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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
Wednesday, February 15, 2017
9:02 a.m. - 4:56 p.m.

VIDEOTAPED DEPOSITION OF SLOCUM HATCH FOGLEMAN
(Corporate Representative of Cherokee Investment
Partners, 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.

EXHIBIT "8"

1 Q. Did you speak to anyone after the deposition
2 yesterday regarding the testimony that you were going to
3 provide on behalf of Cherokee Investment Partners, LLC,
4 other than counsel?

5 A. Yes.

6 Q. And who did you speak with?

7 A. Tom Darden and John Mazzarino.

8 Q. Was counsel present for those conversations?

9 A. Yes.

10 Q. Sir, have you done anything to prepare for your
11 deposition today?

12 A. Yes.

13 Q. And what is it that you have done?

14 A. Reviewed the complaint, the fourth amended
15 answer and additional defenses, counterclaims and third
16 party claims. I have reviewed the notice of deposition
17 with the list of topics. And I have met with Tom Darden
18 and John Mazzarino.

19 Q. Did you say you met with Tom Darden and
20 Mr. Mazzarino?

21 A. Yes.

22 Q. Are they here in Miami?

23 A. No.

24 Q. So this was prior to yesterday's deposition?

25 A. I'm sorry. The answer is no, not to my

1 behalf of Cherokee Investment Partners, or CIP?

2 A. No.

3 Q. So the first time you had seen this complaint
4 was approximately a week ago, you said?

5 A. That is my recollection, yes.

6 Q. And the answers and affirmative defenses?

7 A. Yes. That is my recollection.

8 Q. Other than reviewing those documents, were
9 there any other documents that you reviewed in preparation
10 for your deposition testimony today?

11 A. There were some e-mails that I reviewed.

12 Q. And what were those e-mails?

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

15 BY MR. ANNESSER:

16 Q. Do you know what the contents of those e-mails
17 were, sir?

18 A. E-mails related to this matter.

19 Q. How many e-mails were there that you reviewed?

20 A. I don't remember the number. It was a good
21 many.

22 Q. More than 20?

23 A. Yes.

24 Q. More than a hundred?

25 A. I don't know that. I did not count them. I'm

1 Q. Okay. What are those entities?

2 A. Cherokee Investment Partners II, LE; Cherokee
3 Investment Partners III, LP; Cherokee Investment Partners
4 III Parallel Fund, LP; Cherokee Investment Partners IV,
5 LP. Those are the only ones that come to my mind at this
6 time.

7 Q. And what are those companies? What do they do?

8 A. They are private equity funds. They are
9 investment funds.

10 Q. Do they have employees?

11 A. No.

12 Q. Does Cherokee Investment Services provide
13 services for those funds?

14 A. Yes.

15 Q. So what services are provided by Cherokee
16 Investment Partners, LLC as opposed to Cherokee Investment
17 Services?

18 A. Cherokee Investment Partners is an investment
19 manager for the funds. Investment management services
20 would include finding investments, sourcing investments,
21 investigating investments, managing investments, raising
22 capital for investments.

23 Q. Okay. And then the services provided by
24 Cherokee Investment Services for those funds?

25 A. Services Cherokee Investment Services, Inc.

1 but it is used to describe a body of work that Tom Darden
2 and John Mazzarino have been involved in in a partnership
3 together that spans close to, if not, 30 years.

4 Q. So it is your understanding that when the term
5 "Cherokee" is used, it refers to all of the dealings
6 between Mr. Mazzarino and Mr. Darden?

7 A. As I said before, it's in my mind, and I am
8 not -- I don't want to be too specific about the word
9 "brand," but in my mind when I use "brand," I mean an
10 intangible to describe the body of work that I mentioned
11 in the previous statement.

12 Q. Let me ask you this way, does Cherokee
13 Investment Partners have a website?

14 A. Yes.

15 Q. And what is that website?

16 A. Cherokeeefund.com.

17 Q. Okay. That is the website for Cherokee
18 Investment Partners, LLC, CIP?

19 A. I believe that is correct. I believe they own
20 that domain name.

21 Q. When is the last time you have been on that
22 website?

23 A. Not recently. I understood it was being
24 reworked.

25 Q. Now, on that website it is represented that

1 Q. Why?

2 A. To tell him about the E-Cat device that
3 Compton -- I think Jim Compton thought Tom Darden would be
4 interested in investigating.

5 Q. Is it your understanding that Mr. Mazzarino and
6 Mr. Darden operate under the name "Cherokee" for some
7 reason?

8 A. They have used the name "Cherokee," as I said,
9 to describe a body of work.

10 Q. Why? Do you know?

11 A. It's been a common name, as we have mentioned
12 in the names of the entities, from maybe even back to the
13 1980's.

14 Q. So they use the name "Cherokee" because of the
15 history and because of the projects that they had worked
16 on; is that correct?

17 A. I think that is fair.

18 Q. Trading on past successes, would you agree with
19 that?

20 A. I wouldn't use those terms, but...

21 Q. Is there any limitation on what Cherokee can
22 invest in?

23 A. Cherokee Investment Partners, LLC?

24 Q. Yes.

25 A. Cherokee Investment Partners, LLC does not make

1 investments.

2 Q. What about the Cherokee funds, all four of
3 them, is there anything that limited what they can invest
4 in?

5 A. Yes.

6 Q. And what is that?

7 A. The investment parameters are described fully
8 in the limited partnership agreements for each of the
9 funds. And generally speaking, without providing the
10 details that I am not prepared to provide, are real estate
11 investments typically called brownfield real estate
12 investments because of some sort of past environmental
13 contamination.

14 Q. So outside of the Cherokee funds, any
15 investments to your understanding done by Tom Darden or
16 John Mazzarino were done under the name "Cherokee,"
17 typically? Is that your understanding?

18 A. No.

19 (Exhibit 3, IH82332 through 82349, was marked
20 for Identification.)

21 BY MR. ANNESSER:

22 Q. I will show you a document we will mark as
23 Exhibit 3. If you look at the second e-mail down from
24 Mr. Vaughn to Mr. Joe Pike, in the first paragraph he
25 states: "Cherokee's funds are strictly designated for

1 Q. Did they -- did Cherokee Investment Partners
2 ever pay any money to Industrial Heat, LLC, to your
3 knowledge?

4 A. Pay money to Industrial Heat?

5 Q. Invest in, give money to?

6 A. Not to my recollection.

7 (Exhibit 9, Rossi 00011171 through 11202, was
8 marked for Identification.)

9 BY MR. ANNESSER:

10 Q. Sir, I want to show you a document that bears
11 the Bates number 00 -- I'm sorry, it is Rossi 00011171.
12 The first page is an e-mail from Daniel Pike to Thomas
13 Darden and Dr. Andrea Rossi. If you flip to the first
14 page, it reports to be a Feasibility Report of Cold Fusion
15 E-Cat of Industrialization in China.

16 Did Mr. Darden, on behalf of Cherokee, go to
17 China to make a presentation?

18 A. I don't recall any particular trips, but he has
19 made trips to China.

20 Q. On behalf of Cherokee?

21 A. I don't recall it being on behalf of Cherokee
22 Investment Partners, LLC, per se.

23 Q. Well, let me have you turn to the page Bates
24 stamped Rossi 00011175. It says up at the top 1.2 E-Cat
25 Technology/Owning Side Industrial Heat, LLC. On that page

1 it says: "Cherokee funds in 2013 owned the E-Cat
2 intellectual property and set up Industrial Heat, LLC in
3 Raleigh Triangle Industrial Park."

4 Is that a correct statement, sir?

5 A. Not to my knowledge.

6 Q. So your understanding is, this document that
7 was presented to potential Chinese investors contained
8 inaccurate information?

9 A. I don't know who it was presented to. I
10 just -- I just am responding to that statement. I haven't
11 seen this document.

12 Q. Do you know who Daniel Pike is, sir?

13 A. I have heard the name, but I have never met
14 him.

15 Q. You have heard the name in what?

16 A. I have heard the name and I have never met him.

17 Q. Do you know who he is? How is he related to
18 the Cherokee entities or the Industrial Heat entities?

19 A. His father is an investor in Industrial Heat.

20 Q. Now, the second thing this page says is: "They
21 improved the E-Cat reactor to COP of 20 to 80, the test
22 data of Industrial Heat, LLC."

23 Does Cherokee have any evidence that that
24 statement is not correct?

25 A. To my knowledge, Cherokee Investment Partners,

1 LLC has no information that would indicate that statement
2 is correct.

3 I would like to say that again. To my
4 knowledge, Cherokee Investment Partners, LLC has no
5 information to support that statement.

6 Q. Does it have any information that undermines
7 that statement, that proves that to be incorrect?

8 A. To my knowledge, Cherokee Investment Partners,
9 LLC does not have any information regarding the COP of the
10 E-Cat. That would be Industrial Heat, LLC would have
11 whatever information there is.

12 Q. Do you have any knowledge, sir, personally?

13 A. No, I don't have any knowledge personally.

14 Q. Do you have any knowledge that you have been
15 told by anyone?

16 A. To support or not support this?

17 Q. Of any facts that support or contradict that
18 statement.

19 A. To my knowledge, I have no information that
20 would support a COP of these levels.

21 Q. I can understand, sir, you don't want to answer
22 the question in a manner that might be helpful to my
23 client. But the question was, do you have any knowledge
24 as to any information or evidence to support or contradict
25 the statement that the COP achieved by Industrial Heat's

1 calculations was a COP of 20 to 80?

2 MR. LOMAX: Objection to the form of the
3 question.

4 THE WITNESS: I don't have any knowledge of
5 information that would support a COP of 20 to 80.

6 BY MR. ANNESSER:

7 Q. Sir, do you have any knowledge that would
8 contradict a COP of 20 to 80?

9 A. It is my understanding that Industrial Heat,
10 LLC has not been able to replicate any measurable excess
11 energy on an consistent basis.

12 Q. And what evidence do you have to support that?
13 Or that you are aware of?

14 A. Well, the statements that have been made in
15 these proceedings, and it is my understanding those
16 statements are based on information that Industrial Heat,
17 LLC has.

18 Q. Other than what is contained in the pleadings
19 that have been filed in this action, sir, do you have any
20 evidence or any knowledge that contradicts the statement
21 made by Mr. Darden in this presentation that they improved
22 the E-Cat reactor to a COP of 20 to 80, the test data of
23 Industrial Heat, LLC?

24 A. I just can't -- I can't recall that.

25 Q. So you don't? The answer is no; is that

1 correct?

2 A. State the question again, please.

3 Q. Do you have any evidence, other than what you
4 have read in the pleadings in this case, any evidence to
5 contradict the statement made in this report that -- I
6 will read it verbatim -- they improved the E-Cat reactor
7 to a COP of 20 to 80, the test data of Industrial Heat,
8 LLC?

9 MR. LOMAX: Is this question being asked of him
10 as Jim Fogleman or as a representative of Cherokee?

11 MR. ANNESSER: Thank you, Chris. You can
12 answer the question.

13 MR. LOMAX: No, I instruct you not to answer
14 until we clarify.

15 MR. ANNESSER: It is being asked of him in any
16 capacity in which he can answer.

17 BY MR. ANNESSER:

18 Q. Let me ask you, is there any capacity in which
19 you can answer that question? Do you have any knowledge
20 either individually or in your capacity as the corporate
21 representative of Cherokee Investment Partners?

22 A. I'm not -- I'm just not familiar with any COP
23 of 20 to 80 in any capacity.

24 Q. Sir, you have been very clear to try to state,
25 and I understand, you certainly have a bias in this field.

1 But you have been very clear to state that you have no
2 evidence to support that they have achieved that COP. And
3 I have asked you, repeatedly now, without getting an
4 answer, whether you have any evidence that they did not
5 achieve a COP of 20 to 80, other than what you have read
6 in the pleadings.

7 A. It is my understanding that Industrial Heat,
8 LLC has the evidence.

9 Q. But you do not?

10 A. I do not.

11 Q. Thank you. And Cherokee Investment Partners
12 does not, correct?

13 A. To my knowledge, they do not.

14 Q. Thank you. Do you know, sir, whether
15 Industrial Heat ever formed a Sino-American joint venture
16 with anyone in China regarding the E-Cat technology?

17 A. I don't recall that.

18 Q. Do you know if Mr. Darden ever appeared at a
19 conference on behalf of Cherokee, and I think the name of
20 the conference was ICCF-19. Does that ring a bell to you?

21 A. I seem to recall a reference, yes.

22 Q. And he appeared on behalf of Cherokee, meaning
23 Cherokee Investment Partners?

24 A. I recall that Tom attended some of those
25 conferences. I don't recall the number sequence exactly.

1 Q. Okay. And he was there on behalf of your
2 company, correct?

3 A. I don't know what company he was representing.

4 Q. Was he there representing a Cherokee entity?
5 Do you know?

6 A. I don't know. Sorry.

7 Q. So you don't know if it was on behalf of
8 Cherokee Investment Partners, do you?

9 A. I don't know who he was representing at the
10 conference.

11 Q. Do you have any evidence that it was not
12 Cherokee Investment Partners that was being represented at
13 the conference?

14 MR. LOMAX: Object to the form of the question.

15 THE WITNESS: I don't have any evidence. I
16 don't know, as I stated to the previous question, I
17 don't know who he was representing at the conference.

18 BY MR. ANNESSER:

19 Q. You don't have any evidence that would show he
20 was not investing -- or he was not representing Cherokee
21 Investment Partners?

22 A. I don't have any evidence as to who he was
23 representing at the conference.

24 Q. All right. If an invoice were to be generated
25 for one of the Cherokee funds or Cherokee Investment

1 doesn't say how much or the amount invested in the 550
2 properties.

3 Q. Is there a reason why Cherokee Investment
4 Partners would not want to be clear on that? Is there a
5 reason why Cherokee doesn't advertise that they have got
6 2.2 billion in committed funds?

7 MR. LOMAX: Objection to the form of the
8 question.

9 THE WITNESS: Other than trying to be brief in
10 a presentation like this, and I think in my
11 experience with this, this would not normally be
12 presented to just any layman. It would be a
13 presentation and any further explanation, you know,
14 could be given in that presentation.

15 BY MR. ANNESSER:

16 Q. Do you know for a fact that that further
17 explanation was given?

18 MR. LOMAX: Objection to the form of the
19 question.

20 THE WITNESS: I wasn't present for the
21 presentation, no.

22 BY MR. ANNESSER:

23 Q. Do you know, sir, do you have any facts that
24 would indicate that Dr. Rossi was explained that the
25 \$2.2 billion in funds that are claimed -- that are claimed

1 know what inquiries or due diligence Dr. Rossi might have
2 attempted to make and the explanations he received.

3 Q. As the corporate representative, do you have
4 any information, facts or evidence that Dr. Rossi was
5 informed that Cherokee Investment Partners was not the
6 company that was going to invest into his technology?

7 A. My discussions of this investment with Tom
8 Darden, and as I mentioned earlier, going through the use
9 of the name Cherokee, it was clear to me that there was a
10 discussion of whether or not to use the name Cherokee in a
11 to-be-formed entity. The clear inference there is there
12 was a to-be-formed entity that may or may not reference
13 your question. But that's what I can think of in terms of
14 what I know about the discussion with Dr. Rossi about an
15 entity to be used for his investment.

16 Q. Did you attend the closing on the investment
17 into Dr. Rossi's technology?

18 A. No.

19 Q. Do you have any knowledge as to what
20 representations were or were not made at closing?

21 A. No. Other than what's -- what would be in the
22 agreements.

23 Q. Were there any intracompany agreements between
24 Cherokee and Industrial Heat between August 2012 and the
25 present?

1 familiar with that would indicate that Mr. Vaughn was
2 providing the services for Cherokee Investment Partners,
3 LLC.

4 Q. Or that he wasn't?

5 A. There is no evidence that he was.

6 Q. Is there any evidence that he was not?

7 A. The evidence is, the evidence I am aware of is
8 that Cherokee Advisors, LLC paid for his services.

9 Q. Okay. Now, allegation 38, paragraph 38 of the
10 complaint says: "At each of the aforementioned meetings
11 Darden, Vaughn and Cherokee repeatedly stated that
12 Cherokee has billions of dollars at its disposal and is
13 willing to pay Rossi and Leonardo to license the E-Cat
14 IP."

15 What evidence do you have that those statements
16 were not made by Mr. Darden, Mr. Vaughn and Cherokee?

17 A. Other than they are just beyond any imagination
18 I have.

19 Q. I didn't ask about your imagination, sir; I
20 asked about evidence. Court cases are tried on evidence.
21 And I would like to know what evidence you have and that
22 you intend to present to support your denial of that
23 allegation.

24 A. I'm not aware of evidence.

25 Q. Okay. Paragraph 39 of the complaint alleges

1 that: "Moreover, at these meetings Darden, Vaughn and
2 Cherokee fraudulently represented that, A, if Cherokee
3 were granted a license to the E-Cat IP, they would protect
4 the E-Cat IP from dissemination, so as to maximize value
5 of the intellectual property around the world."

6 What evidence do you have that Darden, Vaughn
7 and Cherokee did not make that representation, if any?

8 A. I don't have any evidence that they made the
9 representation or that they did not make the
10 representation.

11 Q. Is there someone at your company that would
12 have more knowledge or more information regarding this
13 fact?

14 A. Not that I know of.

15 Q. Have you asked anyone about this prior to your
16 deposition today?

17 A. I think I recall, I'm not sure I recall
18 exactly, but this seems like, by my recollection, one of
19 the topics we discussed in a meeting.

20 Q. But sitting here today, you have no facts or
21 evidence to support your denial that Cherokee
22 represented -- I'm sorry, Darden, Vaughn and Cherokee
23 represented that if Cherokee were granted the license to
24 the E-Cat IP, they would protect the E-Cat IP from
25 dissemination to as to maximize the value of the

1 intellectual property around the world?

2 A. No.

3 Q. No evidence?

4 Now, do you have any facts or evidence to
5 support your claim -- your denial of the claim that
6 Darden, Vaughn and Cherokee fraudulently represented that
7 they were authorized to use the funds managed by Cherokee
8 to pay Leonardo in excess of \$100 million for the E-Cat IP
9 license?

10 Sir, do you have any facts or evidence to
11 support your denial of that allegation?

12 A. The -- so funds managed by Cherokee Investment
13 Partners, LLC would refer to the private equity funds
14 which were not permitted to make this investment. So...

15 Q. That is not the question, sir. The question
16 is, do you have any facts or evidence to support your
17 denial --

18 A. That would be -- the limited partnership
19 agreement would be what I would reference there too. That
20 it says funds managed by Cherokee Investment Partners,
21 LLC. That would refer, in my mind, to the private equity
22 funds.

23 Q. Okay. I am not asking whether the funds could
24 do that. What I am asking is, do you have any facts or
25 evidence to support your denial of the allegation that

1 Darden, Vaughn and/or Cherokee fraudulently represented
2 that they were authorized to use the funds managed by
3 Cherokee to pay Leonardo in excess of \$100 million for the
4 E-Cat IP license?

5 A. Other than the testimony of Mr. Darden and
6 Vaughn, no.

7 Q. What has Mr. Darden testified to?

8 A. I don't know that.

9 Q. What has Mr. Vaughn testified to?

10 A. I don't know that.

11 Q. So you don't know whether there is anything in
12 their testimony that would serve as evidence to support
13 your denial?

14 A. I don't know their testimony.

15 Q. Okay. Sitting here today, sir, as the
16 corporate representative of Cherokee Investment Partners,
17 you have filed a legal pleading in which you deny that
18 allegation. Now, in doing so, you represent to the Court
19 that there is a basis for that. Do you have a factual or
20 evidentiary basis to deny that allegation at this point in
21 time?

22 MR. LOMAX: Objection.

23 BY MR. ANNESSER:

24 Q. And if so, what is it?

25 MR. LOMAX: Objection to the form of the

1 your denial of that allegation?

2 MR. LOMAX: Objection to the representation.

3 MR. ANNESSER: Which representation?

4 MR. LOMAX: Which paragraph are you asking him
5 about?

6 MR. ANNESSER: 40.

7 MR. LOMAX: Did we deny it?

8 BY MR. ANNESSER:

9 Q. Well, do you deny it, sir?

10 A. I don't have the response.

11 Q. Okay. Let me put it this way. Sir, do you
12 deny that in reliance upon the representations above,
13 Dr. Rossi and Leonardo, with the assistance of their
14 Italian attorney, negotiated the terms of the license
15 agreement with Cherokee?

16 A. Yes. With a license agreement with Cherokee
17 Investment Partners, LLC, yes. That was never the
18 intention.

19 Q. What facts or evidence do you have?

20 A. Cherokee Investment Partners, LLC would never
21 make that investment.

22 Q. I understand what you are saying. But I am
23 asking for facts and evidence, not your assertion that
24 they would never make that.

25 A. This is my testimony.

1 Q. That is your testimony. So you have no other
2 facts or evidence to support your denial, other than your
3 testimony that CIP would never make that investment?

4 A. That is correct.

5 Q. Okay. You also -- well, do you have any --
6 strike that.

7 Do you deny, sir, that once the terms of the
8 license agreement had been negotiated, Dr. Rossi, at the
9 suggestion of defendants Darden and Vaughn, travelled to
10 defendant Cherokee's office to execute the license
11 agreement on October 26, 2012?

12 A. No.

13 Q. You do not deny that?

14 A. I'm sorry?

15 Q. You deny that or you admit that?

16 A. I wasn't at the closing, so I don't recall
17 whether it was in the Cherokee office or not. But I
18 remember there was a closing on October 26, 2012. So I
19 don't deny it.

20 Q. Where else would it have been?

21 A. I don't know.

22 Q. But you have no facts to support a denial of
23 that?

24 A. No.

25 Q. Okay. Sir, do you deny that upon arrival at

1 company for the E-Cat license and that the license
2 agreement would be signed by that new company?

3 MR. LOMAX: Objection to the form of the
4 question.

5 THE WITNESS: The branch of Cherokee Investment
6 Partners, LLC, to my knowledge, is not correct. But
7 that Industrial Heat, LLC would serve as a holding
8 company for the E-Cat license and that the license
9 agreement would be signed by the new company is
10 correct.

11 BY MR. ANNESSER:

12 Q. Okay. The question to you, sir, is did
13 Mr. Darden and Mr. Vaughn inform Dr. Rossi and Leonardo
14 that Industrial Heat, LLC was a branch of Cherokee
15 Investment Partners? Not whether it is or not, but did
16 they inform him of that?

17 A. I'm not aware of that.

18 Q. Do you have any evidence one way or another?

19 A. I'm not aware of that.

20 Q. That was an easy question. Do you have
21 evidence one way or another as to whether that --

22 A. No.

23 Q. -- whether they informed him of that or no?

24 MR. LOMAX: Objection to the form of the
25 question.

1 THE WITNESS: No.

2 BY MR. ANNESSER:

3 Q. Sir, was Industrial Heat formed as a limited
4 liability company from Delaware?

5 A. Yes.

6 MR. LOMAX: Objection to the form of the
7 question.

8 BY MR. ANNESSER:

9 Q. Is there a reason why Cherokee has denied that
10 allegation?

11 MR. LOMAX: Objection to the form of the
12 question.

13 THE WITNESS: I don't recall that.

14 BY MR. ANNESSER:

15 Q. Do you have any facts or evidence to support a
16 denial that it was a Delaware limited liability company?

17 MR. LOMAX: Is there a paragraph where you are
18 referring to?

19 BY MR. ANNESSER:

20 Q. Sir?

21 MR. LOMAX: Are you refusing to say the
22 paragraph?

23 MR. ANNESSER: Chris, this is my deposition. I
24 get to ask the questions. Please allow me to
25 continue. Go ahead.

1 MR. LOMAX: So be fair.

2 MR. ANNESSER: If he can't answer the question,
3 he can't answer the question. That is fine.

4 THE WITNESS: So your question is?

5 BY MR. ANNESSER:

6 Q. The question is, do you have any facts or
7 evidence to support a denial of the claim that Industrial
8 Heat was formed as a Delaware limited liability company?

9 A. No.

10 Q. Okay. Sir, do you know one way or another
11 whether Mr. Darden and Mr. Vaughn assured Dr. Rossi and
12 Leonardo Corporation that Cherokee and Industrial Heat are
13 the same company?

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

16 THE WITNESS: Cherokee Investment Partners, LLC
17 and Industrial Heat, LLC are not the same company.

18 BY MR. ANNESSER:

19 Q. Again, sir, that was not my question. My
20 question is, do you have any facts or information or
21 evidence, okay, that Mr. Darden and/or Mr. Vaughn did not
22 make that representation?

23 A. No.

24 Q. Do you have any evidence that Mr. Darden and/or
25 Mr. Vaughn did not make the representation that Industrial

1 Heat was entirely owned and funded by Cherokee?

2 MR. LOMAX: Objection to the form of the
3 question.

4 THE WITNESS: Industrial Heat was not entirely
5 owned and funded by Cherokee Investment Partners,
6 LLC.

7 BY MR. ANNESSER:

8 Q. Do you have any facts or evidence regarding the
9 claim that Mr. Darden and/or Mr. Vaughn made that
10 allegation or made that statement to --

11 MR. LOMAX: Object to the form of the question.

12 BY MR. ANNESSER:

13 Q. -- to Leonardo Corporation and Dr. Rossi?

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

16 THE WITNESS: No.

17 BY MR. ANNESSER:

18 Q. Do you have any facts or evidence that
19 Mr. Darden and Mr. Vaughn did not represent to Dr. Rossi
20 and Leonardo that Cherokee guaranteed that Leonardo would
21 be paid in accordance with the license agreement?

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

24 THE WITNESS: Cherokee Investment Partners, LLC
25 did not guarantee that Leonardo would be paid in

1 accordance with the license agreement.

2 BY MR. ANNESSER:

3 Q. That was not the question, sir. The question
4 is, do you have any facts or evidence that the
5 representation that Cherokee guaranteed that Leonardo
6 would be paid was not made?

7 A. No.

8 MR. LOMAX: Objection to the form of the
9 question. Now you can answer.

10 BY MR. ANNESSER:

11 Q. Do you have any facts or evidence that
12 Mr. Darden and Mr. Vaughn did not know of the falsity of
13 the statements that they made to Dr. Rossi and Leonardo,
14 that Cherokee and Industrial Heat are the same company,
15 that Industrial Heat was entirely owned and funded by
16 Cherokee and that Cherokee guaranteed Leonardo will be
17 paid in accordance with the license agreement?

18 MR. LOMAX: Objection to the form of the
19 question.

20 BY MR. ANNESSER:

21 Q. Do you know whether those statements were made
22 or not, sir?

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

25 THE WITNESS: To my knowledge, the statements

1 were not made.

2 BY MR. ANNESSER:

3 Q. Do you have any knowledge that they were not
4 made specifically?

5 MR. LOMAX: Objection to the form of the
6 question.

7 THE WITNESS: No.

8 BY MR. ANNESSER:

9 Q. When we go into court and we represent to the
10 Court that these statements were made, is there evidence
11 that your company has that it plans to introduce or could
12 introduce or that you believe contradict these claims?

13 MR. LOMAX: Objection to the form of the
14 question. It is a compound question.

15 BY MR. ANNESSER:

16 Q. Let me strike the question. I will re-ask it.

17 Sir, do you have any facts or evidence that the
18 representations that Cherokee and Industrial Heat are the
19 same company, that IH was entirely owned and funded by
20 Cherokee and that Cherokee guaranteed that Leonardo would
21 be paid were not made by Mr. Darden and/or Mr. Vaughn?

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

24 THE WITNESS: No.

25 BY MR. ANNESSER:

1 Q. Did Mr. -- I'm sorry -- did Dr. Rossi and
2 Leonardo enter into a license agreement with Industrial
3 Heat, to your knowledge?

4 A. Yes.

5 Q. Now, Dr. Rossi and Leonardo have alleged that
6 they did so in justifiable reliance upon the
7 representations that we just discussed.

8 Do you have any facts or evidence that would
9 indicate otherwise, that he did not rely upon those
10 statements?

11 MR. LOMAX: Objection to the form of the
12 question.

13 THE WITNESS: No.

14 BY MR. ANNESSER:

15 Q. Do you have any evidence that he did not rely
16 upon the statements made by -- by any statements made by
17 Mr. Darden, Mr. Vaughn or Cherokee in relation to
18 Cherokee's involvement with Industrial Heat?

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

21 THE WITNESS: Cherokee Investment Partners, LLC
22 is not an investor in Industrial Heat, LLC.

23 BY MR. ANNESSER:

24 Q. That was not the question, sir.

25 A. Then I don't think I understand. You said

1 involvement. Cherokee's involvement with Industrial Heat,
2 LLC are I think the words.

3 Q. I asked, do you have any facts or evidence to
4 show that Dr. Rossi and Leonardo Corporation did not rely
5 upon the information and representations made by
6 Mr. Darden, Mr. Vaughn and Cherokee with respect to
7 Industrial Heat?

8 MR. LOMAX: Objection to the form of the
9 question.

10 THE WITNESS: To my knowledge, Cherokee
11 Investment Partners, LLC did not make representations
12 to Dr. Rossi.

13 BY MR. ANNESSER:

14 Q. You are saying to your knowledge. What are you
15 basing that statement on?

16 A. My general knowledge of the business of
17 Cherokee Investment Partners, LLC.

18 Q. Did you ask anyone at Cherokee Investment
19 Partners whether they made that statement?

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

22 THE WITNESS: I don't recall asking that
23 specific statement.

24 BY MR. ANNESSER:

25 Q. Okay. Did -- is there somebody at Cherokee

1 MR. ANNESSER: Your objection is noted. Thank
2 you.

3 BY MR. ANNESSER:

4 Q. Sir, do you know, do you have any facts or
5 evidence to indicate that Mr. Darden, Mr. Vaughn,
6 Industrial Heat and Cherokee did not represent to
7 Dr. Rossi that Industrial Heat and Cherokee had funds in
8 excess of \$100 million available to pay Dr. Rossi and
9 Leonardo for the license for the E-Cat IP?

10 MR. LOMAX: Objection.

11 THE WITNESS: No.

12 BY MR. ANNESSER:

13 Q. Did Cherokee Investment Partners ever have
14 \$100 million in which they could pay Dr. Rossi for the
15 E-Cat IP?

16 A. Cherokee Investment Partners, LLC was not a
17 party to the license agreement.

18 Q. Sir, the question was, did Cherokee Investment
19 Partners ever have \$100 million in which they could have
20 paid for the E-Cat IP?

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

23 THE WITNESS: No. Because they were never an
24 investor in the license agreement.

25 BY MR. ANNESSER:

1 answer or a simple single answer for your question. It is
2 more of a facts and circumstances, at least in my words.

3 Q. Sir, do you have any facts or evidence that --
4 to show that Mr. Darden or Mr. Vaughn did not inform
5 Dr. Rossi that Cherokee would guarantee the payment for
6 the license fee because Industrial Heat was a wholly owned
7 subsidiary?

8 MR. LOMAX: Objection to the form of the
9 question.

10 THE WITNESS: Cherokee Investment Partners, LLC
11 did not guarantee payment, and Industrial Heat was
12 not a subsidiary of Cherokee Investment Partners,
13 LLC.

14 BY MR. ANNESSER:

15 Q. I understand that. My question was, do you
16 have any facts or evidence that Mr. Darden or Mr. Vaughn
17 did not make that representation?

18 A. No.

19 Q. Because that is part of the problem. I
20 understand that Cherokee Investment Partners did not own
21 Industrial Heat, but those claims were made to my client.
22 So what I am asking is whether you have evidence that
23 those claims were not made, as opposed to what the reality
24 of the situation was.

25 A. No.

1 Q. Sir, do you have any facts or evidence?

2 A. I'm sorry. I said no.

3 Q. I'm sorry. I didn't hear you.

4 Do you have any facts or evidence to show that
5 Mr. Darden, Mr. Vaughn, Industrial Heat or Cherokee did
6 not know that IPH was not a wholly owned subsidiary of IH
7 or that IH was not a wholly owned subsidiary of Cherokee?

8 MR. LOMAX: Objection to the form of the
9 question.

10 THE WITNESS: I didn't follow that very well.
11 Can you point that out to me.

12 BY MR. ANNESSER:

13 Q. Do you have any facts or evidence, sir, that
14 Mr. Darden, Mr. Vaughn or IH or Cherokee did not represent
15 to Dr. Rossi and Leonardo Corporation that they were --
16 that Industrial Heat was a wholly owned subsidiary of
17 Cherokee?

18 MR. LOMAX: Objection to the form of the
19 question.

20 THE WITNESS: Industrial Heat was not a
21 subsidiary of Cherokee Investment Partners, LLC.

22 BY MR. ANNESSER:

23 Q. I understand that. But what I am asking about
24 is the representation made by Cherokee, by Mr. Darden and
25 Mr. Vaughn and IH, that IH was a wholly owned subsidiary.

1 Do you have any facts or evidence to show that that
2 representation was never made?

3 MR. LOMAX: Objection to the form of the
4 question.

5 THE WITNESS: No.

6 BY MR. ANNESSER:

7 Q. Did -- did your company at any time, did
8 Cherokee Investment Partners at any time inform Dr. Rossi
9 or Leonardo Corporation that they were not involved with
10 any investment into Dr. Rossi's technology?

11 A. Yes.

12 Q. When?

13 A. By the fact that the investment was made in
14 Industrial Heat, LLC.

15 Q. But we have alleged that the representation was
16 made that Cherokee Investment Partners was the owner of
17 Industrial Heat.

18 A. The allegation is incorrect.

19 Q. So other than --

20 A. CIP, LLC was not the owner of Industrial Heat,
21 LLC.

22 Q. Other than the fact that the license agreement
23 was signed by Industrial Heat, do you have any other facts
24 or evidence to support your position that those
25 representations were never made?

1 was not part of the investment, not making the investment.

2 Q. It would be an indicator to you?

3 A. Now, the fact that the conversations were --
4 took place, would be supportive of that, in my
5 understanding.

6 Q. The claim that been made by Dr. Rossi in this
7 case is that Cherokee represented, among others, that
8 Cherokee Investment Partners was the owner of Industrial
9 Heat. You understand the distinction between whether that
10 is true or not and whether the representation was made, do
11 you not?

12 A. To my knowledge, there was no representation
13 made.

14 Q. Okay. Do you have any facts or evidence to
15 support your claim that there is no representation made or
16 that Dr. Rossi knew for a fact that Cherokee Investment
17 Partners was not the owner of Industrial Heat?

18 MR. LOMAX: Objection to the form of the
19 question. Compound question.

20 THE WITNESS: I don't know what Dr. Rossi knew.

21 BY MR. ANNESSER:

22 Q. Now, you had referenced the e-mails to the, as
23 you called them, brokers, Mr. Bauman and Mr. Compton. Did
24 Cherokee Investment Partners pay those brokers for their
25 services?

1 fraudulently induced Industrial Heat to enter into the
2 term sheet?

3 A. No.

4 Q. Do you have any facts that Dr. Rossi engaged in
5 other conduct alleged -- sorry, other improper conduct in
6 support of the fraudulent inducement and FDUPTA claim set
7 forth in the third -- I'm sorry, the counterclaim filed by
8 Industrial Heat?

9 A. No.

10 Q. Okay. Is Cherokee claiming that Dr. Rossi
11 and/or Leonardo waived their fraudulent inducement claim
12 by agreeing to the provisions of the license agreement?

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

15 THE WITNESS: I'm sorry. Say it again.

16 BY MR. ANNESSER:

17 Q. Okay. Is Cherokee Investment Partners claiming
18 that Dr. Rossi or Leonardo waived any rights to bring
19 their claims against Cherokee Investment Partners?

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

22 THE WITNESS: Are we in any particular defense?

23 BY MR. ANNESSER:

24 Q. The second defense. My question is whether
25 your company is claiming that Dr. Rossi did anything to

1 waive his rights to bring a claim against your company for
2 fraudulent inducement.

3 MR. LOMAX: Objection to the form of the
4 question.

5 THE WITNESS: I'm not following your question,
6 I'm sorry, in the context of the second defense.

7 BY MR. ANNESSER:

8 Q. Did Dr. Rossi or Leonardo ever send to Cherokee
9 a written waiver of any claims against Cherokee?

10 A. Not to my knowledge.

11 Q. Did he ever represent to Cherokee expressly
12 that he was waiving any right to bring action against
13 Cherokee?

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

16 THE WITNESS: Not to my knowledge.

17 BY MR. ANNESSER:

18 Q. Did he undertake any action which Cherokee
19 believes was a waiver of any of his rights with respect to
20 bringing claims against Cherokee?

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

23 THE WITNESS: Not to my knowledge.

24 BY MR. ANNESSER:

25 Q. Did anyone ever tell you that Dr. Rossi or

1 Leonardo had waived their claims against your company,
2 sir?

3 MR. LOMAX: Objection to the form of the
4 question. And I am going to instruct you to not
5 answer, to the extent that this would involve
6 conversation with lawyers.

7 MR. ANNESSER: Well, your lawyers.

8 THE WITNESS: You have instructed me not to
9 answer the question.

10 MR. LOMAX: If it involves --

11 BY MR. ANNESSER:

12 Q. Other than your counsel, sir, did anyone ever
13 tell you that Dr. Rossi --

14 A. I don't recall conversations, other than with
15 counsel.

16 Q. Okay. Is -- do you have any facts or evidence
17 that the plaintiffs in this case, Dr. Rossi or Leonardo,
18 engaged in any unlawful actions?

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

21 THE WITNESS: Other than what I've -- I
22 understand was --

23 MR. LOMAX: I am going to instruct you not to
24 answer, to the extent you are going to talk about
25 conversations you have had with your counsel.

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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
Wednesday, February 15, 2017
9:02 a.m. - 4:56 p.m.

VIDEOTAPED DEPOSITION OF SLOCUM HATCH FOGLEMAN
(Corporate Representative of Cherokee Investment
Partners, 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.

EXHIBIT 1

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CERTIFICATE OF OATH OF WITNESS

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

I, ELIZABETH CORDOBA, RMR, CRR, FPR, Notary Public in and for the State of Florida at Large, certify that the witness, SLOCUM HATCH FOGLEMAN, personally appeared before me on February 15, 2017 and was duly sworn by me.

WITNESS my hand and official seal this March 2, 2017.

E cordoba

ELIZABETH CORDOBA, RMR, CRR, FPR
Notary Public, State of Florida
at Large

Notary #EE075383
My commission expires: 3/17/2019