accept.

18 THE COURT: Plaintiffs?

19 MR. LUKACS: Strike.

20 THE COURT: That's it for you on strikes.

21 MR. LUKACS: Okay.

22 THE COURT: Third-party Defendants, Juror 50,
23 Alvarado.

24 MR. NUNEZ: Accept.

25 THE COURT: Plaintiffs?

1 MR. LUKACS: Oh, excuse me, Your Honor, accept.

2 THE COURT: Defendants?

3 MR. PACE: Accept, Your Honor. That gives us 12?

4 THE COURT: That gives us 12.

5 And let's move on to Juror 56, King. Plaintiffs?

6 MR. LUKACS: No, I don't have any more strikes, Your

7 Honor.

8 THE COURT: Defendants?

9 MR. PACE: Your Honor, I believe we also are also out
10 of strikes, and I don't have a basis for cause.

11 THE COURT: Third-party Defendants?

12 MR. NUNEZ: Same response, Your Honor.

13 THE COURT: All right. So let's go over the list of
14 jurors.

15 MR. PACE: Do we have one -- if Your Honor wants, I
16 think 58 is also still -- was still technically on the list. I
17 don't know if you wanted to stop at 13 or just cover 58 as
18 well.

19 THE COURT: Do you want to try this round with 13
20 jurors, Mr. Pace?

21 MR. PACE: Well, Your Honor.

22 THE COURT: Well, you could.

23 MR. PACE: I'm sorry. I only raised it because that
24 was the only one you didn't cover, so I don't -- you know, I
25 don't know if when you bring them back, somebody is going to

1 remember a --

2 THE COURT: Another vacation.

3 MR. PACE: Right.

4 THE COURT: All right. So let's move on.

5 MR. PACE: I mean, I have no cause for 58. I don't
6 know if anyone else does.

7 THE COURT: Do all parties accept Juror 58?

8 MR. LUKACS: Let me just check one last location.
9 I have no basis for cause.

10 THE COURT: All right.

11 MR. NUNEZ: Same response, Your Honor.

12 THE COURT: Very good.

13 So let's go over the jurors again. Clayton, No. 2;
14 Smith, 10; Shannon, 11; Mumford, 17; Fleite, 24; McFarland, 32;
15 Paez, 33; Belfort 35; Gross 36; Prentice, 37; Solis, 42;
16 Alvarado, 50; King, 56; and Koliwala, 58.

17 Do the Plaintiffs accept the jury?

18 MR. LUKACS: Yes, Your Honor.

19 THE COURT: Defendants?

20 MR. PACE: Yes, Your Honor.

21 THE COURT: Third-party Defendants?

22 MR. NUNEZ: Yes, Your Honor.

23 THE COURT: And the understanding is that there will
24 be eight jurors deliberating at the end, correct? Unless the
25 parties wish to have all of the ones who are here through the

1 duration of this very long trial deliberate?

2 MR. PACE: Um --

3 THE COURT: I will let you all discuss that with your
4 clients and give me your position at some point so we all know.

5 MR. PACE: I appreciate that, Your Honor.

6 THE COURT: All right. Let's bring the jury in,
7 please.

8 COURT SECURITY OFFICER: Please rise for the jury
9 panel.

10 (Prospective jury panel entered the courtroom at 1:40 p.m.)

11 THE COURT: Everyone, please be seated.

12 Ladies and gentlemen, I wish to thank you once more,
13 first of all, for coming in today in response to the jury
14 summons; second, for answering our questions with honesty and
15 candor; and, third, for being so patient with us. I know it's
16 been a long day for you.

17 At this time, I am going to call out the juror numbers
18 and names of those who have been selected. If your name is
19 called, it means you are a juror in this case. At the
20 conclusion of my reading of the list, I will excuse the rest of
21 your members who were not picked. You will all go back to the
22 jury pool section to receive further instruction.

23 If your name is called and you should leave with your
24 fellow jurors outside my courtroom doors, we'll lock the
25 courthouse down and get you back here. So please don't leave

1 if your name is called, because we continue with the trial
2 after the rest of the jurors are excused.

3 These are the jurors selected in this case: Juror
4 No. 2, Cheryl Clayton; Juror No. 10, Lewanda Smith; Juror No.
5 11, Babette Shannon; Juror 17, Ronnie Mumford; Juror 24, Brenda
6 Fleite; Juror 32, Wendy McFarland; Juror 33, Gabriel Paez;
7 Juror 35, Hideyuki Belfort; Juror 36, Janis Gross; Juror 37,
8 LeRoy Prentice; Juror 42, Gisell Solis; Juror 50, Glenda
9 Alvarado; Juror 56, Kathy King; and Juror 58, Maria Koliwala.

10 To the rest of you, thank you very much. Kindly
11 return to the jury pool section. And you all have a good day.

12 COURT SECURITY OFFICER: All rise.

13 (Prospective jury panel exited the courtroom at 1:48 p.m.)

14 THE COURT: Ms. Clayton, I am going to ask you, ma'am,
15 to go into the jury box. You can just -- there is an opening
16 over there and sit in the very first seat.

17 Ms. Smith, if you would move down the row next to
18 Ms. Clayton. And, Ms. Shannon, and if you would move down as
19 well. Mr. Mumford, if you would please join your fellow jurors
20 in the first row.

21 Ms. Fleite, please come forward, ma'am.
22 Ms. McFarland. Ms. Clayton, I did not mean you. I need you to
23 stay in the jury box. I'm sorry.

24 Ms. Fleite, ma'am, if you would please move into the
25 jury box with this seat. Ms. McFarland, if you would follow.

1 And, Mr. Paez, just move all the way down, please.

2 Mr. Paez, Gabriel Paez. Okay. Very good. Thank you.

3 Mr. Belfort. Mr. Belfort, if you would move into the
4 second row, all the way down.

5 COURT SECURITY OFFICER: This way, sir.

6 THE COURT: Ms. Gross, Mr. Prentice, Ms. Solis,
7 Ms. Alvarado, Ms. King and Ms. Koliwala.

8 Ladies and gentlemen, I am going to ask that you
9 please stand and raise your right hands. At this time, my
10 courtroom deputy will administer your oath as jurors in this
11 case.

12 (Time 1:46 p.m.)

13 (The selected jury panel was sworn.)

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

15 COURT'S PRELIMINARY JURY INSTRUCTIONS

16 THE COURT: Ladies and gentlemen, first of all, let me
17 indicate that if any of you will need letters for your
18 employers, my courtroom deputy can get those to you. And you
19 will you be meeting with her in the jury room because I'm sure
20 many of you would want to let your employers know.

21 Particularly for public employers, they are very well and
22 familiar with the rules of this court. And our jury pool
23 section will work with you at guaranteeing that your employers
24 receive communications so that you don't receive any pressure
25 from that end with regard to your jury service here.

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

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

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

15 Some evidence may prove a fact indirectly. For
16 example, if a witness saw wet grass outside and people walking
17 into the courthouse carrying wet umbrellas, this may be
18 indirect evidence that it rained, even though the witness did
19 not personally see it rain. Indirect evidence like this is
20 also called circumstantial evidence, simply a chain of
21 circumstances that likely proves a fact.

22 As far as the law is concerned, it makes no difference
23 whether evidence is direct or indirect. You may choose to
24 believe or disbelieve either kind. Your job is to give each
25 piece of evidence whatever weight you think it deserves.

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

9 Second, the lawyer's questions and objections are not
10 evidence. Only the witness's answers are evidence. Do not
11 decide something is true just because a lawyer's question
12 suggests that it is. For example, a lawyer may ask a witness,
13 you saw Mr. Jones hit his sister, didn't you? Well, that
14 question is not evidence of what the witness saw or what
15 Mr. Jones did unless the witness agrees with it.

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

24 When I sustain an objection to a question, you must
25 ignore the question and not guess what the answer might have

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

8 Ladies and gentlemen, as you know, this is a civil
9 case, and the Plaintiffs have the burden of proving their case
10 by a preponderance of the evidence. That means that the
11 several Plaintiffs in this case must prove that in light of all
12 the evidence, what they claim is more -- that their claims are
13 more likely true than not true. So if you put the evidence
14 favoring the Plaintiffs and the evidence favoring Defendants on
15 opposite sides of balancing scales, the Plaintiffs need to make
16 the scales tip to their side. If Plaintiffs fail to meet this
17 burden, you must find in favor of the particular Defendant.

18 To decide whether any fact has been proved by a
19 preponderance of the evidence, you may, unless I instruct you
20 otherwise, consider the testimony of all the witnesses,
21 regardless of who called them, and all exhibits the Court
22 allowed regardless of who produced them.

23 After considering all the evidence, if you decide a
24 claim or fact is more likely true than not, then the claim or
25 fact has been proved by a preponderance of the evidence. On

1 certain issues called affirmative defenses, the Defendants
2 asserting them have the burden of proving the elements of
3 defenses by a preponderance of the evidence.

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

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

16 In this age of technology, I want to emphasize that in
17 addition to not talking face-to-face with anyone about the
18 case, you must not communicate with anyone about the case by
19 any other means. This includes e-mails, text messages and the
20 Internet, including social networking websites such as
21 Facebook, Myspace and Twitter. You should not Google or search
22 online or offline for any information about the case, the
23 parties or the law. Do not read or listen to the news about
24 this case or research any fact, issue or law related to it.

25 The law forbids jurors to talk with anyone else about

1 the case and forbids anyone else to talk to jurors about it.
2 It is very important that you understand why these rules exist
3 and why the they are so important. You must base your decision
4 only on testimony and other evidence presented in the
5 courtroom. It is not fair to the parties if you base your
6 decision in any way on information you acquire outside the
7 courtroom. For example, the law often uses words and phrases
8 in special ways, so it is important that any definitions you
9 hear come only from me and not from any other source.

10 Only you jurors can decide a verdict in this case.
11 The law sees only you as fair, and only you have promised to be
12 fair. No one else is so qualified.

13 Let me walk you through the trial. First, the lawyers
14 may make opening statements, but they do not have to.
15 Remember, opening statements are not evidence, and they are not
16 supposed to be argumentative. They are simply an outline of
17 what the particular party intends to prove.

18 Next, the Plaintiffs will present their witnesses and
19 ask them questions. After they do so, the Defendants may ask
20 the witnesses questions. This is called cross-examining the
21 witness. Then the Defendant may present -- Defendants may
22 present their witnesses, and the Plaintiffs and third-party
23 Defendants may cross-examine them.

24 You should base your decision on all the evidence,
25 regardless of which party presented it. After all the evidence

1 is in, the parties' lawyers present their closing arguments to
2 summarize and interpret the evidence for you, and then I give
3 you instructions on the law, and then you go to the jury room
4 to deliberate.

5 At this time, we will hear the parties' opening
6 statements. We will hear, first, from the Plaintiffs, and then
7 we will take a brief recess before we hear the remaining
8 arguments -- or statements, I'm sorry.

9 OPENING STATEMENT ON BEHALF OF PLAINTIFFS

10 MR. CHAIKEN: Ladies and gentlemen of the jury, my
11 name is Brian Chaiken, and along with my cocounsel, John
12 Annesser, John Lukacs, Rob Bernstein, we have the privilege to
13 represent Dr. Andrea Rossi, who is in the courtroom today, and
14 his company Leonardo Corporation.

15 Dr. Rossi is the inventor and creator of an amazing
16 technology that you are going to learn a lot about over the
17 next several weeks. The Defendants in this case understood the
18 value of that technology, and they sought to obtain a license
19 to it. They negotiated a license agreement with my client,
20 Dr. Rossi. They agreed to pay him money for it. They received
21 the benefit for it. They received the intellectual property
22 and the trade secrets that went along with it. But when it
23 came time to pay him in full, they refused. And that's why we
24 are all here today.

25 The evidence in this case is going to show that for

1 the three years following the entrance of that license
2 agreement, the Defendants made numerous statements to the
3 public about this technology. They claimed it had the
4 potential to change the world. They claimed that it was
5 independently validated, independently tested, that it worked
6 and, in fact, that it was worth well over \$2 billion. With a
7 "B," 2 billion.

8 They are going to come here today, and they are going
9 to argue that despite making all of those statements about this
10 technology, that it is worth zero today. That's what they are
11 going to tell you.

12 Dr. Andrea Rossi was born in Italy. You heard a
13 little bit about that earlier. He was educated in Italy. He
14 obtained the equivalent of a Ph.D. in Italy. He spent the
15 next -- excuse me -- he spent the last 20 years or so
16 developing and creating what's called the E-Cat technology.

17 My mouth sometimes gets a little dry. I apologize.

18 Let me spell that out for you. E-Cat, E-C-A-T.

19 Now, what is the E-Cat technology? The E-Cat
20 technology allows for the creation, by using its device, to
21 create excess energy. That means energy goes in, more energy
22 comes out. And the beauty of this technology is that it is
23 inexpensive, and it's clean energy, meaning it doesn't emit any
24 radioactive waste or harmful things to the environment.

25 The Judge in this case, Your Honor, had mentioned

1 something called L-E-N-R. Low-Energy Nuclear Reaction. E-Cat
2 technology falls within the field of LENR technology.

3 I am going to read to you some statements made by a
4 leader in LENR technology about Dr. Rossi and the E-Cat. I am
5 going to try to read slowly because sometimes I read too fast
6 and the court reporter can't take it all down.

7 First: This new energy source produces clean and
8 affordable energy because it emits no pollution or radiation
9 and creates no radioactive waste. Moreover, the minute amount
10 of raw energy required is abundantly available. Thus, the cost
11 structure of LENR energy sources is much better than even
12 today's most advanced coal and natural gas energy sources.
13 Commercializing LENR technology would lead to clean, abundant
14 energy.

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

22 Third: The E-Cat has been tested extensively by an
23 independent committee of Swedish and Italian scientists.
24 Published reports of such tests placed its coefficient of
25 performance, that's COP, between 2.6 and 5.6.

1 Let me briefly stop to explain what that means. COP,
2 coefficient of performance, you are going to hear a lot about
3 over the next several weeks. COP. It is a very simple
4 mathematical formula. It's calculated by putting energy output
5 divided by energy input. So if I put one unit of energy in,
6 and five came out, we'd have a COP of 5. Pretty simple.

7 The fourth statement I am going to read to you: In
8 December of 2012 and March of 2013, representatives of Bologna
9 University, Uppsala University, and the Royal Institute of
10 Technology in Sweden conducted independent tests of high
11 temperature E-Cats. The published report of the tests
12 concluded the E-Cat has an energy density beyond any known
13 battery, fuel or chemical. The E-Cats created excess energy of
14 three to five times as much. A published report of the March
15 2014 test indicates the E-Cat produce a COP of over 3, over a
16 32-day test period.

17 Fifth: Dr. Rossi has accomplished two critical
18 things. First, he has the truly novel means of causing the
19 reaction to occur. And the logic or rationale for why his idea
20 works is very strong.

21 Said another way, Rossi's system logically will
22 generate more energy than others.

23 The second area in which Rossi has been a leader is
24 with materials. He focused on nickle instead of the hugely
25 more expensive palladium and platinum which behaved similarly.

1 While the success with any of these would be very valuable, the
2 fact that he could experiment with such an inexpensive material
3 gave him an advantage.

4 And sixth and last, with respect to the \$2 billion
5 figure, we are going to provide a draft of the test report
6 prepared by the Royal Swedish Academy of Scientists which
7 awards the Nobel Prize in physics. The report described a
8 32-day test conducted by a number of prominent European
9 physicists, apparently, including members of the committee that
10 selects the Nobel Prize winner. And it concludes that
11 Dr. Rossi has discovered a new source of energy with properties
12 rivalling nuclear fission but without releasing radiation or
13 producing radioactive waste. So this technology seems to be
14 without precedent and extremely valuable.

15 Now, the reference material for all of those
16 statements that I just read to you come from the same source.
17 You will probably be surprised to learn that that source is the
18 Defendants. Mr. Darden, Mr. Vaughn and their companies said
19 all of those things about my client and his technology.

20 Before you, we set up this rather large time line.
21 Now, my team and I, during the course of this case, we are
22 going to populate this time line. We are going to populate it
23 with evidence in this case. Above the line, we are going to
24 populate it with statements made in writing by the Defendants
25 in this case to my clients or to their investors.

1 Below the line, we are going to populate this time
2 line with statements that the Defendants claim they made orally
3 or statements that they made in writing which contradict what
4 they said above the line.

5 Let me give you a little bit of a preview of what that
6 evidence is going to be. And I will start walking along the
7 time line. In June of 2013, Defendants Mr. Vaughn, Mr. Darden,
8 were first introduced to my client, Dr. Andrea Rossi. At the
9 time, Mr. Darden was the CEO of Cherokee. Mr. Darden was an
10 investment manager at Cherokee. Cherokee holds itself out as a
11 sophisticated, experienced investment fund that has invested
12 and raised over \$2.2 billion over the last 30 years. After
13 they were introduced, they started negotiating the license
14 agreement.

15 I think it is still going. Thanks, guys.

16 At all times during the negotiations, Mr. Darden,
17 Mr. Vaughn representing themselves as part of Cherokee. At all
18 times during those negotiations, Dr. Rossi represented himself
19 as the inventor and creator of the E-Cat technology through his
20 corporation Leonardo Corporation.

21 Let's fast-forward to October 24, 2013, two days
22 before the license agreement is signed by the parties.
23 Defendant Darden forms a new entity called Industrial Heat,
24 LLC. The very next day, October 25, 2013, an e-mail is sent to
25 the employees of Cherokee, and you see it on the screen in

1 front of you.

2 Specifically, they write to the employees of Cherokee,
3 "Please join Tom Darden and John Mazzarino as the partner of
4 Tom Darden, along with Dr. Andrea Rossi, to celebrate and
5 congratulate Cherokee and Leonardo companies on their joint
6 venture for the future success of cold fusion." That is
7 consistent with what they told Dr. Rossi during the
8 negotiations.

9 The very next day, the parties, Dr. Rossi is invited
10 to sign the license agreement. He shows up at the offices of
11 Cherokee. He is told for the first time, We just formed a new
12 entity called Industrial Heat. Don't worry, though. It is
13 going to be backed, it's going to be funded by Cherokee, it is
14 going to be a wholly owned subsidiary of Cherokee. Don't
15 worry. It's going to be able to make the payments to you. You
16 have nothing to worry about, Dr. Rossi.

17 So based on those representations, Dr. Rossi signed an
18 agreement on behalf of Leonardo with this new entity Industrial
19 Heat. And but for those representations, Dr. Rossi never would
20 have agreed to an exclusive license of his game-changing
21 technology with a newly created entity that didn't have a dime
22 in its newly created bank account.

23 Let's fast-forward. Actually, let 's go to the next
24 day. The agreement is signed. Let me tell you a little bit
25 about some of the more -- most specific and interesting terms

1 of this license agreement. In order to avoid having the types
2 of disputes that we have before you today, the parties actually
3 agreed to an independent third party to decide, to kind of be
4 the referee, to make sure that if the parties had
5 disagreements, he would be the arbiter. He would be the judge.
6 He would say, I am going to make the final decisions. And they
7 call that person -- if you want to pull it up, Rob -- an Expert
8 Responsible For Validation or ERV. You are going to read the
9 term in the contract which discusses the ERV.

10 Now, a contract provided that Defendant Industrial
11 Heat would pay, in return for getting that exclusive license to
12 this technology, they would pay Dr. Rossi \$100 million. They
13 are going to pay it in three separate tranches or installments.

14 First, they agreed to pay \$1.5 million upon the
15 execution of the agreement. In return for that, they became
16 the owners of the device, the equipment that actually produced
17 the energy. And that was called, pursuant to the agreement,
18 the one-megawatt E-Cat. Second, upon the completion, the
19 successful completion, as determined by the expert responsible
20 for validation, of a one-day test of this one-megawatt E-Cat,
21 certified in writing by that expert responsible for validation,
22 Dr. Rossi would be entitled to a payment of \$10 million, at
23 which point, he would, then, turn over all of the intellectual
24 property to the Defendants.

25 Third, Dr. Rossi would be entitled to a payment of

1 \$89 million. For that, he had to run a test of the
2 one-megawatt E-Cat for a period of 400 days. And if it
3 successfully performed for 350 of those days, he would be
4 entitled to that \$89 million.

5 Let's go back to the date of the contract, October 26,
6 2013. That first payment is made, \$1.5 million, upon signing
7 of the contract. Interestingly, half of that, 750,000 of it
8 came from an entity called Cherokee, not Industrial Heat.

9 Let's fast-forward to February 2013. The Defendants
10 create one, what will be many, investor PowerPoints. In that
11 PowerPoint, they write specifically, "Cherokee is the lead
12 investor with more than 2.5 million invested to date, and
13 Cherokee will continue to invest."

14 Now, starting in February and moving forward, a few
15 months later, the parties begin preparations for the validation
16 test, the one-day test that would earn my client \$10 million.
17 And, in fact, leading up to the test, they had to agree to that
18 ERV, that expert responsible for validation. In fact, in April
19 of 2013, you are going to see that Mr. Darden specifically
20 agrees to use a gentleman by the name of Dr. Fabio Penon as the
21 expert responsible for validation.

22 You are going to hear from Mr. Penon -- excuse me --
23 from Dr. Penon during the course of this trial. He is going to
24 come and he is going to testify. He is going to testify that
25 he created a protocol for purposes of these tests. The parties

1 agreed to that protocol. They selected various pieces of
2 equipment for purposes of measuring the necessary things to
3 show success. And he is going to explain to you what the
4 results of those tests were.

5 April 30th, May 1st, 2013, the test is performed, the
6 validation test is performed. Dr. Penon, five days later,
7 issues his final report, says, E-Cat performed successfully,
8 Dr. Rossi's entitled to receive a 10 million dollar payment.
9 He puts that in writing. Five days later, another independent
10 third party, another nuclear engineer issues another report,
11 and he says, Dr. Rossi has successfully transferred his
12 intellectual property to the Defendants, is entitled to receive
13 that 10 million dollar payment. In fact, 10 million dollar
14 payment is made.

15 Upon the completion of that test, the evidence will
16 show, that the Defendants wasted no time telling their
17 investors and potential investors that the E-Cat technology
18 actually works and that Dr. Rossi has successfully transferred
19 his intellectual property to them. In May of 2013 -- not going
20 to show a copy of this, but -- in May of 2013, Industrial Heat
21 reported to its investors that their initial technology creates
22 excess energy between 3 and 20 times the amount of energy
23 required to operate the device. A month later, July -- two
24 months later, July 2013, Defendants write to their investors
25 that they successfully operated and built a reactor independent

1 of Dr. Rossi. That means, they didn't need him to successfully
2 build and run the equipment.

3 Let's fast-forward to August of 2013. The equipment,
4 the one-megawatt plant, is delivered to the Defendants in
5 North Carolina where they have a facility.

6 So here we are, August on our time line. Now, this is
7 a significant date because the parties' agreement states that
8 the guaranteed performance test is supposed to begin
9 immediately upon delivery of the one-megawatt plant to the
10 Defendants, August of 2013. Now, at this time, as you've heard
11 me say already, the one-megawatt unit is owned and controlled
12 by the Defendants, they have it, it's in their plant. The test
13 doesn't start in August 2013. Why?

14 I'll give you three reasons. First, the Defendants,
15 at that time, didn't have the money to pay my client if the
16 test was successful. Two, the Defendants didn't obtain
17 healthcare authorizations from the state of North Carolina,
18 which would allow them to operate a low-energy nuclear reactor.
19 Three, a group of independent third-party professors from some
20 prestigious universities in Europe told the Defendants and
21 Dr. Rossi that they wanted to test the stuff.

22 The Defendants recognized that such an independent
23 third-party test would be very valuable to their marketing
24 efforts, and, therefore, they said, let's wait on the
25 guaranteed performance test, let's have these third parties do

1 it. Dr. Rossi recognized that, he agreed, he said, we can
2 delay it.

3 So from August 2013 to the spring of 2014, the parties
4 prepared for and allowed those independent professors to run
5 that test. In fact, that test was successfully completed by
6 those professors. They issued a report stating, that they
7 received positive COP from Dr. Rossi's E-Cat. Thank you.

8 Now, while they're preparing to run that test, a few
9 things happened. First, in October of 2013, the Defendants are
10 going to tell you that Dr. Rossi, by not having a test start in
11 August of 2000 -- in August 2013, they're going to say that the
12 time for performance of that guaranteed performance test had
13 expired. They're going to claim that they told him
14 specifically in October of 2013, that he no longer had the
15 opportunity or the rights to collect the 89 million dollars.

16 MR. PACE: Your Honor, I am going to object to the
17 cartoon characters. They weren't referenced to Defendants
18 prior to the opening statement.

19 THE COURT: Please remove.

20 MR. CHAIKEN: They're going to tell you, ladies and
21 gentlemen, that my client was made aware, that he would not
22 have the opportunity to earn 89 million dollars, and despite
23 being told that, he continued to work for them for free all the
24 way through 2016 -- it's over there.

25 What they're not going to tell you is that, although

1 Mr. Darden is going to make that claim that he told that to
2 Dr. Rossi orally, that the evidence in this case is going to
3 contradict that statement. In fact, there's going to be a lot
4 of written evidence showing that the Defendants knew,
5 understood, and even agreed to allow that guaranteed
6 performance test to take place. What also -- another thing
7 they're not going to tell you is that before we came here
8 today, during the discovery period of this case, they produced
9 over 65,000 documents to me and my team.

10 Not one of those documents, out of 65,000, will you
11 find a single communication where they say the time for the
12 guaranteed permission test had expired or that Dr. Rossi was
13 going to be unable to collect that 89 million dollars. Not
14 one.

15 Mr. Darden's oral statement in October of 2013 is also
16 going to be contradicted. It's going to be contradicted by
17 Mr. Vaughn -- thank you -- Mr. Vaughn's going to testify that
18 his company, Industrial Heat, never told Dr. Rossi that the
19 time for the guaranteed performance test had expired. Why?
20 Because they were afraid that if they told him that, he would
21 stop working and their ability to continue to market this
22 technology would be lost.

23 You're going to see throughout the course of this
24 case, that there is going to be a mountain of written evidence
25 which shows that Defendants agreed to the guaranteed

1 performance test when it was performed. Now, let's
2 fast-forward back to our time line. Spring of 2014, the test,
3 in Europe, those independent third-party professors issue their
4 report. Dr. Rossi attends that test, Mr. Darden attends that
5 test, Mr. Vaughn attends that test, their chief engineer, a
6 gentleman by the name of T. Barker Dameron, who you're going to
7 hear from in this case, he attends that test. They come back,
8 Mr. Darden wastes no time telling his investors once again,
9 hey, this technology works. He writes to his investors and
10 says these independent professors have verified that this
11 technology works.

12 Now, they're back from Europe, Dr. Rossi says, we've
13 had the independent test, it's validated, let's get started on
14 the guaranteed performance test. And he writes an e-mail to
15 Mr. Darden and Mr. Vaughn. He says, I am writing with a plan
16 of operation, let's go get the authorizations that we need from
17 the North Carolina healthcare office. And he says, Mr. Darden,
18 you've told me that you have an expert working on getting those
19 authorizations, let's go, let's get started.

20 How does Mr. Darden respond? Does he say, Dr. Rossi,
21 I don't know what you're talking about? I told you back in
22 October the time for the test is expired. You can't collect
23 the 89 million dollars anymore.

24 Doesn't say that at all. Heck, doesn't say anything
25 about starting the test, getting healthcare authorizations. He

1 says nothing.

2 Dr. Rossi again tries via a written e-mail, in May --
3 following up May 2014, he says, I'm happy to do this test for
4 you right there in your facility, in North Carolina. I will
5 even set up a drying facility. I know how to do it. Let's
6 find a customer. We'll attach my E-Cat to it. I'll provide
7 you with steam that can dry various products. And he
8 says, hey, your engineer Mr. Dameron, he used to work for
9 GlaxoSmithKline, huge pharmaceutical company. He says, Why
10 don't you get Glaxo on the line? We can dry their products for
11 them.

12 Response from Mr. Darden, silence.

13 Finally, frustrated with his inability to get the test
14 started, he says, you know what? Dr. Rossi says, I'll find my
15 own customer, and I'll get my own healthcare authorizations,
16 and I'm going to get this thing started. And in fact, that's
17 what he does. He lives in Miami. He goes to the Florida
18 healthcare office. He gets the authorization he needs. And he
19 finds a customer, a customer that can use the steam for an
20 experimental process to dry various products. And he brings
21 that to Defendants and says, let's go, let's get started. All
22 the while, the Defendants continue to market his technology.

23 Let's fast-forward to July 2014 -- actually, I take
24 that back. Before we get to July -- thank you -- June 2014,
25 Mr. Vaughn e-mails Mr. Darden in response to what's going on

1 with Dr. Rossi's request. And you'll see that Mr. Vaughn
2 admits that Dr. Rossi no longer has an obligation at this time
3 to continue to consult with, to assist, to help Industrial Heat
4 in any way, shape, or form. He says it right there in his
5 e-mail. He says, this consulting obligation has already
6 expired.

7 The very next month, July 2014, Industrial Heat is
8 attempting to raise 200 million dollars. They create a
9 confidential memorandum for that purpose. In that confidential
10 memorandum, did they tell the potential investors that
11 Dr. Rossi no longer has an obligation -- excuse me, no longer
12 has a right to achieve that 89 million dollar payment? The
13 opposite takes place. They state right there, Dr. Rossi still
14 would be entitled to receive 89 million dollars on the
15 successful completion of that 350-day or 400-day test.

16 In addition to that, they concede that Dr. Rossi is
17 the key to their plans. In their investment memorandum, they
18 specifically state that they have a dependence on one key
19 person, and it's not Mr. Darden, and it's not Mr. Vaughn. In
20 fact, they state the future success of Industrial Heat is
21 dependent upon one key individual, Dr. Andrea Rossi. And if
22 the services of such individual were no longer to be available,
23 its future success would likely be materially and adversely
24 affected. They're telling their investors that they've got
25 LeBron James on their team, and if they want to go to the NBA

1 finals, they're going to ride him there.

2 August 2014, still moving along our time line, the
3 one-megawatt unit is shipped to Miami, pursuant to an
4 agreement. This agreement was made by Leonardo Corporation,
5 Industrial Heat, one of our third-party Defendants,
6 JM Products.

7 Now, you've heard one of the reasons why the
8 Defendants are going to say they don't have an obligation to
9 pay my client the 89 million dollars. They're going to say the
10 test didn't start on time.

11 JM Products is the second reason they're going to
12 claim they shouldn't have to pay my client. They're going to
13 claim that Dr. Rossi misrepresented to them who JM Products
14 was, what JM Products was all about. They're going to claim,
15 that JM Products wasn't a real company and it didn't have a
16 real manufacturing process.

17 The evidence is going to show, that the Defendants, a
18 sophisticated investment company led by a gentleman who is
19 graduated from Yale Law School, was fully informed of
20 everything that JM Products was, everything that JM Products
21 did well before they executed that agreement to merely ship the
22 one-megawatt unit down to Florida. Specifically, the
23 Defendants were fully informed, JM Products was a newly formed
24 entity prior to them entering into that term sheet. Second,
25 Dr. Rossi's real estate attorney Mr. Johnson, who's sitting

1 here before you, was the incorporator of that entity. He was
2 named as the president of that entity. They had met him before
3 they entered the license agreement. They knew that he had no
4 manufacturing experience whatsoever. They knew that Dr. Rossi,
5 as he had told them early that year, April, May 2014, had found
6 the customer, was going to create the facility, was going to
7 build that facility from scratch.

8 The evidence is going to show, that their engineer,
9 Mr. Dameron actually flew to Miami, visited a newly leased
10 facility to help create and set up the facility for purposes of
11 running the tests. The evidence is going to show that they
12 knew the entire time that Dr. Rossi was going to run that
13 facility.

14 They're going to say that they were tricked, they were
15 duped, they shouldn't have to pay. The evidence is going to
16 show that's not true.

17 Let's fast-forward, February 2015, the equipment is
18 now in Miami. They're getting ready to start the guaranteed
19 performance test -- over here -- you're going to see
20 Dr. Fabio Penon, the expert responsible for validation, and in
21 February, the beginning of February 2015, Dr. Penon is going to
22 e-mail Mr. Darden, Mr. Rossi and he's going to say, here's my
23 protocol, here's the test plan for the guaranteed performance
24 test. Now, February 18th -- to the 331 -- February 18th, 2015,
25 Dr. Rossi e-mails Mr. Darden and he says, the ERV has arrived,

1 the plant is ready to start. Does Mr. Darden respond by
2 saying, I don't know what you are talking about? Why do you
3 have the expert responsible for validation there? I told you
4 back in October of 2013 that you couldn't do it.

5 Doesn't say that.

6 What does he say? He says, Thanks for the positive
7 news for us and the world.

8 Next one, February 18 through February to 20th,
9 Dr. Penon, Mr. Darden trade e-mails discussing the protocol for
10 the one-megawatt plant. Again, does Tom Darden say, can't do
11 it, can't run the tests? Does he say, I don't know what you're
12 doing in Miami, because I'm not paying you that 89 billion
13 dollars?

14 Doesn't say any of that.

15 Instead, he writes an e-mail to Mr. Penon -- excuse
16 me, to Dr. Penon and says, Thank you very much for your
17 important work. This evaluation will have the eyes of the
18 world on it once we release any information. And then once
19 they start up the test, he responds to Dr. Rossi, Congrats on
20 the startup. This demonstration will have a great impact
21 beginning in about a month when we have the visitor from
22 overseas.

23 He doesn't say, Stop, don't run this test, I'm not
24 paying you.

25 He says, Congrats.

1 Two days later, the test starts up. Dr. Rossi writes
2 another e-mail to Defendants, Darden and Vaughn. He says, I'm
3 having problems with some of the equipment, it's still
4 performing, but I'm having some problems.

5 Why is that important? Because the evidence is going
6 to show that over the course of that 350-day test, Dr. Rossi
7 didn't hide anything from the Defendants. He told them when he
8 was having problems. He told them when he was having issues.
9 If someone was trying to deceive someone else, why would they
10 tell them in writing of all the problems they were having?

11 Now, it's around this time, February, March 2015,
12 you're going to hear some testimony from Mr. Darden. He's
13 going to say, I knew back then that something funny was going
14 on there, that this test couldn't be relied on, something fishy
15 was happening in his plan.

16 He's not going to be able to put any physical evidence
17 or any written evidence to support that, but he's going to say,
18 I knew something was wrong.

19 But despite his suspicions that something was wrong,
20 it didn't stop him from bringing investors to the facility to
21 talk to Dr. Rossi, to learn about the E-Cat technology, to
22 understand what he was doing. In fact, the evidence is going
23 to show, that several times between February 2015 and July of
24 2015 and even later, he brought potential investors to the
25 plant to talk to Dr. Rossi.

1 And that brings us to -- let's see-- we also knew in
2 March of 2015, the test has been running for several weeks now.
3 Unequivocally, we know that this plant was producing steam.
4 How do we know? Because Mr. Darden himself put it in writing.
5 In fact, you're going to see an e-mail from Mr. Darden,
6 March 23, 2015. He writes to one of his investors. He says
7 specifically, we're definitely producing steam for a customer.
8 My lack of clarity is just around precisely how much. We
9 cannot definitively represent this yet. What is the nature of
10 the customer?

11 But these are picky nuances, not related to the core
12 issue. What does that mean? That means the Defendants in this
13 case didn't care what the customer was doing. They never asked
14 to see what was going on in the JM Products side of the
15 facility, it didn't matter because they were able to bring
16 investigators in, and they were able to raise money without
17 knowing what was going on on that side of the plant. The fact
18 is and the evidence will show, the Defendants didn't care what
19 was going on in the JM Products side of the facility until this
20 lawsuit was filed. They never asked to go see it. It wasn't
21 of interest.

22 May 2015, payday. Defendants successfully sell
23 4 percent of their company in exchange for 50 million dollars.
24 That's a 1 billion dollar valuation. They kept 96 percent,
25 they gave out 4 percent of their shares for 50 million dollars.

1 Company called Woodford gave them that money.

2 Oh, they're going to claim that money didn't go into
3 their pockets. That, instead, it was used to invest in other
4 LENR technologies. Ladies and gentlemen, the evidence will
5 show, that they still have ownership of those technologies.
6 They still have the right to get the benefit of those
7 technologies. My client has no right to those technologies and
8 will receive no benefit from those technologies.

9 THE COURT: Three minutes.

10 MR. CHAIKEN: Thank you, Your Honor.

11 The evidence is going to show, immediately after
12 receiving that 50 million dollars, the story changed. The
13 narrative changed. Suddenly Dr. Rossi was no longer -- was no
14 longer cooperative. The test results were no longer going to
15 be valid. The technology, we're not sure if it works anymore.
16 The evidence will show, they completely changed their tune
17 after they received the money. The Defendants are going to
18 give you a lot of defenses in this case. They're going to
19 give -- they're going to raise a lot of excuses as to why they
20 should have to pay the 89 million dollars to my client. And
21 for a few of them, the last one they're going to tell you is,
22 is that the test results, verified and certified by the
23 agreed-upon experts for validation, they were impossible,
24 they're going to tell you. They're going to tell you that the
25 plant design couldn't possibly have dissipated the amount of

1 heat it was creating. They're going to tell you that the
2 equipment couldn't possibly have pumped the amount of water
3 that could have gone through it. They're going to tell you
4 that the electricity records and the energy records don't line
5 up with FPL.

6 And I'm going to tell you, the evidence is going to
7 show, we have a response to all of those things. And at the
8 end of the day, at the end of the day, the evidence is going to
9 show, Defendants entered into a contract, Defendants received
10 the benefit of that contract to the tune of over 50 million
11 dollars. And the evidence is going to show, that they refused
12 to pay my client what he was owed, which is 89 million dollars.

13 Thank you, Your Honor.

14 THE COURT: Thank you.

15 Ladies and gentlemen, we're going to give you now a
16 10-minute recess. We'll be taking you to the jury room. My
17 courtroom deputy will meet you there and ask you to fill out a
18 form that gives us your contact information that we can have
19 during the trial to reach you, if we need to. She's also going
20 to give each one of you my business card. It has the phone
21 number to my office. That is the phone number to call from now
22 on, for any reason, if you're running late or have any other
23 issue. Please do not discuss the case. We'll bring you back
24 inside so you can hear the remaining opening statements, and
25 we're in recess.

1 COURT SECURITY OFFICER: All rise.

2 (The jury exited the courtroom at 2:40 p.m.)

3 THE COURT: All right. We're in recess.

4 MR. PACE: Thank you, Your Honor.

5 (A recess was taken from 2:41 p.m. to 3:00 p.m.)

6 THE COURT: I believe you've all received the note
7 from the juror, Janis Gross. Any objection to releasing her?

8 MR. LUKACS: No, Your Honor.

9 MR. PACE: We have not, Your Honor, sorry.

10 THE COURT: She wrote, she has a planned vacation from
11 July 21st to July 25th that she forgot to mention.

12 MR. PACE: I'm sorry. What -- do you know the number
13 for that juror? I apologize.

14 MR. LEON DE LA BARRA: 36.

15 MR. PACE: 36.

16 MR. LEON DE LA BARRA: 36.

17 MR. LUKACS: No objection, Your Honor, to a cause
18 challenge, excuse for cause, excuse me.

19 THE COURT: Alan, when you bring them in, if you can
20 just ask her to wait, and once the others are in just let her
21 know she is being excused.

22 COURT SECURITY OFFICER: Janis Gross?

23 THE COURT: Gross. We're ready for the rest of the
24 panel. Thank you.

25 MR. LUKACS: We received the timing of next week.

1 THE COURT: I wasn't extending the time.

2 MR. LUKACS: Okay.

3 THE COURT: I mean, that doesn't mean that we don't
4 have trial the other days. Those are just days where I'm not
5 going to go to the ten-to-four schedule. Let's go later and
6 start earlier to try to recover some of the lost time. I had
7 done that when we lost Monday due to the Court closure. Now we
8 lost more time.

9 MR. LUKACS: Okay.

10 (The jury entered the courtroom at 3:02 p.m.)

11 THE COURT: It's all right.

12 Everyone, please be seated.

13 OPENING STATEMENT ON BEHALF OF DEFENDANTS

14 MR. PACE: Thank you, Your Honor.

15 And good afternoon, everyone.

16 This is a case about written promises, and it's about
17 blatant lies. It's about fake-testing results. It's about
18 fake invoices. It's about a fake customer. It's about high
19 hopes that my clients had for technology and how those hopes
20 were destroyed when it turned out in the real world the
21 technology didn't work.

22 Now, you heard Mr. Chaiken discuss with you that my
23 clients should be paying \$89 million for something that
24 occurred in Florida, for a testing that occurred in Florida.
25 But you know what? He didn't tell you anything about that

1 test, did he? Let me tell you about this supposed test.

2 I want to put up on the screen right now two images,
3 if we can, that you are going to see of -- of this plant.
4 These are the devices that were in Florida. If I can zoom in,
5 in fact, just on the upper corner, when we talk about a E-Cat,
6 I want this to help everyone, that's what we're talking about.
7 It's a little box. It's a box, water goes into the box, the
8 box is supposed to turn that water into steam.

9 Now, there were 115 of these magic boxes that were in
10 a container down in Florida, and that Plaintiffs are claiming
11 for what was -- what occurred with those boxes for a one-year
12 period in Florida entitles them to \$89 million.

13 Now, let me explain what was supposed to be happening
14 with these boxes in Florida. According to what the Plaintiffs
15 were claiming, or did claim, these boxes were producing every
16 day enough steam to fill up this courtroom hundreds of times.
17 Not once. Not twice. Hundreds of times every day, day in and
18 day out.

19 Steam, as you know, 212 degrees Fahrenheit, roughly,
20 when it start -- water starts to boil, that's when it starts to
21 turn into steam. This -- this container -- these pictures that
22 I'm showing you here, right here, this would have been an oven.
23 It would have been turning it, they would have been running out
24 steam 212 agrees, constantly, all day long.

25 And yet look at this picture I want to show you that

1 we obtained during the course of this discovery.

2 Here's Dr. Rossi. He's not only close to these E-Cat
3 boxes that are supposed to be pumping out courtrooms full of
4 steam at 212 degrees Fahrenheit, he's touching them. I'm not
5 sure if you can see them there, but he actually has a
6 stethoscope. He's putting a stethoscope up to them, and he's
7 trying to listen to these little E-cat boxes. And, yeah, he's
8 wearing a jacket. Supposedly next to device that's producing
9 hundreds of courtrooms worth of super hot steam, this man is
10 wearing a jacket and using a stethoscope to try to listen to
11 the devices. This is what they're claiming should be -- earn
12 them \$89 million.

13 Still there's more. I showed you a picture. If I can
14 show you here again, this is the -- sort of these E-Cat boxes,
15 they were set up all in the container. There's 115 of them.
16 That's what he was supposed to be working on down in Florida
17 with these magic boxes.

18 Now, in that first picture there, none of those
19 worked. They didn't work. They were never operative. There
20 was 51 of them that didn't work at all the entire time period.
21 You're supposed to run 115. 51 never worked. Out of the
22 remaining 64, some worked sometimes, some worked other times.
23 In fact, when an engineer from Industrial Heat finally got
24 inside this warehouse and finally got inside the E-Cat plant to
25 look at it, this is what he was finding, in terms of some of

1 these separate reactors, some of these separate E-Cat boxes.
2 They clearly weren't being used.

3 He found corrosion, he found capped water lines, he
4 found clear evidence that they had never used some of these
5 things during the entire one-year time period. Again, this is
6 what Plaintiffs claim earned them \$89 million.

7 I want to tell you a little bit more about those magic
8 boxes and what Plaintiffs claim occurred in Florida. The
9 amount of water that Plaintiffs say that they were turning into
10 steam every day is the size of a large swimming pool, about
11 9,000 gallons of water. Every day they were able to turn 9,000
12 gallons of water into steam. And steam expands greatly, and so
13 that turns out to be -- one swimming pool would be well over a
14 thousand swimming pools worth of steam.

15 But what did some -- what did our people discover when
16 they went down and looked at the operations in Florida and
17 discovered what was going on? If I could show you here, there
18 are -- in order for these magic boxes to work, the water has to
19 get into them, so you have to have little pumps. You have to
20 have pumps to bring the water into them. The grand total of
21 the pumps that were working -- these are -- this is a picture
22 of six of them. There was three sets more like this, so it's
23 24 of these pumps. These 24 pumps together, working 24 hours a
24 day, working as hard as they possibly can at their maximum can
25 move about half a swimming pool a day, so less than 5,000

1 gallons. So if you're claiming to us that you're turning 9,000
2 gallons of water into steam, but it's impossible for you to get
3 9,000 gallons of water into your magic boxes, that can't be
4 true, that can't be credible, and that doesn't earn you
5 \$89 million.

6 I can give you several more examples, but I'm going to
7 just limit myself to -- really just to one more. So the magic
8 boxes, the E-Cat boxes in Florida, they required electricity to
9 work, so the -- there's a tube in the inside of the box.
10 Electricity goes into the tube, the tube is supposed to heat up
11 and turn all the water around it into steam. That's basically
12 how the E-Cat device is supposed to work.

13 So what happened is there were folks in Florida who
14 were telling us, including Fulvio Fabiani, who's not here
15 today, but he'll be here during this trial, was reporting to
16 us, Here's how much electricity these guys are using down in
17 Florida. Here's information you need to know about how the
18 plant is operating.

19 Once the lawsuit got filed, we went to Florida Power &
20 Light, went to FPL and said, Hey, give us the power records for
21 this warehouse in Florida where these tests were occurring.
22 Because we know the information we were being told by
23 Plaintiffs, we know the information we were being told by
24 Fulvio Fabiani, let's compare it. You would think that they
25 would have some similarity. This is the comparison.

1 And, in fact, there were days in here when Plaintiffs
2 and Fulvio Fabiani are claiming that they were using more
3 energy than FPL was even selling them. In any event, their
4 numbers were completely out of whack with what FPL was
5 reporting, you know, was reporting was being provided.

6 So we're going to get to the question now, I think,
7 of, well, why were these boxes in Florida then? Why did you
8 let -- you heard from the Plaintiffs, we agree, my clients
9 owned these E-Cat boxes. They did. They were -- they -- they
10 paid the \$1.5 million. They then paid an additional \$10
11 million. So they paid a lot of money; they were theirs. Why
12 in the world would they let them go to Florida? Fair question.

13 After my clients invested over \$11 million in
14 Plaintiffs, provided over \$11 million to Leonardo Corporation,
15 they wanted to see if these devices could work in a real world
16 setting, in a context with a real business. They offered some
17 of these solutions in North Carolina to Andrea Rossi, and the
18 evidence is going to show you that he got -- that he regularly
19 rejected them. But even Andrea Rossi would say to my clients,
20 a phrase he used is, The marketplace is truth.

21 That means if you really want to show the value of
22 this technology that I've supposedly created, you need to get a
23 real business to use it. That's what -- that's what's going to
24 convince people that this is useful technology. It's not just
25 something you can do in a lab, it's not just something that can

1 be done, you know, off in a -- you know, in a very careful
2 setting. It can actually work in the real world.

3 Now, Plaintiffs would not agree to do -- to any of the
4 options that were provided to them in North Carolina, which is
5 where my clients are based; there's where they wanted to keep
6 the technology. So then he came along -- but then they came
7 along at one point with an idea, with a solution. They said,
8 Well, I found the customer, you know, this whole idea of doing
9 something in the real world, the marketplace is truth, he comes
10 back and says that he's found a customer that can actually use
11 this E-Cat technology. I've got an e-mail from you here. This
12 is June of 2014. This is Andrea Rossi writing to my clients,
13 he's writing to -- you see the Thomas Darden, you see
14 J.T. Vaughn. He tells us, Leonardo Corporation has found the
15 solution. A customer has been found.

16 That's not I'm a customer, or I'm going to open a
17 company or anything like that. He's saying, We found -- we
18 found the customer to use the M1 plant to use the E-Cat boxes,
19 to use the E-Cat boxes and his chemical additives and -- and
20 catalyzers.

21 What you really need to take from this is somebody has
22 a business. There's a real business that has a real use for
23 this technology, exactly what Industrial Heat wanted, exactly
24 what IPH wanted, exactly what my clients wanted. This customer
25 even has a factory, a factory that exists down in Florida. Let

1 me move the plant, let me take these E-cat boxes that you paid
2 for, Industrial Heat, that are yours, let me take them down to
3 Florida because I have a real customer who's going to make real
4 a real use of this.

5 In fact, it got even more attractive for my clients
6 because what Andrea Rossi told my clients is that this company
7 that's going to operate in Florida is an affiliate of a larger
8 company called Johnson Matthey. Now, a lot of us haven't heard
9 much about Johnson Matthey. It's a large chemical company in
10 the United Kingdom, in England. It's got over 10,000
11 employees. It's got offices all over the world. My client was
12 so convinced of this that my client even prepared a document, a
13 contract to enter with Johnson Matthey saying, Okay, that's --
14 that's great, this is -- remember we talked, a real customer,
15 proving something works in the real world. Well, if you can --
16 if you can provide a benefit or service to one of these
17 multinational companies with over 10,000 employees, that's
18 pretty good. That's a real customer.

19 It went even further, and Plaintiffs talked about --
20 had a meeting in North Carolina. And in this meeting,
21 North Carolina, they brought Mr. Johnson, and he came up and
22 talked about this new company, this subsidiary called -- it was
23 going to be called JM Products, at the time JM Chemical
24 Products. The name got changed over time. And they talked
25 about this company, this subsidiary, and how it was connected

1 to Johnson Matthey; in fact, how it was owned by Johnson
2 Matthey. Indeed, Henry Johnson even signed a document. They
3 had him sign a piece of paper.

4 Give me just one second. He -- he swore to my clients
5 that this company of his, this small company, was owned by an
6 entity formed in the United Kingdom. There will be no
7 evidence -- the evidence will be unquestioned that that's a
8 lie. No doubt about it, no dispute about it. They can't deny
9 it. In fact, this company, JM Chemical Products, now the
10 Defendant in this case, or the third-party Defendants in this
11 case, JM Products, it's owned by a trust. It's owned by a
12 trust that was set up in the United States. It's owned by a
13 trust that was set up by Henry Johnson. He knew exactly who
14 owned JM Products. He knew it wasn't owned in the United
15 Kingdom, but he knew he was pulling the wool over my -- the
16 eyes of my client by trying to get him to think that it was
17 associated with a real customer.

18 The parties eventually do sign this agreement. They
19 signed this contract that says, We're going to let these E-Cat
20 boxes go down to Florida, and we're going to let Andrea Rossi
21 use them in Florida to provide benefits to this real customer,
22 JM Products. And, in fact, you'll notice here, it's very
23 clear, this document that's signed in August of 2013 -- of
24 2014, it says that this JM Products operates a production
25 facility in Miami. So they've got a real business going down

1 there. They're representing we've got a real business. And we
2 require low temperature steam. We need what Leonardo
3 Corporation is selling.

4 Well, it turns out, that my clients discover later on,
5 is that JM Products was a company set up by Henry Johnson at
6 Andrea Rossi's direction. It had no products, it had no
7 employees, it had no assets. It was under the complete control
8 of Andrea Rossi. In fact, it had no supposed manufacturing
9 facility in Florida. Indeed, days after my client signed this
10 term sheet, what happened, Andrea Rossi had to go out and find
11 a warehouse. He didn't have one. So he said, well, they fell
12 for it, you know, they've agreed to sign up for us. We're
13 supposed to have a production facility. Maybe we should run
14 out and grab one.

15 It's not even JM Products does it. He gets it from
16 Leonardo and then says, JM Products, I'll give you half of
17 them. This is what's -- this is the nature of the
18 relationship. This is pulling the wool over my clients' eyes.

19 My clients agree, as a result, to allow their -- these
20 E-Cat boxes to go down to Florida. And the deception continues
21 even after everyone gets to Florida.

22 If I can go to the February 2015 e-mail.

23 This is an e-mail from Andrea Rossi that he's sending
24 to my clients, Thomas Darden, J.T. Vaughn, several others, and
25 you can see here this is -- this is right after they're

1 supposedly starting their task. And what -- what does he tell
2 my clients? Today the director of JM phoned me and said they
3 are satisfied. Monday he will write you a letter about the
4 energy they're receiving.

5 So he's making it sound like there's some independent
6 party that he's dealing with. Oh, I -- I actually phoned this
7 guy. During his deposition, what he's testified to is we're
8 not quite sure who the director of JM Products is, but he says
9 that he ran the entire facility in Doral. So unless he was
10 calling himself, I'm not sure how this phone call occurred.

11 But it makes a reference to a letter in there, right?
12 It says that you're going to start getting something from this
13 JM Products company. They're going to start sending you
14 letters telling you about essentially how great it is, the
15 power that they're getting.

16 And sure enough, my clients start to get letters.
17 They start to get letters from Henry Johnson on behalf of this
18 separate company that's saying, Here's the power that we're
19 getting from the Leonardo Corporation, and that, you know, on a
20 monthly basis, for example.

21 What my clients don't know is Andrea Rossi wrote this
22 letter. In fact, they kept a copy of the letter that he wrote.
23 He would write the letter, he would then send it over to
24 Henry Johnson to have it filled out, and then have
25 Henry Johnson sign his name to it. Henry Johnson had no idea

1 how much power JM Products used. In fact, it had no use for
2 any of the steam that was going over there. He simply did
3 whatever Andrea Rossi told him to do. Andrea Rossi would say,
4 Just tell them this much, and he'd turn around, and he'd go
5 ahead, and that's what he'd tell my clients.

6 And then it doesn't end there because then they also
7 enlisted one of the other parties you've seen in the courtroom,
8 James Bass. He was presented to Industrial Heat and to others
9 as the director of engineering for this company, this separate
10 independent customer called JM Products. He's supposed to be
11 the director of engineering. Now, as a director of
12 engineering, you would assume, as my clients assumed, that he
13 would know something about what was going on at JM Products,
14 maybe how they were using this power that they were receiving.

15 Here's an e-mail from James Bass asking Andrea Rossi,
16 What do I say? How do you measure the output? He has no idea
17 what JM Products is doing because it's not a real company. And
18 what does Andrea Rossi tell him? It's simple, we need -- I
19 won't get into the technical, but one megawatt hour per hour,
20 that's what that little reference to. It's -- it's amount of
21 power that could power an entire residential subdivision. It's
22 massive. But -- but still, he says, Tell them -- he's putting
23 it in quotes, When you talk to somebody, tell them we need
24 this -- all this power for our production.

25 There is no production. There's nothing they're

1 making at JM Products.

2 Says, Obviously, we measured the energy input. You
3 know, he says -- you know, Mr. Bass, lie, tell them we're
4 measuring the energy you're getting even though everyone knows
5 that you're not. Mr. Bass has admitted that they're not.
6 Mr. Rossi, Andrea Rossi has admitted that they're not. You are
7 not supposed to give more information. You are sure -- you for
8 sure are not supposed to show them anything about the plant of
9 JM, of JM Products. Exactly as you did with the IH, that's
10 short for Industrial Heat, persons.

11 They kept my clients in the dark purposely. They
12 would not let my clients see anything about what was going on
13 at JM Products.

14 So when Industrial Heat was told that there was a real
15 customer that was using this steam in Florida, and that --
16 this, ladies and gentlemen, is the amazing production process,
17 after we finally had a chance to get discovery and someone had
18 finally had a chance to take a picture inside of this
19 JM Products facility. It's pipes. That's not a massive
20 production facility. That's not something that needs the
21 amount of energy they could -- they could support an entire
22 residential subdivision.

23 Now, what the Plaintiffs also didn't tell you is that
24 those pipes you just saw, they're in a container. They're in a
25 box in this warehouse in Florida. I don't know if you can see

1 it too well here, but there's a little black box on that image,
2 that's where -- that's where those pipes are. That's the
3 entire JM Products production facility. But you see the fake
4 wall in front of it? That was put up to keep my clients out.
5 My clients were never allowed on the other side of that wall.
6 They were strictly told, You can't go there because JM Products
7 is engaged in this secretive manufacturing process. You've now
8 seen what that secretive manufacturing process is, ladies and
9 gentlemen. It's the series of pipes in a container box that
10 are doing nothing.

11 And also, do you remember when Mr. Chaiken was up
12 here, and he talked to you about Andrea Rossi got approval, got
13 Government approval to have his operations in Florida? I want
14 you to take a look at what this Government approval is. It's a
15 fire certificate. Not only is it just a fire certificate, but
16 look what it tells you about JM Products. Does it tell you
17 JM Products changing the world? Does it tell you JM Products
18 using massive amounts of electricity? Does it say JM Products,
19 you know, handling chemicals?

20 The word's "occupancy." They just had a couple of big
21 containers in a giant warehouse in Florida. It was easy for
22 them to convince the fire department folks. At the very least,
23 this is by no means some special Florida regulatory approval
24 for anything. There was no approval that was required.

25 So I've explained -- and I have to keep an eye on the

1 time. You've been very patient with me.

2 I've explained the test that was done in Florida for
3 which they say my clients should pay them \$89 million, and
4 we've seen that that was a sham. That was a fake customer.
5 Turns out after this lawsuit gets filed, my clients go back and
6 start looking at some of the other things that happened when
7 they start realizing what's going on, and turns out that's not
8 the only lies that have been told to my client.

9 You heard and you saw on your time line, you saw
10 Mr. Chaiken talk to you about a -- I think the reference, if
11 you recall, is to a validation test. So it was a short test,
12 it was 24 hours. It was done in Italy, not -- not too long
13 after the license agreement was signed. Under that license
14 agreement, the Plaintiffs were required to do -- were required
15 to do this test of that whole -- if you remember that image I
16 showed you, they were supposed to do a test of a hundred --
17 over a hundred of these E-Cat boxes in Florida. This was -- it
18 was supposed to show us that it would work for a 24-hour
19 period. But days before that test began, Andrea Rossi came to
20 my clients, and here is another story.

21 He says he met with health officials in Italy. They
22 told him there's a problem with going forward running this
23 test. But he says they found -- they worked together and found
24 an acceptable solution. At the end, he says, I'll activate
25 only half of the reactors -- that's the -- that's his phrase

1 for the E-Cat, the magic boxes. So now instead of testing over
2 a hundred E-Cat reactors, he tells my clients, You can't do
3 that. We can only test at most 30 of these reactors.

4 Turns out this is not true. This is not what
5 happened, but my clients weren't told all the information. My
6 clients weren't told -- this is what my clients were told, this
7 is what my clients relied upon.

8 Now, I should tell you 'cause this is actually
9 important as well. When Dr. Rossi said this, what did my --
10 what my clients did say, Well, wait a second, that's not what's
11 in the license agreement. We're willing to accept it because
12 they believed him. But what did they do? They wrote it down.
13 They wrote -- it's called -- they wrote an amendment to the
14 license agreement. That's what you do. If you've got a
15 written agreement with written promises that you agree you're
16 going to follow, then if you're not going to follow them, you
17 put it in writing, and you have it signed by all the parties.
18 That's called an amendment to an agreement, an amendment to a
19 license agreement. That's exactly what they did here. They
20 wrote down the changes, and then everybody signed it. Andrea
21 Rossi signed it, Tom Darden signed it, that third company that
22 you heard Mr. Chaiken refer to called AmpEnergo -- I'm going to
23 call them AEG because I butcher the name AmpEnergo.

24 After that, however, Andrea Rossi changed the goal --
25 or the goalpost again, and rather than even testing 30 boxes,

1 he decided that the test would only be limited to 18 boxes.

2 So my clients originally agreeing to test over a
3 hundred of these E-Cat boxes and see that all hundred-some-odd
4 of them were working and all going great, turned out they only
5 ended up testing at the end of the day 18.

6 Now, remember what I told you about Florida, how all
7 those E-cat boxes that were down there, there was 115 sent
8 there, most of them never worked. That's what made my clients
9 start realizing maybe most of those didn't even work back in
10 Italy. But we got suckered into allowing only 18 of them to be
11 tested when there was a hundred of them that were supposed to
12 be used.

13 Mr. Chaiken spoke to you about the license agreement
14 for some time. I don't think he showed you very much of the
15 license agreement. I want to be able to talk to you a little
16 bit about that.

17 I want to start with one thing because Mr. Chaiken was
18 talking to you about Cherokee. Remember, he was kind of -- and
19 never really defining it for you, but he was saying Cherokee
20 was going to go this, and Cherokee was going to do that.

21 This is a license agreement. You can read it. You're
22 going to get a chance to read it. It doesn't once mention
23 Cherokee. Nowhere. It never says Cherokee is going to make
24 any payments. It never says Cherokee is going to be providing
25 any financial backing.

1 So, now, they claim that there were other promises
2 that were being made to them that aren't reflected in the
3 license agreement. But that's not what they said when they
4 signed the license agreement.

5 In fact, when they signed the license agreement, they
6 agreed at that time that the agreement, it contained all of
7 their promises, every single one of them. And it says it
8 supersedes. That means it gets rid of any prior agreements,
9 oral or written. These are the things you put in your
10 contracts and make sure everybody understands. If there is
11 something you are supposedly relying on, make sure it is in
12 writing. Don't kid yourself. There is nothing special about
13 the particular day that this was signed on. If Dr. Rossi was
14 telling you the truth and if he walked in and suddenly there
15 was a different name on the documents than what he was going to
16 sign, instead of him signing an agreement with Google, he
17 signed an agreement with Gaga, he could have said, I'm not
18 signing. Or write it in that Industrial Heat is going to be
19 backed by somebody.

20 Not in here. Didn't happen. Because it's not true.

21 I want to talk just quickly, if I can, about the
22 payments. And Mr. Chaiken explained some of this to you
23 already, so I'll go relatively quickly, which is to say the
24 license agreement, to start, involved the payment of 1.5
25 million dollars. That's a substantial payment. And that's for

1 the magic boxes, the E-Cat boxes that my clients purchased.
2 When you put all of those together, they would call them an
3 E-Cat plant. Mr. Chaiken called them a 1MW plant. I apologize
4 for all the different phrases and terms, and over time, you'll
5 get, you know, you will hear them enough. But for now, put all
6 the boxes together, you call them a plant. So 1.5 million
7 dollars for a plant.

8 There was the next payment, 10 million dollars. That
9 was for all the technology that the Plaintiffs had. It's
10 called -- it was kind of -- it is called intellectual property
11 or IP. That means everything you knew. So 1.5 million
12 dollars, you get a bunch of these E-Cat magic boxes. 10
13 million dollars more, you get everything that I know about this
14 technology. That's what -- that's what the promise was.

15 And then the last payment was if you can go out and
16 show in the real world that this thing can perform at an
17 amazingly high level, not only that, but that you do it as soon
18 as you send us this plant, as soon as we get this the plant,
19 you turn around and you run it and you show us how, you know,
20 how amazing it is.

21 Now, I have already talked to you about the test that
22 they actually ended up eventually doing, which was the one
23 where we've already seen where Mr. Rossi is next to practically
24 a furnace and wearing a jacket. But they also didn't try to
25 test it or didn't test it promptly. That's what the agreement

1 says. The agreement -- Mr. Chaiken told you that all of these
2 E-Cat boxes arrived where my clients are located in North
3 Carolina. They arrived in August of 2013. Nothing happened in
4 August of 2013. Nothing happened in September of 2013.
5 Nothing happened in October of 2013.

6 So then Mr. Chaiken also says, Well, but no one ever
7 told Dr. Rossi that the time might be running out.

8 Oh, they more than told him. They actually created a
9 document about it. It's called the second amendment.
10 Remember, we talked about this. If you have got a contract, if
11 you've made written promises, if you want to change it, you put
12 it in writing, and you sign it.

13 Well, everybody realized that the time period for
14 running that guaranteed performance test had run out by
15 October, because you had to start it immediately. Immediately
16 when something shows up in August is not, you know -- is not
17 October. Maybe it's September. I would think probably more
18 like August, but in any event. So they put it in writing.
19 They said, oh, we are willing -- they're willing to extend the
20 time. We will give you more time. But you have to test
21 something that's a little bit different than what you said.
22 You now have created a new device. It's called a six-cylinder
23 unit. I shouldn't say new device. Created an alternative
24 device called a six-cylinder unit, that we want you to test
25 that instead.

1 Now, you don't need to understand a whole lot about
2 this six-cylinder unit. I've thrown a lot at you already, and
3 I apologize for that. But here is all that you really need to
4 know, that you didn't hear Mr. Chaiken once say anything about
5 the six-cylinder unit. I am guessing this is the first time
6 you are hearing it. No one has ever tested it. No one even
7 claims that they ever tested a six-cylinder unit. So the
8 parties were willing to extend the time period, but only if
9 they made a change.

10 Dr. Rossi didn't -- you know, he signed this document,
11 but he never ran the test on this type of unit. Again, written
12 promises, you can change written promises, but if you are going
13 to change the written promises, you put it in writing. That's
14 the pattern here.

15 In fact, they even said that in the license agreement.
16 If I could look at Section 16.9 -- I'm moving around on you
17 here a lot, but just for a second here. That's not just good
18 practice. That's not just the way that wise people operate.
19 That's not the way that business people operate.

20 By the way, Andrea Rossi, the testimony you will hear,
21 has owned a number of different businesses. He is not an
22 unsophisticated individual. But they even put in writing.
23 They said, Look, you can change this thing, but if you are
24 going to change it, you have got to write it down.

25 It's a written instrument signed by the parties. They

1 did it on a couple of occasions. According to Andrea Rossi
2 though, later on they never did it. He doesn't have an
3 explanation for it. He doesn't have any signed contract or
4 signed amendment. He knew his time had expired.

5 Instead, he was more focused on conning Industrial
6 Heat and IPH to shipping their -- these boxes down in Florida
7 for their supposed fake customer. That's their approach.
8 Along with Henry Johnson and James Bass, they created and
9 presented to my client a fake customer, JM Products, a company
10 with no business, under the hidden control of Andrea Rossi.
11 Along with Fulvio Fabiani, as well as Johnson, they provided my
12 clients with false information and false data to promote what
13 they were doing in Florida.

14 Now, I have one final point, and I am almost done, and
15 I appreciate your tolerance. My clients are Tom Darden
16 J.T. Vaughn, and their colleagues have been successful
17 entrepreneurs in a number of projects addresses environmental
18 challenges. That's included a large number of projects
19 cleaning up contaminated property so they can be back to a
20 productive use. It's involved converting businesses into using
21 clean renewable energy sources. That's what they have focused
22 their efforts and their successes on.

23 Now, you heard Plaintiffs' Counsel talk to you about
24 this 50 million dollars, this 50 million dollar payment.
25 But -- and I think he said this, but I wanted to make sure that

1 everyone heard it. Tom Darden did not receive a penny of that
2 50 million dollars. J.T. Vaughn did not receive a penny of
3 that 50 million dollars. A company invested 50 million dollars
4 in their companies that were pursuing LENR technologies. In
5 fact, you remember Mr. Chaiken literally told you, he described
6 my clients as the leading LENR investors. They are. That's
7 why the money was invested with them. That's where the money
8 went to, to making an effort to try to find a technology that
9 works. It didn't go into Andrea's, because his technology
10 doesn't work.

11 Now, Plaintiffs read to you various messages that
12 Industrial Heat has sent to investors over time, their
13 investors. But Mr. Chaiken was highly selective in what he was
14 reading to you.

15 They also argue their claim is predicated on this idea
16 that Industrial Heat only said great things about Andrea Rossi
17 until March of 2013 when they got that 50 million dollar
18 investment, and then they turned on him. That's their theory.
19 Turned on him like that.

20 Mr. Chaiken showed you part of this document. This is
21 a document from July 2013. So this is well before that money
22 was paid. This is -- and this is the very document that says
23 other things; for example, it calls Andrea Rossi a key employee
24 under a section called Risk Factors. Having Andrea Rossi as
25 your key employee is a risk. What else does it say? Rossi has

1 a history of failed business relationships and conflicts. And
2 he is difficult to communicate and work with.

3 However, he appeared to have a remarkable technology.
4 So the principals of IH -- that's Industrial Heat -- were
5 willing to invest a great deal of time and to be more tolerant
6 of eccentric or difficult interpersonal characteristics than
7 one actually -- more than one normally would or that Rossi had
8 experienced with others in his prior business relationship.

9 This led to an unusual and attractive business
10 structure. Industrial Heat, IH, took excessive risk with
11 relatively small amounts of capital fund, but no large payments
12 would be owed unless the technology proved to be extremely
13 successful. This is what Industrial Heat and its parent
14 company and another company were telling investigators. This
15 is what they believed. They thought there was a remarkable
16 technology here. And as a result, they were extremely
17 tolerant. They were trying to find ways that they could make
18 this work.

19 THE COURT: Five minutes.

20 MR. PACE: Thank you, Your Honor.

21 And as we have discussed, though, over the last 40
22 minutes, the fact of the matter is these E-Cat boxes, they're
23 not filled with magic. Turned out that they were just simply
24 filled with lies. That's when my clients' tolerance ended. My
25 clients were tricked by the Plaintiffs. They were tricked by

1 the fake company of JM Products. They were tricked by the fake
2 data that was being provided them by people like Fulvio
3 Fabiani.

4 In the end, my clients don't owe anyone \$89 million.
5 What my clients are owed is the return of the millions of
6 dollars, well over 10 -- well over \$11 million that they paid
7 out because of the broken promises made to them and the lies
8 that were told to them.

9 Thank you.

10 THE COURT: Mr. Leon De La Barra.

11 MR. LEON DE LA BARRA: Thank you, Your Honor.

12 OPENING STATEMENT ON BEHALF OF THE THIRD-PARTY DEFENDANTS

13 J.M. PRODUCTS, ET AL.

14 MR. LEON DE LA BARRA: Ladies and gentlemen, I want to
15 begin by addressing one very important issue. As Your Honor
16 mentioned earlier: What the attorneys say is not evidence.
17 What Mr. Pace just said is not evidence. What Mr. Chaiken said
18 earlier is not evidence. Consequently, what I am about to tell
19 you is not evidence. Over the course of the next few weeks,
20 you will hear sworn testimony and review multiple documents.
21 That is the evidence that you will rely on when you return your
22 verdict.

23 That being said, please indulge me some time to walk
24 through the facts and circumstances of this case and the
25 reasons that, what the evidence will show, there is no scheme

1 to defraud Mr. Pace's clients.

2 Now, we have heard a lot of talk about a license
3 agreement. You may remember, license agreement was entered
4 into in October of 2012. That is nearly two years before the
5 formation of JM Products or two years before Mr. Darden and
6 Mr. Vaughn meet Mr. Henry Johnson. Now, those two events would
7 have occurred around June or July 2014. Similarly, that is
8 over two years before Mr. James Bass comes into the picture.
9 That would happen in late 2014 to early 2015.

10 Now, we have heard a lot about this license agreement.
11 Everyone knows it required a one-year test. Upon completion of
12 that one-year test, Dr. Andrea Rossi and the other corporations
13 would be entitled to an \$89 million payment. Mr. Chaiken spoke
14 about the license agreement. Mr. Pace showed you several
15 portions of the license agreement.

16 What he didn't show you was a single provision
17 requiring a customer to be used in connection with the test or
18 with the technology at all. That's because there is no
19 requirement. In fact, Mr. Vaughn, as a corporate
20 representative for Industrial Heat, will testify that they
21 didn't care about a customer. It simply wasn't important to
22 them.

23 With that being said, fast-forward to July of 2014,
24 around this time frame, discussions were starting between
25 Dr. Andrea Rossi, Defendants Mr. Darden, Mr. Vaughn about

1 beginning a test and perhaps moving the plant down to Florida.

2 Now, what Mr. Pace didn't tell you is that my client,

3 Mr. Henry Johnson, only met with Defendants on one occasion.

4 In that occasion, it was made very clear to Defendants Darden

5 and Vaughn -- consequently Industrial Heat and IPH -- that

6 Mr. Johnson was the president of JM Products and would only

7 handle the corporate matters. In fact, they were well aware

8 that Mr. Johnson was Mr. Rossi's real estate attorney. In

9 fact, you will hear testimony from Mr. Johnson himself where he

10 says, We figured there would be a technical person running the

11 operation. Mr. Johnson clearly didn't have any manufacturing

12 experience. They knew that he wouldn't be the person to run

13 the operation down in Florida. Similarly, Mr. Pace stated that

14 his clients were told that there -- were never told that there

15 wasn't a facility down in Doral or that there was -- and that

16 there wasn't a use for the steam. That's clearly false.

17 That's going to be contradicted by his own clients.

18 Mr. Darden will testify that he knew -- they knew that

19 JM Products was a newly formed entity and that it was going to

20 have a new facility. Similarly, Industrial Heat of which

21 Mr. Vaughn will testify, the corporate representative, he will

22 testify that Industrial heat knew that JM Products would have a

23 new facility for the sole purpose of experimenting with new

24 processes. Industrial Heat and IPH claim that Rossi and

25 Johnson made certain representations about Johnson Matthey.

1 Mr. Pace showed you -- Madam Court Reporter, can you switch,
2 please.

3 THE COURT REPORTER: Yes.

4 MR. LEON DE LA BARRA: Bear with me. I'm not the best
5 with technology.

6 You will note right up here. This is the actual term
7 sheet that was signed by the parties. You will note that
8 Johnson Matthey is nowhere in here. That's because such
9 representations was never made. Mr. Pace showed you a draft of
10 the agreement. That draft was quickly corrected to reflect the
11 true party that was entering into this agreement.

12 Now, Mr. Johnson did not know -- will testify that he
13 did not know what Johnson Matthey was at the time. In fact, at
14 the meeting I mentioned, Mr. Johnson will testify that the only
15 reference to Johnson Matthey made at that meeting was quite
16 simply that Johnson Matthey would be a supplier of materials
17 for JM Products.

18 Mr. Vaughn and Industrial Heat will testify that they
19 have no recollection of anything Mr. Johnson said at that
20 meeting.

21 Now, this is the term sheet that was eventually
22 entered into. Over the course of the next few weeks, between
23 the date of the meeting in July through August 13th when this
24 term sheet was eventually signed by the parties, Industrial
25 Heat and Dr. Rossi went back and forth over several terms in

1 the agreement. It is undisputed that Industrial Heat
2 negotiated the terms of this agreement and, in fact, even had
3 their attorneys at the time review it. Again, this has been
4 stipulated to. It is undisputed in this case.

5 Conversely, Mr. Johnson did not make any comments or
6 any revisions to the term sheet.

7 And, like I said, in mid-August Leonard, Industrial
8 Heat, and JM products signed and entered into this term sheet.

9 Now, what did this term sheet provide? I want you to
10 pay particular attention to a few paragraphs here.

11 Paragraph 7, states that Industrial Heat will provide
12 maintenance for the plant.

13 Paragraph 8 provides that Leonardo would be
14 responsible for the operation of the one-megawatt plant.

15 Paragraph 9 states something crucial to this case.
16 The personnel of JM Products will not have access to the inside
17 of the one-megawatt plant for the information about how the
18 plant operates.

19 If I go down to paragraph 14, the term sheet expressly
20 provided Industrial Heat the ability to provide whatever
21 security, whatever monitoring and whatever control measures it
22 deemed appropriate to protect the plant and to properly analyze
23 its performance.

24 Around the same time the term sheet was entered into,
25 you saw a document that's titled Compliance With OFAC. OFAC is

1 an acronym. It simply stands for Office of Foreign Asset
2 Control. Throughout the trial, you will get the chance to
3 review this document. You will notice that this document
4 contains no reference to a specific company, especially no
5 reference to Johnson Matthey as being the owner of JM Products.

6 Now, it is true, the document does say that it --
7 JM Products is owned by an entity in the United Kingdom.
8 However, Mr. Johnson will testify there was a specific intent
9 for this -- for JM Products to be owned by a trust or an entity
10 in the United Kingdom. You will learn throughout the trial
11 that there was simply no intent to deceive Industrial Heat into
12 entering into this agreement.

13 Now, Mr. Bass, what can I tell you about my client,
14 Mr. James Bass? He's an engineer. Graduated at the top of his
15 class *summa cum laude* from Rutgers University. His background
16 is in electrical engineering, specifically with controls or
17 control boards or what he likes to call closed loop systems.
18 Now, he has worked hard his entire life and is now
19 self-employed. He has a company. He works as an independent
20 contractor.

21 So here is Mr. Bass, he's working as an independent
22 contractor. Around the time that JM Products is getting into
23 shape, a contract has just expired, and an old colleague
24 reaches out to him. He says, Hey, Jim, I have a job
25 opportunity for you. It is this great client. It's called

1 JM Products. They're in need of an electrical engineer.

2 So what does he do? He meets with JM Products. He is
3 intrigued, and he decides just to hop aboard.

4 Now, what is the scope of his work? The scope of his
5 work, you will learn throughout the weeks of trial, the primary
6 focus was to create a control board for JM Products. This
7 control board was to facilitate the processes that, if their
8 experiments proved fruitful, could be used in their production
9 facility. Given his scope of work and given his background, he
10 was given the title of director of engineering. Industrial
11 Heat will testify that they have absolutely no reason to
12 believe that Mr. Bass was in fact -- was not, in fact, the
13 director of engineering. Simply put, it's because he was.

14 There is no dispute that Mr. Bass was involved in
15 moving the plant to Florida. Again, this is a stipulated fact,
16 something that Defendants -- sorry -- Industrial Heat and IPH
17 do not dispute.

18 So we fast-forward to about December of 2014 when the
19 plant arrives in Florida. When the plant arrives, they start
20 to install the plant. And in about February of 2015 Mr. Darden
21 will testify that at that time -- he is going to claim that at
22 that time, they knew -- himself and Mr. Vaughn, Industrial
23 Heat, and IPH -- they knew that this test was not going to be
24 legitimate. They knew that something bad was going on down
25 there. I believe Mr. Chaiken alluded to that.

1 Despite these supposed claims, despite these supposed
2 beliefs that they had back in February of 2015, Industrial Heat
3 nor IPH ever requested additional equipment to be installed at
4 the plant to ensure that they could have proper monitoring or
5 the return of the plant itself. Those are two contractual
6 rights that they had pursuant to the term sheet.

7 Now, shortly after those statements are made, the test
8 begins, and as the test begins and the plant's running,
9 Dr. Rossi, JM Products, they experiment and use the steam to
10 process different materials. You will hear testimony that
11 JM Products experimented with, amongst other things, platinum
12 sponges and graphene.

13 Throughout the operation of the plant in Florida,
14 throughout JM Products' use of the steam, Industrial Heat never
15 once sent an invoice or demanded any payment from JM Products
16 for the use of that steam. Industrial Heat nor IPH ever
17 requested JM Products, Mr. Johnson, or Mr. Bass for that
18 matter, to maintain any records of the E-Cat plant's operation
19 or, similarly, asked for any specifics about the business of
20 JM Products or to maintain any records about the business of
21 JM Products and what it was that they were doing down there.

22 Now, Dr. Penon, who Mr. Chaiken mentioned was the ERV
23 in connection with the license agreement, Mr. Penon will
24 testify that there was no measurement needed on the JM Products
25 side of the facility. Now, he created the test protocol. The

1 test protocol did not require any measurements to be taken on
2 the JM Products side of the facility. Simply put, this wasn't
3 relevant.

4 I believe I mentioned this, but just in case,
5 Mr. Bass, his scope of employment again had nothing to do --
6 strike that. Let me backtrack for a second. Mr. Bass was not
7 responsible for the measurement or the operation of the E-Cat
8 plant. Similarly, he wasn't responsible for the testing at
9 JM Products either. As I mentioned, he worked on control
10 boards. That was the scope of his business.

11 JM Products, Mr. Johnson, Mr. Bass, none of them ever
12 provided the coefficient of performance, which is the COP, to
13 Industrial Heat or IPH. That is the key element -- that is the
14 key indicator of the E-Cat plant's performance. The testimony
15 will show that none of my clients ever provided a COP to
16 Industrial Heat or IPH. They simply never relied on anything
17 my clients ever represented or ever stated as to the
18 performance of the E-Cat plant that is the subject of this
19 litigation.

20 So the test finishes. Leonardo demands of 11 million
21 dollar. Industrial Heat and IPH say -- simply say, No, you are
22 not entitled to it. So here we are.

23 THE COURT: Five minutes.

24 MR. LEON DE LA BARRA: Thank you, Your Honor.

25 So here we are. Industrial Heat and IPH claim it's an

1 elaborate scheme to deceive them as to the operation of the
2 one-megawatt plant.

3 I want to reiterate something. My clients have no
4 stake in the outcome of the tests. They have no claim to
5 89 million dollars in dispute. JM Products, Mr. Johnson,
6 Mr. Bass did not play any role in the operation or the
7 measurement of the E-Cat plant that is the primary focus of
8 this litigation.

9 Industrial Heat and IPH never requested either of
10 them -- any of them, I should say -- to take measurements or
11 provide any reports about the plant. JM Products, Mr. Johnson,
12 Mr. Bass did not make any representations about the COP, which,
13 again, was the key indicator of the plant's performance.
14 Dr. Penon will testify that the test protocol did not require
15 any measurement on the JM Products side. It is undisputed that
16 Mr. Bass played no role in Industrial Heat and IPH's
17 decision-making to bring the plant to Florida.

18 After you have heard all of this evidence, I will ask
19 you to return your verdict for JM Products, Mr. Johnson and
20 Mr. Bass. Thank you.

21 THE COURT: Thank you.

22 Mr. Nunez.

23 MR. NUNEZ: Thank you, Your Honor.
24
25

1 OPENING STATEMENT ON BEHALF OF THE THIRD-PARTY DEFENDANTS

2 FULVIO FABIANI, ET AL.

3 MR. NUNEZ: May it please the Court, ladies and
4 gentlemen, you have heard -- you have been hearing today from
5 the Plaintiffs' side and the Defendants' side that this is a
6 dispute that involves many millions of dollars, right? They
7 are talking about 89 million dollars. The Plaintiffs -- the
8 Defendants want over 11 million dollars.

9 Because Mr. Fabiani worked for Dr. Rossi, he has been
10 dragged in this case. That is why my client is here. And why
11 I am here -- my name is Rudy Nunez, again, I introduced myself
12 earlier -- I'm here to defend Mr. Fabiani and his company.

13 Now, you heard the Judge's instructions earlier that
14 your decision at the end of this case, you will be essentially
15 the judges of the facts, what are the facts, and what does the
16 evidence show? And your decision is going to be based on the
17 exhibits that you're shown, your decision is going to be based
18 on the testimony, and there is going to be testimony that was
19 taken under oath that's also going to be presented to you.

20 Now, based on this evidence, I will ask you at the end
21 of the case and I'll ask you at every opportunity I get, that
22 you will find Mr. Fabiani and his company are not liable for
23 the claims. There are two claims that Industrial Heat has
24 brought against him. He is not seeking any affirmative relief.
25 We're not -- Mr. Fabiani is not here trying to get paid for

1 anything. Okay?

2 You will hear that Mr. Fabiani does have a dispute
3 with Industrial Heat that he did not get paid his last payment,
4 and I will get to that in a little while.

5 Now, I want to go through what I think the evidence
6 that you will be presented in this trial -- I know you have
7 been here a long time, especially you all have been here since
8 very early, and I will do my best to get through this and not,
9 ah, and not bore you too much.

10 Now, I want to go through the evidence as to Mr.
11 Fabiani. I'm not going to talk too much about the things that
12 you've heard already. And I want to point out and it's very
13 important that when it comes to the claims against Mr. Fabiani,
14 that you focus on the evidence with regard to him, all right,
15 and not attribute to him things that others have done or said,
16 the things that you have seen today, the exhibits that have
17 been presented to you during these opening statements. All
18 right?

19 So first of all, what's Mr. Fabiani's role? You
20 didn't hear very much about him from anyone. You heard
21 Mr. Pace mention him and with regard to the data and Mr. Pace's
22 claim that there's some fake data or some false data. All
23 right. Well, let's start, Mr. Fabiani and Mr. Rossi start
24 working -- or better yet, Mr. Fabiani starts for Mr. Rossi in
25 the middle of 2012, and he starts working with regard to this

1 E-Cat technology and the E-Cat plant. Mr. Fabiani's
2 experience, he is experienced in electronics, computer science,
3 and in producing computer control boards. Okay?

4 So at around the same time that Mr. Fabiani and Dr. --
5 starts working for Dr. Rossi, that's when Dr. Rossi and
6 Mr. Darden when they start and they meet and they start
7 negotiating this license agreement that you're going to see a
8 lot about. You saw some of that today. Well, Mr. Fabiani is
9 not a party of that agreement. Mr. Fabiani had no part in
10 negotiating or bringing about that license agreement. And,
11 most importantly, Mr. Fabiani has nothing to gain whether
12 Industrial Heat has to pay Dr. Rossi in accordance with that
13 license agreement.

14 Now, you heard there was -- you heard earlier, you'll
15 hear the testimony that the E-Cat plant came to the Industrial
16 Heat's facilities sometime in August 2013. Right after that,
17 my client Mr. Fabiani enters into an agreement with Industrial
18 Heat. And it is an agreement titled Technical Consulting
19 Agreement. And that's -- that's a copy of it. It was attached
20 to pleadings, the papers that are filed by the Defendant in
21 this case. All right?

22 Now, let's take a look at this for a minute, and we'll
23 see, I have highlighted some -- some areas. Let's look at that
24 Paragraph 2. Now Mr. Fabiani -- and it's known that he has, as
25 it says here, great technical and scientific competence in

1 electronics, electromechanics, and computer science. And he
2 has experience in producing and assembling components of these
3 energy plants. By these energy plants, it's the E-Cat plant.
4 Okay?

5 Now, the consulting agreement, then it goes on to
6 say -- I'm sorry -- just the second sentence, that Industrial
7 Heat desires to engage United States Quantum Leap, which is
8 Mr. Fabiani's company, to provide services to -- and this is
9 important, because you heard Mr. Pace saying, What does the
10 contract say? It's to manufacture and develop the mentioned --
11 the above-mentioned energy plants. All right?

12 In the next page on paragraph 2, now it mentions that
13 the company, Mr. Fabiani's company, is going to provide
14 technical consulting and assistance to, again, manufacture and
15 develop the electrical equipment and the electrical system for
16 the above plants. All right?

17 Now, this agreement, this technical consulting
18 agreement, this was for a one-year period, this was for a
19 one-year term, right, that then was subsequently extended for
20 two more terms. And those extensions of the agreement, they
21 never changed the duties or responsibilities or what
22 Mr. Fabiani was supposed to do under his contracts. Right?
23 The language stayed the same. They just changed the dates.
24 All right?

25 Now, in this case one of the claims, Industrial Heat

1 claims that Mr. Fabiani breached the agreement. He breached
2 the agreement. All right? Now, you are going to be asked to
3 decide whether or not he did. And to decide that, you are
4 going to have to determine whether he breached a material term
5 of that contract. And to determine that, you will consider --
6 one of the things that you'll be instructed, you're going to
7 consider is what is the purpose and intent of the contract?

8 Now, you are going to hear testimony from Mr. Darden,
9 right, the president, he is the top guy for Industrial Heat.
10 And his understanding of that technical consulting agreement
11 was to support and help Dr. Rossi build the plant and continue
12 developing the technology. All right? To essentially help
13 build the device. Mr. Darden is expected to testify that
14 Dr. Rossi asked him, I want Mr. Fabiani to help me because of
15 the area of expertise that he has. And Industrial Heat decided
16 you know what? We want Dr. Rossi to work on this and create
17 this and be successful. So you know what? We'll enter into
18 this contract, we'll pay Mr. Fabiani, right? But to work for
19 Mr. Rossi and at Mr. Rossi's direction.

20 You are going to hear very similar testimony from
21 Mr. Vaughn, and he testifies or has testified as a corporate
22 representative for Industrial Heat. Again, his testimony is
23 going to be that the contract between Mr. Fabiani and
24 Industrial Heat was for him to help Dr. Rossi and to work at
25 the direction and discretion of Dr. Rossi.

1 You also hear -- you've heard his name at some time
2 today, a gentleman by the name of Barry West. Barry West was
3 an independent -- is an independent contractor for Industrial
4 Heat. He is going to be a witness for Industrial Heat. And
5 Mr. West is going to testify that he worked essentially for
6 three years, the entire time Mr. Fabiani had contracts, these
7 consulting agreements, with Industrial Heat, that almost the
8 whole time he worked along beside Mr. West. Mr. West also
9 confirmed that Mr. Fabiani's role was in electrical design and
10 maintenance of the plants. All right. Mr. West is going to
11 testify that they knew Mr. Fabiani worked previously for
12 Dr. Rossi, they knew they had this previous relationship, and
13 that they didn't have a problem with that. They accepted that,
14 because what they wanted, when they entered into this agreement
15 with my client, was just anything Mr. Rossi needed to help the
16 plant work, so they brought on Mr. Fabiani to do that.

17 Now, there is a provision in the contract -- and
18 you're going to hear about this later on from the other side,
19 and this has to do with the data and turning over data by
20 Mr. Fabiani to Industrial Heat. And there is a provision,
21 paragraph 6, that talks about all confidential information
22 belongs to Industrial Heat. And if you are not able to see
23 that, maybe I can zoom in just a little. And it references
24 tester results. Okay?

25 With regard to this provision, you are going to hear

1 testimony from Mr. Darden. Strike that. You are going to hear
2 testimony from Mr. Vaughn, all right, and that Mr. Fabiani was
3 not the, let's say, data -- I think his -- the way he explained
4 it was not the data-capturing expert for Industrial Heat.
5 That's not his job, Mr. Fabiani's job, to collect this data.

6 Today, here in this trial, it is a big issue of the
7 data, what data was provided, what data wasn't provided. All
8 right? But when they entered this agreement and Mr. Fabiani
9 started working for them and it was up in North Carolina,
10 collecting data wasn't his job back then. All right?

11 Now, Mr. Darden and Mr. Vaughn will also confirm and
12 the evidence will show that my client did turn over data. He
13 was asked by Mr. Rossi at certain times to collect data to show
14 and for his own knowledge to see how the plants were working
15 how the technology was working. And they'll testify that that
16 data was turned over to Industrial Heat. Okay? Even when the
17 plan was in Florida, my client was turning over data to
18 Industrial Heat.

19 Now, there is going to be testimony, you are going to
20 hear how at the end of this test, however they want to call
21 it -- again, it's not our dispute -- whether the test in Doral
22 counted for purposes of the license agreement, for the
23 amendments license agreement. That's not my case to prove or
24 disprove. All right?

25 But what the evidence is going to show that it's at

1 that time, at the end of the test essentially when everything
2 is going to blow up between the two parties, then they started
3 saying, oh, where is this data, and we want this data, now they
4 are claim that he didn't give them the data.

5 Well, that's going to be contradicted by a few things.
6 Okay? First of all, you will hear from my client, he'll come
7 in, hopefully -- and I think I told you earlier, he doesn't
8 live in this country, he's travelling, he will be here next
9 week, and I expect him testify in the trial. He's going to say
10 that, again, while the plant was in Doral, he was turning over
11 power consumption data to Industrial Heat.

12 Now, after everything blows up and these guys are
13 fighting against each other, all right, my client is summoned
14 by Industrial Heat to come to the offices of their attorneys.
15 All right? So Mr. Fabiani's called and says you have go down
16 to the offices of Mr. Pace. All right? Now, his understanding
17 is that, one, they are going to make him an offer to extend his
18 contract for another three years, and they are going to make
19 the payment that is due to him under the existing contract that
20 he had.

21 Now, my client goes to the offices of Industrial
22 Heat's attorneys -- this is before the litigation starts -- and
23 he turns over data. He goes on two occasions. He turns over
24 data. And that promised contract -- or at least in his mind,
25 he was going to get this extension of his contract -- no

1 extension of the contract and no payment either. There was --
2 the last payment under the contract was never made.

3 So at that point, the testimony will show, my client
4 did not turn over certain raw data to them. It has been turned
5 over subsequently. Okay?

6 Now, the last thing on this -- on issue of data -- and
7 I think this is very important for you to keep in mind
8 throughout this trial -- you are going to be presented with
9 expert reports. All right? And those expert reports from
10 Industrial Heat's experts, they utilize and they rely on the
11 data that Mr. Fabiani did give them. Not just the raw data at
12 the end, but the data that he was giving them during the test
13 at Doral, the data that he turned over to them at their
14 attorney's office, okay, their own experts rely on that data.
15 At the same time, they make a claim that Mr. Fabiani didn't
16 turn over data. Okay?

17 Now, let me move -- so there is the claim on the
18 breach of contract. Okay?

19 THE COURT: Five minutes.

20 MR. NUNEZ: Thank you, Your Honor.

21 There is a claim on the breach of contract. There is
22 also the claim of this deceptive scheme. This alleged
23 deceptive scheme, all right? You didn't hear anything today
24 that my client had anything to do with JM Products. My
25 client -- you would have heard it. There is nothing in writing

1 that he said anything about JM Products. There is nothing
2 tying him to JM Products. Okay?

3 There is nothing -- you didn't hear today anything
4 said by Mr. Pace that my client did anything or said anything
5 about moving the plant to Florida. My client, you know why?
6 Because there is no evidence to that. All right?

7 You are going to hear evidence -- Mr. Vaughn, he was
8 questioned in his deposition, and he couldn't come up with a
9 single factor to show my client, again, had anything to do with
10 JM Products or moving the plant down to Florida.

11 There's another issue that they brought up that they
12 weren't allowed into the JM Product's side of the building.
13 Well, in that, you are going to hear from Mr. West, the
14 contractor and witness for Industrial Heat, and he is going to
15 testify to this, and he's going to -- his testimony is going to
16 be that my client didn't have free access to JM Products. His
17 access was restricted. He was restricted to where the
18 containers were. He wasn't allowed to freely to cross over.
19 Yes, there's testimony from Mr. West that he would go to the
20 front offices of JM Products, if they had computer issues.
21 Okay. But he still had to go around. And the only Mr. West
22 ever saw him go through those doors that you saw on that
23 picture, it was one time, and he was allowed in by an employee
24 of JM Products.

25 Now, the last part is this manipulation of data. Now,

1 you saw a graph today that Mr. Pace showed you, and it talked
2 about the FP&L numbers and that my client and his energy
3 consumption numbers had shown that there was -- what was it?
4 That there was more energy than that was reported by FP&L.
5 Their own witness, their expert witness Joe Murray who created
6 that graph, his testimony is that that occurred on 14 days of
7 the 350-plus days of the test. That occurred on 14 days.
8 That's why my client is in here is for those 14 days. But you
9 are going to hear testimony from Mr. Murray, their expert, that
10 he couldn't attribute that to either Mr. Fabiani, to the
11 equipment that was measuring the input, the power input, or it
12 could have even been a problem with FP&L's numbers.

13 That's why my client is here. And, again, my time is
14 running out. I am almost out of time. That I will ask you
15 that at the end of this, that you find that Mr. Fabiani's not
16 liable.

17 And the last thing I will leave with you -- and I
18 think it's very important is Mr. West, again, a person who was
19 a contractor for Industrial Heat, worked with Mr. Fabiani for
20 almost three years side by side working on this technology, and
21 he was asked whether he saw Mr. Fabiani do anything deceitful
22 or dishonest to Industrial Heat, and his answer was simply no.

23 So I ask you to find my client is not liable for these
24 two claims brought against him. Thank you.

25 THE COURT: Ladies and gentlemen, I know you have all

1 been here since early this morning. We adjourn now. If you
2 remember, I indicated we did not have trial Monday or Tuesday.
3 The court is closed on these dates. I ask that you return on
4 Wednesday, July the 5th at 9 o'clock. Please be gathered in
5 the jury room at 9 a.m. And have a happy July 4th weekend.
6 We'll see you at 9. Please do not discuss this with anyone or
7 do any reading research about it.

8 COURT SECURITY OFFICER: All rise.

9 (The jury exited the courtroom at 4:19 p.m.)

10 THE COURT: We actually begin at 9:30. I told them 9
11 so they could all be here on time. Sometimes there are late
12 jurors. So that was a fictional start time, but we begin at
13 9:30 on Wednesday.

14 MR. PACE: Thank you, Your Honor. Happy 4th of July.


15 THE COURT: You as well.

16 (The proceedings adjourned at 3:00 p.m.)

17 C E R T I F I C A T E

18
19 I hereby certify that the foregoing is an
20 accurate transcription of the proceedings in the
21 above-entitled matter.

22
23 07/01/31
24 DATE

25 
STEPHANIE A. McCARN, RPR
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