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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. )

HIGHLY CONFIDENTIAL

Videotaped Deposition of JOSEPH ALAN MURRAY  
(Taken by Plaintiff)  
Raleigh, North Carolina  
Friday, February 17, 2017

Reported in Stenotype by  
Lauren M. McIntee, RPR  
Transcript produced by computer-aided transcription

1 Q. Yeah. How much?

2 A. **An hourly rate? 150 or \$175 an hour.**

3 Q. What are you being paid, sir, for your  
4 services that you're providing to Industrial Heat now?

5 A. **\$175 an hour.**

6 Q. Is your company, 0 Base Design, part of any  
7 professional organizations?

8 A. **No.**

9 Q. Are you part of any professional  
10 organizations?

11 A. **Not presently.**

12 Q. Have you been within the last three years?

13 A. **Yes.**

14 Q. Which organization?

15 A. **I have been a member of ASME, a member of  
16 SPIE, the Society of Photographic and, and Imaging  
17 Engineering, and the American Physical Society.**

18 Q. What is ASME?

19 A. **American Society For Mechanical Engineers.**

20 Q. Why are you no longer a member of that?

21 A. **Just because I, I changed addresses and never  
22 renewed at my new address.**

23 Q. Okay. What about the society for -- I'm  
24 sorry, SPIE?

25 A. **Yeah. The, I, I am no longer doing imaging**

1 understand what the anticipated performance was in  
2 different scenarios. So we looked at, we used OpenFOAM,  
3 that tool that I described, to do 3D simulations of  
4 various reactors. We used a series of tools called,  
5 it's Python, NumPy, and other associated infrastructure  
6 tools to do analysis and modeling of it. So we modeled  
7 electromagnetic fields. We modeled the current and  
8 voltage supply timing. So general modeling and  
9 simulation associated with an engineering system.

10 Q. Okay. What are the limitations on that, if  
11 any? I mean --

12 A. On modeling and simulation?

13 Q. Yeah.

14 A. Oh, there are significant limitations. It  
15 really depends on the fidelity and how you describe it,  
16 the boundary conditions, but it really depends. We use  
17 it as guidance for understanding kind of the range of  
18 potential outcomes. So we use it as a tool to guide the  
19 development of a test plan and procedure.

20 Q. Okay. So is there any, within that system  
21 what, what is the error rate for the modeling as opposed  
22 to the actual testing?

23 A. I don't know, I don't understand what you  
24 mean.

25 Q. How closely can you predict a result with

1 you not?

2 A. I never prepared any report to undermine  
3 anything. I prepared a report on a review of the  
4 documents that I was provided.

5 (Whereupon, Exhibit 7 was marked for  
6 identification.)

7 Q. I show you, sir, a document marked as Exhibit  
8 Number 7. Have you seen this document before, sir?

9 A. Not in this form. It looks, it looks  
10 familiar, but it doesn't seem like it's complete.

11 Q. Did you prepare this document, sir?

12 A. It appears to be part of a document that I  
13 prepared.

14 Q. Well, it says that it's an appendix. Is  
15 there a larger document?

16 A. Well, this was after the test, so I would  
17 imagine that there is more to this document, yes.

18 Q. Do you know why it hasn't been produced?

19 A. I have no idea.

20 Q. Who asked you to prepare this document?

21 A. After the visit on the 20 -- I'm sorry, on  
22 the 16th and 17th, Mr. Chris Pace of Jones Day asked  
23 me --

24 Q. 16th and 17th of?

25 A. I'm sorry. Of February of 2016.

1 Q. Thank you.

2 A. I have to be careful.

3 MR. LOMAX: I'm going to instruct you not to  
4 divulge conversations you had with counsel.

5 THE WITNESS: Okay.

6 A. I was instructed to write down all of my  
7 notes and information about what I had observed.

8 Q. Who instructed you?

9 A. Counsel.

10 Q. Counsel for Industrial Heat?

11 A. Yes.

12 Q. I'm sorry. You were instructed to write down  
13 your notes and everything that you had observed?

14 A. Yes.

15 Q. Is there a more complete report other than  
16 this?

17 A. I believe that, you know, based on what's in  
18 here, there's lots of redactions and at least the front  
19 matter is removed. I'm still going through it, but  
20 yeah, there's a lot of redaction.

21 Q. Do you know why it would be redacted?

22 MR. LOMAX: Objection to the form of the  
23 question.

24 A. Because I prepared it for Industrial Heat's  
25 attorneys.

1 Q. Is it your understanding it would be used for  
2 litigation?

3 A. **Probably. If the litigation were to, to**  
4 **happen.**

5 Q. Does any of this form the basis of your  
6 opinions in this case?

7 A. **Yes. These were my observations from what I**  
8 **had seen on those days.**

9 Q. And do you reference these documents, or did  
10 you refer to them in preparing your expert disclosure?

11 A. **I don't believe I did at all.**

12 Q. So you did this great body of work and never  
13 referenced it?

14 A. **No, I don't think I did at all. In fact, I**  
15 **think this is the first time I've looked at it in at**  
16 **least 10 or 11 months.**

17 Q. Okay. Looking at -- I'm sorry. For the  
18 record, this is a document marked or bates stamped  
19 IH00120031. If you look at Page 4 of 39 of this  
20 document.

21 A. **Oh, same one 4?**

22 Q. Yes, sir.

23 A. **Uh-huh.**

24 Q. On the first paragraph, second sentence in  
25 you say, "As far as we can tell, none of the sensor data

1           **A.     I saw the formula in the document, but we**  
2 **never saw the worksheet.**

3           Q.     Yeah.

4           **A.     So we just reproduced it and came up with**  
5 **values that were very similar to his.**

6           Q.     Okay. So your, your values were similar --

7           **A.     Based on his data --**

8           Q.     -- to --

9           **A.     -- yes.**

10          Q.     Okay. So you're not saying he did any  
11 improper calculations or anything to arrive at his --

12          **A.     As far as I'm aware, the calculations were**  
13 **consistent.**

14          Q.     Okay. Now, so you ultimately visited the  
15 plant in Doral, correct?

16          **A.     I visited the plant twice in Doral. Once on**  
17 **the, I believe it was the 16th and 17th, and then**  
18 **subsequently we came back and made some additional**  
19 **inspections. I don't remember if it was March or at**  
20 **some point after that.**

21          Q.     Now, you were permitted to speak with  
22 Dr. Penon at the plant, correct?

23          **A.     Yes.**

24          Q.     Correct?

25          **A.     At the end of the test I had a, what I would**

1 know, the publications are just a criteria that you need  
2 to publish to be able to continue on in these spaces.

3 Q. Okay. Have you ever appeared as an expert in  
4 any cases where you did not wind up testifying?

5 A. No.

6 Q. Have you ever offered expert opinions to, in  
7 respect to any litigation before?

8 A. No. I don't know if the deposition that I  
9 did back in the late '90s, I don't know if that would be  
10 considered expert or not. I just simply don't know.  
11 They were asking me about my opinions on these various  
12 products.

13 Q. Okay.

14 A. So I don't, I don't know if that's expert or  
15 not.

16 Q. Have you been retained as an expert in this  
17 case?

18 A. Well, that's hard to say. I am, I was asked  
19 to, to do this deposition and to support, and in my  
20 severance package it indicates that I have to support  
21 them at, at their request. So I would guess that that's  
22 probably yes, but I don't really understand the  
23 technical delineation of that. I am doing it. I'm  
24 billing them for my time.

25 Q. Okay. Who contacted you to do this work?



1           A.       So what you do is you create a distribution  
2 of the two data sources so you can look at how those  
3 measurements correlate, so you can look at the  
4 distribution shape to find out if there's anomalous  
5 structure in the distribution.

6           Q.       Anomalous structure in the distribution?

7           A.       Yes.

8           Q.       We're, we're comparing presumptively two data  
9 points on the same date to each other?

10          A.       No. In a joint probability density function  
11 what you're doing is you're actually creating a  
12 distribution of all the days at the various power levels  
13 and corresponding the power levels measured by, in this  
14 case, Penon to the power levels measured by Florida  
15 Power and Light. So we could look to see how these  
16 distributions vary over time to see if there's  
17 structural changes in it.

18          Q.       I guess I'm not understanding. Structural  
19 changes in the distributions of what?

20          A.       Of the, the behavior between the two power  
21 sources. So you do a, you're creating a, a distribution  
22 of these power measurements.

23          Q.       What, what do you mean by distribution of  
24 these power measurements?

25          A.       So a, if you take, if you create a histogram,

1 average. What happened was the amount of output energy  
2 was effectively not, I shouldn't say constant, it varied  
3 some, but the input energy to the system actually went  
4 down. So we actually see a reduction in the input  
5 energy. So this disproportion means the output energy  
6 was constant and the input went down and, therefore, the  
7 COP went up. So if I put in less power, how could that  
8 happen? It's just completely illogical.

9 Q. Okay. How long, this reaction that's used on  
10 the device -- first of all, do you have any background,  
11 education, or work experience with LENR technologies?

12 A. Not before I went to Industrial Heat.

13 Q. Okay. And any experience with nuclear  
14 reactors prior to that?

15 A. No.

16 Q. Okay. So are you familiar with nuclear  
17 reactors?

18 A. Yes, I am.

19 Q. Do you feel competent to testify as to them?

20 A. No, no.

21 Q. Okay.

22 A. I'm not into the full operation of a nuclear  
23 reactor, no.

24 Q. Now, when the reaction is started in the  
25 E-Cat and you remove the power source, the input power,

1 temperature area, and condensing the steam back into  
2 water, and recirculating it back to the other side.

3 Q. And what amount of pressure or vacuum would  
4 have been needed to move that amount of steam?

5 A. My recollection, based on the information I  
6 had, was about 10 PSI pressure drop, but it is  
7 impossible to say without knowing what was on the other  
8 side of the wall. I mean if there was a bunch of  
9 additional plumbing or turns or corners or ups or downs,  
10 then that number goes up because there are more losses  
11 in the system.

12 Q. 10 PSI?

13 A. Approximately. And I know I'm mixing units  
14 on you there, so I'm --

15 Q. You are.

16 A. -- sorry about that.

17 Q. So your thermal simulations, do they set  
18 forth, the simulations that you've done, do they set  
19 forth all the presumptions and data that you put into  
20 them?

21 A. Yes. It's all in the simulation files, all  
22 of the assumptions and all of the data.

23 Q. Okay. Do you know whether those have been  
24 provided?

25 A. I believe that those were conducted for our

1 **attorneys, so I, I don't know what was provided.**

2 Q. You don't, you don't plan on presenting those  
3 to a jury, do you?

4 MR. LOMAX: Objection --

5 **A. I do, yes.**

6 MR. LOMAX: -- to the form of the question.

7 Q. You do?

8 **A. Yes.**

9 Q. So you, you plan on using those simulations  
10 in front of a jury, yet somehow they haven't been  
11 provided to us prior to your deposition?

12 **A. I don't know what's been provided.**

13 MR. LOMAX: Objection to the form of the  
14 question.

15 **A. So I don't know what has been provided. I**  
16 **provided those to counsel, and I provided them as a**  
17 **basis for understanding what was going on in the**  
18 **building.**

19 Q. As well as a report?

20 MR. LOMAX: Objection to the form of the  
21 question.

22 **A. Yes. I think I, I believe I did write a, a**  
23 **report.**

24 Q. Okay.

25 THE VIDEOGRAPHER: 20 minutes.

1           **A.     Okay.    So why, maybe you could go through and**  
2 **interpret all of this language for me.**

3           Q.     That I cannot do for you because I don't  
4 speak Italian.

5           **A.     Okay.**

6           Q.     Sir --

7           **A.     Is that maximum flow, minimum flow, average**  
8 **flow?**

9           Q.     I believe that's the tested rate.

10          **A.     Okay.**

11          Q.     But let's make that assumption for now.  
12 Okay?

13          **A.     Okay.**

14          Q.     We'll, we'll call it an assumption. We can  
15 have you check that. But at 1.5, errore, which I'm  
16 pretty sure we both can guess is error percentage --

17          **A.     Uh-huh.**

18          Q.     -- at 1.5 appears to be .3 and .4 --

19                 MR. LOMAX: Objection.

20          Q.     -- percent.

21          **A.     This, again I'll go back to the original**  
22 **discussion. Where is the test plan? Where are the test**  
23 **procedures? Where is the data to support this? These**  
24 **are numbers in Italian on a sheet of paper.**

25          Q.     That is a great question. Where is your test

1 plan, sir, for the test you ran?

2 **A. It's in our, in our archival, and it was**  
3 **provided to our attorneys under attorney-client**  
4 **privilege.**

5 Q. It has not been provided to me --

6 **A. I don't, I don't know.**

7 Q. -- so I can't evaluate your test either, but.

8 MR. LOMAX: Objection to this as argumentive.

9 You're just making conversation instead of  
10 questions.

11 Q. Can I properly evaluate your test, sir,  
12 without knowing the test plan?

13 **A. I don't believe you can.**

14 Q. Okay. Can I properly assess your test, your  
15 testing without being provided the test data?

16 **A. I don't believe you could.**

17 THE VIDEOGRAPHER: One and a half minutes.

18 Q. Can I adequately evaluate your test data  
19 without seeing any information --

20 MR. LOMAX: Objection.

21 Q. -- regarding how it was performed, how it was  
22 run, the test data, the assumptions made, the slope, the  
23 flow rate of the water?

24 **A. Only to the equivalent extent as I can read**  
25 **Italian and interpret this.**

1 of the test? No, I was --

2 Q. For Industrial Heat.

3 A. -- an employee of Industrial Heat.

4 Q. Okay.

5 A. Prior to the end of the test I was an  
6 employee of Industrial Heat.

7 Q. And your work there was as an employee of  
8 Industrial Heat, was it not?

9 A. Uh-huh.

10 Q. Your measurements?

11 A. Uh-huh.

12 Q. Okay. That, that was in the ordinary course  
13 of your job functions?

14 A. No. I was provide -- I was doing this  
15 specifically because I was requested to do it when we  
16 went down to the plant closing after Industrial Heat had  
17 engaged.

18 MR. LOMAX: And once, once again --

19 MR. ANNESSER: No, no. Hold on.

20 MR. LOMAX: -- I object.

21 MR. ANNESSER: I'm entitled to timing here.

22 Q. Were you asked to come down to the plant on  
23 the 16th and 17th by counsel or as part of your job?

24 A. I was asked to come down --

25 MR. LOMAX: Objection.

1           **A.       I was asked to come down by Industrial Heat**  
2 **under the guidance of counsel.**

3           Q.       Okay. So at that point in time, without  
4 seeing any of the things that you observed on that date,  
5 was it your understanding that they were planning on  
6 litigating with Dr. Rossi?

7           MR. LOMAX: Objection. Do not respond to  
8 this based on your --

9           MR. ANNESSER: I asked his understanding.

10          MR. LOMAX: No --

11          MR. ANNESSER: I'm entitled to understand  
12 that. Yeah, absolutely.

13          MR. LOMAX: That would be based on his  
14 communication with counsel.

15          MR. ANNESSER: Was it --

16          MR. LOMAX: Objection.

17          MR. ANNESSER: His understanding is his  
18 understanding.

19          MR. LOMAX: Based on --

20          MR. ANNESSER: I'm not asking about  
21 communications. His understanding is not  
22 privileged. Communications are.

23          MR. LOMAX: I'm going to instruct you, if you  
24 can provide anything outside of what you know from  
25 your communications with counsel, then you should do



1 so. Otherwise --

2 MR. ANNESSER: Just because he communicates  
3 with counsel doesn't mean he doesn't have to testify  
4 to anything that he communicated about. I'm asking  
5 his understanding. I'm not asking what was  
6 discussed.

7 Q. And I don't want you to tell me what was  
8 discussed. I want you to tell me was it your  
9 understanding at that point in time that they were  
10 preparing for litigation with Dr. Rossi?

11 MR. LOMAX: Objection. If you can answer  
12 without divulging what you knew from --

13 MR. ANNESSER: Stop, Mr., Mr. Lomax. You are  
14 guiding the witness. Okay. I'm not asking for any  
15 communications.

16 BY MR. ANNESSER:

17 Q. You can answer with a yes or no. Was it your  
18 understanding, sir, that at that time, as of the end of  
19 the test, February 16th and 17th, 2016, that Industrial  
20 Heat was preparing for litigation with counsel -- or I'm  
21 sorry, litigation with Dr. Rossi?

22 **A. All of my communications were with counsel at**  
23 **that time.**

24 Q. All right. That was not the question, sir.  
25 Was it your understanding that, that Industrial Heat was

1 preparing litigation with Dr. Rossi?

2 **A. My understanding was that the Industrial Heat**  
3 **group anticipated that Dr. Rossi would sue them.**

4 Q. Because they did not plan to pay?

5 MR. LOMAX: Objection. I object to this  
6 entire line of questioning.

7 **A. I don't, I don't have any idea about why.**

8 Q. Why would Dr. Rossi sue them?

9 **A. I have no idea. He's a litigious person? I**  
10 **don't know.**

11 Q. Is he? How many lawsuits has he filed?

12 MR. LOMAX: Objection. I'm...

13 **A. I have no idea.**

14 Q. Well, you just called him a litigious person?

15 **A. Uh-huh.**

16 Q. Based on what?

17 **A. Based on comments made to me by Tom Darden.**

18 Q. What comments?

19 **A. That he's a litigious person and we need to**  
20 **drive this to find out if anything is real here.**

21 Q. And when were those comments made?

22 **A. June of 2015.**

23 Q. So your participation in the, in coming down  
24 on the 16th and 17th of February 2016, was that in  
25 anticipation of litigation or was that in your role as