

CONFIDENTIAL

Page 1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 1:16-cv-21199-CMA/O'Sullivan

ANDREA ROSSI and LEONARDO )  
CORPORATION, )  
 )  
 )  
Plaintiffs, )  
 )  
 )  
v. )  
 )  
THOMAS DARDEN; JOHN T. )  
VAUGHN; INDUSTRIAL HEAT, )  
LLC; IPH INTERNATIONAL, )  
B.V. and CHEROKEE )  
INVESTMENT PARTNERS, LLC, )  
 )  
Defendants. )

C O N F I D E N T I A L

Video Deposition of THOMAS BARKER DAMERON, III  
(Taken by the Plaintiffs)  
Raleigh, North Carolina  
Thursday, December 1, 2016

Reported by: Marisa Munoz-Vourakis -  
RMR, CRR and Notary Public

CONFIDENTIAL

Page 78

1 BY MR. ANNESSER:  
 2 Q. And your answer?  
 3 A. No.  
 4 MR. ANNESSER: We'll take a break.  
 5 THE VIDEOGRAPHER: We're off the  
 6 record at 10:56.  
 7 (Recess.)  
 8 THE VIDEOGRAPHER: Video number two,  
 9 we're on the record at 11:13.  
 10 BY MR. ANNESSER:  
 11 Q. Sir, before we left on our short break, we  
 12 were talking about three perceived flaws in the test  
 13 setup for the guaranteed performance test in Doral,  
 14 Florida, correct? Do you recall that?  
 15 A. Yes.  
 16 Q. I think we covered the first two, but the  
 17 third was that there were no traplines in place, is  
 18 that correct?  
 19 A. Correct, yes.  
 20 Q. Okay. And how do you know there were no  
 21 traplines in place?  
 22 A. In my visit, about February 24, that was an  
 23 observation I made. There may have been another  
 24 picture of that area that came from somewhere else, but  
 25 I do not recall.

Page 79

1 Q. And had there been a trapline in place, is  
 2 it possible that it could have been something you just  
 3 didn't see?  
 4 A. It was -- when I laid the unit out and had  
 5 it kind of setup, before we kind of packed it up and  
 6 sent it, it was not where I had put it.  
 7 Q. I'm sorry, I didn't follow. Say that  
 8 again, please?  
 9 A. The unit was -- when it was constructed, it  
 10 had pipes on the outside of it that had to be taken off  
 11 for shipping. And so that's where those traplines and  
 12 some of that extra stuff was, extra piping, places for  
 13 instruments were located. And that was not there when  
 14 I observed it in Florida.  
 15 Q. Did you say anything at the time you didn't  
 16 see it?  
 17 A. I did not.  
 18 Q. Now, you had mentioned with all three of  
 19 these perceived problems with the test, that you didn't  
 20 have the opportunity to mention it to Andrea Rossi or  
 21 to Mr. Penon. But you were there February 24,  
 22 thereabouts, with Dr. Rossi. Was Mr. Penon there as  
 23 well?  
 24 A. I think not, I'm pretty sure --  
 25 Q. Have you ever met Mr. Penon?

Page 80

1 A. Yeah, I met him in the trip to Italy, but  
 2 as I recall, that's the only time I met him.  
 3 Q. Are there any other errors that you see in  
 4 the test that tell you automatically that hey, this is  
 5 not proper, this is not correct?  
 6 MR. PACE: Objection, form.  
 7 BY MR. ANNESSER:  
 8 Q. Other than the three we've discussed?  
 9 A. There may be others. Those are the main  
 10 ones that come to mind.  
 11 Q. And do you perceive those to be big  
 12 problems or little problems?  
 13 A. Big problems.  
 14 Q. Now, you knew what this test was in Miami,  
 15 correct? You knew that it was the guaranteed  
 16 performance test pursuant to the contract?  
 17 MR. PACE: Objection to form.  
 18 BY MR. ANNESSER:  
 19 Q. I remind you, sir, you're under oath.  
 20 MR. PACE: Objection to form.  
 21 A. What was the question?  
 22 Q. You knew, sir, that the guaranteed  
 23 performance test, the test in Doral, Florida, was the  
 24 test pursuant to the contract?  
 25 MR. PACE: Objection to form.

Page 81

1 BY MR. ANNESSER:  
 2 Q. Is that correct?  
 3 A. No, I'm not -- I wasn't sure exactly --  
 4 there was some question about selling steam to a client  
 5 at one point. There were -- the answer, the things you  
 6 mentioned earlier about what was the test and when did  
 7 the test start, so there's confusion in my mind about  
 8 even when I was there, was that the guaranteed test?  
 9 If that's what it was, I'm not sure what was when.  
 10 Q. Sir, you knew that the guaranteed  
 11 performance test was to take place in Doral, the 350  
 12 out of 400 day test, you know what I'm talking about,  
 13 correct?  
 14 MR. PACE: Objection to form.  
 15 A. I -- the whole what was a test was in some  
 16 question to me. It may have been known by other  
 17 people. I, I think I can say pretty -- that there was  
 18 going to be a test, and it was likely to be in Florida  
 19 or at this location.  
 20 Q. And you knew that Mr. Penon was the ERV for  
 21 that test, as he had been for the validation test,  
 22 correct?  
 23 A. No, there seemed to have been some question  
 24 about was he qualified, was he agreed upon and so on.  
 25 That was not part of what I was -- that's not part of

CONFIDENTIAL

Page 152

1 MR. PACE: Objection to form.

2 A. Before the final payment of something, I'm  
3 not sure what that final word was.

4 Q. Was it your understanding that a testing  
5 had to be carried out successfully in order for  
6 Dr. Rossi to be paid the final sum of money?

7 MR. PACE: Objection to form.

8 A. Yes.

9 Q. And that sum was \$89 million, correct?

10 A. Could have been that much, I think. As I  
11 recall, that was the maximum amount.

12 Q. Sir, I am showing you a document, which  
13 we've marked as Plaintiff's Exhibit 11, which has Bates  
14 number IH00091609.

15 (The document referred to was marked  
16 Plaintiff's Exhibit Number 11 for  
17 identification.)

18 (Pause.)

19 Q. The first email, sir, is from J.T. Vaughn  
20 to yourself from June 16, 2014. Do you see that?

21 A. Yes.

22 Q. Did you receive this email, sir?

23 A. Yes.

24 Q. And it attaches a copy of the contract and  
25 refers to Section 5 requirements for the one megawatt

CONFIDENTIAL

Page 153

1 to pass a 350-day test. Do you see that?

2 A. Yes.

3 Q. Do you understand that to be the guaranteed  
4 performance test?

5 A. Yes.

6 Q. So it's your understanding, as of June 16,  
7 2014, that guaranteed performance test had not yet been  
8 undertaken?

9 A. Yeah, yes.

10 Q. And in fact, you later learned that the  
11 guaranteed performance test would be undertaken at the  
12 Doral facility in Miami, is that correct?

13 MR. PACE: Objection. I'm sorry,  
14 objection to the form of the question.

15 MR. ANNESSER: What's your objection?

16 MR. PACE: You keep phrasing it in  
17 terms of something that it's what he's  
18 testified to in terms of your  
19 characterization of the test. That's why I  
20 say that.

21 MR. ANNESSER: Can you repeat the  
22 question? I want to make sure if Mr. Pace  
23 is correct, I will correct myself.

24 (Record read.)

25

<p style="text-align: right;">Page 178</p> <p>1 A. I would have to reread the protocol at this 2 point. 3 Q. Sir, if you did not believe that the 4 protocol would yield a reliable result at the time that 5 you reviewed it, would you have said something? 6 A. Yes. 7 Q. Would you have sent an email to Dr. Rossi, 8 Engineer Penon, Mr. Vaughn or Mr. Darden saying 9 gentlemen, this protocol does not yield a reliable 10 result? 11 A. If I were to have a communication, it 12 probably would have been verbal to either Tom or J.T. 13 Q. Do you know, sir, sitting here today, 14 whether anybody; Mr. Vaughn, Mr. Darden or any other 15 person on behalf of Industrial Heat, conveyed to either 16 Engineer Penon or Dr. Rossi that there was a perceived 17 deficiency in the protocol prior to the beginning of 18 the test? 19 A. I don't know. 20 Q. Are you aware of any such communications, 21 sir? 22 A. I thought that's what I just answered. 23 Q. And so you don't know whether you conveyed 24 that to Mr. Vaughn or Mr. Darden or any other person or 25 not?</p>	<p style="text-align: right;">Page 180</p> <p>1 the question. 2 A. Don't know. 3 Q. So you do not know? 4 A. No. 5 Q. I understand there's two aspects; one is 6 what the protocol calls for and what was actually done, 7 correct? Is that the distinguishment you're making? 8 A. No, not at all. There's the protocol and 9 the protocol assumes a type of piping. So the type of 10 piping determines whether the protocol is right. 11 So it was -- it was not piped at the 12 time -- the protocol was written. So you might agree 13 with the protocol, but if the piping has changed, you 14 don't agree with the protocol. 15 Q. What piping are we talking about, sir? 16 A. Steam water traps, drains. 17 Q. Okay. The piping between the plant and the 18 customer, correct? 19 A. Piping within the plant, how you feed it 20 water, all kind -- many, many, there's many aspects of 21 that. 22 Q. Didn't you construct the plant, sir? 23 A. I did. 24 Q. So you know what the inside, how it had 25 been piped, correct?</p>
<p style="text-align: right;">Page 179</p> <p>1 A. I thought that was not the question. 2 Q. No, this is a new question. 3 MR. PACE: Objection to the form of 4 the question. 5 BY MR. ANNESSER: 6 Q. Sitting here today, you don't know whether 7 you ever conveyed to Mr. Vaughn, Mr. Darden, Dr. Rossi 8 or Engineer Penon, or any other person for that matter, 9 that you perceived the test protocol that was being 10 formulated to be deficient in any manner? 11 MR. PACE: Objection to the form of 12 the question. 13 A. A test protocol is one thing. The way it 14 is piped and operated is a different thing. So when I 15 say the protocol, I'm also saying I don't recall 16 exactly what was in the protocol. So knowing what I 17 know now, I don't know whether it was followed or not. 18 Q. Sir, as the sole engineer at the company at 19 the time, you reviewed the protocol, correct, before 20 the test, and one of two things happened; you either 21 objected to the protocol or you did not. Sitting here 22 today, do you know whether you objected to the protocol 23 or whether you did not? 24 A. I don't know. 25 MR. PACE: Objection to the form of</p>	<p style="text-align: right;">Page 181</p> <p>1 A. Correct. 2 Q. So when reviewing this, you knew how it had 3 been piped? 4 A. Right. 5 Q. And the test protocol was appropriate for 6 that piping, correct? 7 A. I would say so. 8 Q. Now, you gave directions to JM and 9 Dr. Rossi as to the piping going to the JM site, is 10 that correct? 11 A. No. 12 MR. PACE: Objection to the form of 13 the question. Go ahead. 14 A. No, that was dictated later. 15 Q. What do you mean dictated? 16 A. It was already piped when we got there. 17 Q. When who got there, sir? 18 A. When the unit got there. The wall was 19 already built. The pipes were already there to feed. 20 Q. Based on whose specifications? 21 A. Don't know. Not mine. 22 MR. PACE: Are we at a breaking point? 23 MR. ANNESSER: Yes. 24 MR. PACE: Let's take a break. 25 THE VIDEOGRAPHER: We're off the</p>

<p style="text-align: right;">Page 182</p> <p>1 record at 3:14. 2 (Recess.) 3 THE VIDEOGRAPHER: This is video 4 number four, we're on the record at 3:32. 5 BY MR. ANNESSER: 6 Q. Sir, now you've seen the document that's 7 been marked as Exhibit 13, which is in front of you, 8 which is the document we have been previously 9 discussing. Having reviewed that document. Does that 10 refresh your recollection as to whether the test being 11 performed in Miami, Florida was in fact the guaranteed 12 performance test? 13 MR. PACE: Objection to the form of 14 the question. 15 A. It seems to be aimed that way. 16 Q. Would that be a yes or no, sir? 17 A. I was not involved in what was exactly 18 classified as the performance, the test performance 19 test, so -- 20 Q. But that's what you understood it to be? 21 A. Yeah, I think I understood it to be. 22 Q. Now, prior to the beginning of this test, 23 Mr. Barry West went down to the facility, the JM 24 facility to scope it out, prepare for bringing the 25 plant down, is that correct?</p>	<p style="text-align: right;">Page 184</p> <p>1 MR. ANNESSER: Yes. 2 Q. Sir, that appears to be an email from 3 Mr. David Perry to Fulvio Fabiani, Andrea Rossi, Barry 4 West and yourself, correct? 5 A. Yes. 6 Q. And it's regarding travel to Miami? 7 A. Yes. 8 Q. And this is an email, dated November 4, 9 2014? 10 A. Yes. 11 Q. And it states: I'm writing to inform you 12 that T. Barker's mother was in an automobile accident 13 this afternoon, and she is in the hospital. T. Barker 14 will not be traveling to Miami this week, but Barry 15 West will be there to study the plant and 16 specifications for delivery. Barry will arrive as 17 follows, and then provides his flight itinerary on 18 November 5, 2014. 19 Does that refresh your recollection as to 20 whether Mr. West came down prior to the delivery of the 21 plant? 22 A. Yes. 23 Q. Now, you had testified previously that the 24 piping for the JM had already been installed by the 25 time that you got there, is that correct?</p>
<p style="text-align: right;">Page 183</p> <p>1 A. I'm not sure how much he went down before, 2 but he definitely was there to help set it up. I don't 3 remember his exact schedule, but it's something of that 4 nature. 5 Q. So from your understanding, Mr. West did 6 take part in the settlement of the plant? 7 A. Correct. 8 Q. What did that entail, if you know, the 9 setting up of the plant? 10 A. Let's see here, Barry is by trade is an 11 electrician. So it had to do with the electrical parts 12 of it. I can't tell you exactly what other tasks he 13 did. I believe there were some plumbing tasks that 14 were done. I don't think he was the only one down 15 there helping, so I don't know how that division of 16 work was carried out exactly. 17 Q. Sir, I'm going to show you a document, 18 which we'll mark as Plaintiff's Exhibit 14. 19 (The document referred to was marked 20 Plaintiff's Exhibit Number 14 for 21 identification.) 22 Q. And really what I'd like to direct you to 23 is the last email on the first page. 24 MR. PACE: The carryover email Dear 25 Andrea?</p>	<p style="text-align: right;">Page 185</p> <p>1 MR. PACE: Objection to the form of 2 the question. 3 A. Yes. 4 Q. Was that your testimony? 5 A. That's the truth. 6 Q. Do you know if it had been installed prior 7 to Barry's arrival? 8 A. I'm pretty sure it had been. 9 Q. Okay. And do you know if there was 10 anything wrong with the way it was setup? 11 A. Issues with the piping were just a couple 12 of -- one of them were we had to adjust for the 13 elevation of the condensate in one case, and the steam 14 pipe, I thought, was too small, but there was nothing 15 to be done at that point. 16 Q. Let's talk about the elevation for the 17 moment. In fact, per your instruction, JM changed the 18 location of their condensate pipe? 19 A. That -- 20 MR. PACE: Let him finish the 21 question. Were you done? 22 MR. ANNESSER: Not quite yet. 23 Q. Changed the location of that pipe to 24 satisfy your concerns, is that correct? 25 MR. PACE: Objection. Objection to</p>

<p style="text-align: right;">Page 190</p> <p>1 Q. And what effect do you believe that that 2 had on the measurements taken by the ERV? 3 MR. PACE: Objection to the form of 4 the question. 5 A. The effect of that pressure would have 6 greatly reduced the flow of steam that could go through 7 the pipe. So the effect is I don't know if it would 8 affect the measurement or not. It would affect the 9 flow. 10 Q. Okay. It would affect the flow of steam, 11 but you don't know that it would have affected the 12 measurements? 13 A. Correct. 14 Q. What measurements were taken on the steam 15 pipe? 16 A. Let's see here, I think there was, I'm not 17 exactly sure. I think there was a pressure gauge 18 somewhere in the system. I think I was shown a 19 pressure gauge inside the container up near the front, 20 and there were temperature sensors on all of the E-CAT 21 units. There were -- I don't recall the number or 22 placement of the temperature sensors on the steam 23 header leaving the plant. There may have been pressure 24 sensors on all of the E-CATs as well. 25 Q. Now, sir, you say you went and visited the</p>	<p style="text-align: right;">Page 192</p> <p>1 coupling types of the lines. 2 Q. And did you alert the ERV as to your 3 concerns? 4 A. No. 5 MR. PACE: Hold on, objection to the 6 form of the question. 7 A. No. My communications were through the 8 Industrial Heat people. 9 Q. And you don't know sitting here today 10 whether they did or did not alert the -- 11 A. Correct. 12 Q. Did you observe any other problems with 13 either the placement of equipment, the type of 14 equipment being used by Engineer Penon or any other 15 problems with the measurements taken by the ERV for the 16 guaranteed performance test? 17 MR. PACE: Objection to form of the 18 question. 19 A. The measurement system was much different 20 than how it was designed to be. So there were meters 21 in places where I not expected there to be meters. And 22 piping was noticeably different than what we said as to 23 how it was laid out to be operated under my skin. So 24 it took me some time to figure out what that scheme had 25 been rearranged to be.</p>
<p style="text-align: right;">Page 191</p> <p>1 plant on or about February 24, 2015? 2 A. That's correct. 3 Q. How long did you spend there? 4 A. It was a day trip. 5 Q. What was the purpose of your visit? 6 A. General looking around, see what was there. 7 Friendly visit, see how it was going. I hadn't seen 8 it. 9 Q. So at that point in time, you had reviewed 10 the test protocol, correct? 11 A. Yeah, would have. 12 Q. So you were aware of it? 13 A. Right. 14 Q. And you were also at that point in time, as 15 of February 2015, still the sole engineer at Industrial 16 Heat, correct? 17 A. I think that's correct. 18 Q. And so when you went down, is that when you 19 observed that the steam pipe, in your opinion, was too 20 small? 21 A. No. The steam pipe was too small based on 22 the earlier visit. I think that I -- however, that 23 information got to me when we were lowering the 24 condensate line, that I think we knew something 25 about -- Andrea maybe even told me, the size and the</p>	<p style="text-align: right;">Page 193</p> <p>1 Q. What piping are you referring to, sir? 2 A. I'm referring to the condensate return 3 system, supply water system, the drain system, the trap 4 system, steam header system. I think that's all. 5 Q. Okay. So specifically, the condensate we 6 discussed, you said that that was placed where you had 7 instructed them to the condensate line? 8 A. What might be called condensate return, 9 yes. 10 Q. We're talking about the same thing, that's 11 what we talked about before being located where you had 12 instructed? 13 A. Right. 14 Q. So that was as you had instructed? 15 A. Yes. 16 Q. Okay. The supply water line, what was the 17 problem with the supply water line? 18 A. The supply water line design was completely 19 abandoned, and it was actually the condensate return 20 tank was used as a supply tank in a different location. 21 Q. And did you believe that to be a problem 22 for the carrying out of the guaranteed performance 23 test? 24 MR. PACE: Objection to the form of 25 the question.</p>

Page 194

1 A. Did I think? It was a confusing thing. It  
 2 was not -- the whole -- the movement of the tank called  
 3 into question how you would meter the water going in  
 4 that I did not follow up on.  
 5 Q. So there would be no emails in which you  
 6 discuss that or perhaps email Andrea and say hey,  
 7 it's --  
 8 A. Discussions were not with generally Andrea.  
 9 It was -- no.  
 10 Q. The drain system, what was wrong with the  
 11 drain system?  
 12 A. There was a drain system in there that was  
 13 to come out and alarm. It's certain valves happen, if  
 14 you wanted to drain water, and it was -- I think it was  
 15 either not connected or stopped up, one or the other.  
 16 It was to come out to a device to measure, and that  
 17 device was not there.  
 18 Q. Likewise, did you bring that to Dr. Rossi's  
 19 attention?  
 20 A. No, same as usual.  
 21 Q. So there will be no emails that discuss  
 22 those perceived deficiencies?  
 23 A. Probably not.  
 24 Q. And the steam header, is that the same  
 25 thing we've been talking about with in terms of the

Page 195

1 size of the pipe?  
 2 A. It is the same system. It's further up --  
 3 further towards the plant.  
 4 So what we were talking about before was  
 5 the steam line as it is on the JM Product side, and the  
 6 steam header would be what is on the production side.  
 7 So they come together and meet someplace.  
 8 Q. Why did it matter what happened on the JM  
 9 side with the steam line?  
 10 A. Different type -- for several reasons. On  
 11 a very basic level, you didn't want to supply steam to  
 12 a device that didn't want steam. So there should have  
 13 been a way to divert a steam supply, if it needed to be  
 14 diverted for safety reasons.  
 15 Q. Let me interrupt you for just a moment.  
 16 Does that affect the measurements being  
 17 taken by the ERV?  
 18 MR. PACE: Objection to the form of  
 19 the question.  
 20 A. I would have to think about that one for a  
 21 minute, but it doesn't come to mind right off.  
 22 Q. Okay. Continue your answer, sorry.  
 23 A. Let's see, what is on the other side, what  
 24 type of load there? It matters what pressure that  
 25 system operates to how the one megawatt would operate.

Page 196

1 So it would be important to know something about that  
 2 unit.  
 3 Q. How does that affect the measurements by  
 4 the ERV?  
 5 A. You could have, for instance, a vacuum on  
 6 the other side that would suck steam over that could  
 7 distort things.  
 8 Q. What would it distort?  
 9 A. I would have to think about that for a  
 10 minute. It would distort pressures inside the system.  
 11 Q. But that would be reflected in the  
 12 pressures being measured on the E-CAT site?  
 13 A. Should be, yeah.  
 14 Q. So if in fact there was something creating  
 15 a difference in pressure on the JM side, that would be  
 16 reflected in the measurements taken on the E-CAT side,  
 17 correct?  
 18 MR. PACE: Objection to the form of  
 19 the question.  
 20 A. The answer is only probably.  
 21 Q. Why is it only probably?  
 22 A. It depends on how each one is operated.  
 23 They could have been operated in a balance, for  
 24 instance, so --  
 25 Q. If it was operated in a balance, meaning

Page 197

1 it's not a vacuum system, it's not a pressured system,  
 2 how would that affect the measurements taken by the  
 3 ERV?  
 4 A. I'm not sure how it changes -- it just  
 5 changed the operation of the unit.  
 6 Q. It changes the operation of the unit, but  
 7 it won't necessarily change the results of the test?  
 8 MR. PACE: Objection to the form of  
 9 the question?  
 10 BY MR. ANNESSER:  
 11 Q. Is that correct?  
 12 A. I would have to think about that a little  
 13 bit. That would not be a high concern for me, but I  
 14 would have to think about it.  
 15 Q. Did you see a copy of Engineer Penon's  
 16 initial report? Actually, I think it may be -- it may  
 17 have been attached to one of those emails that we have  
 18 been discussing.  
 19 Did you review the additional report from  
 20 Engineer Penon?  
 21 MR. PACE: Objection to the form of  
 22 the question.  
 23 A. I'm trying to remember which reports I saw.  
 24 Are you talking about a dir -- can you explain which  
 25 report this is in more depth?

Page 198

1 Q. Sir, looking at Exhibit 12, Mr. Penon  
 2 submitted a report that the operation of the plant had  
 3 begun, and that report was as of -- that was the first  
 4 report on May 28, 2015.  
 5 A. Okay. Got you.  
 6 Q. Did you review that report?  
 7 A. I did see that report, yes.  
 8 Q. In writing to any person.  
 9 Did you tell them that you thought that the  
 10 results of that report were incorrect?  
 11 A. Not that I recall.  
 12 Q. Did you see any other reports from Engineer  
 13 Penon regarding the operation of the E-CAT plant in  
 14 Doral, Florida, between February 2015 and February  
 15 2016?  
 16 A. My recollection is I saw this report. I  
 17 may have seen another report sometime between this  
 18 report and the end of the test, but I think I've seen  
 19 one at the end of the test.  
 20 Q. And with those reports, did you ever send  
 21 an email to anybody, whether it be Engineer Penon,  
 22 Dr. Rossi, Mr. Vaughn, Mr. Darden, indicating that you  
 23 disagreed with those reports?  
 24 A. Not that I recall.  
 25 Q. Sir, did you ever prepare a design

Page 199

1 schematic for the layout of the plant and how it should  
 2 be at the Doral facility, in your opinion?  
 3 A. Yes.  
 4 Q. Did you ever share that with Dr. Rossi?  
 5 A. I thought that I did. I don't guarantee  
 6 it.  
 7 Q. If it's not in the emails that are  
 8 produced, is it fair to state that it was not shared  
 9 with Dr. Rossi?  
 10 A. No, because it may have been shown to him  
 11 in a hand sketch.  
 12 Q. When would you have shown that to him?  
 13 MR. PACE: Objection to the form of  
 14 the question.  
 15 A. That would be very near the time it was  
 16 shipped, as that would have been when that was being  
 17 laid out.  
 18 Q. Isn't it true, sir, that Dr. Rossi was in  
 19 fact in Miami prior to it being shipped?  
 20 A. He was back and forth at various times.  
 21 Q. Do you know whether the layout of the plant  
 22 was done in line with your design schematic?  
 23 A. I think it was not.  
 24 Q. How so?  
 25 A. When I went down there and looked at it, it

Page 200

1 was not there, and I have heard from Barry West it was  
 2 rearranged, consciously rearranged.  
 3 Q. What do you mean by consciously rearranged?  
 4 A. Andrea changed the design -- layout of it  
 5 and put it in a different way.  
 6 Q. And what was the difference?  
 7 A. It didn't have a steam header in it. It  
 8 didn't have the steam traps in it. It didn't have the  
 9 drains in it.  
 10 MR. ANNESSER: Sorry, gentlemen, I  
 11 can't hear. Gentlemen, please.  
 12 Q. So you said it did not have a steam header,  
 13 correct?  
 14 A. Did not have --  
 15 Q. I want to go through these again. I want  
 16 to go through one by one to make sure I understand.  
 17 A. The steam header that was made to go on the  
 18 unit was not on the unit.  
 19 Q. What is the steam header?  
 20 A. Steam header is a piece of pipe that comes  
 21 out, has taps in it for pressure and temperature,  
 22 thermal wells for temperature. It had a place to  
 23 put -- it had a drip leg in it where you could get  
 24 condensate out, a place for a trap to drain that. It  
 25 had a place to install two steam meters. It had a way

Page 201

1 to connect it back together again and connect to the  
 2 pipe going to the JM Products.  
 3 Q. And, sir, what was there in place of this  
 4 steam header?  
 5 A. A line came out of the one megawatt unit  
 6 and turned and went straight to the JM Products.  
 7 Q. Were there any temperature devices there,  
 8 temperature gauges?  
 9 A. I don't -- there may be, I don't recall.  
 10 Q. Pressure gauges?  
 11 A. I don't think there were any pressure  
 12 gauges there. There was a pressure gauge inside the  
 13 unit.  
 14 Q. And when you were there on February 24,  
 15 2015, did you pull Andrea Rossi aside and say hey, this  
 16 isn't what we planned?  
 17 A. No, I did not.  
 18 Q. When you returned, did you tell Mr. Vaughn  
 19 or Mr. Darden that --  
 20 A. Most likely, yes.  
 21 Q. Did you ever tell Mr. Penon?  
 22 A. No.  
 23 Q. And you don't know sitting here today  
 24 whether Mr. Darden or Mr. Vaughn ever told Dr. Rossi or  
 25 Engineer Penon --

<p style="text-align: right;">Page 202</p> <p>1 A. Correct.</p> <p>2 Q. -- that it was not done according to your</p> <p>3 schematic?</p> <p>4 A. Correct.</p> <p>5 Q. In fact, you never raised any issue with</p> <p>6 the setup of the plant to Dr. Rossi himself, is that</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. You never raised any issue with the setup</p> <p>10 of the plant or testing equipment to Engineer Penon</p> <p>11 either?</p> <p>12 A. Correct.</p> <p>13 Q. And at that time, you were still the sole</p> <p>14 engineer?</p> <p>15 A. My communications were going through J.T.</p> <p>16 and Tom.</p> <p>17 Q. And so if they didn't communicate that</p> <p>18 information, it was not communicated, correct?</p> <p>19 MR. PACE: Objection to the form of</p> <p>20 the question.</p> <p>21 A. I'm not sure what other paths are</p> <p>22 available. There may have been some, I don't know.</p> <p>23 Q. How often did you communicate with Barry</p> <p>24 West throughout the guaranteed performance test between</p> <p>25 February 2015 and February 2016?</p>	<p style="text-align: right;">Page 204</p> <p>1 Q. The piping outside of the box?</p> <p>2 A. Outside of the unit. He told me --</p> <p>3 Q. This is the piping that you saw when you</p> <p>4 were down there on February 24, 2015?</p> <p>5 A. Right, or it wasn't there, right.</p> <p>6 Apparently there was some plumbing issues he's told me</p> <p>7 about. He's told me about replacing thermocouples.</p> <p>8 He's told me about fishing. He's told me about dealing</p> <p>9 with Fulvio.</p> <p>10 Q. Did he ever tell you anything about the COP</p> <p>11 that they were registering?</p> <p>12 A. He may, he may have, but I don't recall.</p> <p>13 From Barry that would have been what I would have -- I</p> <p>14 call this hearsay evidence, I'm not sure Barry would</p> <p>15 know what it was, unless they told him. So I would</p> <p>16 have dismissed that number.</p> <p>17 Q. Sir, when you reviewed the results that</p> <p>18 periodically came out from Engineer Penon for the ones</p> <p>19 that you saw, what were the COPs being recorded on</p> <p>20 average?</p> <p>21 A. First of all --</p> <p>22 MR. PACE: Objection to the form of</p> <p>23 the question.</p> <p>24 A. -- I don't think that they regularly came</p> <p>25 out. I think that that's not a true -- not the truth.</p>
<p style="text-align: right;">Page 203</p> <p>1 MR. PACE: Objection to the form of</p> <p>2 the question.</p> <p>3 A. I don't recall. It was -- it was less than</p> <p>4 weekly.</p> <p>5 Q. Would it be via email?</p> <p>6 A. Probably not. Barry was not a big email</p> <p>7 person. It would have been by -- usually by telephone.</p> <p>8 Q. If you know, what percentage of the time</p> <p>9 was Barry West at the facility? Was he there five days</p> <p>10 a week? Seven days a week, if you know? If you don't</p> <p>11 know, that's fine.</p> <p>12 A. I think he was there full time. So I'm not</p> <p>13 sure what that means for overtime or days off. But in</p> <p>14 general, it was a full-time job.</p> <p>15 Q. And when you communicated with Mr. West,</p> <p>16 what did you communicate about?</p> <p>17 A. Good question. We communicated some about</p> <p>18 what was going on at the plant.</p> <p>19 Q. What did he tell you?</p> <p>20 A. He told me -- the first thing he told me</p> <p>21 was that Andrea had changed all the piping around, had</p> <p>22 wanted it set up a different way and did that.</p> <p>23 Q. Hold on one second. When you say the</p> <p>24 piping, what piping?</p> <p>25 A. Steam header piping.</p>	<p style="text-align: right;">Page 205</p> <p>1 Q. How many reports did you see, sir?</p> <p>2 A. Like I said before, I think I saw this one</p> <p>3 we referred to, maybe another one in between and some</p> <p>4 at the end. So possibly three reports out of maybe 12.</p> <p>5 Q. And do you recall even the range of COPs</p> <p>6 that were being --</p> <p>7 A. I think they were very --</p> <p>8 MR. PACE: That were being, and he</p> <p>9 didn't get a chance to finish his question.</p> <p>10 Hold on a second.</p> <p>11 BY MR. ANNESSER:</p> <p>12 Q. That were being reported by Engineer Penon?</p> <p>13 MR. PACE: Objection to the form of</p> <p>14 the question.</p> <p>15 A. As I recall, they were very high, and I</p> <p>16 forget the -- two numbers come to mind. I don't</p> <p>17 remember which one it was.</p> <p>18 MR. ANNESSER: Chris, what was your</p> <p>19 objection?</p> <p>20 MR. PACE: I think that you had said</p> <p>21 being --</p> <p>22 MR. ANNESSER: I asked him does he</p> <p>23 recall what the COPs --</p> <p>24 MR. PACE: That's right. So the</p> <p>25 document speaks for itself. It's written in</p>

CONFIDENTIAL

Page 211

1 A. I think he got a check from industrial.

2 Q. And Mr. Fabiani, was he hired by Industrial  
3 Heat?

4 A. Like I said, I think he probably had a  
5 contract with and was paid for by Industrial Heat and  
6 worked under the direction of Andrea.

7 Q. Do you know if Industrial Heat ever sent an  
8 invoice to JM Products for the power that JM was  
9 reporting that it received?

10 A. Wait, say that question again?

11 Q. For the heat.

12 A. Say that question again?

13 Q. Do you know whether Industrial Heat ever  
14 sent an invoice or requested payment from JM Products  
15 for the power that they received or the heat that they  
16 received?

17 A. I don't know.

18 Q. Have you ever spoken with anyone at JM  
19 Products?

20 A. Not that I recall.

21 Q. When you were at the plant in February of  
22 2015, did you ever meet Mr. James Bass?

23 A. I think I did not.

24 Q. Did you ask to?

25 A. Not that I recall.

CONFIDENTIAL

Page 252

1 What's the basis for it?

2 MR. PACE: Can I just say if it's on  
3 the basis of conversations with counsel, you  
4 should tell him, but if it's not on the  
5 basis of conversations with counsel, you  
6 should answer the question.

7 A. Okay. I think it is based on various  
8 discussions at Industrial Heat with mainly J.T., I  
9 would have said.

10 Q. And what is it that you learned about  
11 Mr. Johnson from those discussions with J.T.?

12 A. That he represents Andrea in several  
13 things. He seems to be involved in JM Products. Those  
14 are the main things.

15 Q. How about Jim Bass or James Bass? Have you  
16 ever met him?

17 A. Not I'm aware of.

18 Q. Have you had any phone conversations or  
19 exchange any emails with him?

20 A. No.

21 Q. What do you know about Jim Bass or who he  
22 is?

23 A. I know very little about him. I think he's  
24 involved with JM Products or whatever that name is, but  
25 that's about all.

CONFIDENTIAL

Page 266	Page 268
<p>1 THE VIDEOGRAPHER: We're off the  2 record at 5:50 p.m.  3 (Whereupon the deposition was  4 concluded at 5:50 p.m.)  5 (Signature reserved.)  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p>1 ERRATA PAGE  2 MMV  3  4 CASE NAME: Rossi vs. Darden  5  6 WITNESS NAME: THOMAS BARKER DAMERON, III  7 DATE: December 1, 2016  8  9 PAGE LINE READS SHOULD READ REASON FOR CHANGE  10 _____  11 _____  12 _____  13 _____  14 _____  15 _____  16 _____  17 _____  18 _____  19 _____  20 _____  21 _____  22 _____  23 _____  24 _____  25 _____</p>
Page 267	Page 269
<p>1 SIGNATURE PAGE  2  3  4  5  6  7 _____  8 THOMAS BARKER DAMERON, III  9  10  11 SUBSCRIBED AND SWORN to before me this _____  12 day of _____, 2016.  13  14  15 _____  16 NOTARY PUBLIC  17  18 My Commission expires: _____  19  20  21  22  23  24  25</p>	<p>1 CERTIFICATE  2 I, Marisa Munoz-Vourakis, RMR, CRR and Notary Public,  3 the officer before whom the foregoing proceeding was  4 conducted, do hereby certify that the witness(es) whose  5 testimony appears in the foregoing proceeding were duly  6 sworn by me; that the testimony of said witness(es) were  7 taken by me to the best of my ability and thereafter  8 transcribed under my supervision; and that the foregoing  9 pages, inclusive, constitute a true and accurate  10 transcription of the testimony of the witness(es).  11 I do further certify that I am neither counsel for,  12 related to, nor employed by any of the parties to this  13 action in which this proceeding was conducted, and  14 further, that I am not a relative or employee of any  15 attorney or counsel employed by the parties thereof, nor  16 financially or otherwise interested in the outcome of the  17 action.  18 IN WITNESS WHEREOF, I have hereunto subscribed my name  19 this of _____, 2016.  20 MARISA MUNOZ-VOURAKIS  21 Notary #20032900127  22  23  24  25</p>

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at [www.veritext.com](http://www.veritext.com).