

# Exhibit A

Thomas Darden Deposition Transcript  
Excerpts

02/16/2017 Thomas Darden

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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  
THOMAS DARDEN  
(Taken by Plaintiff)  
3509 North Haworth Drive, Suite 403, Raleigh, North Carolina

February 16, 2017  
Reported in Stenotype By  
Leslie Christian  
Transcript produced by computer-aided transcription

1 There's one in Rhode Island that, you know, is trying  
2 to create valuable metals through transmutation. So  
3 that was the analog in my mind.

4 Q. Did you make any attempts after this time  
5 November of 2013 to do exactly that? Run tests and see  
6 if they could transmutate isotopes?

7 A. We didn't feel that the -- we did test for  
8 transmutation of isotopes after that. We did not find  
9 transmutation of isotopes in any of the machines that  
10 we ran, and we didn't find the evidence of  
11 transmutation ultimately to be credible.

12 Q. Were those tests you ran in Raleigh?

13 A. We ran them in Raleigh.

14 Q. What timeframe?

15 A. 2015. Maybe '16.

16 Q. Now, at some point in time you began  
17 negotiating with Dr. Rossi about the license agreement.  
18 Who on behalf of your group was responsible for those  
19 negotiations?

20 A. In 2012?

21 Q. '12.

22 A. Negotiating with the license agreement?

23 Q. Yes.

24 A. I would say I was. John Mazzarino was  
25 involved. J.T. Vaughn was involved. You know, the

1           **A.    Yes, I did initial this page.**

2           Q.    Who drafted this protocol?

3           **A.    I don't know.**

4           Q.    By initialling this protocol did that  
5 signify your agreement to it?

6           **A.    I assume that we accepted this protocol  
7 from that test, yes.**

8           Q.    Okay.  Is it your contention sitting here  
9 today that this protocol was not followed or not  
10 properly followed?

11                           MR. BELL:  Objection.

12                           **THE WITNESS:  I think it was not  
13 followed, and I think it was not sufficiently monitored  
14 to be able to know whether it was followed or  
15 whether -- whether there were other flaws in the test.**

16                           Like, for example, we were not able to  
17 go inside the unit to see what was going on.  Like, we  
18 were prevented from entering into the -- from getting  
19 close to the device as it was operating.  It would have  
20 been highly relevant.

21 (BY MR. CHAIKEN)

22           Q.    Prior to the initiation of this lawsuit on  
23 April of 2016 did you ever tell Leonardo or Dr. Rossi  
24 that you believed that this protocol was not properly  
25 followed?

1 to us.

2 Q. Were those -- did you ever put those  
3 requests in writing?

4 A. I suspect that we did, but I don't  
5 remember.

6 Q. Is there a reason why you wouldn't have put  
7 them in writing?

8 A. Well, just because, you know, we're talking  
9 by phone or -- excuse me -- in the other office. You  
10 know, I saw him most days for a long period of time.

11 Q. Now --

12 A. I tend not to send e-mails to people who I  
13 communicate with verbally so --

14 Q. Did you have a meeting in Raleigh in July  
15 of 2014 with Dr. Rossi and Henry Johnson?

16 A. I know that we had a meeting in Raleigh  
17 with -- when he brought Henry Johnson to a restaurant,  
18 but I don't remember the date.

19 Q. Who was present at that meeting?

20 A. J.T. was there. I was there. Andrea,  
21 Johnson. I don't know who else was there from our  
22 side. I can't remember.

23 Q. And what was the purpose of that meeting?

24 A. He was introducing us to the president of  
25 the Johnson Matthey subsidiary.

1 products from Johnson Matthey. He said Johnson Matthey  
2 was going to be operating the plant.

3 Q. Okay. And who else was present when he  
4 made those statements?

5 A. I don't remember which conversation and who  
6 was present at which conversation but --

7 Q. Let's go to the --

8 A. He said Johnson Matthey would -- after the  
9 plant had operated for a brief period of time and they  
10 were sure that it was working and everything was  
11 effective, that Johnson Matthey wanted to announce that  
12 they were the customer.

13 Q. And let's go back to the meeting with Henry  
14 Johnson. You said it was held in a restaurant in  
15 Raleigh?

16 A. Yes.

17 Q. And there was J.T. Vaughn, yourself, Dr.  
18 Rossi and Henry Johnson, right?

19 A. Yes. I'm not sure if anybody else was  
20 there.

21 Q. And what was said at that meeting?

22 A. It was a formalistic kind of a meeting to  
23 introduce the customer and to talk about, you know, the  
24 circumstances of bringing the plant down to Miami.  
25 And, you know, we wanted to build a -- have some

1 Q. And did they tell you they were forming a  
2 new company for the purposes of doing it?

3 A. Yes.

4 Q. And did they tell you who the officers and  
5 directors of that company were going to be?

6 A. I don't remember that. Well, Henry  
7 Johnson.

8 Q. And they told you that they were going to  
9 be opening up a new facility in --

10 A. Yes.

11 Q. Was there any reason why you were prevented  
12 from calling Johnson and Matthey directly to confirm  
13 any of this?

14 A. Rossi made us promise we wouldn't do that.  
15 He said, "Please don't do that. Then they won't use  
16 it. They'll be scared. They'll come out as soon as  
17 it's run for 90 days. Everything is going great and  
18 they'll come out. You know, they'll be proud to be  
19 associated with it at that point. Right now they don't  
20 want that to happen."

21 In fact, we knew people in England who knew  
22 people at Johnson Matthey, and it would have been very  
23 easy to simply -- you know, I was thinking, well, let  
24 me call them up. And he said, "No, no. You can't do  
25 that. It'll -- you know, they'll get spooked or they

1 that has the name Johnson Matthey in it that -- that  
2 was produced in discovery.

3 (BY MR. CHAIKEN)

4 Q. Did you ever receive anything in writing  
5 from Dr. Rossi where he said specifically that he was  
6 purchasing products from Johnson Matthey?

7 A. I don't remember that.

8 Q. In the course of this case defendants have  
9 produced over 65,000 pages of documents. I haven't  
10 seen one which says specifically anything to the effect  
11 of J.M. Chemical Products, Inc., is a subsidiary or  
12 affiliate of Johnson Matthey. Is it your contention  
13 that such a written document exists?

14 A. I know -- I don't know whether such a  
15 written document exists.

16 Q. Okay. If it did exist it would have been  
17 produced, correct?

18 A. I would assume that it would have.

19 Q. Okay. Now, you mentioned that pursuant to  
20 this agreement, Industrial Heat would have been  
21 entitled to \$365,000 per year, correct?

22 A. Yes.

23 Q. Did Industrial Heat ever seek to collect  
24 that money?

25 A. After the plant got it -- no, we did not.



1 After the plant got installed in Florida and we saw  
2 that Rossi had removed all of the instrumentation and  
3 the monitoring access that we had, and as we realized  
4 that he was restricting access to it so it was not  
5 going to be a fully transparent bona fide test, at that  
6 point we became very suspicious.

7           We realized that it was -- something bad  
8 was going on down there. And we don't want to get  
9 thrown in jail for participating in some kind of fraud  
10 so we said we don't want to receive payment from them.

11           Q.    What measurement equipment did you --

12           A.    I don't know the details of it, but we had  
13 put on access ports on places where instruments could  
14 be put so that we could put our own instruments on it  
15 and cut it all off.

16           Q.    Who -- who knows more about that than you?

17           A.    T. Barker knows about it.

18           Q.    Anybody else?

19           A.    Barry probably knows something about it.

20           Q.    Did you ever inform Dr. Rossi and said,  
21 "Hey, why are you removing all this measuring  
22 equipment"?

23           A.    We did talk about that.

24           Q.    You talked about it. Did you ever send him  
25 an e-mail and say, "Hey, why are you moving all this

1 would be the number of visits by folks from Industrial  
2 Heat, IPH, Cherokee and employees such as yourself and  
3 Mr. Vaughn at least the times that you visited the  
4 plant in Doral, Florida; would that be correct?

5 **A. I see this.**

6 Q. Okay. And would I be correct in saying  
7 that if you direct your attention to number two it  
8 says, "During the week of February 9th, 2015." Do you  
9 see that?

10 **A. Yes, I see that number two.**

11 Q. There was a visit by yourself, John T.  
12 Vaughn and Paul Lamacraft --

13 **A. I see that.**

14 Q. -- on February 9th. And then it goes on to  
15 say that you visited for approximately two hours with  
16 Andrea Rossi, Fulvio Fabiani, James Bass and Barry  
17 West, correct?

18 **A. Yes.**

19 Q. Would that be the first time that you met  
20 Mr. Bass?

21 **A. I don't remember the different trips,**  
22 **unfortunately. So sorry about that. I feel like I**  
23 **might have met him -- I thought maybe the second time I**  
24 **met him was with -- was with Lamacraft. Is there**  
25 **reference to another meeting happening with him?**

1 Q. Not before that one.

2 A. I believe that I met him before that with  
3 some Chinese visitors.

4 Q. Okay. And if we -- if we look at the  
5 listing, I believe, only by reading the names, that  
6 perhaps the first time that any one of the Chinese  
7 defendants visited would have been March 27th, 2015?

8 A. I see that. Wait a second. March 27th. I  
9 see that.

10 Q. Would that refresh your recollection?

11 A. Well, it would mean that I could not have  
12 met him with the Chinese before the visit when we met  
13 him with Paul Lamacraft. So, yes, that would refresh  
14 my recollection. Are we saying the --

15 Q. February 9th, 2015, would I be correct in  
16 stating that the plant had not commenced operations  
17 yet? The testing phase yet?

18 A. I don't remember the dates but let's say  
19 that's the case.

20 Q. So if that's the case, Mr. Bass at that  
21 point in time could not have been making any  
22 representations to you concerning the performance or  
23 the power, if you will, being produced by the plant,  
24 correct?

25 A. I understand what you're saying. If the

1 **plant was not running then he could not have been**  
2 **representing that.**

3 Q. So now if you could take a second, I read  
4 through the rest of the visit and in none of those  
5 visits was it indicated that you, Mr. Vaughn or anyone  
6 else met with Mr. Bass.

7 **A. I see that.**

8 Q. So that's -- based on your recollection  
9 you're telling me that this is probably inaccurate then  
10 that you met with him on more than that occasion?

11 **A. I remember him talking about the**  
12 **performance of the plant.**

13 Q. Okay. And if I could ask you when you met  
14 and he talked about the performance of the plant, who  
15 else was with him?

16 **A. Well, I'm not remembering the different**  
17 **trips. So I thought I met with him with some of the**  
18 **Chinese visitors. So I'm -- but I'm not remembering**  
19 **the details of who was in the room at the time.**

20 Q. And could it be fair for me to state that  
21 by the time those Chinese visitors went to the plant in  
22 Doral the -- by then the plant was operational?

23 **A. I believe that that's the case. I believe**  
24 **that's the case.**

25 Q. The plant was producing?

1           **A.    Yeah, I believe that's the case. But let**  
2 **me -- let me note something that in August there was**  
3 **another visit when Paul Lamacraft came and so perhaps**  
4 **we met with him at that point. I don't know. I don't**  
5 **know whether it was the second trip with Paul Lamacraft**  
6 **that we met with him again or whether it was one of the**  
7 **Chinese trips.**

8           **Q.    But you do recall meeting with him when the**  
9 **Chinese folks were at Doral?**

10           **A.    I don't want to make such a definitive**  
11 **statement as that. So I thought that I remembered**  
12 **meeting with him with the Chinese visitors, but perhaps**  
13 **I met him twice with Lamacraft.**

14           **Q.    Okay. And if that were the case then we**  
15 **would follow the dates here that would have been then**  
16 **in August of 2015?**

17           **A.    That's when we apparently came with Paul**  
18 **Lamacraft, yes.**

19           **Q.    And by then the test that was being**  
20 **performed on the one megawatt plant was well underway,**  
21 **correct?**

22           **A.    That would be correct.**

23           **Q.    Now, did Mr. Bass have an obligation to you**  
24 **-- and by that I mean you or IH or IPH -- to present**  
25 **you with reports of data concerning measurements of the**

1 COP of the one megawatt plant?

2 **A. I seem to recall that they did.**

3 Q. When you say "they," was it Mr. Bass that  
4 was sending you a report?

5 **A. Well, Bass or J.M. I have it in my mind.**  
6 **I'm trying to remember something that -- where they had**  
7 **committed to do that. I can't remember, but I seem to**  
8 **recall that.**

9 Q. Does the term sheet permit J.M. Products or  
10 any of its employees to provide IH with any data at  
11 all?

12 **A. Can we get it out and let me take a look at**  
13 **it because this is -- I'm making these comments**  
14 **from memory.**

15 Q. Could you please.

16 **A. Sure. We're looking.**

17 MR. BELL: I'm putting in front of  
18 Mr. Darden what was previously marked as Exhibit 28.

19 (Witness peruses document.)

20 **THE WITNESS: Well, I see here on the**  
21 **second page 19, "J.M.C. will keep records of the**  
22 **operation of the one megawatt plant as reasonably**  
23 **requested by Leonardo or IH and will provide copies of**  
24 **such records to Leonardo and IH upon request."**

25 (BY MR. ARAN)

1 Q. Okay. Do you have any recollection of ever  
2 having made such a request of J.M. Products?

3 A. I don't remember doing that, but we would  
4 like to see them.

5 Q. Well, was a request made?

6 A. I don't remember. I'm sure that we said to  
7 them, "How is it going. How much are you getting. How  
8 is the output."

9 Q. Okay. But you did not make -- am I correct  
10 in stating you did not make any formal request of J.M.  
11 to keep track of any particular type of measurement,  
12 correct?

13 MR. BELL: Objection to form.

14 THE WITNESS: Well, except via the  
15 term sheet where we assumed that they were and the fact  
16 that they were sending us bills. Other than that, I'm  
17 not aware of one.

18 (BY MR. ARAN)

19 Q. So you're aware of them sending you an  
20 invoice. Let me backtrack. What you're aware is that  
21 they sent you a letter saying, "Please invoice me  
22 because the one megawatt plant this month produced X  
23 amount of COP"?

24 A. I don't remember exactly what they  
25 communicated but something like that.

1           **A.    Yes.**

2           Q.    What, if anything, did Mr. Bass do to  
3 manipulate the plant being brought to Florida from  
4 North Carolina?

5           **A.    Well, if he was part of setting up a  
6 fraudulent company, that was part of the scheme or the  
7 deception to try to trick us into sending the machine  
8 down there thinking that it was a credible entity, then  
9 that would have been his role.**

10          Q.    Well, what proof do you have that Mr. Bass  
11 was involved in setting up this company or doing any of  
12 the acts that you've just testified to?

13          **A.    I believe that he helped in building the  
14 heat radiator or heat transfer system on the other side  
15 of the wall. And I believe that he represented to us  
16 that there was a manufacturing plant there and that it  
17 was operating nicely.**

18          Q.    But did that happen prior to you making the  
19 decision to bring the plant to North Carolina?

20          **A.    I don't know the chronology of when he came  
21 to be involved.**

22          Q.    But we do know that he -- you and him had  
23 not met until after the decision had been made to bring  
24 the plant to Florida?

25          **A.    That is correct.**



1 Q. So how then could he have been involved in  
2 manipulating you to do so if he was not in the picture  
3 at all?

4 **A. I don't know when he came to be part -- in**  
5 **the picture.**

6 Q. So if he came to be part of the picture  
7 after the decision had been made to transfer the plant  
8 and the transfer had already been entered into, then  
9 would I be correct in stating that he had no part in  
10 that first part of the scheme?

11 **A. If he came to work there or got involved**  
12 **after we had already made the decision to send the**  
13 **plant to Florida what you said sounds reasonable.**

14 Q. Okay. So that's a "yes"? He would have  
15 had no part in the scheme? Now, let me read to you  
16 what the second part of the scheme was.

17 "The second part of the scheme was to  
18 manipulate the operation of the plant and the  
19 measurement of the plant's operations to create the  
20 false and deceptive appearance and impression that the  
21 plant was performing at astronomical levels, with COP  
22 measurements not only well in excess of anything  
23 achieved by any third party testing of the E-CAT  
24 technology, but in fact many multiples higher than  
25 anything achieved by any third-party testing." Let me

1 steam and they were buying one megawatt of steam.

2 Q. Again, a casual conversation?

3 MR. BELL: Objection to form.

4 THE WITNESS: He was sitting at the  
5 head of the table as a representative of J.M. Products  
6 there to report to us on how things were going.

7 (BY MR. ARAN)

8 Q. Okay. But did he measure and report to you  
9 the measurement of COP of the one megawatt plant?

10 A. No.

11 MR. BELL: Objection to form.

12 THE WITNESS: He did not report the  
13 COP. He reported to us that he was getting the steam.

14 (BY MR. ARAN)

15 Q. Correct. So the second part of the scheme  
16 -- okay -- is reporting false and deceptive impressions  
17 of the plant by the plant performing at astronomical  
18 levels. Mr. Bass never represented to you that the one  
19 megawatt plant was performing at astronomical levels,  
20 did he?

21 A. Yes. He did represent that it was  
22 performing at astronomical levels because one megawatt  
23 of steam coming from that small plant would have been  
24 astronomical. In fact, it would have heated up the  
25 whole building to such a point that people couldn't

1 Q. Okay. Did you do any background search  
2 before -- strike that. Did there ever come a time  
3 where Industrial Heat entered into a contract with  
4 Mr. Fabiani for him to work for the company?

5 A. I know that we paid him so I assume that we  
6 did.

7 Q. Are you aware of whether or not there is a  
8 contract or was a contract?

9 A. I don't remember that specifically, but I  
10 believe that there was a contract.

11 Q. Do you recall at all who executed the  
12 contract on behalf of the other parties?

13 A. No, I'm sorry. I don't.

14 Q. Now, from your understanding what were  
15 Mr. Fabiani's duties with regard to his work  
16 for Industrial Heat?

17 A. Well, to support -- to support Andrea in  
18 producing equipment or control systems for equipment.  
19 Just generally to help out in trying to build a device  
20 that worked.

21 Q. And that was -- that was the intent at the  
22 beginning to bring Mr. Fabiani on to work for  
23 Industrial Heat?

24 A. Well, no. Andrea wanted Fabiani to come  
25 on. You know, he needed his help or he said he needed

1 his help and so, you know, we agreed to pay him to help  
2 Andrea.

3 Q. So would I be correct in saying the purpose  
4 of entering into a contract, at least to your  
5 understanding, was for Mr. Fabiani to help Mr. Rossi in  
6 the development of his technology?

7 A. Yes. Help -- help Rossi and help us  
8 because we were the beneficiaries of that technology,  
9 yes.

10 Q. Did you understand at that time that he  
11 also had duties to report or -- strike that. Did he  
12 also at that time have duties to collect data and take  
13 measurements of the operation of any of the plants that  
14 you were working on at the time?

15 A. Yes. We asked him to help us keep track of  
16 data that was being produced by the different systems.

17 Q. And was he doing that?

18 A. I believe that he was.

19 Q. And where was he working?

20 A. He was working in Raleigh.

21 Q. Do you know how long he worked in Raleigh?

22 A. Sitting here I don't remember the dates,  
23 but a pretty long time. You know, I would say more  
24 than a year.

25 Q. And could you tell me generally from your

1           **A.    This is a memory.  I'm not sure.**

2           Q.    Do you know whether he ever went into that  
3 container on the other side which is the J.M. side?

4           **A.    Well, that's what I'm referring to as the**  
5 **other side.**

6           Q.    Oh, actually into the container?

7           **A.    I don't know.  You know, I don't know what**  
8 **part of what he might have seen on the other side.  But**  
9 **if it had been merely a container then it obviously was**  
10 **not a manufacturing facility.**

11          Q.    But you don't know for sure that he was  
12 ever over there?

13          **A.    I don't know for sure that he was there.  I**  
14 **believe that he was.  And I don't know when he was over**  
15 **there what he was seeing.**

16                   THE VIDEOGRAPHER:  Three minutes.

17                   MR. CHAIKEN:  Did you hear that, Rudy?  
18 (BY MR. NUNEZ)

19          Q.    Was Fulvio Fabiani present when you met  
20 with Jim Bass?  You testified that Jim Bass was at the  
21 head of the table making serious representations.  Was  
22 Fabiani there at that meeting?

23          **A.    I do not recall.  Sorry.**

24          Q.    And do you recall Mr. Fabiani in any way  
25 participating in any way to restrict your or your

1 company's assets to the J.M. side of the facility?

2 **A. I don't remember him needing to do that. I**  
3 **mean, we weren't trying to break down the door. The**  
4 **door was closed.**

5 Q. Well, that was just an allegation in your  
6 complaint that he restricted Industrial Heat's access.  
7 Do you have any facts to support that allegation?

8 **A. That he restricted our access to the other**  
9 **side?**

10 Q. Yes, sir.

11 **A. I did not see him restrict our access or**  
12 **try to keep us from going over there. Maybe someone**  
13 **else.**

14 Q. Now, in the newest amended complaint  
15 there's been some new allegations that he provided  
16 energy consumption numbers that didn't coincide with  
17 numbers from the electric company. Did you have any  
18 participation in analyzing that at all?

19 **A. I did not do that analysis, no.**

20 Q. Now, you're also -- your claim is that he  
21 did not provide and disclose information and didn't  
22 give his final report; am I correct?

23 **A. I believe that that's correct.**

24 Q. Would you agree with me that by the time  
25 that he -- that that issue came up, you and Industrial

1 CERTIFICATE OF REPORTER  
2 STATE OF NORTH CAROLINA )  
3 COUNTY OF WAKE )

4  
5 I, Leslie Christian, the officer before whom  
6 the foregoing videotaped deposition was taken, do  
7 hereby certify that the witness whose testimony appears  
8 in the foregoing videotaped deposition was duly sworn  
9 by me; that the testimony of said witness was taken by  
10 me to the best of my ability and thereafter reduced to  
11 typewriting under my direction; that I am neither  
12 counsel for, related to, nor employed by any of the  
13 parties to the action in which this videotaped  
14 deposition was taken, and further that I am not a  
15 relative or employee of any attorney or counsel  
16 employed by the parties thereto, nor financially or  
17 otherwise interested in the outcome of the action.

18 This the 28th day of February, 2017.

19 *Leslie Christian*

20 \_\_\_\_\_  
21 LESLIE CHRISTIAN  
22 Notary Public in and for  
23 County of Wake  
24 State of North Carolina  
25 Notary Public No. 201221300088