

COMPOSITE EXHIBIT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ANDREA ROSSI and LEONARDO)
CORPORATION,)
)
Plaintiffs,)

vs.) No. 1:16-cv-2119-CMA)

THOMAS DARDEN; JOHN T. VAUGHN;)
INDUSTRIAL HEAT, LLC; IPH)
INTERNATIONAL B.V.; and)
CHEROKEE INVESTMENT PARTNERS,)
LLC,)

Defendants.)
INDUSTRIAL HEAT, LLC and IPH)
INTERNATIONAL B.V.,)

Counter-Plaintiffs,)

vs.)

ANDREA ROSSI and LEONARDO)
CORPORATION,)

Counter-Defendants,)

and)

J.M. PRODUCTS, INC.; HENRY)
JOHNSON; FABIO PENON; UNITED)
STATES QUANTUM LEAP, LLC;)
FULVIO FABIANI; and JAMES)
BASS,)

Third-Party Defendants.)

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

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

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 ON BEHALF OF PLAINTIFFS:</p> <p>3 PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P.L., by</p> <p>4 MR. BRIAN CHAIKEN, and</p> <p>5 MR. JOHN W. ANNESSER</p> <p>6 283 Catalonia Avenue</p> <p>7 Second Floor</p> <p>8 Coral Gables, Florida 33134</p> <p>9 (305) 337-0781</p> <p>10 bchaiken@pbylaw.com</p> <p>11 jannesser@pbylaw.com</p> <p>12 ON BEHALF OF DEFENDANTS:</p> <p>13 MILLER FRIEL, by</p> <p>14 MR. BERNARD P. BELL</p> <p>15 1200 New Hampshire Avenue, N.W.</p> <p>16 Suite 800</p> <p>17 Washington, D.C. 20036</p> <p>18 (202) 459-9537</p> <p>19 bellb@millerfriel.com</p> <p>20 ON BEHALF OF THIRD-PARTY DEFENDANTS</p> <p>21 J.M. PRODUCTS, INC., HENRY JOHNSON, and JAMES BASS:</p> <p>22</p> <p>23 ARAN, CORREA & GUARCH, P.A., by</p> <p>24 MR. FERNANDO S. ARAN (via telephonic connection)</p> <p>25 225 University Drive</p> <p>Coral Gables, Florida 33134-6732</p> <p>(305) 665-3400</p> <p>faran@acg-law.com</p> <p>ALSO PRESENT:</p> <p>MR. MICHAEL KIRBY, CLVS</p> <p>DR. ANDREA ROSSI</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">INDEX OF EXAMINATIONS</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">2 WITNESS</td> <td style="width: 50%; text-align: right;">EXAMINATION</td> </tr> <tr> <td>3</td> <td></td> </tr> <tr> <td>4 JOHN THOMAS VAUGHN</td> <td></td> </tr> <tr> <td>5 EXAMINATION BY MR. ANNESSER</td> <td style="text-align: right;">6</td> </tr> <tr> <td>6 EXAMINATION BY MR. ARAN</td> <td style="text-align: right;">266</td> </tr> <tr> <td>7</td> <td></td> </tr> <tr> <td>8</td> <td style="text-align: center;">EXHIBITS</td> </tr> <tr> <td>9 NUMBER</td> <td style="text-align: right;">MARKED FOR ID</td> </tr> <tr> <td>10 Vaughn Deposition Exhibit</td> <td></td> </tr> <tr> <td>11 Exhibit 1</td> <td style="text-align: right;">50</td> </tr> <tr> <td>12 Exhibit 2</td> <td style="text-align: right;">73</td> </tr> <tr> <td>13 Exhibit 3</td> <td style="text-align: right;">89</td> </tr> <tr> <td>14 Exhibit 4</td> <td style="text-align: right;">91</td> </tr> <tr> <td>15 Exhibit 5</td> <td style="text-align: right;">118</td> </tr> <tr> <td>16 Exhibit 6</td> <td style="text-align: right;">136</td> </tr> <tr> <td>17 Exhibit 7</td> <td style="text-align: right;">146</td> </tr> <tr> <td>18 Exhibit 8</td> <td style="text-align: right;">152</td> </tr> <tr> <td>19 Exhibit 9</td> <td style="text-align: right;">155</td> </tr> <tr> <td>20 Exhibit 10</td> <td style="text-align: right;">165</td> </tr> <tr> <td>21 Exhibit 11</td> <td style="text-align: right;">173</td> </tr> <tr> <td>22 Exhibit 12</td> <td style="text-align: right;">191</td> </tr> <tr> <td>23 Exhibit 13</td> <td style="text-align: right;">208</td> </tr> <tr> <td>24 Exhibit 14</td> <td style="text-align: right;">213</td> </tr> <tr> <td>25 Exhibit 15</td> <td style="text-align: right;">217</td> </tr> <tr> <td>Exhibit 16</td> <td style="text-align: right;">220</td> </tr> <tr> <td>Exhibit 17</td> <td style="text-align: right;">227</td> </tr> <tr> <td>Exhibit 18</td> <td style="text-align: right;">243</td> </tr> <tr> <td>Exhibit 19</td> <td style="text-align: right;">249</td> </tr> </table>	2 WITNESS	EXAMINATION	3		4 JOHN THOMAS VAUGHN		5 EXAMINATION BY MR. ANNESSER	6	6 EXAMINATION BY MR. ARAN	266	7		8	EXHIBITS	9 NUMBER	MARKED FOR ID	10 Vaughn Deposition Exhibit		11 Exhibit 1	50	12 Exhibit 2	73	13 Exhibit 3	89	14 Exhibit 4	91	15 Exhibit 5	118	16 Exhibit 6	136	17 Exhibit 7	146	18 Exhibit 8	152	19 Exhibit 9	155	20 Exhibit 10	165	21 Exhibit 11	173	22 Exhibit 12	191	23 Exhibit 13	208	24 Exhibit 14	213	25 Exhibit 15	217	Exhibit 16	220	Exhibit 17	227	Exhibit 18	243	Exhibit 19	249
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<p style="text-align: right;">Page 3</p> <p>1 VIDEOTAPED DEPOSITION of JOHN THOMAS VAUGHN, a</p> <p>2 witness called on behalf of Plaintiffs, before</p> <p>3 Margaret M. Kruse, Registered Merit Reporter, Certified</p> <p>4 Realtime Reporter, and Notary Public, in and for the State of</p> <p>5 North Carolina, at 3509 North Haworth Drive, Suite 403,</p> <p>6 Raleigh, North Carolina, on January 19, 2017, commencing at</p> <p>7 9:04 a.m.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 THE VIDEOGRAPHER: We are on the record at</p> <p>2 9:04 a.m.</p> <p>3 This is the videotaped deposition of</p> <p>4 John T. Vaughn in the matter of Andrea Rossi and Leonardo</p> <p>5 Corporation vs. Thomas Darden, et al. This deposition is</p> <p>6 being held in the offices of CaseWorks at 3509 Haworth</p> <p>7 Drive, Suite 403, Raleigh, North Carolina, 27609, on</p> <p>8 January 19, 2017.</p> <p>9 The court reporter is Margie Kruse, the</p> <p>10 videographer is Michael Kirby, both with CaseWorks.</p> <p>11 Would counsel please introduce themselves.</p> <p>12 MR. ANNESSER: My name is John Annesser. I'm</p> <p>13 here on behalf Dr. Rossi. I have with me Mr. Chaiken, who</p> <p>14 is also on behalf of Dr. Rossi and Leonardo Corporation.</p> <p>15 And our client is here, Dr. Rossi.</p> <p>16 MR. BELL: Bernard Bell with the firm Miller</p> <p>17 Friel for the defendants.</p> <p>18 MR. ARAN: Francisco Aran with Aran, Correa &</p> <p>19 Guarch, on behalf of J.M. Products and Henry Johnson.</p> <p>20 THE VIDEOGRAPHER: Will the court reporter please</p> <p>21 swear the witness.</p> <p>22 (Witness administered an oath.)</p> <p>23</p> <p>24</p> <p>25</p>																																																								

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1 sorry.
 2 (Record read.)
 3 MR. BELL: Objection to form. Objection to the
 4 form.
 5 BY THE WITNESS:
 6 **A. When we hired Joe in -- I believe it was in**
 7 **either May or June -- I think it was June of '15, our goal**
 8 **was to have, you know -- as you know, we were struggling to**
 9 **replicate the technology and were being -- were**
 10 **unsuccessful in doing so. So our goal was to get an**
 11 **engineer that really was a qualified engineer -- and a**
 12 **team, in fact, we hired more -- to look at this and to seek**
 13 **to -- to do a more robust replication effort to see if --**
 14 **you know, to see if we were just screwing it up.**
 15 **Dr. Rossi led us to believe it was a simple**
 16 **process that anybody could do it. We weren't having**
 17 **success, and so we wanted to get more qualified people.**
 18 **And that's -- that's what Joe was there to do.**
 19 **He also tried to go down to Miami and assess the**
 20 **setup there but was not allowed.**
 21 BY MR. ANNESSER:
 22 Q. We'll talk about that more in a little bit.
 23 Taking a step back to the license agreement, now,
 24 if I can ask you to turn to the second page of the license
 25 agreement, Exh bit 1 in front of you, Section 3, price and

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1 payments. It states [as read]: The total price for the
 2 grant of the license and the purchase of the plant is
 3 \$100,500,000.
 4 Do you see that?
 5 **A. I see that.**
 6 Q. And then it goes on to say [as read]: The
 7 payment terms will be as follows.
 8 **A. Uh-huh.**
 9 Q. And is it your understanding that there were
 10 three tiers of payments?
 11 **A. Correct. And I apologize, I was just reviewing**
 12 **it to make sure my recollection wasn't incorrect. But**
 13 **correct.**
 14 Q. And at the first payment of \$1,500,000 was to be
 15 made within two days of the signing of this agreement,
 16 correct?
 17 **A. That's what it says, yes.**
 18 Q. And it states in here [as read]: In the event
 19 the plant is not delivered or validation is not achieved
 20 within the time period set forth in Section 4, the full
 21 \$1,500,000 will be refunded to the company within two
 22 business days of its request.
 23 Do you see that?
 24 **A. I see that, yes.**
 25 Q. Did Industrial Heat ever request that that money

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1 be returned?
 2 **A. I don't know. I did -- I don't recall myself**
 3 **requesting that and I don't believe that Tom did. The --**
 4 **we had been provided a report that Dr. Rossi gave us when**
 5 **-- by Levy and other Swedish professors that was very**
 6 **compelling. And so anyway. . .**
 7 Q. This just says if it's not delivered or achieves
 8 the --
 9 **A. Validation, yeah.**
 10 Q. -- the validation, the money would be returned.
 11 Is that what it says?
 12 **A. It says [as read]: In the event the plant is not**
 13 **delivered or validation is not achieved within the time**
 14 **period set forth in Section 4, the full 1.5 million will be**
 15 **refunded to the company within two business days of its**
 16 **request.**
 17 MR. BELL: And his pending question is: Is that
 18 what it says?
 19 **THE WITNESS: That's what it says, yes.**
 20 MR. BELL: His earlier question was: Did you
 21 make a request or whatever. I don't want to rephrase the
 22 question.
 23 **THE WITNESS: I did not make a request.**
 24 BY MR. ANNESSER:
 25 Q. Was validation achieved, sir?

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1 **A. Was validation achieved.**
 2 MR. BELL: On this paragraph you're looking at?
 3 MR. ANNESSER: I'm asking him the question
 4 broadly and we can focus in after that.
 5 BY MR. ANNESSER:
 6 Q. Was validation achieved?
 7 **A. How is validation defined here?**
 8 Q. Well, we can look to paragraph 4 that's
 9 referenced in the document.
 10 **A. Yeah.**
 11 Q. Validation of the plant.
 12 **A. Uh-huh.**
 13 Q. Before we review that, sir, I'm going to ask you:
 14 To your understanding, was a validation test performed?
 15 MR. BELL: Objection to form.
 16 BY THE WITNESS:
 17 **A. Are you referencing in this -- I'm trying to make**
 18 **sure I understand you -- the test that Dr. Rossi did in I**
 19 **believe it's the end of April and early May of 2013?**
 20 BY MR. ANNESSER:
 21 Q. That's what I believe it to be.
 22 **A. That's what you believe it to be.**
 23 Q. Do you believe that to be the validation test?
 24 MR. BELL: Objection to form.
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1 integrity and not trying to obfuscate or disguise what he
 2 was doing or not doing. So anyway, that's a little
 3 background.
 4 You asked who operated that. I don't know
 5 exactly. But it appears to me based on this that it was
 6 Dr. Rossi doing it there at our facility, probably with the
 7 rest of us around or in and out and maybe T. Barker there,
 8 I don't know.
 9 Q. Is it your position that Dr. Rossi manipulated
 10 those tests?
 11 A. So the test, yes. And by those tests, I just
 12 want to be clear, but I think you mean the test that he
 13 would do in our facility over at Triangle Drive. And so
 14 this is when we were -- we were eager to see the one
 15 megawatt operate. He was coming out with lots of reasons
 16 for delaying that and focusing on the Swedish test and
 17 blah, blah, blah, and this, that and the other. And
 18 running a -- you know, preparing for really the next test
 19 to be done by Levy and the Swedes.
 20 But, yes, looking back, you know -- and we didn't
 21 confront him at the time about some of this stuff. For
 22 example, when John Mazzarino and I went to -- I guess it
 23 was Ferrara in November of 2012, Rossi was showing us an
 24 experiment. And -- and he used the Boltzmann formula,
 25 which at the end of that formula -- I didn't know or

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1 whether he was introducing it to me -- you multiply
 2 everything by E, which stands for emissivity, which is tied
 3 to a camera setting.
 4 And later during this period of time, when he was
 5 testing in our facility in Raleigh, he would not multiply
 6 everything by E. Because at the time, at that time he had
 7 E set to 1 on the camera so it didn't matter and later he
 8 changed it so it would be like .5 or whatever.
 9 And I asked him. I said, "Why aren't you
 10 multiplying by E because that affects -- that would cut
 11 your supposed output energy in half." He said, cut me off
 12 and said, "oh, You don't know the science or that's not
 13 right or whatever."
 14 But anyway that's just one example where we --
 15 Q. Did you ask somebody else about that?
 16 A. I'm not sure. I don't recall. I may have -- I
 17 may have just taken his word for it. I don't recall. I
 18 may have mentioned it to T. Barker. I don't remember.
 19 Q. But it wasn't enough of a concern to you to
 20 withhold information such as the tests were producing
 21 significant excess energy as set forth in Exhibit 3?
 22 MR. BELL: Withhold from the investors?
 23 BY MR. ANNESSER:
 24 Q. Sir?
 25 A. Is that what you mean?

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1 Q. Yes.
 2 A. In investor communication.
 3 I'm trying to clarify this for you, but we
 4 were -- it was an evolving process where, you know,
 5 initially we were positive and hopeful and over time -- and
 6 this is borne out in our communications with all of our
 7 investors -- we became much more skeptical. And you know,
 8 that's -- that's borne out in the communications.
 9 Q. At what point in time did you tell Dr. Rossi you
 10 did not believe his results?
 11 A. I'm sure during this period of time we challenged
 12 him on results. Again, he was very kind of controlling
 13 and, you know, oh, you don't know and this has to be done.
 14 Demonstrative I should say.
 15 So it wouldn't have mattered how much I said,
 16 "You know, Dr. Rossi I don't think this is accurate or this
 17 is correct." You don't know. Granted, I'm not an
 18 engineer. I'm an economist -- I'm not an economist. I
 19 have an economics degree.
 20 So, you know, at what specific point in time did
 21 I first say -- express to Dr. Rossi reservations about the
 22 accuracy of his results, it would have been during that
 23 time period, fall of '13.
 24 Q. Would you have done that in an email?
 25 A. I doubt I did it in an email, but I don't know.

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1 We can go back and look. Just because communications with
 2 him were so -- so tenuous, I should say. And, you know,
 3 before kind of confronting him via email, which often, as
 4 you'll see the emails, he was very -- you couldn't tell
 5 what he meant in his response because he would respond in
 6 all caps, for example.
 7 And so we were careful not to try to say things
 8 that would totally alienate him or make him mad in email.
 9 Because we were patient and hopeful. We were wanting to
 10 get to the truth. And challenging him in the email, as was
 11 our perception at the time, wasn't the best way to go about
 12 that.
 13 Q. Sir, your company had invested at that point in
 14 time 11.5 million dollars --
 15 A. Right.
 16 Q. -- and paid that to Dr. Rossi.
 17 A. Right.
 18 Q. And you're telling me that you had doubts, but
 19 you did not have someone qualified other than Dr. Rossi to
 20 perform tests or evaluations for you or validations?
 21 A. Correct. Because we thought that it was simple
 22 and easy and that anybody could replicate it.
 23 As I mentioned, T. Barker, who has some -- has an
 24 engineering degree, was involved. But more or less, he was
 25 there to help Dr. Rossi and be nice to Dr. Rossi. And T.

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1 **Barker also was doing some testing on his own which caused**
 2 **us to have concerns and questions. But we were relying on**
 3 **Dr. Rossi's credibility and his abilities.**
 4 Q. And, in fact, you and Mr. Darden instructed
 5 Mr. Dameron not to raise any concerns or issues with
 6 Dr. Rossi; is that correct?
 7 **A. Tom may have. I don't recall saying that. But**
 8 **Tom may have.**
 9 Q. So after making an \$11.5 million investment and
 10 you're having these concerns because it's more complicated
 11 than you originally thought -- and that's around September
 12 2013 -- did you ever approach Dr. Rossi and say, "We are
 13 not able to replicate, what are we doing wrong?"
 14 **A. Yes. Yes. There was a specific -- again, we**
 15 **weren't confronting him all the time because he's a**
 16 **volatile character or at least he was acting to be at the**
 17 **time. And we didn't want to do anything to damage that**
 18 **relationship without needing to do that.**
 19 **But finally at some point during that time period**
 20 **I explicitly remember sitting at a conference table -- a**
 21 **kitchen table I should say. We had a very small kitchen at**
 22 **this facility, sitting there with Tom and Andrea and Tom**
 23 **very directly confronted him saying, "You know, We're not**
 24 **able to replicate. Help us do that. Help us understand**
 25 **that. We have to be able to replicate." This was an**

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1 **intense conversation -- lose somebody or gain somebody?**
 2 MR. BELL: Don't worry about it. Just keep
 3 going.
 4 BY THE WITNESS:
 5 **A. And eventually part of this conversation was Tom**
 6 **ended up just kind of ended up walking out of frustration**
 7 **after indicating that to Rossi and he was going on about**
 8 **that, this, that and the other. And then, you know, I was**
 9 **left there with Dr. Rossi after Tom left. And I kind of**
 10 **said, "Well, it is what it is, but we do have to have -- we**
 11 **do have to have -- we have to be able to replicate."**
 12 **But. . .**
 13 BY MR. ANNESSER:
 14 Q. And when was that?
 15 **A. I don't remember the exact time. But it was**
 16 **during the fall of '13, I believe, because it was before**
 17 **Rossi went to Switzerland for his next set of tests that he**
 18 **had been focusing on and it was while we were still out at**
 19 **Triangle Drive. I don't remember the exact time.**
 20 Q. Isn't it true, sir, that Industrial Heat was
 21 actually also interested in the Lugano test more so than
 22 the tests that you were carrying on yourselves?
 23 **A. Hang on just one second, sir.**
 24 (Brief pause.)
 25 Can you repeat that question?

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1 BY MR. ANNESSER:
 2 Q. Isn't it true that Industrial Heat and yourself
 3 were more interested in the results of the Lugano test, the
 4 independent test, as it was referred to, than you were of
 5 your own test?
 6 **A. We were very interested in the results of that**
 7 **test. Again, we didn't have -- we clearly had reservations**
 8 **or questions at the end of '13. We also -- while we**
 9 **weren't sure about Rossi's methods and results, we also**
 10 **weren't sure of our own and we questioned our abilities to**
 11 **determine the state-of-the-art. And -- and so we were very**
 12 **interested in what they claimed or their assessment in**
 13 **Lugano.**
 14 **So that was -- I think it's fair to say that we**
 15 **were very eager to hear their analysis.**
 16 Q. And before the Lugano test, you said you were
 17 still concerned about how the testing was carried out and
 18 whether those results were verifiable and accurate?
 19 **A. Correct.**
 20 Q. Who carried out the Lugano test, to your
 21 understanding?
 22 **A. Rossi was there with Fulvio. And then Levy. I**
 23 **think Faci was there. And then -- I get the Swedish guys**
 24 **mixed up, but I think there were two of three of them**
 25 **there, and they were all there to carry out the test.**

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1 Q. And the Swedish guys were members of the Swedish
 2 Royal Academy to your understanding?
 3 **A. I don't know that. I think one of them may have**
 4 **been. I'm trying to recall. What I really recall was that**
 5 **they were -- I think they were retired -- they may not have**
 6 **been retired. They may have been in University of Uppsala.**
 7 **Possibly one of them was a Swedish Royal Academy. I don't**
 8 **-- I don't recall.**
 9 Q. But if you represent to your investors that they
 10 are members or some of them were members of the delegation
 11 that nominates Nobel laureates, would that be true or
 12 correct?
 13 **A. That is what we were being told by Dr. Rossi.**
 14 **And so we -- we thought he was telling the truth or we**
 15 **thought he knew.**
 16 **Very early on -- I'm just trying to remember when**
 17 **this was -- but we were -- we didn't believe that the**
 18 **guys -- maybe this was when he gave us the test results in**
 19 **the end of April 2013, I don't remember. But we didn't**
 20 **know if, in fact, Swedish professors -- we had seen that**
 21 **Levy had previously written some stuff about this**
 22 **technology, but we didn't -- we weren't sure whether or not**
 23 **Swedish professors from Uppsala, a very reputable**
 24 **university, were involved in assessing this technology.**
 25 **And he had been saying that, you know, it was the**

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1 (Recess 12:31 p.m. until 1:02 p.m.)
 2 THE VIDEOGRAPHER: We're back on the record at
 3 1:02 p.m.
 4 BY MR. ANNESSER:
 5 Q. Sir, I remind you that you are under oath still.
 6 During the break that we took, did you discuss
 7 the subject matter of your testimony with anyone?
 8 **A. I talked with my counsel, Bernie.**
 9 Q. Did you discuss the subject matter of your
 10 testimony with him?
 11 **A. I don't think that I did. I mean, I think we**
 12 **talked mainly about -- sorry.**
 13 MR. BELL: Just answer him yes or no.
 14 BY THE WITNESS:
 15 **A. Subject matter of my testimony --**
 16 BY MR. ANNESSER:
 17 Q. Did you talk about any of the questions that I
 18 asked or the answers that you've given?
 19 **A. I think we did.**
 20 Q. And what specifically was said about those
 21 things?
 22 MR. BELL: I'm going to object and instruct him
 23 not to answer on the grounds of attorney-client privilege.
 24 BY MR. ANNESSER:
 25 Q. Sir, one thing that I'm having a difficult time

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1 with, in addition to those we've already discussed, is that
 2 if I'm -- correct me if I'm wrong. But between 2012 when
 3 the license agreement was signed and about June 2015 when
 4 Mr. Murray came on board, you were on -- you or the company
 5 were unsuccessful in replicating any of the results or any
 6 COP for the E-Cat; is that correct?
 7 MR. BELL: Objection, form.
 8 BY THE WITNESS:
 9 **A. We conducted multiple tests. And, you know,**
 10 **looking back --**
 11 Q. Sir, I apologize to interrupt you. I know I said
 12 I wouldn't. But if you could, if you could answer the
 13 question, then if you need to explain it afterward, you can
 14 do that.
 15 **A. Sure.**
 16 Q. So during the period between when the license
 17 agreement was signed in 2012 and approximately June 2015
 18 when Mr. Murray came on board, it's your testimony that
 19 Industrial Heat and yourself were unable to replicate any
 20 positive COP during that time period?
 21 MR. BELL: Objection to form.
 22 BY MR. ANNESSER:
 23 Q. Is that correct?
 24 **A. At this time, correct.**
 25 **You know, we -- we have a bunch of indeterminate**

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1 **information from that period of time, and it just --**
 2 **depending on, you know, as I mentioned, it's an evolving**
 3 **process, our view of the technology. But we realized that**
 4 **we had to get much more sophisticated than we were**
 5 **originally to assess accurately whether or not the**
 6 **technology worked.**
 7 Q. So sitting here today your position is not that
 8 it didn't work, it's that you can't affirmatively state
 9 with the information that you collected at the time that it
 10 does?
 11 MR. BELL: Objection to form.
 12 BY MR. ANNESSER:
 13 Q. Is that fair to -- is that a fair summary?
 14 **A. Sitting here today, it is my belief that the**
 15 **technology does not work.**
 16 Q. Okay. I did not ask you what your belief was.
 17 **A. I'm confused about -- the way you're phrasing the**
 18 **question is confusing. If you could -- I apologize, but if**
 19 **you could restate.**
 20 Q. You've used the term "indeterminate." That
 21 generally means, at least I take it to mean and correct me
 22 if I'm wrong, that you cannot determine whether the results
 23 were correct or not?
 24 **A. I said we were getting a lot of indeterminate**
 25 **information. So if you go back and you review all of these**

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1 **tests, the -- every time there's some variable that it's**
 2 **not accounted for, you know, if you later go back and say**
 3 **oh, what about this or what about that, it's an evolving**
 4 **process of sophistication.**
 5 **You're asking me -- if you're asking me today**
 6 **sitting here today do I believe the technology works, I**
 7 **would say I do not believe that it works. If you're asking**
 8 **me sitting here today, did we ever have any success in our**
 9 **attempts to replicate Rossi's technology, I would say no.**
 10 Q. Okay. So there was no success during that time
 11 period whatsoever, but yet you did not hire anybody who you
 12 deemed competent to perform those tests to come in and
 13 assist you?
 14 **A. I believe we've covered this matter exhaustively.**
 15 **So I'll try to answer this one more time and then maybe we**
 16 **can come back to it.**
 17 Q. Again, I'm going to ask you to answer the
 18 question and then you can explain.
 19 **A. Sorry.**
 20 Q. Did you hire anyone during that time period that
 21 you deemed competent to perform those tests and assist you
 22 in replicating the results?
 23 **A. We hired Joe Murray in I believe it was June of**
 24 **2015. Prior to that, clearly Boeing did some assessment**
 25 **and we believe Boeing to be capable of determining whether**

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1 **A. Right.**
 2 Q. I believe the test protocol was proposed prior to
 3 that in 2014 or early '15 before Mr. Murray was brought on
 4 board. And correct me if that's not true.
 5 But did you at any time tell Mr. Rossi prior to
 6 the beginning of that test that you did not agree with the
 7 protocol?
 8 **A. I don't recall telling him that. But I do recall**
 9 **that we expressed -- particularly Joe and I when we finally**
 10 **made it down there -- our concerns were the deficiencies of**
 11 **protocols supplied by Penon.**
 12 Q. And when did you supply Dr. Rossi with your
 13 perceived deficiencies?
 14 **A. I don't recall exactly.**
 15 Q. Was that in writing?
 16 **A. I don't recall. I know for example, though, that**
 17 **we -- as I mentioned, when Joe and I were down there, we**
 18 **highlighted this ad nauseam. You were, in fact, there**
 19 **yourself.**
 20 Q. That was at the conclusion of the test; was it
 21 not?
 22 **A. What Rossi was claiming to be the conclusion.**
 23 Q. Have you ever heard the term "the 350-day test"?
 24 **A. I thought it was a 400-day test. Anyway, 350,**
 25 **yeah, 350 out of 400, sure.**

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1 Q. So those terms are familiar to you?
 2 **A. (No response).**
 3 Q. Do you understand those terms to be the test that
 4 Dr. Rossi carried out from 2015, February approximately,
 5 through 2016?
 6 MR. BELL: Objection to the form.
 7 BY THE WITNESS:
 8 **A. Rossi was conducting a test for his commercial**
 9 **partner which turned out to be a company that he set up.**
 10 **We were accommodating in that regard. Again, trying to**
 11 **determine whether or not this thing actually worked.**
 12 BY MR. ANNESSER:
 13 Q. So that test was not the 350- or 400-day test?
 14 **A. The test in Miami?**
 15 Q. Yes.
 16 **A. It was run for, I believe, 350 days or**
 17 **thereabouts by Dr. Rossi. But whether -- I don't quite**
 18 **understand your question. I think you're beating the bush**
 19 **a little bit.**
 20 Q. Let me be direct with you.
 21 There was a test contemplated in the license
 22 agreement called the guaranteed performance test. Are you
 23 familiar with that?
 24 **A. Yes.**
 25 Q. And it requires the operation of an E-Cat for 350

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1 out of 400 days; is that correct?
 2 **A. I think it also requires that test start 60**
 3 **days at or --**
 4 Q. Sir, can you please answer the question. You
 5 keep trying to side track. Answer the question and you can
 6 make any statement after that that you want.
 7 **A. Sorry about that.**
 8 Q. But isn't it correct, sir, that the test that is
 9 referenced as a guaranteed performance test in the license
 10 agreement requires that it operate 350 out of 400 days?
 11 **A. Yes. There's a test -- there's a requirement in**
 12 **the operating agreement -- I'm sorry, license agreement**
 13 **that a one-megawatt plant -- I guess it's referred to as a**
 14 **one-megawatt plant -- be tested for 350 out of 400 days or**
 15 **be operated for 350.**
 16 Q. And, sir, when you use the term "350-day test" or
 17 "400-day test," is it fair to assume that you were
 18 referring to the contractual test?
 19 MR. BELL: Objection to form.
 20 BY THE WITNESS:
 21 **A. Clearly Rossi wanted it to be that, right.**
 22 BY MR. ANNESSER:
 23 Q. Sir, I'm going to ask you again to answer the
 24 question.
 25 When you use the term "350-day test" or "400-day

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1 test," are you referring to the test contemplated in the
 2 license agreement? I'm not talking about the Miami test
 3 I'm talking about when you use that term.
 4 MR. BELL: Objection to form.
 5 BY THE WITNESS:
 6 **A. Could I show me where the use that term?**
 7 BY MR. ANNESSER:
 8 Q. We can get there, sir. Let me back you down for
 9 a second.
 10 Was there more than one test that was required or
 11 contemplated anywhere in any agreement that was supposed to
 12 run 350 to 400 days?
 13 **A. More than one test? Well, Rossi introduced this**
 14 **commercial customer down there and he said he wanted to do**
 15 **that for 350 days. In the agreement, that test was -- we**
 16 **were supposed to conduct the 350-day test. That did not**
 17 **require a commercial customer. That was not a requirement**
 18 **at all. And it was supposed to start within 60 days of**
 19 **delivery of the plant.**
 20 **I'm going to stand up for a second if that's**
 21 **okay.**
 22 THE VIDEOGRAPHER: We're off the record at 1:31
 23 p.m.
 24 (Brief pause.)
 25 THE VIDEOGRAPHER: We're back on the record at

Page 142

1 **A. Right.**

2 Q. I believe the test protocol was proposed prior to

3 that in 2014 or early '15 before Mr. Murray was brought on

4 board. And correct me if that's not true.

5 But did you at any time tell Mr. Rossi prior to

6 the beginning of that test that you did not agree with the

7 protocol?

8 **A. I don't recall telling him that. But I do recall**

9 **that we expressed -- particularly Joe and I when we finally**

10 **made it down there -- our concerns were the deficiencies of**

11 **protocols supplied by Penon.**

12 Q. And when did you supply Dr. Rossi with your

13 perceived deficiencies?

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

15 Q. Was that in writing?

16 **A. I don't recall. I know for example, though, that**

17 **we -- as I mentioned, when Joe and I were down there, we**

18 **highlighted this ad nauseam. You were, in fact, there**

19 **yourself.**

20 Q. That was at the conclusion of the test; was it

21 not?

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

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

24 **A. I thought it was a 400-day test. Anyway, 350,**

25 **yeah, 350 out of 400, sure.**

Page 143

1 Q. So those terms are familiar to you?

2 **A. (No response).**

3 Q. Do you understand those terms to be the test that

4 Dr. Rossi carried out from 2015, February approximately,

5 through 2016?

6 MR. BELL: Objection to the form.

7 BY THE WITNESS:

8 **A. Rossi was conducting a test for his commercial**

9 **partner which turned out to be a company that he set up.**

10 **We were accommodating in that regard. Again, trying to**

11 **determine whether or not this thing actually worked.**

12 BY MR. ANNESSER:

13 Q. So that test was not the 350- or 400-day test?

14 **A. The test in Miami?**

15 Q. Yes.

16 **A. It was run for, I believe, 350 days or**

17 **thereabouts by Dr. Rossi. But whether -- I don't quite**

18 **understand your question. I think you're beating the bush**

19 **a little bit.**

20 Q. Let me be direct with you.

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22 agreement called the guaranteed performance test. Are you

23 familiar with that?

24 **A. Yes.**

25 Q. And it requires the operation of an E-Cat for 350

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1 out of 400 days; is that correct?

2 **A. I think it also requires that test start 60**

3 **days at or --**

4 Q. Sir, can you please answer the question. You

5 keep trying to side track. Answer the question and you can

6 make any statement after that that you want.

7 **A. Sorry about that.**

8 Q. But isn't it correct, sir, that the test that is

9 referenced as a guaranteed performance test in the license

10 agreement requires that it operate 350 out of 400 days?

11 **A. Yes. There's a test -- there's a requirement in**

12 **the operating agreement -- I'm sorry, license agreement**

13 **that a one-megawatt plant -- I guess it's referred to as a**

14 **one-megawatt plant -- be tested for 350 out of 400 days or**

15 **be operated for 350.**

16 Q. And, sir, when you use the term "350-day test" or

17 "400-day test," is it fair to assume that you were

18 referring to the contractual test?

19 MR. BELL: Objection to form.

20 BY THE WITNESS:

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

22 BY MR. ANNESSER:

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

24 question.

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

Page 145

1 test," are you referring to the test contemplated in the

2 license agreement? I'm not talking about the Miami test

3 I'm talking about when you use that term.

4 MR. BELL: Objection to form.

5 BY THE WITNESS:

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

7 BY MR. ANNESSER:

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

9 a second.

10 Was there more than one test that was required or

11 contemplated anywhere in any agreement that was supposed to

12 run 350 to 400 days?

13 **A. More than one test? Well, Rossi introduced this**

14 **commercial customer down there and he said he wanted to do**

15 **that for 350 days. In the agreement, that test was -- we**

16 **were supposed to conduct the 350-day test. That did not**

17 **require a commercial customer. That was not a requirement**

18 **at all. And it was supposed to start within 60 days of**

19 **delivery of the plant.**

20 **I'm going to stand up for a second if that's**

21 **okay.**

22 THE VIDEOGRAPHER: We're off the record at 1:31

23 p.m.

24 (Brief pause.)

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

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1 So I don't recall the specific use of the energy
 2 that they were -- that he proposed they were using before.
 3 Q. Do you believe that he told you a specific use?
 4 A. I don't recall. I just don't remember.
 5 Q. Was it important to you what it was being used
 6 for, what they were making?
 7 A. What was important to us is that really -- that
 8 it was Johnson Matthey or an affiliate of Johnson Matthey,
 9 a company that I believe -- I believe it was a public
 10 company in the UK. And so, you know, we thought, wow, this
 11 is a chance to test the technology in a commercial setting
 12 with a very reputable customer. And regardless of whether
 13 or not we want to sell them anything -- that was our
 14 goal -- this should be a good opportunity for Dr. Rossi and
 15 for us to -- to understand how the technology would perform
 16 in an industrial setting.
 17 Q. So it didn't matter to you whether they were
 18 making widgets or anything else? What was important to you
 19 was that it was Johnson Matthey?
 20 A. That it was Johnson Matthey and that they were --
 21 they were accurate in their assessment of the energy that
 22 they were using. You know, we didn't care if they were
 23 making nickel sponges or platinum sponges or whatever, so
 24 long as it was Johnson Matthey and they were accurately
 25 assessing the energy that they consumed.

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1 Q. Why did it matter whether they were accurately
 2 assessing the energy other than the amount that they agreed
 3 to pay you for that energy?
 4 A. Because that's -- that's a check on whether or
 5 not it's a -- how much energy is actually being produced.
 6 They're saying we'll we're consuming X amount. That's a
 7 check.
 8 Payment was unimportant.
 9 Q. So Dr. Rossi approached you and said that Johnson
 10 Matthey wanted to use the device in Florida. Were there
 11 any other locations proposed for the 350-day test of the
 12 device?
 13 MR. BELL: Objection to form.
 14 BY THE WITNESS:
 15 A. Frequently --
 16 BY MR. ANNESSER:
 17 Q. Let me -- I'm sorry. You're counsel made a good
 18 objection there, so let me break that up.
 19 Other than Miami --
 20 MR. BELL: First time for everything.
 21 THE WITNESS: Look at that.
 22 BY MR. ANNESSER:
 23 Q. First time. You can pay him today.
 24 Other than Miami, was any other location proposed
 25 for the operation of the 350-day test?

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1 A. We proposed early on that he could do it right
 2 where the plant was delivered. I mean, that's part of the
 3 reason the plant was delivered to where it was delivered
 4 to; otherwise why wouldn't it have just gone to Miami. So
 5 it was delivered to Raleigh because we fully anticipated
 6 having the test there.
 7 Andrea was very adamant about having a customer,
 8 you got to have a customer that's only validated by the
 9 market and blah, blah, blah. That's what -- we wanted to
 10 be accommodate I have to his desires to have his technology
 11 validated by the market. We wouldn't have a problem with
 12 that, per se. We just wanted to -- our goal was to
 13 determine, again, whether or not the technology really
 14 performed as advertised, real serious significant energy
 15 output, real COP and replicable.
 16 So there a truck washing -- there is a
 17 contracting firm and they often washed trucks with steam
 18 right next to our building. And -- so they needed a lot of
 19 hot water or a lot of heat, you know, however they wanted
 20 to heat the steam, the water they were using. And that was
 21 one specific example of what was proposed.
 22 I believe Tom made other proposals to accommodate
 23 Andrea's desire to -- to want to have a commercial
 24 validation of this. But, anyway, that was -- that was one
 25 of them.

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1 Q. Did it have to have a customer to satisfy the
 2 350-day test requirements?
 3 A. It did not. And we didn't -- again, we were
 4 trying to be accommodative and, you know, a good partner to
 5 Andrea. And he kept saying it was important to him.
 6 And even though we didn't care, we weren't
 7 against it. I mean, it wasn't necessarily a negative
 8 thing. So we wanted to be accommodative to him on that
 9 front because it doesn't necessarily preclude us, we didn't
 10 think, from achieving our objectives.
 11 Q. Because you could measure it without a customer?
 12 You could measure the output without having a customer
 13 looked up to the other end of the line?
 14 A. Right.
 15 Q. Was West Virginia ever proposed?
 16 A. West Virginia?
 17 Q. Yes, sir.
 18 A. I don't recall. You know, I'm trying to
 19 remember. I just don't recall.
 20 Q. Did you, sir, personally ever attempt to obtain
 21 approval to operate the one-megawatt plant in North
 22 Carolina?
 23 A. Did I ever personally attempt to?
 24 Q. Obtain approval from any government agencies or
 25 state or federal?

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1 A. I think we looked into this some. We hired a
 2 consultant to -- to provide an opinion about this, did we
 3 need regulatory approval. And our analysis was that we did
 4 not because this type of device isn't presently regulated.
 5 And so we were very cognizant of that or wanting to be
 6 within compliance, if there are rules and regulations about
 7 it.
 8 Again, I think we hired a consultant to do an
 9 analysis on this, and the feedback was you don't have to do
 10 anything to operate this plant here and you're free to do
 11 that.
 12 Q. Who was that consultant?
 13 A. I believe it was Steve Brown if I recall
 14 correctly. I'm not sure if there were others or not. I
 15 know that Tom also talked with people in government and in
 16 the environmental sector of the government.
 17 Q. Did you ever get a letter from the North Carolina
 18 Bureau of Radiology stating that they needed no
 19 authorization or permit to run this device or anything else
 20 that could be relied upon?
 21 A. We were talking -- so Tom was talking to at that
 22 time the director of the EPA. So I don't know what -- what
 23 higher level information you need. But he was fully aware
 24 of what we were working on and didn't notify us of any
 25 permits or approvals that we needed. I don't know if that

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1 answers your question.
 2 Q. So you talked to the director of the EPA. EPA is
 3 federal, correct?
 4 A. I meant North Carolina EPA. So maybe it's -- do
 5 you know in North Carolina, I'm sorry -- John Skvarla.
 6 That's my understanding, right. First of all we hired a
 7 consultant to do this, he says you're free to operate.
 8 Secondly, Tom's communicating with various different
 9 government stakeholders, including Skvarla, and they're not
 10 telling them that he has to do anything from a regulatory
 11 perspective.
 12 Q. Do you know if that is email communications or
 13 verbal?
 14 A. I imagine it's verbal, but I don't know.
 15 Q. Did you ever obtain anything in writing stating
 16 either you are authorized or you're not required to get
 17 authorization from any government agency?
 18 A. Again, there's Steve Brown's analysis. But the
 19 law, as I understand it -- you're a lawyer, you may have a
 20 different take on it -- is that if you're doing something
 21 that aren't laws or rules or regulations that govern that
 22 activity, you don't need a specific government letter. You
 23 know, it's -- you're free to operate until it's regulated.
 24 After it becomes regulated, then you need the permits.
 25 But. . .

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1 We did that analysis and that's the -- that's the
 2 reason -- that's what we moved forward.
 3 Q. Would that Steve Brown communication have been
 4 produced to us, if you know?
 5 A. I believe so.
 6 Q. Sir, in the beginning of this deposition, I asked
 7 you about the background investigation you did on Rossi and
 8 you said he had a checkered past, and you knew this in 2012
 9 prior to entering into the license agreement; is that
 10 correct?
 11 A. Correct.
 12 Q. What did you mean by "checkered past"?
 13 A. There were all sorts of claims about Andrea --
 14 it's still out there today if you were to Google them --
 15 positive and negative. Positive, in that groups like Levy
 16 and the Swedes were saying this technology is very
 17 interesting or it's done XYZ. Picardi would also be in the
 18 positive camp.
 19 You know others -- even others like NASA
 20 scientists trying to drawing inconclusive results about
 21 Rossi and leaving the door open for it to be a real
 22 technology.
 23 And in parallel to that, you had other reports
 24 that, you know, Rossi's been to jail, Rossi's been involved
 25 in all kinds of stuff. You know, the details were never

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1 totally clear. And we asked Rossi about this and he
 2 described it as tax fraud, he had been accused of tax fraud
 3 and that the guy -- and he even went on to say that the guy
 4 who accused him later turned out to be corrupt or, you
 5 know, was -- lost his position in government and -- and
 6 that he had not complied with some sort of complicated tax
 7 requirements.
 8 And so it's not that he evaded the question of
 9 whether or not he had ever served time in jail, I think he
 10 was always up front about that, but he never -- looking
 11 back now, I don't think he ever gave the full and complete
 12 story, which I believe is out there, although it's a little
 13 -- much more difficult to find and I don't know that it's
 14 completely there.
 15 Q. And what do you believe the full and complete
 16 story to be?
 17 A. I just don't know. But I don't think it's what
 18 he told us it was.
 19 Q. Now -- so you had been told or you had done
 20 research that indicated that he may have been to jail, hat
 21 he had been charged with tax fraud and you said other
 22 things. What are those other things, "involved in other
 23 things"?
 24 A. Involved in other things, I think I was
 25 referencing the tax fraud when I said that.

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1 Q. Okay.

2 **A. Anyway.**

3 Q. And did he deny having been in jail for any

4 period of time?

5 **A. We didn't know exactly and I still know exactly**

6 **how much time he spent in jail. He acknowledged spending**

7 **time in jail. Like I said, he didn't -- but he had a story**

8 **prepared for why he went to jail and the reasons associated**

9 **with that, which, again, at the time, it was kind of**

10 **understandable. He said, look, it's a complicated tax**

11 **regime here, I didn't do -- I didn't properly handle my**

12 **corporate taxes or something -- I don't remember the**

13 **details -- and, you know, I ended up in jail or something**

14 **like that.**

15 I mean, it wasn't like he was evaded the fact

16 that he had been to jail. It was just the reasons

17 associated with that I don't think we got the full story in

18 retrospect.

19 Q. Do you have any facts or any information to

20 indicate that what he was telling you is not the full

21 story? Is there something you've learned since?

22 **A. Yes. I mean, there's -- if you -- if you spend**

23 **much more time researching there, it appears -- again, the**

24 **full story, I can't put it together -- but it appears**

25 **there's more to it than tax fraud. It appears, whether or**

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1 **not this is accurate, it had to do with significant**

2 **environmental degradations and -- and pollution and things**

3 **like that. But. . .**

4 Q. How much time did you spend looking into

5 Dr. Rossi in the beginning, in 2012?

6 **A. In 2012, I don't recall exactly, you know. We**

7 **had a running timeline that we developed to try to recreate**

8 **key events or key points in the -- in Rossi's past or**

9 **history. And these were positives and negatives and**

10 **neutral dots. And I don't know. That was an ongoing**

11 **process. I'm not sure how much time that required.**

12 Q. Sir, going to the term sheet, do you know what I

13 mean when I reference "the term sheet"?

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

15 **Can I stand up real quick.**

16 MR. ANNESSER: Yes, sir.

17 (Whereupon, Vaughn Deposition Exh bit 12 was marked

18 for identification.)

19 BY MR. ANNESSER:

20 Q. Sir, I'm going to show you a document that's

21 tabled as The Term Sheet, which we are marking as Exhibit

22 12. I have it as 12. Tell me if you need a moment to

23 review it.

24 **A. I would.**

25 Q. Have you seen this document before, sir?

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1 **A. Yes, sir.**

2 Q. Is that your signature on the top line of the

3 second page for Industrial Heat LLC?

4 **A. Yes, sir.**

5 Q. Now, the term sheet was an agreement between,

6 according to the top of this, Industrial Heat LLC, J.M.

7 Chemical Products, Inc., and Leonardo Corporation; is that

8 correct?

9 **A. That's correct.**

10 Q. Who is J.M. Chemical Products Inc.?

11 **A. Who is J.M. or what is?**

12 Q. Who?

13 **A. Now, it's -- it's known to be a company set up by**

14 **Henry Johnson and Andre Rossi that apparently is not at all**

15 **affiliated with Johnson Matthey.**

16 Q. Okay. Now you say it's known to be set up by

17 Henry Johnson and Andre Rossi. What do you base that on?

18 **A. I base that on materials you guys turned over in**

19 **discovery and that Johnson and Bass produced in discovery.**

20 Q. Specifically what?

21 **A. Exchanges where Rossi is dictating to Johnson or**

22 **Collett, I can't remember, prepare J.M. invoices such as**

23 **this with this letterhead, here's J.M. letterhead, et**

24 **cetera. Exchanges like that.**

25 Q. Now, you knew that Dr. Rossi was consulting for

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1 J.M. as well, didn't you? Dr. Rossi told you that?

2 **A. That he was consulting for J.M.?**

3 Q. Yes, sir. He was doing consulting work for J.M.

4 He told you that, didn't he?

5 **A. Possibly. I'm not sure. I don't recall that.**

6 **Maybe he did. I'm not sure.**

7 Q. So directions as to make payments or otherwise,

8 that doesn't indicate ownership, does it?

9 **A. It depends on -- it depends on the level of**

10 **involvement, I guess. And maybe ownership is one question**

11 **but control is another.**

12 Q. Do you control Industrial Heat, sir?

13 **A. I'm the manager or the vice president at**

14 **Industrial Heat.**

15 Q. Do you control it?

16 **A. Industrial Heat is not controlled by me, no.**

17 Q. Who is it controlled by?

18 **A. Do you mean who makes executive decisions for**

19 **Industrial Heat or do you mean who owns -- you know, who**

20 **has voting control over Industrial Heat.**

21 Q. I'm asking you, sir, in the term you used,

22 control, as you referenced control as respect to J.M., who

23 controls in your mind Industrial Heat?

24 **A. Industrial Heat, I don't know that I understand**

25 **what you mean by control. But it's clear to me that Andrea**

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1 was directing J.M. Chemical Products with Johnson.
 2 Q. Who owns the stock in J.M. Chemical Products?
 3 A. I don't know. Is there stock?
 4 Q. Could you answer that question?
 5 A. I don't know.
 6 MR. BELL: Don't ask him any questions. He
 7 doesn't have the answer.
 8 BY MR. ANNESSER:
 9 Q. Now, you said you believed there was an
 10 affiliation with Johnson Matthey. Were you concerned at
 11 all Johnson Matthey's name did not appear on this
 12 whatsoever?
 13 A. You'll notice that it has J.M. Chemical Products,
 14 Inc. Again, Andrea was leading us to believe that this was
 15 an affiliate of Johnson Matthey and then they'd set up this
 16 company specifically for this purpose.
 17 Q. For what purpose?
 18 A. To allow this technology, that plant, to be -- to
 19 use in kind of a beta way, so to test whether or not it
 20 worked for some of their needs, whatever the needs may be.
 21 Q. So you knew that there was no ongoing operation
 22 or facility at the time that this was being set up
 23 specifically for the purpose of running the E-Cat and using
 24 the steam that was produced?
 25 A. I knew -- could you say that one more time.

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1 Q. You knew at the time that J.M. Chemical Products
 2 was a newly form entity, not a long-existing entity, it was
 3 formed shortly before this agreement, you know that, right?
 4 A. I can't recall if we got into the specifics of
 5 when J.M. Chemical Products was formed. And I still don't
 6 know when it was formed. I'm sure it's out there. I'm
 7 sure you can look up the Secretary of State filing.
 8 But what we believed is that it was formed
 9 Johnson Matthey in the UK.
 10 Q. Okay. I understand. I understand that's your
 11 belief. But what I'm asking you is: At the time, before
 12 you entered into this agreement, was it your understanding
 13 that J.M. chemical products, not Johnson Matthey, was a
 14 newly formed company for the sole purpose of the -- of
 15 working under the transaction contemplated in this term
 16 sheet?
 17 A. I did not recall at the time -- you know, as I
 18 said, my recollection is that it was an affiliate of the UK
 19 company, Johnson Matthey. I don't know when it was formed;
 20 I'm not sure.
 21 Q. Do you know if J.M. Chemical Products had a
 22 facility operating in Miami prior to entering into this
 23 term sheet?
 24 A. I don't know.
 25 Q. If there had been a facility in Miami, would you

Page 196

1 have asked to see it? Could you have asked to visit the
 2 facility?
 3 A. Not necessarily.
 4 Q. Why not?
 5 A. Why would I have?
 6 Q. To see what they would use the E-Cat for I would
 7 imagine.
 8 A. I previously told you we didn't care how they
 9 were -- you know, what they were using it for. We didn't
 10 care if they were producing nickel, platinum, whatever. It
 11 didn't -- didn't make a difference to us.
 12 Q. Now -- I'm sorry. We have to change the tape
 13 again. Take a five-minute break.
 14 THE VIDEOGRAPHER: We're off the record at 3:03
 15 p.m.
 16 (Recess at 3:03 p.m. until 3:11 p.m.)
 17 THE VIDEOGRAPHER: We're back on the record at
 18 3:11 p.m.
 19 BY MR. ANNESSER:
 20 Q. Sir, before the break, you had just finished
 21 telling me that you were not concerned with what was being
 22 done with the steam or what was being produced with the
 23 steam, but you did indicate that it was important to you
 24 that it was affiliated with Johnson Matthey; is that
 25 correct?

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1 A. That's correct. We wanted to -- we were -- that
 2 was a representation that was made and we thought that that
 3 was a serious reason or a reason to do this in Miami.
 4 Q. Would you have done it in Miami if it were some
 5 other company other than Johnson Matthey?
 6 A. I suppose if it were GE or something like that
 7 and they wanted to do it in Miami.
 8 Q. If it was so important to you that it be Johnson
 9 Matthey or a big name company, why did you agree to it
 10 being done by a company called J.M. Chemical Products?
 11 A. First of all, it was important to us, but it was
 12 more important to us that Dr. Rossi was advertising to us.
 13 He made it seem like it was very important to him in his
 14 commercialization efforts.
 15 Secondly, like I said, we thought that
 16 J.M. Chemical Products was an affiliate of Johnson Matthey.
 17 Q. And at what point did you decide that it was not?
 18 MR. BELL: Objection to form.
 19 BY THE WITNESS:
 20 A. I don't recall exactly.
 21 BY MR. ANNESSER:
 22 Q. Sitting here today, do you know whether it is or
 23 not?
 24 A. Whether it is or not?
 25 Q. An affiliate of Johnson Matthey's.

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1 A. I highly suspect that it is not.

2 Q. Do you have any evidence or do you have any proof

3 that it is not?

4 A. Besides everything you guys turned over in

5 discovery? No. I mean, I also don't have any proof that

6 it is.

7 Q. Now, talking about proof that it is, did you ever

8 call Johnson Matthey and say, "Hey, guys, we're looking

9 forward to working with you"?

10 A. Andrea didn't want us to do that. And we said,

11 you know, can we meet with these guys. I think we were

12 even going to meet them in the UK at some point. And

13 Andrea said, "No, no, no. This has got to be very

14 confidential. You know, they don't want anybody to know."

15 So no, we did not.

16 Q. So Dr. Rossi told you they didn't want anyone to

17 know what, they being Johnson Matthey?

18 A. Correct, that they were setting up this facility

19 to do a testing of E-Cat one-megawatt facility in a unit in

20 Miami.

21 Q. So why was it important to you that it was

22 Johnson Matthey if it wasn't going to be the name attached

23 to this facility?

24 A. We didn't need the name. I mean, we weren't

25 looking for PR points. What we wanted to know was was it a

Page 199

1 credible entity saying yes, we used this amount of energy,

2 one-megawatt worth of energy on a, you know, continuous

3 basis. To us that would have been pretty, you know,

4 impressive.

5 Q. And you believe that J.M. Chemical Products was a

6 credible entity?

7 A. No.

8 Q. But that was who you contracted with? You do

9 understand you did not contract with Johnson Matthey, you

10 contracted with a company here J.M. Chemical Products.

11 A. We can beat this to death, John. But the -- I

12 told you we thought that J.M. Chemical Products was an

13 affiliate of Johnson Matthey. We later came to believe

14 that it was not. It was just a company that Andrea had set

15 up for -- on intentions of deceiving us.

16 Q. Now, you had testified -- you had testified

17 before, sir, that the 350-day test didn't require a

18 customer.

19 A. Correct.

20 Q. Did you do any due diligence into the claim that

21 this was Johnson Matthey or an affiliate of Johnson

22 Matthey?

23 A. Again, clearly, as you noted, one would be

24 inclined to call Johnson Matthey and say, "Hey, we want to

25 confirm that this is your plant." We weren't allowed to do

Page 200

1 that. So it was very difficult for us to affirm whether or

2 not this was, in fact, Johnson Matthey. We were relying on

3 Andrea's claim that it was.

4 Q. When you say you weren't allowed to, what would

5 have happened if you'd picked up the phone and called?

6 A. I'm not sure. They probably would have said --

7 not have a clue what we're talking about.

8 Q. And then what would you have done?

9 A. I don't know. Because we were talking about a

10 hypothetical situation.

11 Q. If it was so important to you that it was Johnson

12 Matthey, what steps did you take to ensure that it was

13 other than Dr. Rossi saying that it was?

14 A. Again, John, all the way back here, periodically

15 things that Rossi would say did turn out, in fact, to be

16 not entirely false. So we were thinking, well, what if he

17 really is talking to Johnson Matthey, we'll respect that he

18 doesn't want us engaging them.

19 But, you know, what would have happened? I don't

20 know what would have happened. And -- if we had picked up

21 the phone and called him. It wasn't -- it was important

22 for us that somebody -- a credible entity such as Johnson

23 and Matthey could say we're consuming X amount of energy on

24 a continuous basis and can validate that.

25 But it was a -- it was -- all of this was

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1 contrived and pulled together by Rossi. So we were also

2 trying to accommodate him.

3 Q. Did you ever request a letter from Johnson

4 Matthey or anything from Johnson Matthey to validate

5 Dr. Rossi's claim?

6 A. I don't recall.

7 Q. Now, as of the date this term sheet was signed,

8 was it your understanding that the plant was going to be

9 shipped to operate for J.M. Chemical Products and during

10 that period the 350-day test, as contemplated by the

11 license agreement, would be carried out?

12 A. At the point this was signed?

13 Q. Yes, sir.

14 A. Can you state that again, the question again?

15 Q. At the point that this was signed, which I will

16 represent to you was August 13, 2014 --

17 A. Okay.

18 Q. -- as stated on the last page, was it your

19 understanding that the plant would go down to Miami, both

20 to supply steam to J.M. Chemical Products as well as for

21 the 350-day test as contemplated by the license agreement?

22 A. My understanding is that it would go down to

23 Miami.

24 Q. At this point in time, did you believe that the

25 testing that would be done in Miami would not be the

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1 guaranteed performance test?

2 **A. Would not the guaranteed performance test?**

3 Q. Sir, we looked at a document from -- I'm sorry,

4 I'm trying to clarify.

5 We looked at a document from July 2014 where you

6 indicated that the guaranteed performance test would likely

7 start on September 1. Do you recall that?

8 **A. Right. Right.**

9 Q. And now this agreement comes up shortly after

10 that.

11 **A. A year later?**

12 Q. This is the same year.

13 **A. Oh, same year.**

14 Q. A month or two later.

15 **A. Uh-huh.**

16 Q. That the plant would go down and operate for a

17 two-year period in Miami. And that was it your

18 understanding that the 350-day test, as contemplated by the

19 license agreement, would be carried out during its

20 operation in Miami?

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

22 Q. Do you know if that was Dr. Rossi's

23 understanding?

24 **A. I'm not sure what Dr. Rossi's understanding was.**

25 Q. Did you ever meet with J.M.?

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1 **A. I met with -- I believe so. I believe so.**

2 Q. And when was that?

3 **A. I'm trying to recall. It was two different times**

4 **as I recall. It might have been another time. I'm not**

5 **sure.**

6 **But I don't remember when the first time was, but**

7 **I believe that Tom and I met Andrea and he was claiming to**

8 **be a representative of Johnson Matthey in Red Robin in**

9 **Brier Creek near Raleigh. And it was Hank Johnson. And**

10 **immediately I didn't connect the dots. And I don't**

11 **remember if it was during the meeting or after the meeting**

12 **that we said is Hank Johnson or Henry Johnson -- we thought**

13 **we'd seen that name before. In fact we had, it was his**

14 **attorney.**

15 **And I believe, if I recall correctly, at the time**

16 **he said, "Yeah, don't worry about it. Johnson Matthey**

17 **wanted somebody to be the president that nobody would**

18 **know." Couldn't talk back to Johnson Matthey, and so we**

19 **left that meeting thinking, odd, you know? But maybe, who**

20 **knows.**

21 **And then the second meeting where I supposedly**

22 **met somebody from -- you know, a representative of --**

23 Q. I'm sorry. I'm going to try to interrupt you for

24 a moment just so we can did one meeting at a time.

25 **A. Okay.**

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1 Q. During that first meeting, it was who? Yourself,

2 Mr. Darden, Mr. Johnson and Mr. Rossi, Dr. Rossi?

3 **A. I think that's right.**

4 Q. Okay. And what did Dr. Rossi tell you at that

5 time?

6 **A. I think I just stated that, that he introduced**

7 **Henry Johnson. I don't remember if he said Henry Johnson**

8 **or Hank Johnson or Mr. Johnson. And I don't remember the**

9 **title that he gave him. I don't remember if he says this**

10 **is the president of J.M. -- whatever it's called --**

11 **Chemical Products or if he said -- you know, went on at**

12 **that point to elaborate that Johnson Matthey didn't want**

13 **anybody to know, so they used who Rossi had proposed, Henry**

14 **Johnson, to be the president of this affiliate or**

15 **subsidiary that they were forming to do this.**

16 Q. And what did Mr. Johnson tell you?

17 **A. I don't remember exactly what he told us other**

18 **than just kind of -- he was playing that part. I don't**

19 **recall that he -- he reminded us that he was Rossi's**

20 **attorney, you know, from other affairs. But I don't**

21 **remember specific things he said.**

22 Q. Did he tell you that he worked for Johnson

23 Matthey?

24 **A. I'm -- it's difficult to recall so long ago.**

25 Q. Can you recall any specific statements made by

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1 Mr. Johnson at that time?

2 **A. Specific quotes?**

3 Q. Any statements made. I'm not asking necessarily

4 word for word.

5 **A. Yeah. I'll tell you what I recall, which is what**

6 **I've stated initially, which is that we were -- and I don't**

7 **remember the sequence. Right.**

8 **We were supposed to go meet Andrea and a**

9 **representative of Johnson Matthey. So we showed up and**

10 **then it turned out to be Henry Johnson or Hank Johnson.**

11 **And I can't remember if it dawned on us right then and we**

12 **said, you know, "Have we met you before? Have we seen your**

13 **name before?" Or if it was after the meeting when we said,**

14 **you know, isn't he your lawyer or haven't you interacted**

15 **with Hank Johnson before? I think we've seen that name**

16 **somewhere.**

17 **And, you know, Rossi's explanation of that,**

18 **ultimately whether it was at that lunch or later, I don't**

19 **recall, was, yes, they needed -- they needed a**

20 **representative that wouldn't be tied back to Johnson**

21 **Matthey. So he's a lawyer and they asked him to be**

22 **president of this company, this affiliate company they're**

23 **setting up.**

24 Q. And you knew all of this before the term sheet

25 was signed?

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1 **A. I believe we had met with him before the term**
2 **sheet was signed.**
3 Q. Okay. Now you said there was a second meeting.
4 **A. Right.**
5 Q. Who was at the second meeting and when was it?
6 **A. Associated with the term sheet, we also had him**
7 **sign another document. It's not here, but anyway.**
8 **The second meeting was, I believe, in February of**
9 **'15. Was it '15? I think that's right. Where Tom Darden,**
10 **myself, Paul Lamacraft were going down to see the plant and**
11 **we met with Rossi and Bass there. And I can't remember how**
12 **Bass was introduced. His card -- I have his card**
13 **somewhere. I can go check his title, engineering plant**
14 **manager. I don't remember whether it were Johnson Matthey,**
15 **J.M. Chemical products. But that's who we met with in that**
16 **meeting.**
17 Q. And what did he -- now, that was after the term
18 sheet was signed in the second meeting?
19 **A. Yeah. I mean this term sheet was signed**
20 **August 13, 2014. That meeting was I believe in February**
21 **2015.**
22 Q. Okay. So you didn't rely on any statements by
23 Mr. Bass before entering into this term sheet?
24 **A. I don't recall if we did or did not.**
25 Q. Sitting here today, is it your position that

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1 Industrial Heat relied on you as the vice president of
2 Industrial Heat before signing this agreement, relied on a
3 statement by Mr. Bass prior to signing it?
4 **A. By Mr. Bass?**
5 Q. Yes.
6 **A. I don't recall. I don't recall. I don't recall**
7 **at what point Mr. Bass was introduced into the equation.**
8 Q. And was Mr. Johnson there the second time?
9 **A. He was not.**
10 Q. So how many times have you spoken with
11 Mr. Johnson?
12 **A. I don't recall -- for example, I don't recall if**
13 **I've talked with him on the telephone or if he's been on a**
14 **conference call that I've been on. I'm trying to remember**
15 **if he was ever at the plant any other time or if I**
16 **literally only met him, besides that mediation, the one**
17 **other time in Red Robin.**
18 Q. Sir, within the term sheet that you have in front
19 of you, you would agree with me that there's no mention of
20 Johnson Matthey, correct?
21 **A. As designed by Rossi, correct.**
22 Q. As designed by Rossi.
23 Now, you signed this agreement, correct?
24 **A. I did.**
25 Q. That's what I asked you before.

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1 **A. I did.**
2 (Whereupon, Vaughn Deposition Exhibit 13 was marked
3 for identification.)
4 BY MR. ANNESSER:
5 Q. Sir, I'm going to show you another document,
6 which has been marked as Exhibit 13. This is titled as
7 Compliance With OFAC. Do you know what OFAC is, sir?
8 **A. I have two. Do you want me to have both of them?**
9 Q. I'll take that one back from you, thank you.
10 Do you know what OFAC is, sir?
11 **A. Office of Foreign Asset Control Department.**
12 THE REPORTER: Asset?
13 **THE WITNESS: Office of Foreign Asset Control.**
14 BY MR. ANNESSER:
15 Q. What was the purpose of this document, sir?
16 **A. The purpose of this document was, as I stated**
17 **here -- do you want to read it? Shall we read it?**
18 Q. No.
19 I'm asking if you know the purpose, not what it
20 says.
21 **A. Right. Well, maybe I should refresh myself on**
22 **it. Okay.**
23 Q. Sir, down at the last paragraph, it says
24 [as read]: JMC is owned by an entity formed in the United
25 Kingdom.

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1 Do you have any evidence or knowledge to prove
2 that that is not true?
3 **A. I have no evidence or knowledge to prove that**
4 **that is true.**
5 Q. Do you have any evidence or knowledge to prove
6 that it is not true?
7 **A. I imagine there is. These guys are going through**
8 **it. But we'll see.**
9 Q. Do you have it, sir? It's not what people are
10 going through or what you imagine. I'm asking a yes-or-no
11 question.
12 Do you have evidence that J.M. is not owned by an
13 entity formed in the UK?
14 **A. You asked me a yes-or-no question pertaining to**
15 **matters that are -- you know, that you would have to review**
16 **a lot of information to know the answer to. And I haven't**
17 **reviewed it all.**
18 MR. BELL: He's asking you as you sit here today.
19 **THE WITNESS: As I sit here today, I do not know**
20 **whether or not --**
21 BY MR. ANNESSER:
22 Q. Sir, my question -- and I want a yes-or-no answer
23 and then you can explain it if you feel it's necessary.
24 Do you have any evidence or knowledge that JMC is
25 not an entity formed in the United Kingdom?

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1 been agreed to?

2 **A. I don't remember us telling him that we had**

3 **agreed to the test plan.**

4 Q. Was it silence, just nobody said anything and

5 we'll see how it goes?

6 **A. No. You already asked Tom. He was trading**

7 **emails with Penon. And I just -- I'm not sure.**

8 Q. You're vice president of the company. You didn't

9 know whether the test plan had been agreed to or not?

10 **A. I knew that Penon had set a test plan. I knew**

11 **that there were questions about that test plan. But. . .**

12 Q. Wasn't this plan important, sir?

13 **A. What was important, as I've said, is determining**

14 **definitively whether or not the technology works. And to**

15 **the degree that this plan would enable that, it was**

16 **important.**

17 Q. And you understood at the time that this emails

18 was exchanged and you were copied that success under this

19 test plan, if the E-Cat operated successfully, your company

20 could be obligated to pay \$89 million?

21 **A. I understood that -- that there was -- if he**

22 **performed, based on the credible test plan, and we could**

23 **prove that the technology had been transferred, meaning we**

24 **could replicate it, yes, then we would be obligated to pay**

25 **\$89 million.**

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1 Q. So as of the dates of these emails range -- as of

2 February 18 or February 19, you understood that this test

3 plan could result in the payment of \$89 million. This was

4 the test plan that you were trying to determine whether it

5 was reliable or not, that you had to determine and say,

6 yes, this is the plan we agreed to in order for this test

7 to take place, where at the end, if the plan has been

8 followed and the test successful, your company would have

9 to pay \$89 million?

10 MR. BELL: Objection to form.

11 BY THE WITNESS:

12 **A. The -- could you -- I'm sorry. I was distracted**

13 **with you guys.**

14 Q. Were there any other -- let me go back.

15 Were there any other test plans being thrown

16 around and considered at the time for the 350-day test?

17 **A. There may have been. I'm not sure.**

18 Q. Did you tell Dr. Rossi about any other test plans

19 or did you have any communications with Dr. Rossi?

20 **A. I'm not sure. I mean, as you can see, Tom was**

21 **emailing with Penon about this.**

22 Q. So was it your understanding that this was the

23 test plan, in whatever final form it ended in, that would

24 determine the payment of \$89 million?

25 **A. This is a test plan they were putting forth.**

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1 Q. Sir, I'm going to ask you yes or no, and then you

2 can explain.

3 **A. Okay.**

4 Q. Was this the test plan to your knowledge that

5 would result, the ultimate plan, that was created from this

6 discussion, that would result in either the payment or

7 nonpayment of \$89 million to Dr. Rossi?

8 **A. It's hard to say because there were emails going**

9 **back and -- I mean, you're not showing me a test plan. I**

10 **mean, this is not a test plan.**

11 **I don't know is my answer.**

12 **Now, I will say that I'm sure there's some**

13 **document somewhere that outline a test plan that probably**

14 **they sent to us and probably that they said, you know,**

15 **here's a test plan. And whether or not that test plan is**

16 **perfect, I can't say. I don't know.**

17 MR. ANNESSER: We have to take a short break to

18 change the tape.

19 THE VIDEOGRAPHER: We're off the record at 4:13

20 p.m.

21 (Recess at 4:13 p.m. until 4:22 p.m.)

22 THE VIDEOGRAPHER: We are back on the record at

23 4:22 p.m.

24 BY MR. ANNESSER:

25 Q. Sir, during the course of the test being carried

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1 out down in Doral, Florida, did you visit the plant at all?

2 **A. I did.**

3 Q. How many times?

4 **A. I don't remember exactly. Multiple occasions, a**

5 **handful of times. I don't remember exactly.**

6 Q. Were you there when the Chinese investors came to

7 visit?

8 **A. No, sir.**

9 Q. Do you know who I'm talking about when I say "the

10 Chinese investors"?

11 **A. Not really. It was a trip -- I mean, I know that**

12 **they took some Chinese -- Tom or Joe Pike or somebody. I'm**

13 **not sure. But I don't know who those guys were.**

14 Q. Were you there when representatives of Woodford

15 came to the plant?

16 **A. I was.**

17 Q. How many occasions?

18 **A. I think we visited twice.**

19 Q. And what did you do during those tests -- I'm

20 sorry during those visits?

21 **A. We just discussed one a little bit ago when Paul**

22 **Lamacraft and Tom and I met with Bass and Andrea.**

23 **And the second one, I can't remember if it was**

24 **just me and Paul or Tom, me and Paul or there was another**

25 **guy Harry Rates, who may have been there. I think this was**

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1 in August of 2015; is that right? Yes. Anyway, that was
 2 the next time.
 3 Did you ask what did we do there?
 4 Q. Yeah, what did you do? Did you walk around the
 5 E-Cat plant? Did you look at the operation?
 6 A. We stopped in to -- to observe.
 7 Q. Okay. And during your visits to the plant, did
 8 you notice anything that was not normal to you? Anything
 9 that seemed out of place?
 10 A. Yes. We could not go on the other side of this
 11 wall to see fully how everything fit together and was
 12 designed.
 13 Q. Where was this wall, sir?
 14 A. It was in the facility.
 15 Q. What did it -- I'm trying to figure out what
 16 you're talking about. Was this the wall -- was this the
 17 wall between they E-Cat plant and the J.M. side?
 18 A. Correct.
 19 Q. Why couldn't you go on the other side of the
 20 wall?
 21 A. We weren't allowed by Andrea.
 22 Q. What was it that you wanted to observe on the
 23 other side of the wall?
 24 A. Originally, you know, when we started talking
 25 this morning, as I explained to you how it's important to

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1 note from a diagram perspective what goes where, all --
 2 following all heat flows. Whether it be water, steam,
 3 electricity, you need to have a very thorough and detailed
 4 diagram. And for that reason, you know, we needed to know
 5 what's going on on the other side of the wall. Otherwise
 6 you can't -- you don't really know how something's operated
 7 because you've only got partial information. You don't
 8 know what's going on over here.
 9 Q. Did you observe Dr. Penon's testing equipment?
 10 A. I suppose I probably did. But I -- I don't know
 11 that I would have known, like, what's Penon's, what's
 12 Andrea's.
 13 Q. Did you ask?
 14 A. I don't recall if I did or did not.
 15 Q. To your recollection, nobody told you, no, we
 16 won't tell you?
 17 A. We won't tell you what?
 18 Q. If you did ask, was it pointed out to you?
 19 MR. BELL: Objection, form.
 20 BY THE WITNESS:
 21 A. I don't recall if I asked about a specific piece
 22 of equipment. Also, keep in mind, you know, I'm not an
 23 engineer. We tried to go down -- Joseph Murray and I tried
 24 to go down in July of '15 and we were denied -- you were
 25 there, John. Joe finally was allowed in February of '16.

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1 And so Joe would have been the guy to much more competently
 2 assess the system's performance than I would have been.
 3 Q. Okay. So prior to Mr. Murray coming on board,
 4 did you ask any other engineer to go down, other than
 5 Mr. Dameron?
 6 A. I don't believe that we did.
 7 Q. And you said you believed it was around July when
 8 you attempted to come down with Mr. Murray. And why didn't
 9 you?
 10 A. We were turned away by Andrea.
 11 Q. You were turned away. Didn't -- did you go down
 12 and he turned you away at the door or how was that?
 13 A. No. Via email. He told us emphatically that Joe
 14 could not come in the plant.
 15 Q. For what reason?
 16 A. I don't remember his explicit reason. But we
 17 have the emails. You could pull them up.
 18 But I believe his reason was that he recognized
 19 Joe as a sophisticated engineer. And historically Andrea
 20 has never wanted truly sophisticated engineers around what
 21 he's doing because they have a better ability to spot how
 22 he's manipulating things.
 23 Q. And tell me, sir, did you insist on Mr. Murray
 24 coming down? Did you say --
 25 A. I did.

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1 Q. -- we absolutely have the right and you were
 2 insisting on coming down?
 3 A. I don't remember the exact email exchange. You
 4 guys have it. But, clearly, I said that Joseph Murray was
 5 going to come with me and we were going to come assess the
 6 plant and we were emphatically denied.
 7 Q. Do you know how many emails there were? You told
 8 him you were going to come down with Mr. Murray and he said
 9 no. What was your response to that?
 10 A. I don't remember. We were -- he had rejected us.
 11 It's like beating a dead horse. He's not going to allow
 12 it, so we said -- we just left it at that.
 13 Q. You didn't say anything more about it?
 14 A. I don't recall whether or not --
 15 Q. Did you try to bring him down again other than at
 16 the end of the test?
 17 A. Other than in -- I don't recall. I don't
 18 remember.
 19 Q. Do you know who Joe P ke is?
 20 A. I do.
 21 Q. Is he an employee, officer or director of
 22 Industrial Heat, IPH International or any of those related
 23 companies?
 24 A. He is not.
 25 Q. Is he a representative of those companies in any

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1 capacity?

2 **A. No. He's an investor.**

3 Q. Did you authorize or ask Dr. Rossi to allow him

4 to come to the plant with the Chinese investors?

5 **A. I don't believe I did. Not to my recollection.**

6 Q. Do you know if Dr. Rossi was asked to allow the

7 Chinese investors to come?

8 **A. Presumably somebody communicated with me about**

9 **that. Whether it was Tom or Joe Pike directly, I don't**

10 **recall.**

11 Q. At any time prior to Woodford making their

12 investment in Industrial Heat or its related entities, did

13 you tell them that you were not able to replicate any

14 measurable COP?

15 **A. Yeah. I mean, I was -- first of all, Tom was**

16 **managing those communications prior to their investment. I**

17 **mean, I wasn't -- as I said before, you know, you saw an**

18 **email exchange with Paul and Tom. I wasn't there. I**

19 **didn't go to the meetings.**

20 **But, for example, in -- in the data room, we**

21 **highlighted critiques of tests. And we were saying to**

22 **Paul Lamacraft we just don't know. We've -- we've not been**

23 **successful. These experts have apparently. I mean, these**

24 **are their reports. Here are critiques of their reports.**

25 **We don't know which way this is going to go.**

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1 **You know, for all the time that had passed, we**

2 **were still waiting to see if -- if this technology was real**

3 **or not, and they were very aware of that.**

4 Q. Sir, you mentioned a data room. Is that data

5 room still available?

6 **A. I believe it is.**

7 Q. Do you know if the contents of the data room have

8 been provided to my firm?

9 **A. They should have been.**

10 Q. Did you ever review the final test plan?

11 **A. Which one?**

12 Q. The final test plan prepared by Dr. Penon?

13 **A. I'm not sure. If you show it to me, I'll be**

14 **happy to review it.**

15 (Whereupon, Vaughn Deposition Exhibit 18 was marked

16 for identification.)

17 BY MR. ANNESSER:

18 Q. I'll show you what we'll mark as Exhibit 18,

19 which is entitled E-Cat MW1 Energy Test Plant -- Energy

20 Plant in Miami Test Plan bearing the Bates number

21 IH-00104655. Have you seen this before?

22 **A. I think that I have.**

23 Q. Did you ever tell Dr. Penon that you did not

24 agree with this test plan?

25 **A. We covered this already.**

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1 Q. You had asked me because you did not have the

2 test plan in front of you. So now that you do, did you

3 ever tell Engineer Penon or Dr. Penon that you did not

4 agree with this test plan?

5 **A. I think I've already said all that I can say**

6 **about this.**

7 Q. It's a yes-or-no answer, sir.

8 **A. Not to my recollection.**

9 Q. Okay. Now, looking at this test plan, can you

10 please identify the specific errors that were committed

11 during the course of the test that you believe rendered the

12 results invalid?

13 **A. The specific errors.**

14 Q. Do you believe that the test plan was followed or

15 do you have any evidence that it was not?

16 **A. I guess you got a couple questions there.**

17 Q. Let me break it up for you, I want to be very

18 simple. Do you believe this test plan was followed? It's

19 a yes-or-no question.

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

21 Q. Do you have any evidence that this test plan was

22 not followed or are you aware of any evidence that this

23 test plan was not followed?

24 **A. Yes.**

25 Q. And what is that?

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1 **A. And I'm just -- you know, I'm glancing at it here**

2 **because literally just looking at it. So a list of**

3 **components is 115 E-Cat units. I don't believe 115 E-Cat**

4 **units were operating.**

5 Q. Does this test plan require that all of the units

6 have to be operating all the time?

7 **A. I don't know. We have to review it to see.**

8 **But back to your macro level question, one, I**

9 **don't know whether or not -- I should say I don't know the**

10 **specific critiques of this test plan, but a guy like Joseph**

11 **Murray would.**

12 Q. Okay. I'm not asking you for critiques of the

13 plan. I'm asking you: Do you have any evidence -- and you

14 just said yes. Do you have any evidence of any portion of

15 this test plan that was not followed?

16 **A. Well, it says list of components and this says**

17 **115 E-Cat units.**

18 Q. Okay. Other than that, sir, is there anything

19 else?

20 **A. I'm not sure. I haven't reviewed it all.**

21 **You know these are very specific. But I haven't**

22 **-- I don't have off the top of my head the ability to**

23 **recollect or check, you know, was this type of water**

24 **temperature or measurement device used and were the**

25 **calibration certificates accurate and notarized and, you**

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1 **know, those sorts of -- I don't know.**
 2 Q. So sitting here today, you do not know?
 3 **A. I do not know?**
 4 Q. Other than -- other than the number of smaller
 5 E-Cats within this one-megawatt plant that were operating
 6 at any time, you do not know of any other --
 7 **A. I don't know if I know of any other.**
 8 Q. You don't know what you don't know.
 9 **A. That's right. I'm sorry.**
 10 Q. Either you know or you don't. If you don't, the
 11 answer is no.
 12 **A. I'd have to go through and review all of this and**
 13 **see if the backup detail exists or not.**
 14 **Q. Did you ever receive statements from J.M. as to**
 15 **the amount of power that they received and requested that**
 16 **you send them an invoice for that power?**
 17 **A. I did.**
 18 Q. Did you ever send an invoice?
 19 **A. Not to my recollection.**
 20 Q. Why?
 21 **A. Because we -- we could -- that was irrelevant to**
 22 **us. And if, in fact, it were a fraud, we didn't want to**
 23 **participate in that.**
 24 Q. So you believed at the time it could be a fraud?
 25 **A. We didn't know.**

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1 **Q. Now, Industrial Heat paid two people to be there,**
 2 **Mr. Fulvio -- I'm sorry, Fulvio Fabiani and Mr. Barry West.**
 3 **They were there --**
 4 **A. At the request of Dr. Rossi. We were -- Rossi**
 5 **should have been paying them. We were, again, being**
 6 **generous and accommodative. We paid them.**
 7 Q. So you're telling me that you knew this was the
 8 350-day test and you didn't think it prudent to put anyone
 9 else in that plant to monitor, figure out what's going on,
 10 what is he doing that we're not doing?
 11 MR. BELL: Objection to form.
 12 BY THE WITNESS:
 13 **A. Andrea would only allow Barry and Fulvio. And,**
 14 **you know, those were the guys that he wanted.**
 15 BY MR. ANNESSER:
 16 Q. Did you request additional people come on?
 17 **A. Yes. I told you I tried to take Joseph Murray**
 18 **down there. And we also planned to have other of our staff**
 19 **rotate -- excuse me, rotate in and out. So we talked**
 20 **amongst our engineering and operational team to -- about**
 21 **having people go down there and spend long periods of time**
 22 **down there.**
 23 Q. Okay. Prior to Joseph Murray coming on board in
 24 the middle of 2015, who was your engineering team?
 25 **A. As I told you previously, T. Barker Dameron and I**

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1 **believe that was the extent of it.**
 2 Q. Was Mr. Dameron ever turned away?
 3 **A. Not that I recall, and the reason for that is**
 4 **that he's not a -- he was a friendly engineer that has --**
 5 **you know, elderly engineer who was really assigned to be**
 6 **helpful and assistive to Andre.**
 7 Q. So you don't have an engineer team before
 8 Mr. Murray, in that sense, other than an elderly engineer
 9 that was there to assist Dr. Rossi?
 10 **A. He was there -- T. Barker worked with us and**
 11 **assisted Dr. Rossi, but we didn't have an engineering team**
 12 **like we had later when Joe and others were hired and new to**
 13 **the team.**
 14 Q. What others, other than Joe, were hired for your
 15 engineering team?
 16 **A. What other engineers?**
 17 Q. Between July 2015 and February 2016?
 18 **A. Quite a few. I'm trying to remember. Some of**
 19 **them had more scientific backgrounds than engineering**
 20 **backgrounds, but they were all on the engineering team.**
 21 Q. Did you ever ask if any of them could come down
 22 to the plant?
 23 **A. Oh, yeah. I mean, we didn't -- we didn't -- as I**
 24 **said, we had talked about it internally. I don't recall if**
 25 **we ever put that to Andrea after he slammed the door in our**

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1 **face with Joe. Our goal was to -- after Joe and I went**
 2 **down to then have a -- kind of a -- get a feel for it, do a**
 3 **thorough assessment, diagram, as I described, and then**
 4 **begin having people rotate in and out. And I can't**
 5 **remember if we ever sent anybody else down there. We can**
 6 **check the records on that, though.**
 7 **Q. Sir, so it's your position today that you've**
 8 **never been able to replicate the test, never been able to**
 9 **replicate a measurable COP with any of Dr. Rossi's**
 10 **technology, correct?**
 11 **MR. BELL: Objection to form.**
 12 **BY THE WITNESS:**
 13 **A. I don't believe we've been successful in**
 14 **replicating Dr. Rossi's claim about technology.**
 15 BY MR. ANNESSER:
 16 Q. Are you aware that Industrial Heat filed a patent
 17 application that was accompanied by a sworn statement as to
 18 the accuracy of the information therein in which it
 19 purports that there were, in fact, three successful
 20 replications performed of Dr. Rossi's technology?
 21 (Whereupon, Vaughn Deposition Exhibit 19 was marked
 22 for identification.)
 23 BY MR. ANNESSER:
 24 Q. I will show you what's been marked as Plaintiff's
 25 Exhibit 19.

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1 Q. Did you ever tell him that Industrial Heat was
 2 fully funded by Cherokee?
 3 **A. No.**
 4 Q. By the Cherokee principals?
 5 **A. I may have said that, but that's an entirely**
 6 **different statement. That means by individuals.**
 7 Q. And that Cherokee would guarantee that Leonardo
 8 would be paid in accordance with the license agreement?
 9 **A. I never said that.**
 10 Q. Now, Industrial Heat when it assigned the license
 11 agreement to IPH or when it was preparing to, isn't it true
 12 that you represented, along with Mr. Darden, that IPH
 13 International B.V. was a wholly-owned subsidiary and that
 14 IPH International B.V. would be the holding entity for
 15 Industrial Heat?
 16 MR. BELL: Wholly-owned subsidiary of which?
 17 BY MR. ANNESSER:
 18 Q. Of Industrial Heat and that it would be the
 19 holding entity for Industrial Heat?
 20 **A. The IP holding entity, is that what you mean?**
 21 Q. Yes.
 22 **A. At the time that was the case.**
 23 Q. You also represented that IPH International B.V.
 24 would remain a wholly-owned entity of Industrial Heat;
 25 isn't that true?

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1 **A. I'm not sure about that.**
 2 Q. You don't know?
 3 **A. I don't -- that doesn't make sense to me, so I**
 4 **don't recall saying that or making that representation.**
 5 **But, as you said -- could you repeat, could you repeat what**
 6 **you said.**
 7 Q. Isn't it true, sir, that at that time you also
 8 represented to Dr. Rossi that IPH International B.V. would
 9 continue to be a wholly-owned subsidiary of Industrial
 10 Heat?
 11 **A. I do not recall representing that.**
 12 Q. You don't know if you did or didn't?
 13 **A. I don't recall representing that. I mean, that**
 14 **seems -- that doesn't seem to -- why would somebody say**
 15 **that? It doesn't to -- you're making statements about the**
 16 **future that are. . .**
 17 Q. Were there any communications, sir, between you
 18 and either Fulvio Fabiabi and/or Mr. Barry West during the
 19 course of the 350-day test being carried out in Doral?
 20 MR. BELL: Objection to form.
 21 BY MR. ANNESSER:
 22 Q. By Dr. Penon?
 23 **A. There was a lot in there. Could you go back.**
 24 **Were there --**
 25 Q. Do you have communications with Mr. West between

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1 February 2015 and February 2016 regarding the operation of
 2 the plant?
 3 **A. I'm sure I asked Barry how things were going down**
 4 **there.**
 5 Q. Okay. And he responded and gave you reports?
 6 **A. Periodically he would check in.**
 7 **Q. What about Mr. Fulvio Fabiabi?**
 8 **A. I probably touched base with Fulvio less**
 9 **frequently. Periodically Fulvio would send us information,**
 10 **I think, if I recall correctly. But I'm not certain**
 11 **exactly.**
 12 **Q. And what did you do with that information?**
 13 **A. I can't recall what it was, so I can't recall**
 14 **what I did with it.**
 15 **Q. And you also received reports from the ERV,**
 16 **correct?**
 17 **A. I do recall Penon sending some stuff. I think he**
 18 **sent that to Tom. I can't remember if he sent it to me.**
 19 **Q. You know that industrial report received routine**
 20 **reports?**
 21 **A. I believe Penon sent reports periodically to --**
 22 **to Tom.**
 23 Q. Did you ever represent to anyone that Industrial
 24 Heat had acquired Rossi's intellectual property?
 25 **A. I don't recall saying that. And there's a --**

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1 **there's a clear distinction, right? Did I say we had**
 2 **licenses technology? That's -- that's the more accurate**
 3 **statement. You know, to be even more specific, license it**
 4 **in specific territories. But I don't require -- I'm sorry,**
 5 **I don't recall stating that we agreed his technology. But**
 6 **at some point, if I did that, it was a misstatement. It**
 7 **would have been better said we license this technology.**
 8 Q. And, in fact, you raised over 50 million dollars
 9 from investors predicated upon Dr. Rossi's technology; is
 10 that correct?
 11 **A. No.**
 12 MR. BELL: Objection to form.
 13 **THE WITNESS: That's not correct. That's not**
 14 **correct. We raised 50 million dollars based on a portfolio**
 15 **strategy in the LENR sector. And part of that portfolio**
 16 **was our license to Andrea's technology. Andrea's was one**
 17 **variable among many within a portfolio.**
 18 BY MR. ANNESSER:
 19 Q. Would you agree that it was the core?
 20 **A. No.**
 21 Q. If there were an email from Woodford stating that
 22 they believed that Rossi's technology was the core and the
 23 reason they invested 50 million dollars with your
 24 company --
 25 **A. There's not an email to that effect. There's an**

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1 BY MR. ANNESSER:
 2 Q. Do you review the complaint before it was filed?
 3 **A. I believe I did. Did I sign it? I'm not sure.**
 4 Q. So the allegation was incorrect?
 5 **A. I did not say that. That's what you said.**
 6 MR. ANNESSER: Okay. Francisco, he's all yours.
 7 MR. ARAN: Thank you, sir.
 8 EXAMINATION
 9 BY MR. ARAN:
 10 Q. Good afternoon. I know it's been a long day. I
 11 will try to be quick. I don't know if you can hear me all
 12 right. You can ask me to speak up.
 13 **A. I can hear you just find.**
 14 Q. During your testimony, you mentioned that you
 15 tried to accommodate Mr. Rossi with respect to the
 16 operation of the plant; is that correct?
 17 **A. Pardon me, could you introduce yourself and**
 18 **remind me who you represent.**
 19 Q. Sure, my name is Francisco Aran from Aran, Correa
 20 & Guarch. I represent J.M. Products and Henry Johnson.
 21 **A. Thank you. Sorry about that, Fernando.**
 22 Q. Nope, not at all. Earlier in your mention you
 23 mentioned you tried to accommodate Mr. Rossi as it related
 24 to the operation of the plant; is that correct?
 25 **A. Correct.**

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1 Q. Correct. When was it first contemplated that the
 2 plant be moved to Miami? Do you know a time frame?
 3 **A. I don't recall. I'm trying to remember. I'm**
 4 **trying to remember when it was actually. I don't recall**
 5 **exactly, Fernando. I'm sorry.**
 6 Q. Francisco.
 7 **A. I'm sorry, Francisco. Sorry. Sorry.**
 8 Q. No worries.
 9 Aside from having a customer down here, were
 10 there any other considerations that were taken into account
 11 when deciding whether or not to move the plant to Miami?
 12 **A. Aside from having a customer down there, were**
 13 **there other considerations that were taken into account?**
 14 Q. Correct.
 15 **A. It's a good question, Francisco, and I apologize.**
 16 **I suppose there were, but I'm just not sure. What do you**
 17 **mean by like "considerations," for example?**
 18 **Q. Was -- was the only thing you took into account**
 19 **when you decided, hey, let's move the plant, you know,**
 20 **let's go ahead and move the plant to Miami, was the only**
 21 **thing you used to make that determination the fact that**
 22 **there was a customer to provide the energy to or was there**
 23 **something else that was brought up or mentioned that played**
 24 **some form or role?**
 25 **A. Right. As I mentioned previously, one of the big**

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1 **drivers for us that kind of got us over the hump being okay**
 2 **with it going to Miami, was that purportedly an affiliate**
 3 **of Johnson Matthey would be doing -- would be using the**
 4 **energy there.**
 5 **You know, other factors, I'm sure Andrea wanted**
 6 **it close to where he has apartments. So there may be other**
 7 **considerations like that. Fulvio was from that area too.**
 8 Q. Got it. And when were you first advised that the
 9 customer in Miami was an affiliate of Johnson Matthey?
 10 **A. That it was an affiliate? I don't recall**
 11 **exactly. I'm sure that that's in emails somewhere, you**
 12 **know, Andrea introducing this concept.**
 13 Q. Can you give me a specific time frame? Let's
 14 start off with a year. Was it in 2013? Was it in 2014?
 15 **A. Yeah, I'm guessing, Francisco, that it was in**
 16 **2014.**
 17 Q. And would it have been in the first quarter,
 18 second quarter, third quarter, fourth quarter?
 19 **A. I'm really -- I don't know. I apologize. I**
 20 **can't recall and I'm not positive it was 2014. It may have**
 21 **been 2013. And I apologize, Francisco. I just don't**
 22 **recall.**
 23 **Q. Okay. Do you recall who made that**
 24 **representation?**
 25 **A. Which representation again?**

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1 **Q. That there was a customer in Miami that had a use**
 2 **for the steam that was affiliated with Johnson Matthey?**
 3 **A. Fundamentally, you know, that was the**
 4 **representation that Andrea was making to us.**
 5 MR. BELL: You doing okay?
 6 **THE WITNESS: Uh-huh.**
 7 BY MR. ARAN:
 8 **Q. If I recall correctly, you stated earlier that**
 9 **you met with Mr. Henry Johnson one time as it relates to**
 10 **J.M. Chemical Products; is that right?**
 11 **A. Yeah. I stated earlier, Francisco, that I didn't**
 12 **recall if I met with him more than one time, but I do**
 13 **remember one specific time.**
 14 **Q. And at that meeting in that one specific time**
 15 **what was your understanding of Mr. Johnson's involvement**
 16 **generally?**
 17 **A. He was introduced as a representative of Johnson**
 18 **Matthey. And I think I covered this some previously. I**
 19 **don't remember if it was made clear to us during the**
 20 **meeting that like -- during the meeting we remembered Henry**
 21 **Johnson, Hank Johnson, was also the name of Rossi's lawyer.**
 22 **But I do recall that some point we remembered that.**
 23 **And Rossi had said, you know, look, they -- they**
 24 **needed a representative that couldn't be obviously attached**
 25 **to Johnson Matthey and so please do it. I don't recall**

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1 **when exactly that happened.**
 2 Q. Okay. Do you recall any conversations you had
 3 with Mr. Johnson at this meeting that you're referring to?
 4 A. I don't recall the substance of those -- of the
 5 communications of that lunch. I apologize. But he was
 6 introduced as, you know, a Johnson Matthey representative.
 7 Q. Okay. Thank you. He didn't introduce him in
 8 that manner, right?
 9 MR. BELL: Objection to form.
 10 THE WITNESS: I don't really recall, Francisco.
 11 BY MR. ARAN:
 12 Q. Let me rephrase. Did he intro -- how did
 13 Mr. Johnson introduce himself or did he introduce himself
 14 to you or was he introduced to you?
 15 A. I'm struggling to recall, Francisco, if he
 16 introduced himself or if he was introduced and I just don't
 17 recall.
 18 Q. And you don't recall anything substantively that
 19 Mr. Johnson spoke about or said in that meeting?
 20 A. I don't. Again, Francisco, this is a long time
 21 ago. But the reason for the meeting is because Tom and I
 22 wanted to meet a representative of Johnson Matthey who
 23 could speak to the efficacy of what Andrea had been
 24 describing.
 25 Q. Okay. Was Mr. Rossi -- was Mr. Johnson present

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1 during the entire meeting?
 2 A. It was a -- it was lunch meeting. So I can't
 3 remember if Tom and I rode with Andrea or if we met him
 4 there. But we met him for lunch and then we had lunch
 5 together.
 6 Q. Got it.
 7 Okay. You stated earlier that you did not
 8 contact Johnson Matthey to confirm any involvement they
 9 might have with J.M. Chemical Products, correct?
 10 A. Correct. We did not contact Johnson Matthey. I
 11 did not. And that was because Andrea had said, you know,
 12 Henry Johnson is the representative of Johnson Matthey and,
 13 you know, you can't contact them, they want this to be
 14 super confidential, you guys aren't to -- that will make
 15 them nervous if you guys contact them or, you know, mess
 16 things up.
 17 Q. Given the circumstances and the amount of money
 18 involved, would you agree with me that it would have
 19 prudent to confirm one way or another that Johnson Matthey
 20 was not affiliated with J.M. Chemical Products?
 21 A. Say that one more time, Francisco.
 22 Q. Given the circumstances and the amount of money
 23 involved, would you agree with me that it would have been
 24 prudent to confirm in one way another that Johnson Matthey
 25 was, in fact, affiliated with J.M. Chemical Products?

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1 A. You know, in hindsight, again a lot of this is in
 2 hindsight kind of Monday morning quarterbacking, what would
 3 you do differently today than you did at the time. Should
 4 we have spent more time and effort on that specific topic,
 5 possibly so. But our main concern, again, was that it was
 6 a bona fide customer and that, you know, we were going to
 7 have a path to determine whether or not the technology
 8 worked.
 9 So it's -- and we were also trying to be
 10 accommodative to Andrea, so we didn't want to mess up
 11 things that he had been working on that were important with
 12 him.
 13 Q. Got it. I don't mean to play Monday morning
 14 quarterback. But I just mean a scenario where you are
 15 potentially investing up to 150 million dollars in a
 16 venture, would it be normal to do a level of due diligence
 17 that, you know, would require you or compel you to do
 18 looking into the parent company of the company you're about
 19 to go into business with?
 20 MR. BELL: Objection to form.
 21 THE WITNESS: We weren't about to go into
 22 business with Johnson Matthey.
 23 BY MR. ARAN:
 24 Q. No. But that would -- that would be the parent
 25 company, right. It was represented that it was an

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1 affiliate. So would it not be normal to conduct some form
 2 of due diligence?
 3 MR. BELL: Objection to form.
 4 BY THE WITNESS:
 5 A. Yeah, Francisco, we -- I described to you kind of
 6 some of the process that went through and, you know, the --
 7 whether or not Andrea was due additional payments did not
 8 depend on whether or not Johnson Matthey was the customer.
 9 So you can see how we would have wanted to spend
 10 some time on this issue because it was important to us.
 11 But you can also see how it wasn't the top priority in our
 12 list.
 13 BY MR. ARAN:
 14 Q. But the top priority on your list would be to
 15 make sure that the plant operated as -- as intended,
 16 correct?
 17 MR. BELL: Objection to form.
 18 BY THE WITNESS:
 19 A. As I've said all along, our top priority has been
 20 to determine the state of the technology and determine
 21 whether or not it works as advertised.
 22 Q. I'll move on.
 23 Do you recall negotiating any of the terms in the
 24 term sheet?
 25 A. I don't recall specifics.

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1 Q. What's marked as Exhibit 12, I believe.

2 A. Yeah, I can pull up the term sheet here. I don't

3 recall the term sheet. Andrea drafted it, I believe. But

4 go ahead, Francisco. What's your question?

5 Q. Simply, did you -- did you make any changes to

6 the term sheet before it was signed?

7 A. I think there was a little bit of back and forth.

8 I don't recall particularly on what points. I think there

9 was some.

10 Q. Okay. So there was at least some back and forth

11 as to the term sheet before it was signed, correct?

12 A. I think that's correct, Francisco. You guys will

13 have to check the documents on this.

14 Q. Did you request at any point that the term sheet

15 include some language that Johnson Matthey was affiliated

16 with J.M. Chemical Products?

17 A. I think Andrea had said that Johnson Matthey

18 didn't want its name on anything and he had been

19 representing that J.M. Chemical Products, Inc., was an

20 affiliate of Johnson Matthey.

21 Q. Right. You mentioned that, you know, Rossi had

22 stated that he didn't want you guys reaching out because it

23 was supposed to be confidential. But in an agreement that

24 can be confidential, would that not be a way that you could

25 confirm or back up the statement that Johnson Matthey was,

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1 in fact, affiliated with J.M. Chemical Products?

2 A. One of the things that we did was -- you know, I

3 believe Henry Johnson -- he was a lawyer by the way. He's

4 a lawyer, and he signed a representation that didn't

5 specify Johnson Matthey, but it did -- it alluded to a UK

6 company or said a UK company.

7 Again, Andrea didn't want Johnson Matthey

8 explicitly in there.

9 THE VIDEOGRAPHER: Counsel, you have about five

10 1/2 minutes to cutoff.

11 MR. ANNESSER: Francisco, you got five 1/2

12 minutes to cutoff.

13 MR. ARAN: Okay. Thank you.

14 BY MR. ARAN:

15 Q. But did you guys specify that the important part

16 for you was, in fact, it was a company I ke Johnson Matthey

17 or I think you used other company GE, General Electric. So

18 would you not to have wanted something specific in writing?

19 A. That would be ideal, of course. Andrea was very

20 adamant that that was not possible. But that, you know,

21 his -- Henry Johnson, who's a lawyer, was happy to

22 represent that it was owned by a company in the UK and that

23 had no affiliation with Rossi or Johnson or their

24 relatives, et cetera.

25 Q. Right. But he did not, in fact, represent that

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1 it was affiliated with Johnson Matthey, correct?

2 A. He did not because, as I said, Andrea did not

3 want that.

4 Q. Okay. So at this point you're answering to the

5 term sheet, Industrial Heat is potentially entering into an

6 agreement to move the plant to Florida, and if the plant --

7 you know, it's important to you for the sake of, you know,

8 backing up the facts, so to speak, that a company I ke

9 Johnson Matthey report to you guys or a subsidiary of a

10 company like Johnson Matthey report to you guys the amount

11 of energy being received because you deemed that to be a

12 credible source, correct?

13 MR. BELL: Objection to form.

14 (Interruption.)

15 BY THE WITNESS:

16 A. Francisco, could you run the question by me one

17 more time. Sorry.

18 BY MR. ARAN:

19 Q. Yeah. So at this point in time, you guys are

20 getting ready to enter into the term sheet and move the

21 plant to Florida because you felt, you know, it would be

22 important, it would be -- I forget the word you used -- but

23 you would feel comfortable with a company like Johnson

24 Matthey confirming the amount of energy that was used by

25 the plant, correct?

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1 A. I said previously, yeah, that would be a

2 comforting check on what Rossi was reporting if a -- if a

3 sophisticated company was also saying, you know, we've been

4 supplied with one megawatt of energy. Because then you can

5 check the -- the power going into the facility and what

6 they're claiming to have been supplied. And if it's

7 credible party, that's at least a check. It's not, you

8 know, clearly not everything you need, but it's an

9 interesting data point.

10 Q. Right. It's a check.

11 But, needless to say, you did not think it was so

12 important that it needed to be included in the term sheet?

13 A. The -- as I said --

14 MR. BELL: Objection, asked and answered.

15 BY THE WITNESS:

16 A. I believe -- I believe we have covered this.

17 And, Francisco, I think I'll just say what I'm going to say

18 about that. If you want to move on to another question,

19 feel free to.

20 BY MR. ARAN:

21 Q. That's all right. I'll move on. I know I have a

22 minute left.

23 Do you recall when the OFAC compliance sheet was

24 provided to you?

25 A. Provided to me?

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1 Q. Yes, or to Industrial Heat?

2 **A. I don't recall. It's somewhere here in my stack**

3 **of documents. I could look that up if you want me to.**

4 Q. Well, the sheet itself, the OFAC itself is not

5 dated or signed, so that wouldn't help you.

6 **A. The OFAC document is not dated or signed; is that**

7 **what you're saying?**

8 Q. It's not. That wouldn't help you.

9 But do you know -- sitting here today, you don't

10 remember when you received the OFAC sheet?

11 **A. The exact date, I don't recall. I'm trying to**

12 **pull up --**

13 Q. Do you recall --

14 **A. Go ahead, Francisco. I'm sorry.**

15 Q. Do you recall if it was provided to you before

16 the term sheet was signed?

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

18 MR. ARAN: Okay. I'm not sure how I am on time,

19 but I'll cut it off there.

20 THE VIDEOGRAPHER: This concludes the videotaped

21 deposition of John T. Vaughn.

22 MR. BELL: We've marked or you've marked Exhibits

23 2, 3, 4, 9, 10, 14 and 16 which are attorneys' eyes only.

24 So I know we have additional opportunity to designate

25 things as confidential under the protective order, but

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1 those -- obviously those exhibits themselves and the

2 testimony about those we deem to be, you know, not suitable

3 for public file, among the other provisions of the order.

4 Thank you.

5 THE VIDEOGRAPHER: This concludes the videotaped

6 deposition of John T. Vaughn. We are off the record at

7 5:24 p.m.

8 THE REPORTER: Reserving. Read and sign.

9 (DEPOSITION CONCLUDED at 5:24 p.m.)

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1 STATE OF NORTH CAROLINA

2 COUNTY OF W A K E

3 CERTIFICATE

4 I, Margaret M. Kruse, Registered Merit Reporter,

5 Certified Realtime Reporter and a Notary Public in and for the

6 State of North Carolina duly commissioned and authorized to

7 administer oaths and to take and certify depositions, do

8 hereby certify that on January 19, 2017, JOHN T. VAUGHN, being

9 by me personally duly sworn to tell the truth, thereupon

10 testified as above set forth as found in the preceding pages,

11 this examination being reported by me verbatim and then

12 reduced to typewritten form under my direct supervision; that

13 the foregoing is a true and correct transcript of said

14 proceedings; that I am neither kin nor counsel to any of the

15 parties to this action; that I am not interested in the

16 outcome of this case; that I am not in the employ of any of

17 the parties to this action.

18 IN WITNESS WHEREOF, I have hereto set my hand, this

19 the 23rd day of January, 2017.

20 

21 _____

22 Margaret M. Kruse, RMR, CRR

23

24 Notary Public #201632100246

25

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1 WITNESS'S CERTIFICATE

2

3 I, JOHN THOMAS VAUGHN, do hereby certify

4 that I have read and understand the foregoing

5 transcript and believe it to be a true, accurate, and

6 complete transcript of my testimony, subject to

7 the attached list of changes, if any.

8

9 _____

10 JOHN THOMAS VAUGHN

11

12 This deposition was signed in my presence by

13 _____, on the ____ day of

14 _____, 2017.

15

16 _____

17 Notary Public

18 My commission expires:

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