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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 1:16-cv-21199-CMA

ANDREA ROSSI, ET AL.,

Plaintiffs,

vs.

THOMAS DARDEN, ET AL.,

Defendants.

_____ /

PERLMAN, BAJANDAS, YEVOLI &
ALBRIGHT, P.L.
282 CATALONIA AVENUE
SUITE 200
CORAL GABLES, FL 33134
Monday, February 13, 2017
9:07 a.m. - 5:18 p.m.

VIDEOTAPED DEPOSITION OF JOHN THOMAS VAUGHN
(Corporate Representative of Industrial Heat, LLC)

Taken on behalf of the Plaintiff before
Elizabeth Cordoba, RMR, CRR, FPR, Notary Public in
and for the State of Florida at Large, pursuant to
Plaintiff's Notice of Taking Deposition in the above
cause.

1 Veritas to be the certifying entity. So we were trying to
2 balance that with the good news that he was giving us from
3 these professors. And that is why we ultimately
4 acquiesced here. As I said, Tom's e-mail was like a week
5 later.

6 But if you -- if an outside -- an outsider was
7 looking at this and it was a -- and a test that was done
8 by -- an outsider would view the test that is done by the
9 professors as more independent. Right? Than a test that
10 we had conducted. Even if we used Bureau Veritas or
11 Penon, that those guys were -- we didn't hire them.
12 Right? They were independently interested in this. At
13 least we thought so. I don't know in retrospect if Andrea
14 hired them. But we knew that we didn't hire them.

15 Whereas we were paying, whether it turned out
16 to be Penon or Bureau Veritas or another, we were paying
17 at least some of that. So I think that is what Tom is get
18 at here.

19 Q. Okay. As it relates to Fabio Penon, is it
20 Industrial Heat's position that Mr. Penon intended to
21 deceive Industrial Heat?

22 A. It is definitely a question.

23 Q. But that is not what I am asking. I am asking,
24 is it your position today that Penon intended to deceive
25 Industrial Heat?

1 before?

2 A. I don't think so. I don't think so.

3 Q. On the second page is an e-mail from Dr. Rossi
4 to Tom Darden and other people. He states in paragraph
5 three: "Some update certification, the BV certification
6 makes easier the application to six cylinders. In October
7 Bianchini will come to Raleigh to make the job regarding
8 the authorizations."

9 Who is Bianchini?

10 A. I think that is a guy that Rossi would have do
11 background radiation assessments.

12 Q. And what authorizations is he referring to in
13 this e-mail? Do you know?

14 A. I'm not sure. I think he's -- it was some
15 process that he was wanting to run. Maybe it was a safety
16 certification or something else that he was doing. I'm
17 not sure.

18 (Exhibit 33, IH3735, was marked for
19 Identification.)

20 BY MR. CHAIKEN:

21 Q. Okay. I am going to show you what has been
22 marked as Exhibit 33. Exhibit 33 is Bates stamped IH3735.

23 Do you know who Stephen Browne is?

24 A. He was a nuclear radiation compliance
25 consultant.

1 Q. And was he retained by Industrial Heat?

2 A. He was.

3 Q. And why was he retained by Industrial Heat?

4 A. I think we asked him to do some research into
5 how this product may be regulated, if it turned out to
6 work and to emit radiation. What -- you know, what's the
7 process for that? What would we -- what should we be
8 preparing for from a regulatory perspective?

9 Q. And did he also -- was he also asked to
10 determine whether or not there was regulatory approval
11 required to run a 350-day test in North Carolina?

12 A. I can't recall if we asked him that exact
13 question. Again, he was more of a -- kind of at a higher
14 level. Forget about the test. We were concerned about
15 the commercialization of the product. If this is real and
16 it does work, what is required from a compliance or
17 regulatory perspective?

18 Q. If you read the last paragraph, it states:
19 "Barring the revelation of new information that would
20 indicate that the device contains licensable amounts of
21 radioactive material or emits measurable quantities of
22 ionizing radiation, there is in my opinion no basis for
23 considering the manufacture or possession, use of transfer
24 of these devices to be subject to any licensing
25 requirements or safety regulations for ionizing radiation

1 under current state or federal regulatory authority."

2 Was that specifically what he was required to
3 do or requested to do?

4 MR. BELL: Objection to form.

5 BY MR. CHAIKEN:

6 Q. Provide an opinion as to that?

7 A. I believe it is. You know, as I recollect, we
8 engaged him to look into what sort of regulatory
9 compliance issues we may face if this technology performed
10 as advertised from a commercialization perspective.

11 Q. When did Dr. Rossi first propose to do the
12 guaranteed performance test in Florida?

13 MR. BELL: Objection to form.

14 BY MR. CHAIKEN:

15 Q. I will rephrase.

16 Did Dr. Rossi ever propose to do the guaranteed
17 performance test in Florida?

18 A. I'm not sure when he proposed doing testing,
19 like when he first said, I want to do any further testing
20 in Florida. I just don't recall when he first broached
21 that idea. I think that it would have been in the fall of
22 '13, as I state here. I am getting my years mixed up.
23 '13. But I don't recall precisely when he first brought
24 that up. But I am sure it's in the e-mails.

25 Q. Did Industrial Heat agree to do the test in

1 just, Hey, how is it going? Nice to meet you. Things
2 like that.

3 Q. After that meeting, did Industrial Heat perform
4 any due diligence into JM Chemicals or JM Products at that
5 time?

6 A. I don't recall. You know, I think there was
7 some analysis done on where the entity was -- was formed
8 by the secretary of state filings. And then there was an
9 OFAC compliance document that had representations in it
10 that were signed by Johnson and by Andrea.

11 Q. Now, where did you find out JM Products was
12 formed?

13 A. I believe that it is formed in the state of
14 Florida. And I don't remember when we discovered that,
15 but they represented that it was controlled by a UK
16 company.

17 Q. Did you know what JM Products business was or
18 did you inquire into that?

19 A. I believe we were told, if I recall correctly,
20 that they were manufacturing some sort of platinum sponges
21 or things like that. We were always -- it was always kind
22 of under the guise, Oh, you can't -- they want to be top
23 secret about this. You can't know what they are doing.
24 And they don't want you to know that Johnson Matthey is
25 involved, but they are involved.

1 Johnson Matthey and that Johnson Matthey was behind
2 this effort.

3 BY MR. CHAIKEN:

4 Q. Were you aware that at the time the term sheet
5 was entered into or ever before then, that JM Chemicals,
6 JM Products, didn't have a facility in the state of
7 Florida?

8 A. That JM Chemical Products didn't or JM
9 Products?

10 Q. Whatever it was called at the time, whatever it
11 was represented to you, that they did not have an actual
12 facility at the time?

13 A. Yeah, I didn't know whether or not they did or
14 did not.

15 Q. Did you do any due diligence to that?

16 A. No. Because, again, Rossi described it as
17 Johnson Matthey setting up this entity to do this small
18 batch testing.

19 Q. Right.

20 A. And they are going to use our heat to do that.
21 And he and his lawyer represented that it was a UK
22 company, totally disconnected from them, that owned and
23 controlled this operation.

24 Q. I understand. My question is merely limited to
25 the facility.

1 you did have. And the answer states: Yes, Industrial
2 Heat did have access to 89 million as of February 15, 2016
3 through fundraising from investors.

4 Did you have a binding commitment for
5 \$89 million as of that date?

6 A. Binding commitment, yes, in that Woodford had
7 options that it could exercise up to 150 million. But to
8 answer your question more specifically, maybe they were
9 not required to exercise those options. So outside of
10 that, did we have a binding commitment for 89 million?
11 No.

12 Q. Okay. So that additional investment on
13 Woodford's behalf was optional on their part, right?

14 A. It was.

15 Q. Okay. Then you state: Industrial Heat had
16 available cash balance of 16 million and change in its
17 accounts on February 15, 2016.

18 Is that true?

19 A. I suppose it was.

20 Q. And then you state: Industrial Heat has not
21 called upon investors to fund any other capital as of that
22 date because it already knew well before February 15,
23 2016, that Rossi and Leonardo could not guarantee
24 performance under the license agreement.

25 When did Industrial Heat know that Rossi and

1 tell him that Johnson Matthey has anything to do with
2 this, correct? You didn't hear that from Bass?

3 MR. BELL: Objection to form.

4 THE WITNESS: We would have to review all of
5 it. I am just going by the few things that I have
6 seen, which did not mention Johnson Matthey, but did
7 tell him what to say to us.

8 MR. ARAN: Understood. Let me have just one
9 moment because I have been told that I have got
10 almost no time left.

11 THE WITNESS: What time is -- what is the time?

12 THE VIDEOGRAPHER: One minute.

13 MR. ARAN: Just go off.

14 THE VIDEOGRAPHER: Off the record. The time is
15 5:15 p.m.

16 (Thereupon, a recess was taken.)

17 THE VIDEOGRAPHER: We are back on the record.

18 The time is 5:18 p.m.

19 BY MR. ARAN:

20 Q. Mr. Vaughn, do you have any reason to believe
21 that Mr. Bass was not JMC's director of engineering?

22 A. Reason to believe that he was not? That is who
23 he represented to be.

24 Q. Is there any reason for you to believe he
25 wasn't?

1 A. He was not? I don't have a specific reason
2 that comes to mind.

3 MR. ARAN: Okay. Thank you. Very much. No
4 further questions.

5 THE VIDEOGRAPHER: We are off the record. The
6 time is 5:18 p.m.

7 MR. ANNESSER: Mr. Vaughn, on behalf of IH, you
8 have the right to read or waive.

9 MR. BELL: We are going to read and sign.

10 (The deposition was concluded at 5:18 p.m.)

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