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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
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

1 University of Uppsala, which when -- we were rather
2 impressed by those guys, unfortunately, so in retrospect.

3 Q. Let's take a step back for a moment.

4 So an ERV was selected, correct?

5 A. Correct.

6 Q. And you say that you believe that the test
7 performed by the ERV is not valid. Can you tell me why?

8 A. In retrospect, there's certainly not enough
9 scrutiny there to determine definitively the performance of
10 -- of the unit.

11 Also, I believe that the requirements were
12 modified almost in real time while we were there as far as
13 switching the requirements for that test from a -- I
14 believe it's from a one megawatt to just running a couple
15 of units or running all the units to a couple of units.

16 Anyway, it's -- you know, we didn't know what we
17 didn't know at the time. But in retrospect it certainly
18 wasn't a robust enough test.

19 Q. So you believe that the test was performed was
20 not robust enough, not that the test performed was not done
21 correctly?

22 A. I guess I should say that. When I say "not
23 robust enough," it would mean that it was his protocol --
24 when you do a test, you know, I've since learned,
25 particularly from my engineers, that you need to really be

1 clear and detailed in establishing --

2 Q. Go ahead, sir.

3 A. You okay? I didn't mean to interrupt you there.

4 -- in establishing the test protocol and the
5 requirements of the test, establishing a baseline, et
6 cetera. And looking back now, that protocol wasn't
7 sufficient to determine an outcome.

8 Q. So the -- again, the issue is that the protocol
9 was not sufficient, not that wasn't followed; is that
10 correct?

11 A. That's a good question. I understand your
12 distinction now. Sorry.

13 I don't know whether or not his protocol was
14 followed accurately. I know that some things were changed
15 in real time, you know, the units that were being tested
16 and the scope of what was being tested. The duration, for
17 example, I think was cut. I can't remember from what to
18 what, but it was originally supposed to be a longer
19 duration test. And so -- and were we watching Penon close
20 enough to know if he followed the protocol which he put
21 forth.

22 It's just, you know, in retrospect I think we
23 could have been more scrutinous on whether or not he was
24 even following his own protocol. I mean, there was -- we
25 just had -- we had no ability to trace all the water flows

1 or all the electrical flows. A lot of it was we couldn't
2 enter into certain parts of the plant. Again it, in
3 retrospect, something we should have been more adamant
4 about.

5 Q. Okay. I'm not asking whether you would do
6 anything different.

7 What I'm asking is, sitting here today, do you
8 know any specific element of the protocol that was not
9 followed?

10 A. As I said, I don't know that he followed his
11 protocol. He may have. I don't know.

12 Q. You have no knowledge one way or another whether
13 he followed the protocol or not?

14 A. As I said, it's a question in my mind, whether he
15 followed the protocol.

16 Q. But let me ask it this way so it's perfectly
17 clear. In court are you going to testify that he did not
18 follow the protocols set forth?

19 A. I will testify as I've told you here, I don't
20 know if he told the protocol.

21 Q. Sir, that protocol was reviewed by not only
22 yourself but your experts, right, prior to the test?

23 MR. BELL: Objection to form.

24 BY THE WITNESS:

25 A. The -- we didn't have experts at that time. You

1 may be referring to T. Barker Dameron who reviewed it, but
2 there's a big gap between the engineering skills and
3 abilities of T. Barker Dameron and the likes of Joe Murray
4 and the engineering team we later built.

5 (Whereupon, Vaughn Deposition Exhibit 2 was marked
6 for identification.)

7 BY MR. ANNESSER:

8 Q. I'm going to give you a document which we'll mark
9 as Exhibit 2. This document has -- this document at the
10 bottom has the Bates stamp number IH-0058504.

11 Have you seen this document before, sir?

12 **A. I'm in the "to" field, so I suppose that I have.**

13 Q. Now, the first paragraph states in the first
14 sentence [as read]: At the question of Industrial Heat,
15 Deep River Ventures, DRV -- that's Deep River Ventures; is
16 that correct?

17 **A. Right.**

18 Q. (Continuing) -- has reviewed the test protocol of
19 the plant made for Cherokee for the test currently
20 scheduled to start on April 30, 2013.

21 Do you see that?

22 **A. I see that.**

23 Q. Okay. I'm going to ask you to look down below at
24 the section that says "Opinion." It says [as read]: We
25 believe, based on our collective review and discussion,

1 that the test is sufficient to demonstrate whether the
2 tested device meets the contractual specifications.
3 However, there are important additional test criteria not
4 included in the contract that you may wish to review at
5 some point.

6 Do you see that?

7 **A. Uh-huh.**

8 THE REPORTER: Is that a "yes"?

9 **THE WITNESS: That's a yes. Sorry.**

10 BY MR. ANNESSER:

11 Q. So it was your expert's opinion that this test,
12 as the protocol was set forth, was sufficient to meet the
13 contractual specifications?

14 MR. BELL: Objection to form.

15 BY THE WITNESS:

16 **A. You're building in an assumption there that Deep**
17 **River Ventures was our -- somehow qualified to make this**
18 **assessment.**

19 BY MR. ANNESSER:

20 Q. Well, sir, were they? Were they qualified to
21 make the assessment?

22 **A. As I've told you previously, Dewey Weaver, Paul**
23 **Morris, the guys that this was from -- Paul is an IP**
24 **expert. I think his degree, I think it's in math and**
25 **religion. Yeah, maybe it's just religion, I don't**

1 remember. But he -- he's an IP expert. He's an inventor
2 in his own right mainly focused on software stuff. So he's
3 not qualified to assess whether or not an LENR device is
4 producing excess heat or not.

5 Dewey Weaver has a business degree from Wake
6 Forest. While Dewey is interested and kind of an eager
7 type of personality, he's eager to provide his opinion and
8 eager to be helpful, he is in no way qualified to assess
9 whether or not, you know, the LENR device or any such
10 device would produce excess heat. That's just not his --
11 his expertise. I don't know what more to say about that.
12 But -- but these guys aren't experts in this area.

13 Q. Then why did you request them to review the test
14 protocol?

15 A. You know, that's a good question. I imagine that
16 Tom wanted their opinion on it. But they're -- they are --
17 and at the time maybe Tom thought that they had more
18 technical abilities than they did. I see Lee Feldman is
19 copied here. I don't remember Lee's expertise. But -- he
20 was only with them for a short period of time. But at any
21 rate I'm not sure.

22 Q. Now, did Mr. Dameron review the test protocol as
23 well?

24 A. I believe he did.

25 Q. Is he qualified?

1 A. No. As I -- as I mentioned, T. Barker, he's an
2 engineer. I don't remember his specific -- whether it was
3 civil or mechanical or just -- he's an older gentleman --
4 whether at the time it was just a flat engineering degree.
5 He's a great guy. He's a smart guy. He's a long-time
6 friend of Tom's. But he's -- he doesn't have the level of
7 expertise and sophistication one would need to determine
8 whether or not a calorimetry assessment is sufficient or
9 accurate.

10 And, again, at the time we underestimated that,
11 clearly. But in retrospect, it is -- I have much more
12 appreciation and respect for what is required to accurately
13 and precisely determine whether or not something is, in
14 fact, producing excess heat.

15 Q. Well, going back, sir, to the test protocol, did
16 you have anyone who was qualified to review it, review it
17 prior to the test?

18 A. In retrospect, definitely we did not. You know,
19 at the time, I think we were relying on T. Barker, and
20 apparently we got these guys to provide their thoughts on
21 it as well.

22 And also we were relying, as I said, on the
23 report from Levy and the Swedish professors.

24 Q. And T. Barker Dameron was Industrial Heat's --

25 A. Dameron.

1 Q. Dameron, sorry?

2 (Continuing) -- chief and sole engineer until
3 Mr. Murray came on board, correct?

4 A. Let's me think about that for a minute. I think
5 that that's accurate. I don't know that we ever had a
6 chief engineer, quote.

7 He was a -- T. Barker was an early investor, as I
8 mentioned. And he was -- has long known Tom and has been a
9 friend of Tom. And he was helping us, you know, be helpful
10 to Dr. Rossi.

11 Q. Knowing that this test could result in a payment
12 of \$10 million, didn't you think it would be prudent to
13 have someone take a look at the test protocol before
14 agreeing to it?

15 A. Again, I'm trying to distinguish between in
16 retrospect versus at the time. As I admit, at the time --
17 you know, in retrospect. But at the time we underestimated
18 the level of expertise and the difficulty of accurately and
19 precisely assessing heat flows.

20 And so, correct, if you're saying we should have
21 gotten more sophisticated personnel at the time to assess
22 it, that would be correct, I agree with that hindsight. At
23 the time we didn't know what we didn't know.

24 And, again, notwithstanding any concerns we may
25 have had with the -- Penon and his report and his protocol,

1 the test -- the test report, I should say, by Levy and the
2 Swedish professors, which actually covered two different
3 tests, one in December, I believe, of '12 and another in
4 March of '13, if I recall correctly, we were very impressed
5 by that.

6 You know, we -- while we may have had
7 reservations ourselves and also about our own capabilities,
8 we thought, wow, these are smart guys. And that was it.

9 Q. Were those tests purportedly carried out by Rossi
10 or by third-parties, his professors that you've referenced?

11 A. I believe that Rossi was involved, but I don't
12 know to what degree. These guys published the reports. I
13 don't think that Rossi signed as an author of the reports.

14 Q. So you didn't rely on those reports in entering
15 into the license agreement, did you?

16 A. We relied on Dr. Rossi and -- and all that he was
17 telling us, part of which was the reports, part of which
18 was Penon is -- is capable and credible and while he
19 doesn't currently work for Bureau Veritas, he has done work
20 for Bureau Veritas. And then we -- that was our reliance,
21 we were relying on that full set of information. It's
22 never a narrow thing in particular. It's relying on a full
23 spectrum of information.

24 Q. So the results of the validation test in April,
25 end of April, early May 2013, sitting here today, do you

1 have any reason to believe that they were not accurate?

2 A. I think we've covered this, but yes. I mean, in
3 hindsight I have many questions about the robustness of the
4 protocol as we discussed and tried to distinguish between,
5 well, did he follow his protocol. I'm not sure if he did
6 or not; I don't know.

7 But, yeah, I do have serious concerns sitting
8 here today about the accuracy of the claims made in Penon's
9 report about performance.

10 Q. Your company, sir, has alleged that Dr. Rossi has
11 engaged in some scheme to defraud Industrial Heat.

12 A. Right.

13 Q. Are you familiar with that?

14 A. Broadly, yes.

15 Q. Is there anything in connection to the validation
16 test that you believe Dr. Rossi did to defraud Industrial
17 Heat?

18 A. Clearly, I believe he was manipulating that test
19 or using Penon to manipulate the test. I don't know which.
20 It's -- if I knew how to explain everything to you, we
21 wouldn't be sitting here today.

22 But he is a mastermind. And, you know, he is --
23 I don't know exactly what he did at the time, whether he
24 was -- I don't know what he was manipulating to -- or if it
25 was Penon manipulating data or following incorrect

1 protocol. I don't know. But it's --

2 Q. Well, you said -- you said two things, that
3 Dr. Rossi was manipulating the test. How?

4 A. I said -- could you read back what I said?

5 Q. Go ahead and answer the question.

6 Do you have any reason to believe that Dr. Rossi
7 was manipulating the test?

8 A. Don't I have the right to have her read back what
9 I said.

10 Q. No, you don't.

11 A. Okay.

12 MR. BELL: Yes, you do.

13 THE WITNESS: Could you read it back?

14 BY MR. ANNESSER:

15 Q. Go ahead, sir. I'm asking you a question. You
16 have to answer my question.

17 A. I have to answer your question. I'll wait and
18 maybe you can read what I said after you're done answering
19 his question.

20 Q. Are you refusing to answer my question, sir?

21 A. No. Please ask it again.

22 Q. I will ask it again.

23 What grounds or what evidence do you have that
24 Dr. Rossi did anything to manipulate the test carried out
25 as the validation test under the agreement?

1 A. As I said, I don't know, but clearly it wasn't
2 sufficient in hindsight. There's a lot that we've learned
3 in the interim about the level of robustness that one needs
4 to precisely and accurately determine heat flows.

5 And telemetry, while it sounds simple, is not
6 simple, it's very complex, which is, you know, a reason a
7 guy like Rossi would want to be involved in an area like
8 this, because it's easy to manipulate things if really are
9 kind of new and into it.

10 But, nonetheless, kind of where we are today, I
11 can't tell you precisely what he did. I wish I could. If
12 I could, we might not be sitting here. But it is my belief
13 that something was being manipulated and that those results
14 are not accurate. But it would be -- it would be
15 interesting to know exactly what he did. I don't know.

16 Q. That's just your belief; is that correct?

17 A. Correct, based on experience. As I said, at the
18 time, we didn't know what we didn't know.

19 Q. So the manipulation that you're talking is the
20 lack of, in your term, robustness of the test? You're not
21 -- you're not claiming Dr. Rossi went and changed data
22 or --

23 A. I don't know. I told you he may have. And this
24 is where you need a real expert to come in and say, one,
25 was the test protocol proper and robust enough; two, was it

1 followed, which is you're getting that distinction. So
2 two, was it followed.

3 And then I think as part -- and then your other
4 point here is that you're asking me, I believe, correct me
5 if I'm wrong, but you're asking me did I know -- do I know
6 what -- do I believe that Rossi manipulated something. I
7 don't know, but possibly he could have.

8 What I believe, just to reiterate, is that it did
9 not achieve the performance as described in Penon's
10 results.

11 Now, how it did not achieve that performance,
12 again, that's still a mystery to us. That's what maybe
13 we'll find out through this process. That's where we are.

14 Q. I'm trying to figure out the basis for your
15 belief. You're telling me that the test was not robust
16 enough --

17 A. Right.

18 Q. -- to verify that performance.

19 A. Right. So --

20 Q. Please let me finish.

21 A. You interrupted me previously, so --

22 THE REPORTER: I can't hear either.

23 BY MR. ANNESSER:

24 Q. Sorry, let me finish.

25 The question is: I understand you believe that