

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA

3 CASE NO: 1:16-cv-21199-CMA
4

5 ANDREA ROSSI, ET AL.,

6 Plaintiffs,

7 vs.

8 THOMAS DARDEN, ET AL.,

9 Defendants.
10 _____/

11 PERLMAN, BAJANDAS, YEVOLI &
12 ALBRIGHT, P.L.
13 282 CATALONIA AVENUE
14 SUITE 200
15 CORAL GABLES, FL 33134
16 Monday, February 13, 2017
17 9:07 a.m. - 5:18 p.m.

18 VIDEOTAPED DEPOSITION OF JOHN THOMAS VAUGHN
19 (Corporate Representative of Industrial Heat, LLC)
20

21 Taken on behalf of the Plaintiff before
22 Elizabeth Cordoba, RMR, CRR, FPR, Notary Public in
23 and for the State of Florida at Large, pursuant to
24 Plaintiff's Notice of Taking Deposition in the above
25 cause.

<p>1 APPEARANCES:</p> <p>2 ATTORNEYS FOR PLAINTIFFS:</p> <p>3 JOHN W. ANNESSER, ESQ</p> <p>4 BRIAN CHAIKEN, ESQ</p> <p>5 PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P.L.</p> <p>6 283 CATALONIA AVENUE</p> <p>7 SUITE 200</p> <p>8 CORAL GABLES FL 33134</p> <p>9 305-377-0086</p> <p>10 Jannesser@pbyalaw.com</p> <p>11 Bchaiken@pbyalaw.com</p> <p>12</p> <p>13 ATTORNEYS FOR DEFENDANTS:</p> <p>14 BERNARD P. BELL, ESQ</p> <p>15 MILLER FRIEL, PLLC</p> <p>16 1200 NEW HAMPSHIRE AVE, NW</p> <p>17 SUITE 800</p> <p>18 WASHINGTON DC 20036</p> <p>19 202-760-3158</p> <p>20 Bellb@millerfriel.com</p> <p>21 ATTORNEYS FOR THIRD-PARTY DEFENDANTS JM PRODUCTS, INC.,</p> <p>22 HENRY JOHNSON, ESQ AND JAMES BASS:</p> <p>23</p> <p>24 FERNANDO S. ARAN, ESQ</p> <p>25 FRANCISCO J. LEON DE LA BARRA, ESQ</p> <p>ARAN CORREA & GUARCH</p> <p>255 UNIVERSITY DRIVE</p> <p>CORAL GABLES FL 33134</p> <p>305-665-3400</p> <p>Faran@acg-law.com</p> <p>Fleon@acg-law.com</p> <p>ATTORNEYS FOR THIRD-PARTY DEFENDANTS FULVIO FABIANI AND</p> <p>UNITED STATES QUANTUM LEAP, LLC:</p> <p>RUDOLFO NUNEZ, ESQ</p> <p>RUDOLFO NUNEZ, P.A.</p> <p>200 UNIVERSITY DRIVE</p> <p>CORAL GABLES FL 33134</p> <p>305-665-3400</p> <p>Rnunez@acg-law.com</p>	<p>Page 2</p> <p>1 INDEX</p> <p>2 WITNESS PAGE</p> <p>3 JOHN THOMAS VAUGHN</p> <p>Direct Examination by Mr. Chaiken 7</p> <p>4 Cross-Examination by Mr. Nunez 261</p> <p>Cross-Examination Aran 281</p> <p>5</p> <p>6 EXHIBITS</p> <p>7 NUMBER DESCRIPTION PAGE</p> <p>8 Exhibit 1, Notice, 8</p> <p>9 Exhibit 2, IH82315 through 82329, 18</p> <p>10 Exhibit 3, IH83129 through 83130, 25</p> <p>11 Exhibit 4, IH83131 through 83149, 27</p> <p>12 Exhibit 5, IH127754 through 127759, 47</p> <p>13 Exhibit 6, IH2266 through 2315, 52</p> <p>14 Exhibit 7, IH113114, 61</p> <p>15 Exhibit 8, IH83307, 75</p> <p>16 Exhibit 9, IH117875 through 117876, 83</p> <p>17 Exhibit 10, IH18659 through 108661, 90</p> <p>18 Exhibit 11, IH84295 through 84297, 97</p> <p>19 Exhibit 12, IH136414 through 136430, 100</p> <p>20 Exhibit 13, License Agreement, 103</p> <p>21 Exhibit 14, First Amendment to the License Agreement, 111</p> <p>22 Exhibit 15, April 25, 2013 E-Mail, 116</p> <p>23 Exhibit 16, April 15, 2013 Memorandum, 120</p> <p>24 Exhibit 17, IH99334 through 99336, 127</p> <p>25 Exhibit 18, IH20906 through 20911, 130</p>
<p>1 APPEARANCES (Continued):</p> <p>2 ALSO PRESENT</p> <p>CHRISTIAN HERNANDEZ, VIDEOGRAPHER</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1 EXHIBITS</p> <p>(Continued)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 19, Fourth Amended Answer, Additional 151</p> <p>4 Defenses, Counterclaims and Third Party</p> <p>5 Claims,</p> <p>6 Exhibit 20, 96250 through 95252, 162</p> <p>7 Exhibit 21, IH22072 through 22074, 168</p> <p>8 Exhibit 22, IH81230 through 81234, 172</p> <p>9 Exhibit 23, IH22156 through 22200, 178</p> <p>10 Exhibit 24, Feasibility Report of Cold Fusion 182</p> <p>11 E-Cat of Industrialization in China,</p> <p>12 Exhibit 25, 89208 through 89212, 188</p> <p>13 Exhibit 26, IH4856 through 4857, 198</p> <p>14 Exhibit 27, Second Amendment to the License Agreement, 200</p> <p>15 Exhibit 28, IH45757 through 45819, 205</p> <p>16 Exhibit 29, 107550 through 107552, 205</p> <p>17 Exhibit 30, 107246 through 247, 207</p> <p>18 Exhibit 31, 106452 through 106474, 208</p> <p>19 Exhibit 32, IH10037 through 38, 210</p> <p>20 Exhibit 33, IH3735, 211</p> <p>21 Exhibit 34, IH117296 through 297, 221</p> <p>22 Exhibit 35, IH11865 through 11866, 235</p> <p>23 Exhibit 36, IH11867 through 11870, 236</p> <p>24 Exhibit 37, IH12026, 237</p> <p>25 Exhibit 38, IH80561 through 567, 243</p>

<p style="text-align: right;">Page 6</p> <p>1 EXHIBITS (Continued)</p> <p>2</p> <p>3 NUMBER DESCRIPTION PAGE</p> <p>4 Exhibit 39, Industrial Heat's Supplement to 248 Defendant Industrial Heat, LLC's Amended Responses and Objections to Plaintiff Andrea 5 Rossi's First Set of Interrogatories, 6 Exhibit 40, Technical Consulting Agreement, 263 7 Exhibit 41, IH3717 through IH3718, 274 8 Exhibit 42, Term Sheet, 281</p> <p>9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Good morning, Mr. Vaughn.</p> <p>2 A. Good morning.</p> <p>3 Q. Could you please state your name for the 4 record?</p> <p>5 A. John Thomas Vaughn. I also go by JT.</p> <p>6 Q. Can you spell your last name.</p> <p>7 A. V as in Victor, A-U-G-H-N.</p> <p>8 Q. And have you been designated this morning as 9 the corporate representative for Industrial Heat, LLC?</p> <p>10 A. I have been.</p> <p>11 (Exhibit 1, Notice, was marked for 12 Identification.)</p> <p>13 BY MR. CHAIKEN:</p> <p>14 Q. I will show you what has been marked as 15 Exhibit 1. Sorry, Rudolfo, I have only got four sets.</p> <p>16 Mr. Vaughn, have you seen Exhibit 1 before?</p> <p>17 A. Exhibit 1, is that -- you mean just the front 18 page or the --</p> <p>19 Q. The entire document.</p> <p>20 A. The entire document? I believe that I have.</p> <p>21 Q. Okay. And who designated you to be the 22 corporate representative for purposes of today's 23 deposition?</p> <p>24 A. The company.</p> <p>25 Q. Who on behalf of the company made that</p>
<p style="text-align: right;">Page 7</p> <p>1 Thereupon,</p> <p>2 THE VIDEOGRAPHER: We are on the record. The 3 date is February 13, 2017. The time is 9:07 a.m. 4 This is media unit one of the video deposition of the 5 corporate representative of Industrial Heat, LLC in 6 the matter of Andrea Rossi, et al. versus Thomas 7 Darden, et al.</p> <p>8 At this time may counsel please state their 9 appearances for the record.</p> <p>10 MR. CHAIKEN: Good morning. Brian Chaiken and 11 Jonathan Annesser on behalf of the plaintiff.</p> <p>12 MR. BELL: Bernard Bell for defendants.</p> <p>13 MR. ARAN: Fernando Aran for third party 14 defendants JM Products, Henry Johnson and James Bass. 15 And my associate Francisco Leon will be joining 16 us shortly.</p> <p>17 MR. NUNEZ: Rudy Nunez on behalf of third party 18 defendant Fulvio Fabiani and United States Quantum 19 Leap, LLC.</p> <p>20 Thereupon,</p> <p>21 JOHN THOMAS VAUGHN, 22 having been first duly sworn or affirmed and responded, 23 "I do," was examined and testified as follows:</p> <p>24 DIRECT EXAMINATION</p> <p>25 BY MR. CHAIKEN:</p>	<p style="text-align: right;">Page 9</p> <p>1 decision?</p> <p>2 A. That was made in conjunction with the directors 3 of the company, including Tom Darden and John Mazzarino.</p> <p>4 Q. Okay. And do you currently have a position 5 with Industrial Heat, LLC?</p> <p>6 A. I do. Vice president.</p> <p>7 Q. Okay. What did you do to prepare for today's 8 deposition?</p> <p>9 A. Reviewed documents with counsel.</p> <p>10 Q. Okay. Did you do anything else besides that?</p> <p>11 A. Spoke to some of our teammates with counsel.</p> <p>12 Q. Okay. I am not asking the subject of your 13 conversation, but can you tell me the name of the people 14 who were present?</p> <p>15 A. Counsel, and we talked by phone with T. Barker 16 Dameron, as well as Tom Darden, briefly. I believe that's 17 it.</p> <p>18 Q. Okay. Turning to page A-4 of this document, 19 there is a list of areas of inquiry. Are there any areas 20 of inquiry -- and there are 27 areas listed -- are there 21 any areas of inquiry on this page that you are not 22 prepared to testify about today?</p> <p>23 MR. BELL: Give me a minute to check something, 24 Brian.</p> <p>25 MR. CHAIKEN: Sure.</p>

1 So we were trying to go back and reconstruct a
2 timeline of what had happened in the field of LENR, as
3 well as with regard to Andrea. So that with regard to
4 Andrea, aside from his field, you know, he also -- there
5 were a number of people who clearly did not believe that
6 he was a legitimate character, a legitimate actor. And
7 they voiced their opinions very strongly online and, you
8 know, we raised concerns about his past. And so it was an
9 -- I would say it was an interesting process and
10 interesting timeline that was built around both the field
11 of LENR, as well as Andrea personally at that time.

12 Q. What specifically did you learn about
13 Dr. Rossi's background?

14 A. We learned that, you know, there are a number
15 of claims at that time about him having previously gone to
16 prison. I believe we confronted him about these claims.
17 He explained it -- he never denied having been in prison.
18 But he explained it as tax fraud and that it was --
19 effectively, there was no way for him to be compliant or
20 it was almost impossible for him to be compliant under
21 Italy's tax code. And he hadn't done a good job of
22 compliance, and so he ended up in jail for that.

23 You know, his other partners AEG seemed to also
24 kind of affirm that that was the case. And so we didn't
25 -- you know, in retrospect, maybe we should have dug a

1 I believe, is the attachment to that e-mail.

2 A. Okay. Thank you.

3 Q. Exhibit 4 has been Bates stamped 831 -- IH83131
4 through 83149. I believe that is the attachment to that
5 e-mail.

6 Do you recall seeing this? And you can take a
7 minute, to make sure. And I just have a real simple
8 question.

9 A. Okay.

10 Q. It relates to the e-mail, not necessarily the
11 report.

12 A. Okay.

13 Q. But in the e-mail it seems that, at least as of
14 August 16, 2012, Tom Darden had a copy of this report.
15 Would you agree with that?

16 A. I would agree with that, based on this e-mail.

17 Q. Okay. And at least he considered that Fabio
18 Penon could have been part of a fraud regarding this
19 technology. Would you agree with that?

20 A. Well, he did say, "Of course, the report could
21 be by someone who was part of a broader fraud. The
22 writer/professor is at the university there in Bologna, I
23 think. It has not been released."

24 So I am wondering if Tom was -- I agree this
25 report is appears to be about Penon. As I read Tom's

1 e-mail, I am wondering if he was referring to Penon or to
2 Levi when he says "professor at the university there in
3 Bologna." Because I was -- and Penon references a
4 validation test on July 16, 2012. Which I think that was
5 conducted by Levi. If you have that, it might help us
6 out.

7 Q. I don't have a copy of it right now.

8 A. Yeah.

9 Q. But my question, I don't mean to interrupt you,
10 but my question is really simply, do you recall having any
11 conversations with the team about, you know, this report
12 and Penon and whether or not he was -- could be, you know,
13 part of a greater fraud.

14 A. I recall that we -- that one of the possible
15 scenarios, right, is that this could be a pathological
16 scientist. So that was a term developed by LENR critics.
17 Which means that these guys want something to happen so
18 badly that they believe that it is happening, even though
19 it is really not happening. There was one scenario.
20 Another scenario that could be outright fraud. Right?

21 But do I recall specifically discussing Penon
22 and fraud in this time period? I don't. It is not to
23 say that it -- it may have been discussed, and as you are
24 pointing out, this appears to be from Penon. But offhand
25 I recall more particularly Levi and having questions about

1 Levi and his group, who had done -- I believe they did the
2 July 16th test and then they later did a -- I believe it
3 was December and March, December '12 and March '13 test,
4 which were combined and one report was written about both
5 of them. So -- but, you know, Penon it appears was doing
6 some work at that time, as well.

7 Q. You know, before I go any further, I wanted to
8 ask this question I forgot to ask. Are you also going to
9 be appearing as the corporate representative for IPH at
10 tomorrow's deposition?

11 MR. BELL: Why is that appropriate to ask him
12 now?

13 MR. CHAIKEN: So I don't have to duplicate a
14 lot of the work.

15 THE WITNESS: I think we are still working to
16 determine who -- who that is going to be.

17 BY MR. CHAIKEN:

18 Q. Okay.

19 A. But we are still trying to decide about that.

20 Q. Okay. Are you currently an officer or director
21 of IPH?

22 A. I am not.

23 Q. Okay. Are the -- well, I will ask that later.

24 When approximately did your team complete its
25 due diligence on Dr. Rossi and the E-Cat technology?

<p style="text-align: right;">Page 38</p> <p>1 Italy, but would indicate that he was involved in 2 much more than he -- than he intimated to us. So 3 Petrol Dragon was a much greater environmental 4 catastrophe than he intimated to us. 5 And my research would also indicate that he was 6 involved in gold trafficking. And so this is all 7 online research. It may or may not be accurate. But 8 sitting here today, that's what I know. 9 BY MR. CHAIKEN: 10 Q. Okay. Let's talk about the existing parties he 11 claimed he was engaged with. So you said that you believe 12 he made inaccurate statements regarding existing parties 13 he was engaged with prior to entering into the license 14 agreement with Industrial Heat. 15 What specific facts are you aware of that lead 16 you to that conclusion? 17 A. Petrol -- Defkalion is one. And again, you 18 know, this is all contextualized information. So do I 19 have a specific affidavit from somebody at Defkalion? No, 20 I don't. But based on his reaction to every time 21 Defkalion was brought up, which is a very strong kind of 22 visceral reaction, looking back, I suspect that we weren't 23 getting the full and complete truth about whatever 24 happened with Defkalion. But we may have been. 25 So sitting here today, do I have anything that</p>	<p style="text-align: right;">Page 40</p> <p>1 So he is -- he is advertising these results to 2 us as valid. Right? And sitting here today, I would say 3 that is not to be the case. 4 Q. That the results are not valid or that he 5 didn't believe they were valid or that he knew they were 6 valid at the time -- that he knew they were invalid at the 7 time and represented that they were? 8 A. I suspect that at the time he may have known 9 that they were invalid, but represented that they were. 10 Whether or not the assessors were pathological, meaning 11 they wanted it to work so badly that they believed it was 12 working, they weren't diligent enough to determine that it 13 wasn't, I don't know. But I believe, you know, even as 14 early as this date that Rossi knew that it wasn't working 15 and he represented that it was. 16 Also, if you -- this just refreshed my memory a 17 little bit that, you know, he would claim online, if you 18 go back in history, that it will be on the market in a 19 commercialization within a year, then X amount of time. 20 And I think you could say that those are knowingly false 21 statements. Because every time he said that, it's not 22 been the case that it has happened with any time period, 23 much less the time period that he highlighted. But these 24 would all be online comments he made. 25 Q. So in response to my question as to false</p>
<p style="text-align: right;">Page 39</p> <p>1 can kind of blatantly say, Well, you know, he said this 2 and Defkalion gave us an affidavit that says this, so he 3 must have been lying, I don't have that. 4 Q. Okay. Do you have anything that you could 5 point to specifically that you believe he said that was 6 inaccurate regarding the state of the art prior to your 7 entering into the license agreement? 8 A. State of the art. This gets at Levi and many 9 others, this report. 10 Q. Well, let's keep it solely to what Dr. Rossi 11 told Industrial Heat. 12 A. Mm-hmm. 13 Q. Is there something specifically that Dr. Rossi 14 told Industrial Heat prior to you entering into the 15 license agreement about the state of the art that you 16 claim was untruthful? 17 A. So he is saying, you know, in his e-mail 18 here -- 19 Q. What are you looking at? 20 A. I am looking at the document you provided. 21 Q. Exhibit number? 22 A. Exhibit 3, page two. So he says, you know, 23 "Dear all: Please find attached the convalidation of the 24 certicator made during the 7th of August, which repeated 25 the same results of the test in July, of July 16th."</p>	<p style="text-align: right;">Page 41</p> <p>1 statements that he made to Industrial Heat prior to 2 entering into the license agreement, you pointed me to a 3 document I have just handed you, and you say that that was 4 your belief that he knowingly stated something that was 5 false. 6 Do you have any evidence that these tests or 7 that the test I handed you, which was Exhibit 4, was 8 inaccurate or false? 9 A. We do. And, you know, we tried to replicate 10 these same tests without success multiple times. 11 Q. Well, were you present in 2012 when this test 12 was performed? 13 A. I was not present when this test was performed. 14 Q. Okay. Do you have any reason to believe that 15 the data set forth in that test is inaccurate? 16 A. Now I do, yes. 17 Q. And the evidence you have is your attempt to 18 replicate and your inability to do so? 19 A. That is correct. As well as others, others' 20 attempts to replicate and their inability to do so. 21 Q. Did anyone who was part of this test ever come 22 out and say the data was manipulated or the data was 23 inaccurate? 24 A. They did not. 25 Q. Okay.</p>

1 A. Not to my knowledge at least.

2 Q. Okay. We talked a little bit earlier about
3 Industrial Heat and when it was formed. Do you recall
4 when it was formed?

5 A. I believe that it was formed October 24, 2012.
6 But I am sure you guys have this, this information.

7 Q. Do you know why it was formed?

8 A. For the purposes of entering into a license
9 agreement.

10 Q. Okay. IPH, do you know when that was formed?

11 A. I don't recall the exact date. I am trying to
12 recall the time period. If I recall correctly, and I
13 didn't review this, so my memory may fail me here, but I
14 think it was formed prior to the second step of the
15 validation -- of the license agreement, what was referred
16 to as the validation phase. If I recall correctly. You
17 guys have all this information.

18 Q. My question is going to be, why was IPH formed?

19 A. It was formed -- we have had a concern all
20 along about protecting IP in this field and ensuring that
21 that IP is -- cannot be subject to a government declaring
22 it property of the government for national security
23 reasons or other reasons.

24 Our goal has always been to ensure that this
25 technology can be made widely available around the world,

1 took a break about IPH and whether or not it had a bank
2 account. You had said that it had a bank account.

3 Do you know if Industrial Heat was paying
4 expenses from its bank account for IPH's expenses?

5 A. Meaning was it -- was Industrial Heat, LLC
6 paying expenses and then charging it to IPH International?

7 Q. Well, let me give you an example. So let's
8 say, so after the assignment takes place --

9 A. Right.

10 Q. -- IPH -- and after IPH was formed, obviously
11 -- IPH would get an invoice directed to IPH. Would IPH
12 pay using its account or would Industrial Heat use its
13 account to pay those IPH expenses?

14 A. And then expense that to IPH? I don't recall.
15 I apologize. You know, Jim Fogleman was handling all
16 this. So I don't know how that was handled. If
17 Industrial Heat would pay the expense and then charge it,
18 you know, expense it to IPH International or if IPH
19 International would pay it directly.

20 Q. Is there any reason you can think of why IPH
21 would have received an invoice and then forward it on to
22 IH for payment?

23 A. I apologize, I am not going to be too helpful,
24 and it is simply because Jim was managing all that. I
25 could see -- it wouldn't surprise me if that had happened.

1 But I am not sure. And I apologize for not providing a
2 more definite answer.

3 (Exhibit 7, IH113114, was marked for
4 Identification.)

5 BY MR. CHAIKEN:

6 Q. I am handing you what has been marked as
7 Exhibit 7. It's been Bates stamped IH113114.

8 Have you seen this flowchart before?

9 A. Yes, sir.

10 Q. And does this accurately depict the current
11 organizational structure of the -- I will call it the
12 IH-HI entities?

13 A. Just one second. Let me review it to...

14 Q. Sure.

15 A. I don't think -- there may be -- broadly, I
16 think the answer is yes. But if you look under the IHJ
17 Holdings Limited, I believe that there are only two
18 entities under that. I'm nearly positive there are only
19 two entities under that. So you see here there are three.
20 And there are, in fact, I believe only two.

21 Q. Okay. And you said that was IHJ Holdings
22 Limited, the Jersey on the right?

23 A. Yeah. So the diagram is showing three
24 different entities under that. I believe that there are
25 only two.

<p style="text-align: right;">Page 62</p> <p>1 Q. When in time was this structure put into place?</p> <p>2 A. This was a reorganization that was undertaken</p> <p>3 prior to Woodford coming in. Woodford's bias is to invest</p> <p>4 in UK companies. And they have more allocation for UK</p> <p>5 companies. And in addition, UK companies are not a bad</p> <p>6 domicile, based on analysis we were receiving, for an</p> <p>7 endeavor that is focussed on holding and then</p> <p>8 commercializing IP, even if that IP had not necessarily</p> <p>9 held necessarily in the UK.</p> <p>10 Q. So this was done in 2015?</p> <p>11 A. Yeah. So the Woodford investment closed in May</p> <p>12 of 2015. And this all happened around about that time. I</p> <p>13 don't know if it was, you know, April '15 and then closing</p> <p>14 or the exact date. But -- and some of these entities may</p> <p>15 have been set up after that, right? So it might not have</p> <p>16 all been in place at closing. But the broad plan was in</p> <p>17 place and parenting was in place.</p> <p>18 Q. So what happened to people who had equity in</p> <p>19 Industrial Heat, LLC? Were they provided with an equity</p> <p>20 interest in IH Holdings International Limited?</p> <p>21 A. Yes.</p> <p>22 Q. Just a swap or was there some type of ratio?</p> <p>23 A. No. People owned, you know, whatever you owned</p> <p>24 in Industrial Heat, LLC when it was the parent, you owned</p> <p>25 the same amount pro rata in IH Holdings International</p>	<p style="text-align: right;">Page 64</p> <p>1 transaction was. But clearly, if it was once owned by</p> <p>2 Industrial Heat, LLC and is now owned by IPH BV Holdings</p> <p>3 Limited, there was transfer of that interest, right?</p> <p>4 A. Right.</p> <p>5 Q. Right?</p> <p>6 A. You know, we would have to visit the PWC</p> <p>7 analysis on this. But it had to do with their</p> <p>8 recommendations on corporate structuring. And I am trying</p> <p>9 to recall why they felt the need to have IPH BV Holdings</p> <p>10 Limited as the immediate parent to IPH International BV.</p> <p>11 Q. Let's talk about the negotiations for the</p> <p>12 license agreement. When did those negotiations begin, as</p> <p>13 far as you know?</p> <p>14 A. I believe that was in -- I am trying to</p> <p>15 remember if it was June or July of '12. I am going back</p> <p>16 to a point when Tom first met with Andrea. This is not</p> <p>17 necessarily a negotiation started then, but it is a</p> <p>18 starting point. I think it was in June or July of '12.</p> <p>19 Q. And was Tom the lead negotiator?</p> <p>20 A. I would say primarily. And I was -- yeah, I</p> <p>21 would say that, yes. And I was providing some input to</p> <p>22 him.</p> <p>23 Q. Was there anybody else who was negotiating</p> <p>24 directly with Dr. Rossi?</p> <p>25 A. John Mazzarino was involved at times, but not</p>
<p style="text-align: right;">Page 63</p> <p>1 Limited when that was formed. And then, of course,</p> <p>2 Woodford invested into IH Holdings International Limited,</p> <p>3 so everybody's ownership was diluted by that incoming</p> <p>4 investment.</p> <p>5 Q. Now, looking at this flowchart, specifically</p> <p>6 looking at the bottom left three companies, was there a</p> <p>7 time in which Industrial Heat, LLC was the owner of IPH</p> <p>8 International BV?</p> <p>9 A. I believe that there was. But we -- and there</p> <p>10 is -- there is many presentations about this</p> <p>11 reorganization, so it should kind of spell out. Price</p> <p>12 Waterhouse Coopers did this work for us and it should</p> <p>13 spell out how this reorganization was completed, or</p> <p>14 consummated, I should say.</p> <p>15 But I believe -- I am trying to remember if --</p> <p>16 what I am trying to recall is Industrial Heat, LLC, did it</p> <p>17 ever own as a subsidiary IPH International or were they</p> <p>18 always brother-sister relationship? And that is what I</p> <p>19 would have to refresh myself on. But I believe that they</p> <p>20 did, that Industrial Heat, LLC did at one point own IPH</p> <p>21 International BV.</p> <p>22 Q. And do you know why it was decided to move IPH</p> <p>23 International BV to IPH BV Holdings Limited?</p> <p>24 A. To move it or to --</p> <p>25 Q. To transfer it, sell it. I'm not sure what the</p>	<p style="text-align: right;">Page 65</p> <p>1 -- more so as an advisor, but not as a negotiator.</p> <p>2 Q. Okay. Do you know who proposed the purchase</p> <p>3 price? I believe it was a little over a hundred million.</p> <p>4 A. Andrea did, I believe.</p> <p>5 Q. Was there any negotiation over the purchase</p> <p>6 price?</p> <p>7 A. Not that I recall. Not that I recall.</p> <p>8 Q. How did -- how did IH value the technology at</p> <p>9 that time?</p> <p>10 A. At that time?</p> <p>11 MR. BELL: Objection to form.</p> <p>12 THE WITNESS: It was a -- you know, when you</p> <p>13 kind of have to do a potential value scenario and</p> <p>14 with a spectrum. So we didn't say, Oh, we think it</p> <p>15 is worth X. Right? Some people may do that. That</p> <p>16 is not really -- what we do, we say, We don't know</p> <p>17 what it is worth. If it works as advertised, it is</p> <p>18 worth a lot. Right? If it doesn't, it is worth, you</p> <p>19 know, zero, or in this case negative zero, due to all</p> <p>20 the legal costs that we are incurring.</p> <p>21 BY MR. CHAIKEN:</p> <p>22 Q. Was there any type of methodology that IH used</p> <p>23 to try to value the technology or to value the license</p> <p>24 agreement?</p> <p>25 A. Can you say that one more time? I'm sorry.</p>

1 A. I have.

2 Q. Is this a document prepared by Industrial Heat?

3 A. It is.

4 Q. Do you know who at Industrial Heat prepared
5 this document?

6 A. I believe that I prepared it.

7 Q. Do you know why you prepared it?

8 A. To provide an overview, I would imagine, to
9 prospective partners or to investors in Industrial Heat.

10 Q. And did this document get distributed to
11 potential investors in Industrial Heat?

12 A. I don't know if it ever was used or not. I
13 don't know.

14 Q. The very first line of this document states:
15 "Cherokee has been researching technologies which create
16 heat through low energy nuclear reactions."

17 Do you see that?

18 A. I see it.

19 Q. Was that a true statement?

20 A. Sure. In effect that, you know, Tom and I had
21 been looking into these -- this field of study.

22 Q. Okay. Down to the fourth paragraph on the
23 page, it starts with "if the investor is successful."

24 A. Inventor.

25 Q. Excuse me. Thank you for correcting me. I

1 if those provisions were met, true?

2 A. Industrial Heat was planning to raise
3 additional capital, either from Tom and John, the original
4 sources, or others. And that was, you know, that was a
5 known fact.

6 Q. Okay. Let's look at 3.2 (a). And take a
7 minute to review it. Let me know when you are done.

8 A. Okay.

9 Q. Okay. Did, in fact, Industrial Heat make this
10 payment under 3.2 (a)?

11 A. Industrial Heat paid 1.5 million upon executing
12 the agreement.

13 Q. I'm sorry. Can you repeat your answer?

14 A. Sure. Industrial Heat paid 1.5 million after
15 executing the agreement.

16 Q. Right. Now, did Industrial Heat cut that check
17 or did someone pay on behalf of Industrial Heat?

18 A. I would have to go check, but I believe that
19 Industrial Heat -- I'm not sure, in fact, if Industrial
20 Heat -- I am trying to recall when Industrial Heat set up
21 its bank account and if that was originally paid on behalf
22 of Tom and John or if it was paid on behalf of Industrial
23 Heat. I don't recall. I apologize. But we could look it
24 up.

25 Q. Okay. Is there a reason someone would pay on

1 Q. Did Industrial Heat and Leonardo amend this
2 agreement to provide for a date outside the 120-day
3 period?

4 A. No, not to my knowledge.

5 Q. Has Industrial Heat, prior to the initiation of
6 this lawsuit, ever made a claim that it was entitled to a
7 refund of the 1.5 million paid under 3.2 (a)?

8 A. Prior to the initiation of the lawsuit, I don't
9 believe so.

10 Q. Okay. Had Industrial Heat ever informed
11 Dr. Rossi that they believed that Leonardo Corporation was
12 in violation of Section 3.2 (a)?

13 MR. BELL: Can I have that read back?

14 (A portion of the record was read by the
15 reporter.)

16 MR. BELL: You are saying before the lawsuit?

17 MR. CHAIKEN: At any time.

18 THE WITNESS: Not to my knowledge.

19 BY MR. CHAIKEN:

20 Q. Now, Section 3.2 (a) refers to Section 4 of the
21 agreement. Are you familiar with Section 4?

22 A. I would need to review it.

23 Q. Go ahead. It starts on page three, goes to
24 page four.

25 A. Okay.

1 Q. Okay. Is it your understanding or is it your
2 belief sitting here today that Industrial Heat is entitled
3 to a refund of that \$1.5 million?

4 A. Yes, based on successful validation of a plant.
5 Again, it's a kind of what you know then versus what you
6 know now. But at the time we consented to pay the 11 and
7 a half -- an aggregate of 11 and a half million. In
8 retrospect, knowing what we know today, we shouldn't have
9 done that. And in retrospect, the technology did not
10 perform as we were being led to believe that it did.

11 Q. So it is your understanding sitting here today
12 that Industrial Heat's entitled to a refund of the --
13 let's not talk about the \$10 million yet, let's just talk
14 about the 1.5. You are suggesting that Industrial Heat is
15 entitled to a return of 1.5 million?

16 A. Just to review the conditions under which that
17 could be returned. It said: "In the event a plant is not
18 delivered or validation is not achieved within the time
19 period set forth in Section 4, the full 1.5 million will
20 be refunded within two business days of its request.
21 Refund of the 1.5 million will not be provided for any
22 other reason and no other refund will be provided for any
23 reason."

24 Q. Did the company make a request for the
25 1.5 million back?

1 A. Not prior to the initiation of this lawsuit, I
2 don't believe. So if that is a requirement, and I am not
3 a lawyer, if the company did not make that request, then I
4 don't know. I mean, you guys would have to figure that
5 out.

6 But if it is based on validation, which is what
7 I am more focussed on, then it seems to me there is an
8 argument that we are due back that capital because it did
9 not validate, as specified, though, at the time, of
10 course, Penon was saying that it did. Anyway, it is a
11 what you know then versus what you know now.

12 Q. We will get into the validation in a little
13 bit, in a little while. But just talking about the time
14 frame for this to take place.

15 Is Industrial Heat making a claim that because
16 it wasn't performed timely, that it should be entitled to
17 a refund of the 1.5 million?

18 A. Based on contract here, I think that is one
19 thing that should be examined. The other thing that I
20 would say should be examined is whether or not the
21 technology actually validated as advertised.

22 Q. Let's put those two things, separate them out.

23 A. Okay.

24 Q. You are here today as the representative of
25 Industrial Heat. I am asking you, is Industrial Heat

1 A. Let me refresh. The reason I remember, I
2 remember the format. It is an outline of what would take
3 place for the validation protocol in the agreement.

4 Q. So this is what the parties agreed to would be
5 the protocol for purposes of the validation tests as
6 identified in Section 3.2 (a) of the agreement?

7 A. I believe that is correct, Brian. I am just
8 reviewing that here. I believe that is correct.

9 Q. Okay. Now, you said that you prepared it with
10 the help of Tom and T. Barker Dameron; is that correct?

11 A. I believe that is correct.

12 Q. Did you have any other scientists or engineers
13 participate in its draft or review?

14 A. I don't recall. I don't recall. I can't
15 recall, for example, did I run this by the 3 Phoenix guys
16 or Tom D'Muhala? I don't think so.

17 Q. Did you think you had enough eyes on it that
18 you felt comfortable with the protocol at the time?

19 A. Yeah. It is a good thing to specify, at the
20 time, versus kind of retrospectively. At the time I think
21 we thought that because we thought that it was a serious
22 amount of real energy and a serious real COP. And if
23 those were the cases, then it shouldn't be as difficult to
24 determine its performance. Or at least that was our
25 belief at the time. I think we underestimated it.

<p style="text-align: right;">Page 118</p> <p>1 list, including make, model and calibration of all 2 instruments used during the test. 3 I don't know if we got that for all instruments 4 used during the test. 5 And two, a detailed test protocol which 6 describes, among other things, how the ERV will strike 7 measurements and where will place thermometers, manometers 8 flowmeters and other such measuring instruments. 9 So that is a detailed diagram. I do believe 10 that there was a diagram, but was it, you know, sufficient 11 is a big question. Again, we probably were more lenient 12 than we should have been in retrospect, considering, but 13 it was because of other reports that were also provided at 14 the same time. 15 Q. Did Industrial Heat prior to initiation of this 16 lawsuit ever claim that it didn't receive these things 17 from the ERV? 18 A. I don't know that we did. And I don't think 19 that we did, but I'm not sure. Because our focus was then 20 shifting to, okay, can we replicate this technology? And 21 if we could, then, you know, that is a big deal. 22 Q. Did Industrial Heat retain an entity called 23 Deep River Ventures to assist in reviewing this protocol? 24 A. We did retain Deep River Ventures. Did we 25 retain them specifically to review this protocol? It is</p>	<p style="text-align: right;">Page 120</p> <p>1 other gentleman was more of a general, you know, he 2 was good at kind of building relationships and very 3 interested technically, but not a technical guy. And 4 knew a fair amount about IP through kind of 5 on-the-job experience, but was not an inventor, was 6 not an IP attorney. 7 And, you know, that was the two guys. And so 8 we retained them to help from an IP perspective, IP 9 strategy perspective, but also from assessing the 10 sector kind of perspective, which was a general step. 11 BY MR. CHAIKEN: 12 Q. And the first guy was Paul Morris and the 13 second guy was Dewey Weaver? 14 A. Correct. 15 (Exhibit 16, April 15, 2013 Memorandum, was 16 marked for Identification.) 17 BY MR. CHAIKEN: 18 Q. Got it. Showing you what has been marked as 19 Exhibit 16 is the memorandum by Deep River Ventures dated 20 April 15, 2013. 21 Have you seen this before? 22 A. I believe that I have. 23 Q. And would you agree that -- well, first 24 question, very top of the page it states in the reference 25 section, Re: DRV comments on test protocol for plant made</p>
<p style="text-align: right;">Page 119</p> <p>1 not the specific reason we retained them. But did they 2 review it? It would not surprise me if they did review 3 it. But their -- it is kind of like, you know, it is not 4 like getting Joe Murray to review it. 5 Q. Did you think that Deep River Ventures was 6 competent to review this protocol? 7 A. No. That is what I meant by not like getting 8 Joe Murray. I mean, it is good to have another opinion on 9 it, you know. It's good to have more eyes than less on 10 something like this. But that wasn't their expertise. 11 Q. How much did you pay Deep River Ventures to 12 review the protocol? 13 MR. CHAIKEN: Objection to form. 14 THE WITNESS: We did not pay them specifically 15 to review the protocol. We had retained them as 16 general consultants. 17 BY MR. CHAIKEN: 18 Q. Got it. General consultants for what exactly? 19 A. Their expertise -- 20 MR. BELL: Objection to form. 21 THE WITNESS: Their expertise, it's kind of 22 twofold. One is, early on, there was a partner 23 involved in Deep River that was a talented inventor. 24 So he was very good at identifying and protecting or 25 IP. So that was kind of the primary driver. The</p>	<p style="text-align: right;">Page 121</p> <p>1 for Cherokee. 2 Do you know why they reference Cherokee in this 3 matter? 4 A. I don't. But, you know, it was -- sure, again, 5 in reference to, as we have described earlier, stuff that 6 Tom and John are doing, but on the venture side of things. 7 Q. And down below in their opinion they state that 8 they believed based on, I am quoting, "on our collective 9 review and discussion that the test is sufficient to 10 demonstrate whether the tested device meets the 11 contractual specifications." 12 Did you have any discussions with Dewey Weaver 13 or Paul Morris about the protocol? 14 A. I imagine that I did. I don't recall a lot of 15 those discussions or particulars about those discussions. 16 But it is hard to believe that I would not have asked them 17 to elaborate on this. 18 Q. Now, going back to the Exhibit A to the first 19 amendment. That one. Exactly. It references an expert 20 responsible for validation, "ERV". 21 Was there an ERV selected for purposes of the 22 validation test? 23 MR. BELL: I'm sorry, where are you? Okay. I 24 apologize. I am with you. 25 THE WITNESS: We -- you know, we thought it was</p>

<p style="text-align: right;">Page 122</p> <p>1 going to be Bureau Veritas. Andrea, this is --</p> <p>2 captures a series of exchanges, inserted Penon.</p> <p>3 Originally we thought he was an employee of Bureau</p> <p>4 Veritas and then it turned out to be that he was not</p> <p>5 an employee of Bureau Veritas, may or may not have</p> <p>6 consulted for Bureau Veritas.</p> <p>7 Anyway, again, at the time we were receiving a</p> <p>8 lot of information which appeared positive. And so</p> <p>9 we allowed the test to proceed and we transferred the</p> <p>10 remaining capital. But it, you know --</p> <p>11 BY MR. CHAIKEN:</p> <p>12 Q. My question was, and I was hoping you could</p> <p>13 answer my question, and I appreciate the background, but</p> <p>14 right now I don't want background, I just want you to</p> <p>15 answer the question I am asking.</p> <p>16 The question is, was an ERV selected for</p> <p>17 purposes of the validation test?</p> <p>18 MR. BELL: Objection to form.</p> <p>19 THE WITNESS: Andrea selected Penon.</p> <p>20 BY MR. CHAIKEN:</p> <p>21 Q. Okay. And is it your -- is it Industrial</p> <p>22 Heat's position that it did not agree to use Penon for the</p> <p>23 ERV?</p> <p>24 A. We allowed Andrea to move forward with Penon,</p> <p>25 without affirming that he was the ERV. Because we wanted</p>	<p style="text-align: right;">Page 124</p> <p>1 A. We allowed Andrea to move forward with Penon.</p> <p>2 But it was our -- our desire was as Bureau Veritas. And</p> <p>3 that was very evident, all the way up until right at the</p> <p>4 last minute when Penon was inserted.</p> <p>5 Q. You didn't answer my question. It is very</p> <p>6 simple.</p> <p>7 MR. BELL: He already answered it once.</p> <p>8 MR. CHAIKEN: He hasn't answered it yet.</p> <p>9 BY MR. CHAIKEN:</p> <p>10 Q. Is Industrial Heat's --</p> <p>11 MR. BELL: Let's go back to the first question.</p> <p>12 MR. CHAIKEN: He hasn't answered it yet.</p> <p>13 MR. BELL: He did answer it. You will see in</p> <p>14 the record. But that is fine.</p> <p>15 MR. CHAIKEN: He didn't. So I am going to ask</p> <p>16 it again.</p> <p>17 BY MR. CHAIKEN:</p> <p>18 Q. Is it Industrial Heat's position that Fabio</p> <p>19 Penon was the ERV?</p> <p>20 MR. BELL: Objection to form.</p> <p>21 THE WITNESS: Andrea selected Penon. We wanted</p> <p>22 Bureau Veritas. That is not what happened.</p> <p>23 Notwithstanding that, we ended up paying Andrea after</p> <p>24 this test occurred.</p> <p>25 BY MR. CHAIKEN:</p>
<p style="text-align: right;">Page 123</p> <p>1 to see what would happen with the technology.</p> <p>2 Q. So is it your position that, as far as</p> <p>3 Industrial Heat goes, there was no ERV for the validation</p> <p>4 test?</p> <p>5 MR. BELL: Objection to form.</p> <p>6 THE WITNESS: Our position is that we, based on</p> <p>7 everything Andrea provided us, which included a</p> <p>8 report from Penon, we decided to pay them.</p> <p>9 BY MR. CHAIKEN:</p> <p>10 Q. That is not what I asked.</p> <p>11 Did Industrial Heat -- was it Industrial Heat's</p> <p>12 view of the world that there was no ERV for purposes of</p> <p>13 the validation test?</p> <p>14 A. Not a sufficient ERV.</p> <p>15 Q. Okay. But there was an ERV, just not a</p> <p>16 sufficient one?</p> <p>17 MR. BELL: Objection to form.</p> <p>18 THE WITNESS: Penon was selected by Andrea as</p> <p>19 the ERV.</p> <p>20 BY MR. CHAIKEN:</p> <p>21 Q. Okay. But the agreement says the parties are</p> <p>22 to agree on an ERV, does it not?</p> <p>23 A. I believe that it does.</p> <p>24 Q. Okay. And is it your testimony today that</p> <p>25 Industrial Heat did not agree that Penon was the ERV?</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. Are there any written communications from</p> <p>2 Industrial Heat where Industrial Heat says We disagree</p> <p>3 with Penon as the ERV?</p> <p>4 A. There is written communications where it is</p> <p>5 clear that we expected that it would be Bureau Veritas.</p> <p>6 And then it changed from Bureau Veritas being the ERV to</p> <p>7 Penon, an employee with Bureau Veritas, to, Oh, he is not</p> <p>8 exactly an employee, he is a consultant to Bureau Veritas.</p> <p>9 Whether he is or not, I don't know.</p> <p>10 Q. Okay. My question is really simple. Is there</p> <p>11 an e-mail or any communication where Industrial Heat says,</p> <p>12 We disagree with Penon as the ERV? Either it exists or it</p> <p>13 doesn't.</p> <p>14 A. Not to my knowledge. But you would have to</p> <p>15 check the e-mails.</p> <p>16 Q. If such a communication existed, we would have</p> <p>17 received it in the course of discovery, would we not?</p> <p>18 A. Correct.</p> <p>19 Q. Exactly.</p> <p>20 A. But there are e-mails, just to elaborate, that</p> <p>21 speak to our belief and desire that it would be Bureau</p> <p>22 Veritas certifying at the validation stage.</p> <p>23 Q. And you are confident that no one from</p> <p>24 Industrial Heat ever agreed to use Penon as the ERV?</p> <p>25 A. As I said before, Andrea selected Penon. We</p>

<p style="text-align: right;">Page 126</p> <p>1 thought it was going to be Bureau Veritas. We were 2 provided a plethora of information around this time, 3 including Levi and the Uppsala professor's report, which 4 made us more willing to allow Andrea to continue, when in 5 retrospect we probably could have been much more 6 confrontational at the time. 7 Q. So based on your response, there is no 8 communications that you are aware of in which Industrial 9 Heat agreed to use Penon as the ERV, correct? 10 A. I don't know. There may be. There may not be. 11 I'm not sure. 12 Q. Well, based on what you just told me, you said 13 Industrial Heat did not agree or approve Penon. They 14 allowed the test to go forward, but they didn't approve 15 Penon, did they? 16 THE WITNESS: Could you read what I said? 17 (A portion of the record was read by the 18 reporter.) 19 BY MR. CHAIKEN: 20 Q. Okay. So you would agree with me that, as far 21 as you know, Industrial Heat never approved and never said 22 specifically, We agree that Penon is the ERV? 23 A. I am unaware of communication where we 24 specifically agreed with Penon being the ERV, but there 25 may be such communication out there. I can't recall all</p>	<p style="text-align: right;">Page 128</p> <p>1 scene it recently. 2 Q. Does this change your mind as to whether or not 3 a writing exists showing that Industrial Heat approved 4 Fabio Penon as the ERV? 5 A. That is what Tom is doing in this e-mail. 6 Q. Right so you would agree with me then that the 7 parties agreed that Fabio Penon was going to be the ERV, 8 right? 9 A. Based on this e-mail, which is from Tom to 10 Andrea, it appears that he accepts Fabio Penon as the ERV 11 instead of BV. 12 You can see, consistent with what I said, this 13 is all happening very close to the April 30th date when we 14 were also receiving additional information from Andrea 15 that was -- appeared to be positive. 16 Q. Right. Did the -- if you could go back to the 17 license agreement itself. The license agreement, which is 18 Exhibit 13, did the license agreement contemplate multiple 19 ERVs or just one ERV? 20 A. You know, I would have to read it through. I 21 was under the impression that it was multiple ERVs, ERVs 22 at the validation stage and then an ERV later, at the next 23 phase. But, you know, it may be only one. I would have 24 to go back and read it. 25 I think that this is one of the things that you</p>
<p style="text-align: right;">Page 127</p> <p>1 of our e-mails and all of our documents. 2 (Exhibit 17, IH99334 through 99336, was marked 3 for Identification.) 4 BY MR. CHAIKEN: 5 Q. Let me show you what has been marked as 6 Exhibit 17. Exhibit 17 has been Bates stamped IH99334 7 through 99336. On the first page of this exhibit is a 8 couple of e-mails. The first one is from JT Vaughn to CJ 9 Case and Christopher Lomax. Those are attorneys for Jones 10 Day; is that correct? 11 A. That is correct. That is in May 2016. 12 Q. Right. The e-mail on the bottom of the page is 13 from Tom Darden, dated April 24, 2013 to Andrea Rossi and 14 it cc's yourself and John Mazzarino. Do you see that? 15 A. I see it. 16 Q. And it talks about test process? 17 A. Mm-hmm. 18 Q. And on the second paragraph Tom Darden writes 19 to Andrea Rossi and he says: "Here are my thoughts. 20 First, as we indicated, we can accept Fabio Penon as the 21 ERV instead of BV." Do you see that? 22 A. I see that. 23 Q. Were you aware -- have you seen this e-mail 24 before? 25 A. Clearly, I have seen it before. I haven't</p>	<p style="text-align: right;">Page 129</p> <p>1 guys have violated, which was an interesting point. But 2 -- so I think I would have to go back and read it. 3 Q. Not something you can answer right now? 4 A. Not without reading it. But I realize that 5 your position is that there was only one ERV and it was 6 Fabio Penon. 7 Q. Okay. Did you do -- was there any agreement or 8 amendment that you are aware of to the license agreement 9 that provided for a separate ERV? 10 A. Not to my -- well, I would have to read the 11 first -- this is the first amendment? 12 Q. Correct. 13 A. I would have to go back and review that. 14 But, you know, as I stated, just kind of from a 15 mental model perspective, it was always my belief that 16 there was a two-step process with regard to ERV 17 validation. That, in fact, may not be what the contract 18 says. And, you know, I would assume that we could 19 determine that by reading it. But that was -- definitely 20 it was not my impression or the impression of Industrial 21 Heat that if Tom agreed to Fabio Penon here, in this 22 April 24, 2013 e-mail, that he was then also accepting 23 Penon for later stages in the testing process. 24 Q. Did Industrial Heat do any due diligence into 25 Fabio Penon prior to April 24, 2013?</p>

1 Veritas to be the certifying entity. So we were trying to
2 balance that with the good news that he was giving us from
3 these professors. And that is why we ultimately
4 acquiesced here. As I said, Tom's e-mail was like a week
5 later.

6 But if you -- if an outside -- an outsider was
7 looking at this and it was a -- and a test that was done
8 by -- an outsider would view the test that is done by the
9 professors as more independent. Right? Than a test that
10 we had conducted. Even if we used Bureau Veritas or
11 Penon, that those guys were -- we didn't hire them.
12 Right? They were independently interested in this. At
13 least we thought so. I don't know in retrospect if Andrea
14 hired them. But we knew that we didn't hire them.

15 Whereas we were paying, whether it turned out
16 to be Penon or Bureau Veritas or another, we were paying
17 at least some of that. So I think that is what Tom is get
18 at here.

19 Q. Okay. As it relates to Fabio Penon, is it
20 Industrial Heat's position that Mr. Penon intended to
21 deceive Industrial Heat?

22 A. It is definitely a question.

23 Q. But that is not what I am asking. I am asking,
24 is it your position today that Penon intended to deceive
25 Industrial Heat?

<p style="text-align: right;">Page 138</p> <p>1 what he provided.</p> <p>2 Are there any other documents that you are</p> <p>3 aware of sitting here today which evidence Penon's intent</p> <p>4 to deceive Industrial Heat?</p> <p>5 A. We are reviewing the documents.</p> <p>6 Q. I am not asking you whether you are reviewing</p> <p>7 them. I am asking if you are aware sitting here today of</p> <p>8 any other documents that you can point me to.</p> <p>9 A. We are reviewing the documents, so I don't</p> <p>10 know, is the answer to your question.</p> <p>11 Q. Okay. Well, you can't point me to another</p> <p>12 document, can you?</p> <p>13 A. Today there is a whole trove of discovery --</p> <p>14 Q. Right.</p> <p>15 A. -- pointed to. And it needs further analysis.</p> <p>16 We are not all the way through it.</p> <p>17 Q. Has anyone from Industrial Heat performed that</p> <p>18 analysis?</p> <p>19 A. They are working on it.</p> <p>20 Q. Okay. Today you can't point me to one, right?</p> <p>21 A. That is not what I am telling you. We are</p> <p>22 still working on it.</p> <p>23 Q. Then say you can't point me to one.</p> <p>24 A. I am telling you in my own words that we are</p> <p>25 still working on it and that we believe that Penon did not</p>	<p style="text-align: right;">Page 140</p> <p>1 A. I don't know if we did. Because if Andrea had</p> <p>2 told us or Fulvio had told us, one, that he was</p> <p>3 Maddalena's -- Maddalena's mother had adopted Fulvio.</p> <p>4 Maddalena is Andrea's wife. And so that is how Andrea</p> <p>5 knew him, as I recall. And Andrea had, you know, given</p> <p>6 him an opportunity to work as a technician on this</p> <p>7 technology.</p> <p>8 Q. Okay. I am going to refer you back to the</p> <p>9 license agreement, Exhibit 13. Specifically, I am going</p> <p>10 to refer you to the schedule in the back of it. It is</p> <p>11 Exhibit 13. It is called Schedule 3.2 (b). Page 23.</p> <p>12 A. What page?</p> <p>13 Q. 23.</p> <p>14 MR. BELL: What is it on the pacer ID?</p> <p>15 MR. CHAIKEN: Yeah, it's page 24 of 25. I'm</p> <p>16 sorry, I was looking at the bottom of the page. It</p> <p>17 is Schedule 3.2 (b). Page 25 at the bottom.</p> <p>18 THE WITNESS: I don't know if we are looking at</p> <p>19 the same page number.</p> <p>20 MR. BELL: Look up here.</p> <p>21 THE WITNESS: Sorry. Sorry. Sorry.</p> <p>22 BY MR. CHAIKEN:</p> <p>23 Q. It is okay.</p> <p>24 A. Okay.</p> <p>25 Q. Are you familiar with the schedule?</p>
<p style="text-align: right;">Page 139</p> <p>1 act with pure intentions.</p> <p>2 Q. Okay. Did you talk to anybody who told you</p> <p>3 that Penon didn't act with pure intentions?</p> <p>4 A. Who would we have talked to besides Andrea?</p> <p>5 Q. That is what I am asking about. That is why</p> <p>6 we're having this deposition.</p> <p>7 A. Penon is -- you know, Penon is wherever he is.</p> <p>8 He is inaccessible to us. Hopefully, somebody will get to</p> <p>9 ask him some questions later this week or next week. But</p> <p>10 who could we have talked to?</p> <p>11 Q. That is what I am asking you. Okay.</p> <p>12 A. All we have is what you guys have provided in</p> <p>13 discovery.</p> <p>14 Q. Do you know who Fulvio Fabiani is?</p> <p>15 A. I do.</p> <p>16 Q. Who is he?</p> <p>17 A. He is a technician Andrea worked with.</p> <p>18 Q. And did Industrial Heat hire Fulvio Fabiani?</p> <p>19 A. We paid him, at Andrea's request, to assist</p> <p>20 Andrea in his work. So he was not an employee of</p> <p>21 Industrial Heat.</p> <p>22 Q. Was he a consultant for Industrial Heat?</p> <p>23 A. He was.</p> <p>24 Q. And did you do due diligence into Fulvio</p> <p>25 Fabiani prior to hiring him?</p>	<p style="text-align: right;">Page 141</p> <p>1 A. You know, I haven't reviewed it recently, but</p> <p>2 broadly speaking, yes.</p> <p>3 Q. So this provides -- and it is entitled</p> <p>4 Procedures For Validation of E-Cat IP. And it provides</p> <p>5 for things that are required to happen prior to Leonardo</p> <p>6 being entitled to be paid the \$10 million. And if you</p> <p>7 want to just take a second to review it.</p> <p>8 A. Okay.</p> <p>9 Q. You don't need to take my word for it. That is</p> <p>10 what it says.</p> <p>11 My first question relates just to the first</p> <p>12 paragraph.</p> <p>13 A. Okay.</p> <p>14 Q. Where it says: "No later than five days</p> <p>15 following validation of the plant, Leonardo and Rossi will</p> <p>16 deliver to any combination of one or more of the United</p> <p>17 States patent attorneys and a nuclear engineer."</p> <p>18 Was a nuclear engineer selected by the parties</p> <p>19 or a US patent attorney selected by the parties?</p> <p>20 A. That is where I am going to be a little fuzzy</p> <p>21 on recollection of this. But partly because the IP was</p> <p>22 ultimately disclosed to Tom and not to me. But I don't</p> <p>23 believe that it was ultimately -- I'm not sure if it was</p> <p>24 reviewed by a US patent attorney. I just don't know. If</p> <p>25 it was, I am sure this information is in the documents,</p>

<p style="text-align: right;">Page 146</p> <p>1 A. That the license agreement has value to date?</p> <p>2 Q. Yes.</p> <p>3 A. No.</p> <p>4 Q. Does Industrial Heat believe that the E-Cat IP</p> <p>5 has value?</p> <p>6 A. No, with one caveat. And this is, you know, it</p> <p>7 would be an obtuse kind of minimal value, which would be</p> <p>8 if some of the claims in some of its patent applications</p> <p>9 were allowed and they, in fact, relate to something</p> <p>10 somebody else is doing that does work. But that is a</p> <p>11 pretty hypothetical scenario, so I think the answer is no.</p> <p>12 But you could paint a hypothetical or possibly it could be</p> <p>13 some value there.</p> <p>14 Q. Is there a provision in the license agreement,</p> <p>15 that is Exhibit 13 still, that provides that IH must be</p> <p>16 able to successfully replicate a certain COP result</p> <p>17 without the assistance of Dr. Rossi?</p> <p>18 MR. BELL: Objection to form.</p> <p>19 THE WITNESS: I would have to review the</p> <p>20 license agreement. Clearly, there was a --</p> <p>21 requirements that -- I would have to review it,</p> <p>22 Brian. I'm not sure.</p> <p>23 BY MR. CHAIKEN:</p> <p>24 Q. Are you aware of one sitting here today?</p> <p>25 A. What is that?</p>	<p style="text-align: right;">Page 148</p> <p>1 still under oath.</p> <p>2 MR. BELL: He is under oath.</p> <p>3 MR. CHAIKEN: I said Mr. Vaughn. Mr. Bell, do</p> <p>4 you want to be under oath? I don't think so.</p> <p>5 BY MR. CHAIKEN:</p> <p>6 Q. Before we took the break, I was asking you</p> <p>7 about the license agreement and whether or not there was a</p> <p>8 provision in there that said that, in order for Leonardo</p> <p>9 to be entitled to payment, Industrial Heat had to be able</p> <p>10 to replicate results without Dr. Rossi's assistance.</p> <p>11 Did you find the provision while we were on the</p> <p>12 break?</p> <p>13 A. I did review the license agreement while we</p> <p>14 were on break. If you go to 12, I think it's 12 (b).</p> <p>15 Q. Okay.</p> <p>16 A. Leonardo and Rossi, jointly and severally,</p> <p>17 hereby represents and warrants to the company that the</p> <p>18 patents and patent applications identified in Exhibit A</p> <p>19 and all other E-Cat IP, all of which is to be delivered to</p> <p>20 the company in accordance with Section 3.2 (b) are owned</p> <p>21 by Leonardo and/or Rossi and are all the patents and</p> <p>22 patent applications and other intellectual property that</p> <p>23 are necessary or useful for the company to develop,</p> <p>24 manufacture, make, have made, use, have used, etc.,</p> <p>25 deriving from the E-Cat IP in the territory.</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. I said, are you aware of one sitting here</p> <p>2 today?</p> <p>3 MR. BELL: Objection to form.</p> <p>4 THE WITNESS: There is a replication</p> <p>5 requirement?</p> <p>6 BY MR. CHAIKEN:</p> <p>7 Q. Yeah. Exactly.</p> <p>8 A. I think it was inherent. Now, was it</p> <p>9 specifically spelled out in the agreement? I'm not sure.</p> <p>10 I would have to go back and review it.</p> <p>11 Again, if you have something that is validated</p> <p>12 by a bona fide third party and the technology is</p> <p>13 transferred, then theoretically you shouldn't need that</p> <p>14 requirement, right? But that's -- so if there is not,</p> <p>15 that would be why. Because theoretically you shouldn't</p> <p>16 need it. But it probably would have been safer to have it</p> <p>17 in retrospect.</p> <p>18 MR. CHAIKEN: We have got lunch here, so let's</p> <p>19 take a break for lunch.</p> <p>20 THE VIDEOGRAPHER: We are off the record. The</p> <p>21 time is 12:58.</p> <p>22 (Thereupon, a recess was taken.)</p> <p>23 THE VIDEOGRAPHER: We are back on the record.</p> <p>24 The time is 1:25 p.m.</p> <p>25 MR. CHAIKEN: Mr. Vaughn, I remind you, you are</p>	<p style="text-align: right;">Page 149</p> <p>1 So that in combination with 13-1, in</p> <p>2 consideration of the payment set forth herein, Rossi will</p> <p>3 provide ongoing training and support to the company and</p> <p>4 the use of the plant in a production of the E-Cat products</p> <p>5 for a period of not less than 12 months following</p> <p>6 validation, as well as to the extent reasonably requested</p> <p>7 by the company to enable it to utilize the E-Cat IP,</p> <p>8 operate the plant and produce E-Cat products, etc.</p> <p>9 Q. I'm sorry. I didn't see the word "replicate"</p> <p>10 in any of those -- either of those two paragraphs. Did I</p> <p>11 miss it?</p> <p>12 A. I don't think you missed it.</p> <p>13 Q. Okay.</p> <p>14 A. But I think those paragraphs combined, clearly</p> <p>15 we had to have the ability to replicate the technology.</p> <p>16 It had to be transferred and we had to know how to use it</p> <p>17 and operate it.</p> <p>18 Q. Okay. Now, the ability to replicate was a</p> <p>19 pretty big issue for Industrial Heat, correct?</p> <p>20 A. It was.</p> <p>21 Q. In fact, a lot of your response to the</p> <p>22 complaint is about the fact that you were unable to</p> <p>23 replicate, correct?</p> <p>24 A. Correct.</p> <p>25 Q. So if it was that important, why didn't the</p>

Page 150

1 word "replicate" appear anywhere in the agreement?

2 MR. BELL: Objection to form.

3 THE WITNESS: As I stated earlier this morning,

4 we were, when Andrea drafted the agreement, we were

5 trying not to change his language unless we felt

6 absolutely we needed to. And when you combine 12 (b)

7 and 13-1, we believe that gets the same effect.

8 BY MR. CHAIKEN:

9 Q. During the one year following validation, call

10 it May 1, 2013, did Industrial Heat ever tell Dr. Rossi

11 that it could not replicate?

12 A. Yes.

13 Q. When did it do that?

14 A. I believe on numerous different occasions. But

15 one explicit conversation that comes to mind is a

16 conversation that Tom and I had with Andrea around the

17 kitchen table at Triangle Drive. Triangle Drive is where

18 the initial facility where Andrea worked is located. And

19 the basis of that conversation was to say to Andrea, you

20 know, Look, you think things are going swimmingly. We

21 don't believe that is the case. We can't replicate it.

22 You think it's -- the results are fine. We are not seeing

23 the same results.

24 And it became a heated conversation. And Tom

25 eventually, you know, after he kind of pounded the table

Page 151

1 quite literally, stormed out. And I think that was in the

2 fall -- I know that was in the fall of '13. I don't

3 remember was it September, October, November. I don't

4 remember exactly. But it was during that period of time.

5 Q. Did Industrial Heat ever make that

6 communication to Dr. Rossi in writing?

7 A. I don't know if we did. And we were seeing him

8 quite frequently in person at that time. And so it

9 wouldn't surprise me if we did not, that it was only

10 verbal. But I don't know. There may be some written

11 communication along those lines.

12 And, you know, the other thing is, it was much

13 easier to communicate in person with Andrea than it was

14 via e-mail because of the way he would react or appeared

15 to react via e-mail. You can see that in his responses.

16 Q. Mr. Vaughn, did you ever -- and I was hoping to

17 get a yes or no question to this, you can explain if you

18 need to -- did you ever in writing point to those two

19 contractual provisions that you just pointed me to, and

20 put those in writing and say, Dr. Rossi, you are in

21 violation of these two provision?

22 A. I don't believe that we did, with the

23 explanation I just provided.

24 (Exhibit 19, Fourth Amended Answer, Additional

25 Defenses, Counterclaims and Third Party Claims, was

Page 152

1 marked for Identification.)

2 BY MR. CHAIKEN:

3 Q. Okay. I am going to show you, let's mark this

4 one as Exhibit 19. This is the Fourth Amended Answer,

5 Additional Defenses, Counterclaims and Third Party Claims

6 filed by the defendants in this case.

7 You said you reviewed this before?

8 A. Yeah. And I also during break reviewed this

9 document. And I was -- you know, you had asked me earlier

10 about did we believe that Rossi had violated the protocol

11 for validation. And so I reviewed this. This is, as I

12 said, I might need to go back to review these claims. It

13 refreshed me that only 18 of the specified 30 units were

14 tested. This was based on a health law requirement Andrea

15 represented to us.

16 But, anyway, that was another example of a

17 validation of that process. I apologize. I didn't -- I

18 reviewed it during break and wanted to highlight that. I

19 didn't recall that specific example when you asked me

20 earlier.

21 Q. I am glad you brought that up. Let's go to

22 that. So on page 37 you write here, Industrial Heat

23 states that paragraph 49, Because Leonardo and Rossi knew

24 that the plant could not achieve validation at the time of

25 the license agreement, they manipulated the validation

Page 153

1 testing procedure to deceive counter-plaintiffs into

2 making the second payment under the license agreement.

3 You say "manipulated the validation testing

4 procedure." Does that include manipulating actual data or

5 is it just the procedure we are talking about?

6 A. That is a good question. You know, I mean, I

7 don't know that we know whether or not he manipulated the

8 data, as well, in addition to the procedure. If we go

9 through it, if you read kind of 50, and 50 to -- on a

10 little bit, it talks about how the protocol was

11 manipulated with this health office issue, etc., etc.

12 Q. Okay. Well, let's talk about that for a

13 second. Let's just be very clear. There is a difference

14 between manipulating procedure and manipulating data,

15 correct?

16 MR. BELL: Objection to form.

17 THE WITNESS: There is a difference between

18 manipulating procedure and data. I would say that

19 that's true.

20 BY MR. CHAIKEN:

21 Q. Okay.

22 A. But it could be -- it could be overlapped.

23 Q. Okay. Well, just for purposes of my question,

24 I want to make sure that we are talking about -- we are

25 separating those two different things.

1 need more information to be able to make that sort of
2 assessment.

3 Q. Okay. Looking at the allegations in the
4 counterclaim, paragraph 50 is a recitation of a Rossi
5 e-mail dated April 23, 2013.

6 And you state in paragraph 51: Upon
7 information and belief, Rossi had no such meeting with the
8 Ferrara Health Office and Rossi's statement was false that
9 Italian law would not allow for the 24-hour validation
10 process as set forth in the license agreement without
11 first obtaining a permit that would require "at least six
12 months" to obtain.

13 What proof do you have that no such meeting
14 took place?

15 A. We have no proof that such meeting took place.
16 I guess that is our proof.

17 Q. Got it. Okay. What proof do you have that
18 there is no Italian law that would require a permit for
19 such test?

20 A. Counsel has looked into this and they have
21 looked into Italian law in this matter.

22 Q. Okay. Do you know if -- well, strike that. I
23 will move on.

24 Did your -- do you have an understanding of
25 what the Italian law actually provides as it relates to

<p style="text-align: right;">Page 158</p> <p>1 such a validation process? Is it set forth in the license 2 agreement? 3 A. Do I? 4 Q. Yes. 5 A. I'm not sure. I would have to ask our counsel. 6 But I don't think that it requires permitting for this 7 sort of activity. 8 Q. And what is the basis for your statement, other 9 than communications with your counsel? 10 A. Communication with the counsel. 11 Q. Okay. 12 A. I haven't done the primary analysis of Italian 13 law. 14 Q. Okay. I am going to refer you to paragraphs 95 15 and 96 of your counterclaim, which is on page 52 and 53. 16 And this goes right to what we have been talking about, 17 the ability to replicate. 18 A. Mm-hmm. 19 Q. And 95 sets forth that: Leonardo and Rossi 20 purportedly transferred and delivered all E-Cat IP. 21 And paragraph 96, Industrial Heat states: Only 22 one of three conclusions can be drawn from the foregoing 23 facts. One, Leonardo and Rossi did not transfer and 24 deliver all E-Cat IP. Two, validation was never achieved 25 and Penon's reported COP calculations were false. Or</p>	<p style="text-align: right;">Page 160</p> <p>1 doing. So we continued to get more sophisticated parties. 2 For example, Bowling and then later our engineering team, 3 both without success. 4 Q. But without knowing all that background 5 information, isn't that a conclusion that could be drawn? 6 A. That one could say we weren't sophisticated 7 enough to assess whether or not -- I don't know. That 8 would seem to me that that would be equally absurd. But I 9 guess you can hypothetically make that argument. 10 Q. Could someone conclude that Industrial Heat 11 used faulty equipment when it was running its test? 12 MR. BELL: Objection to form. 13 THE WITNESS: You could make that argument, 14 Brian. But I don't believe that, you know, if you 15 were -- if an expert were to go back and review all 16 that we did and how we did it, that is not a 17 conclusion they would come to. 18 BY MR. CHAIKEN: 19 Q. Okay. Could someone conclude that Industrial 20 Heat used inferior materials for the catalyst? 21 A. Again -- 22 MR. BELL: Objection to form. 23 THE WITNESS: -- I believe all of these are 24 hypothetical arguments that could be made. But it's, 25 you know, we know what we did and we exhaustively</p>
<p style="text-align: right;">Page 159</p> <p>1 three, both. Correct? 2 A. Yeah. I'm sorry, I just lost -- Sorry, I've 3 got it back. 4 Q. Are you with me? 5 A. I am with you, yep. 6 Q. But isn't it true that there other conclusions 7 that could be drawn? 8 A. If there are, they don't come to mind. If 9 there are other conclusions that could be drawn, they 10 don't come to mind. 11 Q. I mean, couldn't it be that you could conclude 12 that Industrial Heat lied about its ability to replicate? 13 Is that a conclusion that could be drawn? 14 A. We did not lie about our ability to replicate. 15 Q. I am not saying that you did or didn't. I am 16 saying, isn't that a conclusion that could be drawn? 17 A. Hypothetically, I suppose that one could make 18 that argument. 19 Q. Could we conclude that Industrial Heat did not 20 have competent scientists or engineers working for it when 21 it tried to replicate? 22 A. No. As I mentioned, we had -- we progressed 23 along the lines of sophistication the more we failed in 24 replication. We kept thinking, well, we didn't 25 successfully replicate. We must not know what we are</p>	<p style="text-align: right;">Page 161</p> <p>1 tested this, so that we would know before entering 2 into a conflict like this if it did, in fact, work or 3 not. Because certainly you wouldn't be in this 4 position if it does, in fact, work. 5 BY MR. CHAIKEN: 6 Q. Could someone possibly conclude from these 7 facts that Industrial Heat didn't properly follow 8 Dr. Rossi's instructions? 9 MR. BELL: Objection to form. 10 THE WITNESS: That was his -- the burden was on 11 him to ensure that we did follow the instructions and 12 that we were doing what he told us to do based on 13 transfer of the IP. And so, you know, if you want 14 to -- if Andrea is saying, Well, they didn't do what 15 I told them to do, then tell us what to do. You 16 know, I think we were there and saying that 17 frequently. 18 So it is hard to -- in my opinion, that is a 19 hard argument to make, as well. Again, it falls 20 under your hypothetical category. But I don't see 21 how, based on the exhaustive work that we did 22 initially, T. Barker and myself to some extent, 23 admittedly those were less sophisticated than the 24 other efforts, but it was because we thought it was 25 easy and a high order of magnitude signal. No</p>

<p style="text-align: right;">Page 162</p> <p>1 success there. Bauman, no success. Joe Murray and a 2 highly competent engineering team, with great 3 facilities and equipment, also didn't succeed. 4 So at some point you have got to conclude that, 5 well -- sorry, a door is opening. Well, either it 6 doesn't work or they didn't transfer the IP. 7 And so that's where we are on the spectrum. 8 But I guess you could hypothetically argue anything. 9 (Exhibit 20, 96250 through 95252, was marked 10 for Identification.) 11 BY MR. CHAIKEN: 12 Q. I will show you what has been marked as 13 Exhibit 20. 14 Before we get into Exhibit 20, has Industrial 15 Heat ever, from the date in which it entered into this 16 license agreement to today, had a positive COP test? 17 A. No. And I know you are referencing, you know, 18 this e-mail here that mentions a test. There were 19 different times, whether it was T. Barker or myself, or 20 even potentially others, I'm not sure, where you're either 21 doing research and you see something that may indicate a 22 positive result or a result different from the results you 23 had been getting, and so all of a sudden you kind of perk 24 up and you get excited about that and you, much too early, 25 claim victory or claim a positive COP.</p>	<p style="text-align: right;">Page 164</p> <p>1 looks like it was forwarded from an earlier e-mail that 2 day. And it's at the middle or three-quarters of the way 3 down, excuse me, one-third of the way down, it says 4 "Industrial Heat update July 2013." 5 What was the purpose of this update? 6 A. I imagine, if I had to guess, it was an update 7 to existing investors at that time. 8 Q. And do you know if this update was ever sent 9 out to investors? 10 A. I don't know for certain, as Tom was sending 11 out the updates at that time. But if I had to guess, a 12 version of it likely was. Whether it was this version, I 13 don't know. 14 Q. Okay. The second paragraph below, where it 15 says Industrial Heat update July 2013, the document 16 states, in the middle of that paragraph: "We tested our 17 plant at the end of April and beginning of May for four 18 days. During the test we operate 37 different reactors 19 for periods ranging from 24 hours to a few hours and the 20 results were good. Our engineer and the independent 21 engineer operating the test reported the machines produced 22 far more energy than they required to operate. Nearly 11 23 times as much in some instances versus our test 24 requirement of six times during the 24-hour test." 25 A. Mm-hmm.</p>
<p style="text-align: right;">Page 163</p> <p>1 Early on, we were overly optimistic and overly 2 confident, I would say, in our ability to assess the 3 performance of this thing. 4 Q. Let me broaden the scope of my question. 5 A. Sure. 6 Q. Has Industrial Heat or any of its affiliates, 7 in any of it LENR investments ever come across a positive 8 COP in any of its testing? 9 A. It would work as also indeterminate and 10 ongoing. So it is ongoing. We will see. 11 Q. Has Industrial Heat ever told its investors 12 that it had received or it had achieved positive COP in 13 any of its testing? 14 A. Again, if we have, it was in a preliminary 15 communication that was later retracted. I'm not sure that 16 we have. But I just want to caveat that. Because I see 17 you are putting in front of me an e-mail here where it 18 says, I mentioned the 1.3 times COP test, and it looks 19 like maybe this was a draft update. Again, it is kind of 20 preliminary exuberance over something that we thought had 21 affirmed results which we were hopeful about. But later, 22 in further analysis, did not affirm those results. 23 Q. Well, let's talk about Exhibit 20. Exhibit 20 24 is Bates marked 96250 through 95252. It is an e-mail 25 dated July 16, 2013 from you to Tom Darden. At the top it</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. Did, in fact, your independent engineers -- 2 excuse me, your independent engineer and the independent 3 engineer perform such tests and receive such results? 4 MR. BELL: Objection to form. 5 THE WITNESS: This was referencing the report 6 that Penon put out about these tests. And that is 7 what Penon reported, I think he reported 10.85 or 8 something. 9 BY MR. CHAIKEN: 10 Q. I see. Did your engineer, independent 11 engineer, operate the tests? Or are you just talking 12 about -- who is the engineer that is being referred to? 13 MR. BELL: Objection to form. 14 THE WITNESS: I believe our engineer, the 15 reference there is T. Barker Dameron. 16 BY MR. CHAIKEN: 17 Q. Got it. 18 A. And I believe the independent engineer 19 operating the test referenced there is Fabio Penon. 20 Q. Got it. The next page of this exhibit there is 21 a paragraph at the top that begins: "The first test of 22 our knowledge retention involved us taking apart a reactor 23 originally built by Dr. Rossi, rebuilding it ourselves and 24 fuelling it with our own charge. Unfortunately, the 25 rebuilt reactor with our charge appeared to generate only</p>

<p style="text-align: right;">Page 170</p> <p>1 have to check with Jim Fogleman. But I don't believe</p> <p>2 if you would look at a cap table of Industrial Heat,</p> <p>3 LLC or IH Holdings International Limited that</p> <p>4 Cherokee Advisors would be listed there. But it may</p> <p>5 be, and I just don't think it is. Because I think</p> <p>6 that it was helping cover costs and was later paid</p> <p>7 back.</p> <p>8 BY MR. CHAIKEN:</p> <p>9 Q. Okay. We mentioned Woodford Investments. And</p> <p>10 you said, I think, the Woodford Investment Fund invested</p> <p>11 in May of 2015?</p> <p>12 A. Correct.</p> <p>13 Q. And they invested \$50 million?</p> <p>14 A. Correct.</p> <p>15 Q. And is it your understanding that the valuation</p> <p>16 for Woodford was a \$2 billion valuation at that time?</p> <p>17 A. No.</p> <p>18 Q. What was the valuation, as far as you</p> <p>19 understood it?</p> <p>20 A. It was a -- they bought -- they -- it's a</p> <p>21 nuance question. It is not just because of the way they</p> <p>22 structured it. They had the ability to buy additional</p> <p>23 equity at specified prices. So they provided 50 million</p> <p>24 initially and received, I believe, just under five percent</p> <p>25 for that. They also had the option to buy up to an</p>	<p style="text-align: right;">Page 172</p> <p>1 A. Sure.</p> <p>2 (Exhibit 22, IH81230 through 81234, was marked</p> <p>3 for Identification.)</p> <p>4 BY MR. CHAIKEN:</p> <p>5 Q. Let me show you what has been marked as</p> <p>6 Exhibit 22.</p> <p>7 A. I will just add, just along the lines, Woodford</p> <p>8 was investing in a portfolio strategy. It wasn't just</p> <p>9 about the E-Cat.</p> <p>10 Q. Okay. We are going to get there.</p> <p>11 Exhibit 22 is an e-mail chain Bates stamped</p> <p>12 IH81230 through 81234. And I am really concerned about</p> <p>13 the e-mail that begins on the second page that was</p> <p>14 forwarded from John Mazzarino on September 6, 2014 to Joe</p> <p>15 Pike, Tom Darden and John Mazzarino and it states: Draft</p> <p>16 TE e-mail to paul@wim. WIM stands for what?</p> <p>17 A. Are you on page two?</p> <p>18 Q. Yeah, page two. The subject line.</p> <p>19 A. Oh. Sorry. Woodford Investment Management</p> <p>20 Company.</p> <p>21 Q. Right. And who is TD?</p> <p>22 A. Tom Darden.</p> <p>23 Q. Tom Darden, right. So specifically looking at</p> <p>24 that e-mail, it is a lengthy e-mail, it goes on to the</p> <p>25 third page. And I am most concerned about the last two</p>
<p style="text-align: right;">Page 171</p> <p>1 additional -- I think it was at least 15 percent at</p> <p>2 different price points. And so they bought the right, in</p> <p>3 effect, to own up to 20 percent of the company. I believe</p> <p>4 it was 20 percent.</p> <p>5 Q. But they would have to pay more for that,</p> <p>6 right?</p> <p>7 A. Yeah. They would have to make additional</p> <p>8 investments.</p> <p>9 Q. Right. Exactly. So you are saying there</p> <p>10 wasn't a \$2 billion valuation; it was something less?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know what it was?</p> <p>13 A. Well, it's a -- it is a difficult question</p> <p>14 because it's -- I will tell you what they received in</p> <p>15 exchange for the capital they provided and then, you know,</p> <p>16 a valuation analyzer could tell you what was the</p> <p>17 valuation. But they paid 50 million bucks and they</p> <p>18 received just under five percent, as well as options to</p> <p>19 purchase an additional 15 percent.</p> <p>20 Q. Right.</p> <p>21 A. And I believe that part of that was at the same</p> <p>22 valuation and part of that was at an increased valuation.</p> <p>23 Q. Okay. Prior to them making that investment,</p> <p>24 were they ever told that Industrial Heat was unable to</p> <p>25 replicate the technology?</p>	<p style="text-align: right;">Page 173</p> <p>1 paragraphs on the page. And the last, the second to last</p> <p>2 paragraph starts: "With respect to the valuation, I can</p> <p>3 give you some background. We talked to Neil about the</p> <p>4 \$2 billion figure earlier this summer, providing him with</p> <p>5 a draft of the test report prepared by the Royal Swedish</p> <p>6 Academy of Sciences, which awards Nobel prize in physics.</p> <p>7 The report described a 32-day test conducted by a number</p> <p>8 of prominent European physicists, apparently including</p> <p>9 members of the committee that select the Nobel prize</p> <p>10 winner, and concludes that Rossi has discovered a new</p> <p>11 source of energy, the properties rivaling nuclear fission,</p> <p>12 but without releasing radiation or producing radioactive</p> <p>13 waste. So this technology seems to be without precedent</p> <p>14 and extremely valuable."</p> <p>15 See that?</p> <p>16 A. I do, yeah.</p> <p>17 Q. Does this refresh your recollection as to</p> <p>18 whether or not there was a \$2 billion valuation?</p> <p>19 A. Well, I didn't -- I didn't need this to refresh</p> <p>20 my memory on that.</p> <p>21 Q. Got it.</p> <p>22 A. Because there's -- there's -- that may have</p> <p>23 been put forth, but that is not what was -- what was</p> <p>24 ultimately agreed to is what I just told you.</p> <p>25 Q. Got it. Was there anything else besides</p>

<p style="text-align: right;">Page 182</p> <p>1 is February 2016, 25, 25, 25 percent. I think that all 2 those 25 percents were made, you know, those were the 3 February 2016 success -- so, anyway, your question was why 4 did that never change? 25 percent was chosen on 5 February 2016. 6 Q. So as of February -- well, it is February 2016 7 and you still hadn't been able to replicate, right? 8 A. Right. 9 Q. So -- 10 A. So one question would be, why is this higher 11 than the 15 percent, presumably? 12 Q. Well, why is it higher than 15 percent? Why is 13 it higher than all the -- one of the other investments, 14 other projects that you are looking at? 15 A. Well, there is another that was at 25 percent 16 and then there is one at 35 percent. 17 Q. Right. 18 A. And presumably this would have been due to -- I 19 am guessing -- the other independent reports, which kind 20 of compile all those factors. 21 MR. CHAIKEN: Okay. You know what, put that 22 one aside for now. I am going to show you a 23 different one. 24 (Exhibit 24, Feasibility Report of Cold Fusion 25 E-Cat of Industrialization in China, was marked for</p>	<p style="text-align: right;">Page 184</p> <p>1 A. I don't think that I have, Brian. But that is 2 why I am flipping through it here. I did not make it. 3 Q. Looking at, let's see, the third slide says 4 1.2, at the top E-Cat. 5 A. Okay. 6 Q. It says: "Cherokee funds in 2013 owned the 7 E-Cat intellectual property and set up Industrial Heat, 8 LLC in Raleigh Triangle Industrial Park." 9 You used the word "Cherokee" in the same -- as 10 probably the same testimony you gave earlier about the use 11 of the word "Cherokee"? 12 MR. BELL: Objection to form. 13 THE WITNESS: Again, I didn't make this. So... 14 BY MR. CHAIKEN: 15 Q. Okay. 16 A. So I would never have said "Cherokee funds." 17 But I don't know who made this. And it is hard for me to 18 comment on it. 19 Q. Let me ask you this. There is a statement on 20 this slide, it says "they improved the E-Cat reactor to 21 COP of 20 to 80, the test data of Industrial Heat, LLC." 22 Is that a false statement, as far as you know? 23 A. As far as I know, yes. 24 Q. And, in fact, if someone from Industrial Heat 25 made this presentation, this would have been a false</p>
<p style="text-align: right;">Page 183</p> <p>1 Identification.) 2 BY MR. CHAIKEN: 3 Q. I am going to show you what has been marked as 4 Exhibit 24. Exhibit 24 is a copy of a Feasibility Report 5 of Cold Fusion E-Cat of Industrialization in China. 6 Have you seen this report before? 7 A. I don't know. 8 Q. Do you know if Tom Darden ever used this 9 PowerPoint as a presentation that he made in China? 10 MR. BELL: What is the source of this? This 11 doesn't appear that it was produced by us and it 12 doesn't have any other indicia of where it came from. 13 MR. ANNESSER: It was attached to an e-mail 14 provided by your clients. 15 MR. BELL: It was produced in this case? 16 MR. ANNESSER: Yes. 17 MR. BELL: Okay. 18 THE WITNESS: Sorry, Brian, what was your 19 question again? 20 BY MR. CHAIKEN: 21 Q. My question is, do you know if Tom Darden ever 22 presented this on a trip to China, to whether it be the 23 investors or parties? 24 A. I don't know. 25 Q. You have never seen it before?</p>	<p style="text-align: right;">Page 185</p> <p>1 presentation, right? 2 MR. BELL: Objection to form. 3 THE WITNESS: As a vice president of Industrial 4 Heat, I never saw this before it went out. This is 5 not my work. And if somebody made this presentation 6 that was part of Industrial Heat, I would be 7 surprised. 8 BY MR. CHAIKEN: 9 Q. Okay. But my question is, if someone made this 10 representation to potential investors, this would have 11 been false? 12 A. It would have been false. 13 MR. BELL: Objection to form. 14 BY MR. CHAIKEN: 15 Q. Okay. One more slide on this exhibit that I 16 want to take a look at. Section 3.6, Company Structure. 17 It states under this slide -- are you with me? 18 A. Yes. 19 Q. In the first paragraph: "Set up a 20 Sino-American joint venture. United States side transfers 21 the whole technology of E-Cat for getting a part of the 22 stake in the joint venture accordingly." 23 Are you aware of any joint venture that 24 Industrial Heat did with anyone in China? 25 A. No.</p>

<p style="text-align: right;">Page 186</p> <p>1 MR. BELL: Are you making any representations 2 about the program set forth and the authorship of 3 this document? 4 MR. CHAIKEN: No. I am just wondering if the 5 fact he was aware that Industrial Heat had a joint 6 venture with a market in China. 7 THE WITNESS: No, was the answer. 8 BY MR. CHAIKEN: 9 Q. Okay. Did Leonardo deliver the E-Cat plant to 10 Raleigh, North Carolina in August 2013? 11 A. I believe that is correct. 12 Q. And did Industrial Heat ever tell Leonardo that 13 its delivery in August of 2013 was late and, therefore, a 14 breach of the license agreement? 15 A. Prior to this lawsuit? 16 Q. Yep. 17 A. I don't recall that we did. 18 Q. Is it making a claim now that it breached the 19 license agreement by delivering the plant late? 20 A. He did not deliver the plant within the time 21 frame specified by the license agreement. 22 Q. Yeah, but is it Industrial Heat's position 23 today that that's a breach of the license agreement? 24 A. I believe that is correct. 25 Q. So you are making that claim?</p>	<p style="text-align: right;">Page 188</p> <p>1 development, modification and testing of the plant." 2 Which independent contractors were those? 3 A. Which independent contractors? 4 Q. Yep. 5 A. I believe that was Barry West, Fulvio Fabiani, 6 and I can't recall if there were others. There were guys 7 that we were paying as independent contractors to help 8 with the outfit. And I think they may have also helped 9 Andrea on some of the -- some other work, but I'm not sure 10 if they did or not. 11 Q. Okay. Was there anybody else? 12 A. Yes. There was -- we engaged Alex Rosa to help 13 with drawings that Andrea wanted done. A gentleman by the 14 name of David Perry was also there, kind of acting as a 15 handyman. I believe that was the extent of it. 16 (Exhibit 25, 89208 through 89212, was marked 17 for Identification.) 18 BY MR. CHAIKEN: 19 Q. Okay. Let me show you what has been marked as 20 Exhibit 25. Exhibit 25 is an e-mail chain. 21 A. I want to stand up just a second. 22 Q. It has been Bates marked 89208 through 89212. 23 An e-mail chain around August of 2013. I'm specifically 24 going to ask you about the one that is from Tom Darden to 25 Joe Pike dated August 15, 2013.</p>
<p style="text-align: right;">Page 187</p> <p>1 A. I believe that is correct. I would have to 2 review the claims, but... 3 Q. Okay. And what is the damage that you are 4 asking as a result of that? 5 A. Again, I would have to review the claims. But 6 it's a breach of the contract. 7 Q. So are you saying that Industrial Heat is 8 entitled to a return of \$10 million as a result of its 9 delivering the plant late? 10 A. Or 11 and a half. I don't remember. Or other 11 costs incurred associated with that. 12 Q. Now, if you could turn back to the -- let's 13 look at the complaint for a second. 14 A. Which one? 15 Q. Excuse me. Counterclaim, your counterclaim. I 16 think it was Exhibit 20. 17 MR. ARAN: Exhibit 19. 18 BY MR. CHAIKEN: 19 Q. Thank you. Exhibit 19. 20 A. Okay. 21 Q. And paragraph 60 on page 40. Are you with me? 22 A. I am. 23 Q. Actually, paragraph 61 states: "Shortly after 24 delivery, Industrial Heat hired several independent 25 contractors to assist Rossi in connection with the</p>	<p style="text-align: right;">Page 189</p> <p>1 Was it Industrial Heat's position that as of 2 August of 2013 that Dr. Rossi could still work towards the 3 third payment that he could earn under the terms of the 4 license agreement? 5 A. Our perspective was that, notwithstanding the 6 fact that he delivered the plant late, we were willing to 7 pay for performance. If he performed, we were still 8 willing to pay him. 9 Q. Okay. So you were operating under that -- that 10 fact scenario, right? 11 MR. BELL: Objection to the form. 12 BY MR. CHAIKEN: 13 Q. That being that if he could perform, he would 14 still be entitled to payment? 15 A. Yes. If the device could be proven to generate 16 real high levels of energy output, such as one megawatt, 17 real COPs such as ten, and the technology had been 18 transferred, then we were willing to pay. 19 Q. And the section in that, goes to the section, 20 third payment, that singular license agreement, we will 21 get to that in a second. But is there a reason that that 22 third test, what we call, I will call it the guaranteed 23 performance test, is there a reason it didn't start in 24 August of 2013? 25 A. I'm not sure why it did not start in</p>

<p style="text-align: right;">Page 190</p> <p>1 August 2013. I know that Andrea felt he needed to rebuild 2 the unit, which we assisted him in doing. And then 3 otherwise it should have been started shortly thereafter. 4 He kept wanting to work on other things, specifically 5 preparing for the Lugano test, which ended up taking place 6 in February and March of '15. So he was running a lot of 7 tests to destruction and doing this, that and the other. 8 But there was no reason that it shouldn't have started in 9 August or September. 10 Q. Did Industrial Heat ask Dr. Rossi to start the 11 test in August or September of 2013? 12 A. We -- we had conversations about what his plans 13 were in that regard, you know, and he was delaying. What 14 reason? I think the reason was he wanted to focus on the 15 Lugano test. But we definitely did talk about that and 16 where it would be located and things like that. 17 Q. Did Industrial Heat have the funding lined up 18 to pay Dr. Rossi \$89 million as of August 2013? 19 A. Yes. The funding was not a concern of ours, so 20 long as he performed. It would be in addition to 21 Woodford's interest, others would be more -- it would be 22 an easy thing to raise capital for. So that wasn't -- 23 that wasn't at the top of our concern list. Our concern 24 was, does it work and can it be proven to work and is the 25 technology transferred? If we could prove those things,</p>	<p style="text-align: right;">Page 192</p> <p>1 finding a customer in North Carolina? 2 A. We did talk to him about that, you know, as he 3 was asking about this. So there was customer next door. 4 It was at -- Southern Industrial Contractors was the 5 facility next door and actually the owner of our building 6 that we were in. And they washed trucks using hot water, 7 hot steam, steam such water. So one easy thing that we 8 proposed was just piping up hot water, you know, piping 9 the heat, I should say, over there to heat their water for 10 that purpose for washing their trucks. 11 Another one was brick company installation. I 12 can't remember if it was brick or plywood. Anyway, there 13 was a facility just kind south of Raleigh, an industrial 14 area where Tom was familiar with. 15 Q. Did Industrial Heat ever make agreements with 16 anyone else to do that exact experiment, combine the E-Cat 17 with an existing customer? 18 A. No. Andrea kept coming up with reasons as to 19 why it wasn't sufficient or he didn't want to do it. His 20 goal was to get it down in Miami. 21 Q. Did Industrial Heat ever ask specifically 22 Dr. Rossi to start doing the guaranteed performance tests 23 required by the contract? 24 A. You know, I imagine that that conversation came 25 up. It is hard to believe that that conversation wouldn't</p>
<p style="text-align: right;">Page 191</p> <p>1 then 89 million was pretty easy, in our view of the world. 2 Q. If you turn to page three of this document, it 3 has a paragraph in the middle of the page that says "new 4 facility." Do you see that? 5 A. I see it. 6 Q. It says: "Later on," in the middle of the 7 paragraph, "later on, we hope to find a nearby beta 8 customer with a secure site where we can operate this 9 plant for a year or more. We are impeded in finding this 10 customer now because we are not publicizing our 11 involvement. If any of you have a suggestion, please let 12 me know." 13 Whose idea was it to have a customer for the 14 purposes of testing the E-Cat equipment? 15 A. Andrea's. And, you know, I think Tom mentions 16 that because Andrea had already broached that idea. 17 Q. And when did he broach that idea? 18 A. I'm not sure of the exact time, but clearly 19 early on, after delivery of the plant in August 2015. 20 Q. I see. 21 A. One of his consistent themes was, you know, we 22 always -- he believed it needed to be ratified by a 23 customer. We could care less about a customer, but that 24 was important to Andrea. 25 Q. Did you have conversations with Dr. Rossi about</p>	<p style="text-align: right;">Page 193</p> <p>1 have come up, as when do you want to start this text? 2 When is this test going to start? And what is that 3 process going to be? Are there e-mail communications on 4 that? I'm not sure. Again, at this point we were seeing 5 him almost daily, so it would have been easier to talk 6 about it. 7 Q. Did Industrial Heat ask Dr. Rossi to 8 participate in tests in Industrial Heat's facility in 9 North Carolina? 10 A. Sure. But these were not -- these were tests 11 of single devices. 12 Q. Right. 13 A. Sure, we did. 14 Q. Was there any -- was there ever a time that 15 Dr. Rossi told you that he would not agree to participate 16 in doing testing, whether it be in Industrial Heat's 17 facility or anywhere else? 18 A. Do you mean with regard to one megawatt or do 19 you mean with regard to testing of the individual units? 20 Q. Let's talk about everything other than the one 21 megawatt. 22 A. Any time we wanted to conduct testing, he 23 always -- he wouldn't -- he would be very obstructionist 24 or not participate, unless he was controlling all the 25 variables, which was not helpful to us. We wanted him to</p>

<p style="text-align: right;">Page 198</p> <p>1 Andrea wanted to amend it to have it focus on a different 2 unit, what he called a six-cylinder unit, versus the -- 3 what was tested in one megawatt unit, so called. 4 (Exhibit 26, IH4856 through 4857, was marked 5 for Identification.) 6 BY MR. CHAIKEN: 7 Q. Let me show you what has been marked as 8 Exhibit 26. 9 And before I ask you about Exhibit 26, is your 10 testimony that it was Andrea who wanted to test the 11 six-cylinder, not Industrial Heat? 12 A. Correct. Yeah. He was -- he was putting that 13 forth. We were -- we were going to accommodate him on 14 that front. But that is what -- that was broached by him, 15 if I recall correctly. 16 Q. Is it your testimony that Industrial Heat would 17 have preferred the one megawatt over the six-cylinder? 18 MR. BELL: Objection to form. 19 THE WITNESS: That we would have preferred -- 20 BY MR. CHAIKEN: 21 Q. To test. 22 A. We -- what we wanted was a definitive and clear 23 test, an assessment of the technology. Whether it be the 24 six-cylinder or the one megawatt. If the six-cylinder had 25 put out, I think it was contemplated it would put</p>	<p style="text-align: right;">Page 200</p> <p>1 through 4857. It's a series of e-mails in July of 2013 2 between Tom Darden and Dr. Rossi. You are cc'd on some of 3 these, as well. I believe the conversation's about 4 working to set up the facility, so as to be able to 5 perform testing on the one megawatt unit. 6 A. Mm-hmm. 7 Q. Is that accurate to you? 8 A. It looks like that is an exchange between 9 Andrea and Tom with two workers, saying something about a 10 flag at the end. And Andrea saying, looks like, you know, 11 I need an expert plumber, an electricist, I presume an 12 electrician, blue collar, not engineer. One expert 13 welder, ability to TIG weld. 14 Q. And Tom asks on July 18, "One question, when do 15 you estimate the work will begin?" And then Dr. Rossi 16 responds, "When all the two containers will have arrived 17 we can start. Therefore, I would say end of August." 18 A. Mm-hmm. 19 Q. And is it your understanding that Dr. Rossi 20 wanted to start the one megawatt test at the end of 21 August? 22 A. It appears to be what he is saying here. 23 (Exhibit 27, Second Amendment to the License 24 Agreement, was marked for Identification.) 25 BY MR. CHAIKEN:</p>
<p style="text-align: right;">Page 199</p> <p>1 250 kilowatts or something like that. You know, that's -- 2 that's a significant amount of real output. If that was 3 at a COP of ten, you know, we would have... 4 Q. Did Industrial Heat have a preference? 5 A. One megawatt versus six-cylinder? As I said, 6 we were willing to accommodate him. We cared about the 7 validity of the test. I think one megawatt of real output 8 is slightly better than anything short of that, all else 9 equal. 10 Q. Okay. 11 A. But it's -- you know, we were going to 12 accommodate him and just never put it into effect. 13 Q. Okay. But putting aside the accommodating 14 Dr. Rossi, did Industrial Heat have a reference as to 15 whether it used the one megawatt or the six-cylinder? 16 A. I would say if you had -- besides the fact we 17 were trying to keep him happy, take that out of the 18 picture, I would say that our preference would have been 19 for a higher power unit, which would have been a one 20 megawatt, right? 21 Q. Okay. 22 A. All else equal. But factor in the 23 accommodating Andrea, we were trying to keep him happy, as 24 well. 25 Q. Exhibit 26 has been Bates stamped IH4856</p>	<p style="text-align: right;">Page 201</p> <p>1 Q. Okay. Mark this one as Exhibit 27. Exhibit 27 2 is the second amendment -- I didn't mean to throw it at 3 you -- the second amendment to the license agreement. 4 Have you seen this document before? 5 A. Yes, sir. 6 Q. And do you know who drafted this? 7 A. I don't recall who did the original draft. 8 Q. Okay. And do you know why this was drafted? 9 A. This was, you know, Andrea was wanting to 10 change the unit under test from the one megawatt, I 11 believe. I haven't read this yet, but to a six-cylinder. 12 Q. Okay. In paragraph -- the under the whereas 13 and therefore clauses, it states: Section 5 of the 14 agreement is hereby amended to delete in its entirety and 15 replace it with the following: 5. Guaranteed 16 performance. Payment of the amount set forth in Section 17 3(c) which is contingent upon a six cylinder Hot Cat unit 18 reasonably acceptable to the company "the six cylinder 19 unit," operating at the same level or better at which 20 validation is achieved for a period of 350 days, even if 21 not consecutive, within a 400-day period commencing on the 22 date agreed to in writing between the parties. 23 "Guaranteed performance." 24 See that? 25 A. I see that.</p>

<p style="text-align: right;">Page 202</p> <p>1 Q. So at that time, at least at the time of this 2 document, was Industrial Heat willing to postpone the 3 start of the guaranteed performance test? 4 MR. BELL: Objection to form. 5 THE WITNESS: It appears that that was 6 contemplated by this amendment, which was never put 7 into effect. 8 BY MR. CHAIKEN: 9 Q. Okay. And whose signature is on page three? 10 A. Tom Darden's and Andrea Rossi's. 11 Q. And you say this agreement was not put into 12 effect, and you say that because why? 13 A. It was never signed by AEG. For it to be 14 effective, it had to be signed by all parties. And I 15 think there was later notice circulated that said it was 16 not in effect because it had never been signed by AEG. 17 Q. Got it. Did -- any time after October 2013 and 18 prior to this lawsuit beginning, did Industrial Heat 19 inform Dr. Rossi that, The time had passed, you could no 20 longer achieve guaranteed performance, and you could no 21 longer achieve an \$89 million payment? 22 A. I'm not sure that we informed him of that 23 verbatim, as you stated. 24 Q. Okay. Did you say it to him in any -- any 25 summary of that, in any -- in any way did you say, Listen,</p>	<p style="text-align: right;">Page 204</p> <p>1 THE WITNESS: Again, in a hypothetical 2 scenario, a lot of things are possible and that is 3 one possibility. 4 BY MR. CHAIKEN: 5 Q. Did you ever -- did you ever say that or 6 communicate that with Dr. Rossi? 7 A. No. He wanted to do a specific thing and we 8 wanted to allow him to do that thing to better understand 9 the state of the art. 10 Q. Did Industrial Heat inform its investors that 11 it had considered the time for performance of the 12 guaranteed performance test having -- had passed? 13 A. I believe that we did. 14 Q. And how did you do that? 15 A. I am guessing, but I am guessing it was either 16 an e-mail -- most likely an e-mail or in a memo. But at 17 the same time, Woodford was as eager as we were to pay him 18 if it performed and the technology would have been 19 transferred. 20 Q. And you know that because Woodford told you 21 that? 22 A. Correct. I think, more precisely, said that to 23 Tom. 24 BY MR. CHAIKEN: 25 Q. When did Industrial Heat first come to the</p>
<p style="text-align: right;">Page 203</p> <p>1 the time has passed, you are -- we are not having a 2 guaranteed performance test? 3 A. I am trying to recall. You know, I -- I don't 4 recall. 5 Q. Do you think that was something that would be 6 important to inform him, that he no longer had the 7 opportunity to earn \$89 million? 8 A. Again, we were planning to pay him, if he could 9 perform. Notwithstanding the fact that he had violated 10 the agreement, not met the conditions of the agreement. 11 So if we had done that, let's take a hypothetical 12 scenario, dealing with a volatile character, you don't 13 know how he is going to respond. Our goal, as stewards 14 and as managers, is to determine definitively the state of 15 the art. And by being confrontational, sooner rather than 16 later, it ensured that you would just blow up in -- there 17 was a chance, at least, that you would blow up the entire 18 relationship and Andrea would stop working on it 19 altogether and so, therefore, we just wouldn't know. 20 Versus getting more information and getting more data to 21 determine the state of the art. 22 Q. Well, couldn't you have told him, Hey, 23 Dr. Rossi, we think that the time has passed, but if you 24 perform, we are willing to still pay you? 25 MR. BELL: Objection to form.</p>	<p style="text-align: right;">Page 205</p> <p>1 conclusion that the time for the guaranteed performance 2 test had passed? 3 A. I don't recall. But from a technical 4 perspective, it would have been 60 days after delivery of 5 the plants, presumably. 6 (Exhibit 28, IH45757 through 45819, was marked 7 for Identification.) 8 BY MR. CHAIKEN: 9 Q. I will show you what has been marked as 10 Exhibit 28. Exhibit 28 has been Bates marked IH45757 11 through 45819. It is a letter from Myers Bigel to Tom 12 Darden. 13 Have you seen this before? 14 MR. BELL: Before you answer, any questions on 15 this document, I believe we called this back, did we 16 not? 17 MR. CHAIKEN: I believe we contested that. 18 MR. BELL: I am not going to let him answer any 19 questions on it. 20 MR. CHAIKEN: Okay. You are going to instruct 21 him not to answer? 22 MR. BELL: I am going to instruct him not to 23 answer. 24 MR. CHAIKEN: Okay. We will save that one. 25 (Exhibit 29, 107550 through 107552, was marked</p>

<p style="text-align: right;">Page 206</p> <p>1 for Identification.)</p> <p>2 BY MR. CHAIKEN:</p> <p>3 Q. I am going to show you what has been marked as</p> <p>4 Exhibit 29.</p> <p>5 A. Thank you.</p> <p>6 Q. Exhibit 29 has been Bates stamped 107550</p> <p>7 through 107552. It is an e-mail from you to John</p> <p>8 Mazzarino and Tom Darden. It is an IH timeline.</p> <p>9 And specifically I want to refer you to the</p> <p>10 second -- well, first of all, do you recall sending this</p> <p>11 e-mail?</p> <p>12 A. I recall this e-mail. Again, it's -- I don't</p> <p>13 recall specifically sending it. I mean, but I recall this</p> <p>14 e-mail. I need to review it.</p> <p>15 Q. I am only going to refer to one line.</p> <p>16 A. Okay. Go ahead.</p> <p>17 Q. It is on the very bottom of the second page.</p> <p>18 It says Mid-2014, May through September. It states:</p> <p>19 "Rossi begins working on one megawatt unit, prepare it to</p> <p>20 operate on a continuous basis for 350 days, per the terms</p> <p>21 of the agreement with IH." See that?</p> <p>22 A. I see that.</p> <p>23 Q. Was it your opinion as of September 11, 2014</p> <p>24 that Dr. Rossi was preparing for a 350-day test, pursuant</p> <p>25 to the agreement?</p>	<p style="text-align: right;">Page 208</p> <p>1 beginning to plan for the next three weeks. Our top</p> <p>2 priority is to get the one megawatt steam plant operating</p> <p>3 and tested, and thankfully Andrea agrees."</p> <p>4 Do you see that?</p> <p>5 A. I see that.</p> <p>6 MR. BELL: Where are you again?</p> <p>7 MR. CHAIKEN: The paragraph -- next page.</p> <p>8 Third paragraph down.</p> <p>9 MR. BELL: Okay. Sorry.</p> <p>10 MR. CHAIKEN: Sure.</p> <p>11 BY MR. CHAIKEN:</p> <p>12 Q. Was it Industrial Heat's top priority to get</p> <p>13 the one megawatt steam plant operating and tested as of</p> <p>14 September 2014?</p> <p>15 A. That is what is stated here in this e-mail. I</p> <p>16 would say that that was a little bit of a narrow</p> <p>17 statement. Meaning we had other things going on that were</p> <p>18 also, I would say, very important. But clearly we were</p> <p>19 interested to see if the one megawatt unit could perform.</p> <p>20 Q. Now, as of September 2014, you weren't talking</p> <p>21 about the 600, you were talking about the one megawatt,</p> <p>22 right?</p> <p>23 A. It appears right here that one megawatt steam</p> <p>24 plant is referenced.</p> <p>25 (Exhibit 31, 106452 through 106474, was marked</p>
<p style="text-align: right;">Page 207</p> <p>1 A. He was preparing for that. It doesn't mean</p> <p>2 that he hadn't also violated the chance to perform under</p> <p>3 that agreement. Clearly, though, you know, we were -- we</p> <p>4 were acknowledging that he was planning to test the one</p> <p>5 megawatt unit for an extended period of time. And we were</p> <p>6 planning to pay, if he could prove that it performed.</p> <p>7 (Exhibit 30, 107246 through 247, was marked for</p> <p>8 Identification.)</p> <p>9 BY MR. CHAIKEN:</p> <p>10 Q. Let me show you what has been marked as</p> <p>11 Exhibit 30. Exhibit 30 has been Bates stamped 107246</p> <p>12 through 247. It is an e-mail from John Mazzarino to Tom</p> <p>13 Darden and yourself, dated September 29, 2014.</p> <p>14 And specifically -- well, you have never seen</p> <p>15 this before, have you? Actually, you were, you were</p> <p>16 forwarded this e-mail. At the very top, see that?</p> <p>17 A. Mm-hmm.</p> <p>18 Q. Do you recall seeing this e-mail?</p> <p>19 A. I mean, clearly I must have seen it. It went</p> <p>20 to me. But I don't know that I recall this specifically.</p> <p>21 Q. Right. On the second page, I am just concerned</p> <p>22 about one sentence.</p> <p>23 A. Okay.</p> <p>24 Q. On the second page of this document, paragraph</p> <p>25 begins: "With Andrea back from Switzerland, he is</p>	<p style="text-align: right;">Page 209</p> <p>1 for Identification.)</p> <p>2 BY MR. CHAIKEN:</p> <p>3 Q. Right. Let me show you what has been marked as</p> <p>4 Exhibit 31. Exhibit 31 has been Bates stamped 106452</p> <p>5 through 106474. It's titled Industrial Heat IPH</p> <p>6 International PD 18-Month Business Plan.</p> <p>7 Do you know who prepared this?</p> <p>8 A. I prepared this, with input from others on the</p> <p>9 team.</p> <p>10 Q. As of October -- I believe this was prepared in</p> <p>11 October of 2014. Do you know if that is true?</p> <p>12 A. I don't know. There should be a date on it</p> <p>13 somewhere.</p> <p>14 Q. I think I got that date from the medidata of a</p> <p>15 document. But you can correct me if I am wrong.</p> <p>16 A. I think that October '14 is likely correct. I</p> <p>17 am surprised there is not a date on it, though. Keep</p> <p>18 going.</p> <p>19 Q. Yeah. Who -- what was the -- who was the</p> <p>20 audience for this document?</p> <p>21 A. Woodford Investment Funds, I believe.</p> <p>22 Q. Specifically on page seven of this document,</p> <p>23 you were still budgeting, or at least had a contingency</p> <p>24 that Rossi might earn his \$89 million fee, true?</p> <p>25 A. Correct. And that was, you know, again,</p>

<p style="text-align: right;">Page 210</p> <p>1 acknowledging that we had been planning and willing to pay 2 him for performance notwithstanding his inability to meet 3 the requirements of the contract. So this was -- this 4 would be provided to Woodford as a potential -- as a 5 capital needs and business plan. 6 Q. Okay. Was there anything that prevented 7 Industrial Heat from performing the guaranteed performance 8 test in North Carolina? 9 A. Only Andrea. 10 Q. Was there any regulatory impediment? 11 A. No. 12 Q. Did anybody from Industrial Heat say that there 13 was a regulatory impediment? 14 A. No, not that I recall. I know we talked about 15 this with the director of the EPA in North Carolina. And 16 we also had a consultant on this issue. 17 (Exhibit 32, IH10037 through 38, was marked for 18 Identification.) 19 BY MR. CHAIKEN: 20 Q. Let me show you what has been marked as 21 Exhibit 32. Exhibit 32 is Bates stamped IH10037 through 22 38. It is a series of e-mails from August of 2013. 23 And I am going to refer you specifically to the 24 one on the second page. It doesn't appear that you were 25 cc'd on this e-mail. Do you recall ever seeing this</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. And was he retained by Industrial Heat? 2 A. He was. 3 Q. And why was he retained by Industrial Heat? 4 A. I think we asked him to do some research into 5 how this product may be regulated, if it turned out to 6 work and to emit radiation. What -- you know, what's the 7 process for that? What would we -- what should we be 8 preparing for from a regulatory perspective? 9 Q. And did he also -- was he also asked to 10 determine whether or not there was regulatory approval 11 required to run a 350-day test in North Carolina? 12 A. I can't recall if we asked him that exact 13 question. Again, he was more of a -- kind of at a higher 14 level. Forget about the test. We were concerned about 15 the commercialization of the product. If this is real and 16 it does work, what is required from a compliance or 17 regulatory perspective? 18 Q. If you read the last paragraph, it states: 19 "Barring the revelation of new information that would 20 indicate that the device contains licensable amounts of 21 radioactive material or emits measurable quantities of 22 ionizing radiation, there is in my opinion no basis for 23 considering the manufacture or possession, use of transfer 24 of these devices to be subject to any licensing 25 requirements or safety regulations for ionizing radiation</p>
<p style="text-align: right;">Page 211</p> <p>1 before? 2 A. I don't think so. I don't think so. 3 Q. On the second page is an e-mail from Dr. Rossi 4 to Tom Darden and other people. He states in paragraph 5 three: "Some update certification, the BV certification 6 makes easier the application to six cylinders. In October 7 Bianchini will come to Raleigh to make the job regarding 8 the authorizations." 9 Who is Bianchini? 10 A. I think that is a guy that Rossi would have do 11 background radiation assessments. 12 Q. And what authorizations is he referring to in 13 this e-mail? Do you know? 14 A. I'm not sure. I think he's -- it was some 15 process that he was wanting to run. Maybe it was a safety 16 certification or something else that he was doing. I'm 17 not sure. 18 (Exhibit 33, IH3735, was marked for 19 Identification.) 20 BY MR. CHAIKEN: 21 Q. Okay. I am going to show you what has been 22 marked as Exhibit 33. Exhibit 33 is Bates stamped IH3735. 23 Do you know who Stephen Browne is? 24 A. He was a nuclear radiation compliance 25 consultant.</p>	<p style="text-align: right;">Page 213</p> <p>1 under current state or federal regulatory authority." 2 Was that specifically what he was required to 3 do or requested to do? 4 MR. BELL: Objection to form. 5 BY MR. CHAIKEN: 6 Q. Provide an opinion as to that? 7 A. I believe it is. You know, as I recollect, we 8 engaged him to look into what sort of regulatory 9 compliance issues we may face if this technology performed 10 as advertised from a commercialization perspective. 11 Q. When did Dr. Rossi first propose to do the 12 guaranteed performance test in Florida? 13 MR. BELL: Objection to form. 14 BY MR. CHAIKEN: 15 Q. I will rephrase. 16 Did Dr. Rossi ever propose to do the guaranteed 17 performance test in Florida? 18 A. I'm not sure when he proposed doing testing, 19 like when he first said, I want to do any further testing 20 in Florida. I just don't recall when he first broached 21 that idea. I think that it would have been in the fall of 22 '13, as I state here. I am getting my years mixed up. 23 '13. But I don't recall precisely when he first brought 24 that up. But I am sure it's in the e-mails. 25 Q. Did Industrial Heat agree to do the test in</p>

Page 214

1 Florida?

2 MR. BELL: Objection to form.

3 THE WITNESS: No. What we allowed him to move

4 forward with his proposal, which was to do testing

5 with a customer he represented as an affiliate of

6 Johnson Matthey in Florida. And we thought, Well,

7 you know, if a group like Johnson Matthey can affirm

8 that this technology performs as advertised, that is

9 a good thing. And so we allowed that to proceed.

10 BY MR. CHAIKEN:

11 Q. We will get into that in a second.

12 But what equipment did Industrial Heat agree

13 would be tested in Florida?

14 MR. BELL: Objection to form.

15 THE WITNESS: Again, he wanted to test, what he

16 was telling us, was the one megawatt plant in Florida

17 with a customer. And so, you know, again, trying to

18 be accommodative and probably overly gracious, in

19 hindsight, we allowed that.

20 BY MR. CHAIKEN:

21 Q. So you agreed to test the one megawatt plant in

22 Florida?

23 MR. BELL: Objection to form.

24 BY MR. CHAIKEN:

25 Q. Agreed?

Page 215

1 A. We allowed him to do what he was proposing to

2 do.

3 Q. Okay. And what he was proposing to do is test

4 the one megawatt?

5 MR. BELL: Objection to form.

6 THE WITNESS: He was proposing to install the

7 one megawatt at a facility where an affiliate of

8 Johnson Matthey would use it for industrial processes

9 and would provide, you know, feedback on their power

10 consumption from the one megawatt device.

11 BY MR. CHAIKEN:

12 Q. Was the discussion about him doing that test

13 with a six cylinder?

14 MR. BELL: Objection to form.

15 THE WITNESS: I don't recall. I recall him,

16 again, around the second amendment, but I don't

17 recall whether or not at that point he was requesting

18 the six cylinder.

19 BY MR. CHAIKEN:

20 Q. At this point in time the owner of the one

21 megawatt was Industrial Heat, correct?

22 A. Correct.

23 Q. And Industrial Heat controlled where that unit

24 was located, correct?

25 A. Correct. All the while, trying to keep Andrea

Page 216

1 happy.

2 Q. Okay. But it had full control. Andrea

3 couldn't move the one megawatt without Industrial Heat's

4 agreement, correct?

5 A. Again, we allowed him to take it down there.

6 Q. Right. And, in fact, Industrial Heat did ship

7 the one megawatt to Florida, did it not?

8 A. I believe that we helped Andrea ship it. Now,

9 did we ship it or did Andrea ship it? I don't recall.

10 But it would not surprise me if, in fact, we contracted to

11 transfer, a transportation contractor that was used to

12 move it.

13 Q. Do you know exactly when it was shipped?

14 A. I don't recall exactly. I believe it would

15 have been -- was it December of '14? I don't recall

16 exactly. January of '15. I don't recall exactly.

17 Q. December '14, January '15, somewhere around

18 there?

19 A. I think. I'm not sure.

20 Q. Did -- well, was there -- was there a

21 requirement in the contract, and I know we talked about

22 this a little bit before, that there be an actual customer

23 using the heat generated by the heat gap?

24 A. No.

25 Q. Okay. Would or could that guaranteed -- I will

Page 217

1 call it for purposes of ease and reference, I am going to

2 call it the guaranteed performance test. You can dispute

3 whether it was or not, but just for the sake of my

4 questioning, I am going to use that term. Fair?

5 A. Okay.

6 Q. Could the guaranteed performance test have been

7 performed without an actual customer?

8 MR. BELL: Objection to form.

9 THE WITNESS: Sure. As originally

10 contemplated, there was no customer involved.

11 BY MR. CHAIKEN:

12 Q. Right. But did IH think it was important to

13 have an actual customer?

14 A. We thought, when we thought it was Johnson

15 Matthey, we were thinking, wow, that is a real reputable

16 company. It was not totally absurd that it would be

17 Johnson Matthey, weirdly enough. I realize if someone

18 said, Well, GE is going to do this, that would maybe sound

19 crazy. But Johnson Matthey has a weird history in the

20 LENR field. They have been involved through supplying of

21 materials and kind of a -- if you do a little bit of

22 research on it, they are not -- they do appear to have at

23 least some tangential interest in the LENR field. So it

24 wasn't totally absurd that, of all the companies out

25 there, Johnson Matthey might actually be willing to test a

<p style="text-align: right;">Page 218</p> <p>1 significant sized prototype.</p> <p>2 Q. Putting Johnson Matthey aside, and my question</p> <p>3 doesn't even relate to them. In general, did Industrial</p> <p>4 Heat think it was useful to have an actual customer, you</p> <p>5 know, use the heat?</p> <p>6 A. It depends on the customer, I would say. And</p> <p>7 we were -- we were always trying to be accommodative to</p> <p>8 Andrea. We wanted to understand the performance of the</p> <p>9 technology. Andrea's perspective was always, You got to</p> <p>10 have -- it's got to be market value, it's got to be</p> <p>11 validated by the market. That is the only time it will be</p> <p>12 accepted.</p> <p>13 So he felt the need to have a customer. Once</p> <p>14 we heard that that customer was Johnson Matthey, we</p> <p>15 thought, Well, that is a real customer. And if they</p> <p>16 affirmed that they consumed the amount of power that was</p> <p>17 supposedly being supplied, then that would be a -- that</p> <p>18 would be a positive thing. It would be</p> <p>19 credibility-enhancing.</p> <p>20 Q. Would using the truck washing company be</p> <p>21 equally as enhancing?</p> <p>22 A. Again, if they could -- if they could affirm</p> <p>23 that the amount of power consumed was, in fact, the amount</p> <p>24 of power. If they used the amount of power that was</p> <p>25 claimed to be consumed, that would be good.</p>	<p style="text-align: right;">Page 220</p> <p>1 Q. Did I misstate that?</p> <p>2 A. I think that what mattered most to us is that</p> <p>3 it -- you are talking about in regards to a customer?</p> <p>4 Q. Yes. A customer generally.</p> <p>5 A. Our desire was that we know the state of the</p> <p>6 art. And if a customer was a bona fide reputable company,</p> <p>7 presumably such as Johnson Matthey, in our view that was</p> <p>8 credibility-enhancing.</p> <p>9 Q. So -- okay. So when it comes to that, would</p> <p>10 you agree that who the customer was was an important issue</p> <p>11 or called a core issue for Industrial Heat for purposes of</p> <p>12 making the decision to allow Dr. Rossi to go to Florida</p> <p>13 with it?</p> <p>14 A. I would say that it was convincing to us, or</p> <p>15 interesting or intriguing, I don't know the right word,</p> <p>16 that he represented it that it was Johnson Matthey.</p> <p>17 Because that's clearly better than a company that he and</p> <p>18 his attorney formed. Right? If we had known that, that</p> <p>19 is a different story.</p> <p>20 Q. And if you had known it was not -- a company</p> <p>21 not affiliated with Johnson Matthey, your testimony is you</p> <p>22 never would have allowed the one megawatt to go to</p> <p>23 Florida?</p> <p>24 A. Well, if it were not affiliated with Johnson</p> <p>25 Matthey, but was a subsidiary of GE or something, for</p>
<p style="text-align: right;">Page 219</p> <p>1 Now, Southern Industrial Contractors, that is</p> <p>2 the company, are they as impressive as Johnson Matthey? I</p> <p>3 would say not, from an outsider's perspective, because</p> <p>4 more people probably know Johnson Matthey than Southern</p> <p>5 Industrial Contractors.</p> <p>6 Q. Sure. Putting aside the name of the company,</p> <p>7 for purposes of my question.</p> <p>8 A. Okay.</p> <p>9 Q. Irrespective, and I understand what you are</p> <p>10 saying about Johnson Matthey specifically. But did you</p> <p>11 think it was going to be useful to be able to tell</p> <p>12 potential investors, Hey, we have a customer who,</p> <p>13 regardless of who it is, made use of the steam?</p> <p>14 A. That was -- I don't think that that was a key</p> <p>15 focus of ours. Right? And if it -- what we wanted was a</p> <p>16 -- some sort of reputable body, whether it be through</p> <p>17 their involvement in a prototype test or just a contracted</p> <p>18 assessment to say, We hereby affirm the performance of</p> <p>19 this device.</p> <p>20 Q. So to you -- what mattered most to Industrial</p> <p>21 Heat was the name of the company, not what the company was</p> <p>22 doing or what it was -- what kind of business it was</p> <p>23 engaged in?</p> <p>24 MR. BELL: Objection to form.</p> <p>25 BY MR. CHAIKEN:</p>	<p style="text-align: right;">Page 221</p> <p>1 example, then maybe so. But if it were just -- if we knew</p> <p>2 that it was, in fact, what it turned out to be, no, we</p> <p>3 would not have allowed that.</p> <p>4 MR. BELL: Can we take a short break?</p> <p>5 MR. CHAIKEN: Sure. Off the record.</p> <p>6 THE VIDEOGRAPHER: Off the record. The time is</p> <p>7 3:18 p m.</p> <p>8 (Thereupon, a recess was taken.)</p> <p>9 THE VIDEOGRAPHER: We are back on the record.</p> <p>10 The time is 3:26 p m.</p> <p>11 (Exhibit 34, IH117296 through 297, was marked</p> <p>12 for Identification.)</p> <p>13 BY MR. CHAIKEN:</p> <p>14 Q. Mr. Vaughn, I am going to show you what has</p> <p>15 been marked as Exhibit 34. Exhibit 34 is Bates stamped</p> <p>16 IH117296 through 297. It is two e-mails. First one on</p> <p>17 the first page is from Tom Darden. Second one on the</p> <p>18 second page is from Andrea Rossi to Tom Darden, and I</p> <p>19 believe you are cc'd on this one.</p> <p>20 Do you recall seeing this e-mail before?</p> <p>21 A. I'm not sure, but clearly it went to me. So...</p> <p>22 Q. On the second page, the e-mail from Andrea</p> <p>23 Rossi to yourself and Tom Darden and others, Andrea</p> <p>24 states, paragraph two or number two: "Since August 2013</p> <p>25 it has been impossible to communicate to us the where to</p>

<p style="text-align: right;">Page 222</p> <p>1 install and make operative the plant."</p> <p>2 Do you see that?</p> <p>3 A. I see that.</p> <p>4 Q. Do you -- do you contest that Industrial Heat</p> <p>5 made it impossible to communicate where to install the</p> <p>6 plant to Dr. Rossi?</p> <p>7 A. I do contest that. And that, you know, he</p> <p>8 could have tested it right where it was delivered to.</p> <p>9 There was no reason that it couldn't have been tested</p> <p>10 there. Or, you know, any number of other locations around</p> <p>11 there, that the truck contractor which actually was right</p> <p>12 next door, the brick plant or the plywood plant there,</p> <p>13 just south of Raleigh.</p> <p>14 Q. If you go to the next page, Tom Darden</p> <p>15 responds: "Your e-mail refers to contract sections, but I</p> <p>16 haven't read them since we signed. I will need to get a</p> <p>17 copy of the document and read it."</p> <p>18 That is not a true statement, is it?</p> <p>19 MR. BELL: Objection to form.</p> <p>20 THE WITNESS: Which statement? Your e-mail</p> <p>21 refers to contract sections, but I haven't read them</p> <p>22 since we signed. I will need to get a copy of the</p> <p>23 document and read it.</p> <p>24 BY MR. CHAIKEN:</p> <p>25 Q. This part where he says "I haven't read them</p>	<p style="text-align: right;">Page 224</p> <p>1 Q. So here we are in June of 2014. Was Industrial</p> <p>2 Heat pushing the guaranteed performance test to start? Or</p> <p>3 did it matter to Industrial Heat when it started?</p> <p>4 A. In June of 2014?</p> <p>5 Q. Sure.</p> <p>6 A. From my perspective, it would have been better</p> <p>7 if it had started before then, well before then. But...</p> <p>8 Q. Is there any written communication from you or</p> <p>9 Tom to Dr. Rossi, saying, Let's start the guaranteed</p> <p>10 performance test. Why are we waiting? Something to that</p> <p>11 effect?</p> <p>12 A. I'm not sure. Again, we were in constant human</p> <p>13 contact with him for a period of time. Where I'm sure we</p> <p>14 communicated these things. He is a difficult guy to deal</p> <p>15 with.</p> <p>16 Q. Is it your testimony that you had said on</p> <p>17 multiple occasions to Dr. Rossi orally, Hey, time to start</p> <p>18 the guaranteed performance test, and he refused to do so?</p> <p>19 MR. BELL: Objection to form.</p> <p>20 THE WITNESS: My testimony is that we had</p> <p>21 talked about when to start the test and where to</p> <p>22 start the test, and he came up with various different</p> <p>23 reasons for why not to start it or why he was</p> <p>24 focussed on something else, through the fall of 2013.</p> <p>25 BY MR. CHAIKEN:</p>
<p style="text-align: right;">Page 223</p> <p>1 since we signed," that is not true, is it?</p> <p>2 A. I have no reason to believe that it's not true.</p> <p>3 Q. I mean, you guys had your internal</p> <p>4 conversations leading up to this regarding whether or not</p> <p>5 the guaranteed performance test had been waived,</p> <p>6 basically, by Dr. Rossi, right?</p> <p>7 MR. BELL: Objection to form.</p> <p>8 THE WITNESS: Our key focus was on whether or</p> <p>9 not the technology worked and whether or not we could</p> <p>10 make it work. But, you know, I don't -- I don't</p> <p>11 believe that there is any reason that Tom would have</p> <p>12 been reading the agreement. Right?</p> <p>13 I mean, counsel would say, if you have a</p> <p>14 conference call, for example, your counsel would say,</p> <p>15 X, Y, Z, he is in breach of agreement because of X,</p> <p>16 Y, Z. Maybe I would have said the same thing. I'm</p> <p>17 not sure. But I don't have a reason to believe that</p> <p>18 Tom is not telling the truth here.</p> <p>19 BY MR. CHAIKEN:</p> <p>20 Q. Okay. Next sentence he says: "Ideally, we</p> <p>21 would not make a decision about this new location for a</p> <p>22 while longer. We have 69 days before the plant is to</p> <p>23 start up, so perhaps decision can wait a while."</p> <p>24 Do you see that?</p> <p>25 A. I see it.</p>	<p style="text-align: right;">Page 225</p> <p>1 Q. Now, there was a meeting held in Raleigh</p> <p>2 between yourself, Tom, Dr. Rossi and Henry Johnson. Do</p> <p>3 you recall that meeting?</p> <p>4 A. Was that the meeting that took place at Red</p> <p>5 Robin?</p> <p>6 Q. I believe so.</p> <p>7 A. If it was, then that is the meeting I recall.</p> <p>8 Q. Did you have multiple meetings with Dr. Rossi</p> <p>9 and Henry Johnson or just the one?</p> <p>10 A. I think it was just the one, but that is the</p> <p>11 one I recall.</p> <p>12 Q. Okay. Then that is the one I am referring to.</p> <p>13 A. Okay.</p> <p>14 Q. Was anybody else there besides the four of you</p> <p>15 at that meeting?</p> <p>16 A. I don't believe so.</p> <p>17 Q. Okay. What did you know about Henry Johnson at</p> <p>18 that time?</p> <p>19 A. I don't know if we realized it during the</p> <p>20 meeting or later that he was also Rossi's attorney. But</p> <p>21 at some point, either during the meeting or after the</p> <p>22 meeting, his name, you know, rang our bell and we said, We</p> <p>23 have seen that name before, and I think we saw it</p> <p>24 originally in connection of escrowing of funds for the</p> <p>25 validation step.</p>

<p style="text-align: right;">Page 226</p> <p>1 Q. Right. What was the purpose of that meeting?</p> <p>2 A. To meet a corporate representative of Johnson</p> <p>3 Matthey.</p> <p>4 Q. Specifically to meet a corporate representative</p> <p>5 of Johnson Matthey?</p> <p>6 A. That is what Andrea had said. And then we got</p> <p>7 to the meeting and it was Henry Johnson, and then the</p> <p>8 company that they were talking about was JM Chemical</p> <p>9 Products or JM Products, I can't think of what the name</p> <p>10 was. And Andrea said, Well, you know, Johnson Matthey</p> <p>11 doesn't want publicity around this or wants to not be --</p> <p>12 be detached from this, so they have set up a subsidiary</p> <p>13 which Henry Johnson is going to be the president of.</p> <p>14 Q. Before we get to the meeting and what was said</p> <p>15 at the meeting, how did or when did Dr. Rossi inform you</p> <p>16 that the purpose of the meeting was to meet the corporate</p> <p>17 representative of the Johnson Matthey?</p> <p>18 A. Prior to the meeting, he was saying, you know,</p> <p>19 we will go and we will meet Johnson Matthey's</p> <p>20 representative.</p> <p>21 Q. And did he say that in writing or was that</p> <p>22 oral?</p> <p>23 A. I can't recall if it was in writing or oral or</p> <p>24 both. But my recollection is that's why we were both</p> <p>25 there at that meeting, right? I mean, if we were just</p>	<p style="text-align: right;">Page 228</p> <p>1 This is Henry Johnson, who Johnson Matthey has hired to be</p> <p>2 the president of JM Chemical Products, Inc. and they are</p> <p>3 trying to distance themselves from it.</p> <p>4 You know, I don't remember exactly what he</p> <p>5 communicated. But that was the effect of the message. He</p> <p>6 wanted us -- we wanted to meet a representative and we</p> <p>7 were even willing to go to the UK to meet somebody at</p> <p>8 Johnson Matthey who could affirm what he was saying. He</p> <p>9 said, Well, actually, I will have their representative</p> <p>10 come up. He is in Miami. And we will meet in Raleigh.</p> <p>11 And that is the meeting at Red Robin.</p> <p>12 Q. Is there anything else that Dr. Rossi said at</p> <p>13 that meeting?</p> <p>14 A. I am sure he said other stuff.</p> <p>15 Q. I mean in general.</p> <p>16 A. I don't remember.</p> <p>17 Q. Substance.</p> <p>18 A. The thing that I recall is what I have</p> <p>19 described, the points that I recall is what I described.</p> <p>20 Q. What did Henry Johnson say at that meeting?</p> <p>21 A. I don't recall him saying a whole lot, you</p> <p>22 know. I remember being unimpressed by his general</p> <p>23 appearance and presence and disposition. He doesn't come</p> <p>24 off as a particularly confidence-inspiring person. But I</p> <p>25 don't remember anything specific that he said. Other than</p>
<p style="text-align: right;">Page 227</p> <p>1 going to be there to meet his real estate attorney, I</p> <p>2 don't think Tom would have taken the time to come.</p> <p>3 Q. Is there some e-mail you can point me to where</p> <p>4 Dr. Rossi said specifically, We are going to meet with</p> <p>5 representatives of Johnson Matthey?</p> <p>6 A. There may be. I'm not sure. I am not the guy</p> <p>7 who has gone through all the discovery.</p> <p>8 Q. Okay. Because I didn't -- if there wasn't one</p> <p>9 produced in discovery, it doesn't exist, correct?</p> <p>10 A. I suppose it. Yeah, everything was produced in</p> <p>11 discovery. So if it is not in the discovery batch, then</p> <p>12 it doesn't exist.</p> <p>13 Q. Now, at the meeting, what was said by Dr. Rossi</p> <p>14 at that meeting?</p> <p>15 A. I don't recall quotes. What I recall is being</p> <p>16 surprised, and I don't remember if it was during the</p> <p>17 meeting or after the meeting, that it was Henry Johnson,</p> <p>18 you know, Rossi's attorney who was going to be the</p> <p>19 president of this company.</p> <p>20 Q. Okay.</p> <p>21 A. So I don't remember, excuse me, quotes or, you</p> <p>22 know, exactly how he introduced him. It would be just,</p> <p>23 Here is Henry Johnson, the president of JM Chemical</p> <p>24 Products, Inc. or JM Products, Inc. or whatever the name</p> <p>25 of the company was, or if he would have said, you know,</p>	<p style="text-align: right;">Page 229</p> <p>1 just, Hey, how is it going? Nice to meet you. Things</p> <p>2 like that.</p> <p>3 Q. After that meeting, did Industrial Heat perform</p> <p>4 any due diligence into JM Chemicals or JM Products at that</p> <p>5 time?</p> <p>6 A. I don't recall. You know, I think there was</p> <p>7 some analysis done on where the entity was -- was formed</p> <p>8 by the secretary of state filings. And then there was an</p> <p>9 OFAC compliance document that had representations in it</p> <p>10 that were signed by Johnson and by Andrea.</p> <p>11 Q. Now, where did you find out JM Products was</p> <p>12 formed?</p> <p>13 A. I believe that it is formed in the state of</p> <p>14 Florida. And I don't remember when we discovered that,</p> <p>15 but they represented that it was controlled by a UK</p> <p>16 company.</p> <p>17 Q. Did you know what JM Products business was or</p> <p>18 did you inquire into that?</p> <p>19 A. I believe we were told, if I recall correctly,</p> <p>20 that they were manufacturing some sort of platinum sponges</p> <p>21 or things like that. We were always -- it was always kind</p> <p>22 of under the guise, Oh, you can't -- they want to be top</p> <p>23 secret about this. You can't know what they are doing.</p> <p>24 And they don't want you to know that Johnson Matthey is</p> <p>25 involved, but they are involved.</p>

Page 230

1 And so it wasn't like we could go and say,
 2 without causing a big ruckus, Hey, we want to know exactly
 3 what is going on in this side of the building, and let us
 4 see it. It was always kind of communicated to us that
 5 that was proprietary and confidential.
 6 Q. Did you know how long JM Products had been in
 7 business?
 8 A. I believe we knew, I am trying to recall, that
 9 it was recently formed entity. And it is not that Andrea
 10 was necessarily hiding that. I think he said, This was
 11 formed, they formed this entity to do this test and kind
 12 of keep some separation. But under the auspices of it
 13 being Johnson Matthey behind the entire thing.
 14 Q. So you knew before you entered into the term
 15 sheet that this was a newly formed company, right?
 16 A. I don't know. I just don't know. I don't know
 17 at what point we knew that. And as you see, they changed
 18 the name of the company. So it is hard to determine, you
 19 know, what exactly the name of the company was and,
 20 therefore, hard to look it up.
 21 Q. Did you do any due diligence into Henry Johnson
 22 himself?
 23 A. He is a lawyer. I do believe that our counsel
 24 affirmed that he does have his law license, surprisingly
 25 so. But I can't recall a lot of additional information

Page 231

1 that, you know, that we pulled on him.
 2 Q. Did you think it was important to do due
 3 diligence into Henry Johnson?
 4 A. We thought that a lawyer was -- would not be so
 5 inclined to deceive and just -- you know, just -- deceive
 6 us from what was really going on. So probably in
 7 retrospect we should have done it further. And even still
 8 today, I would like to know more about Henry Johnson and
 9 his motives.
 10 Q. Didn't answer my question.
 11 A. Okay.
 12 Q. Did you think it was important to do due
 13 diligence into Henry Johnson?
 14 A. To the extent that we did due diligence, yes.
 15 Q. Did you think it was important to do due
 16 diligence into JM Products or JM Chemicals?
 17 A. Again, to the extent that we did it, yes.
 18 Q. Okay. And the extent wasn't very great, was
 19 it? I mean, it wasn't that important. You didn't do that
 20 much due diligence, right?
 21 MR. BELL: Objection to form.
 22 THE WITNESS: We did. We did do some due
 23 diligence. And we had a lawyer representing that it
 24 was controlled by a company in the UK. And we had
 25 Rossi saying that, you know, he was talking with

Page 232

1 Johnson Matthey and that Johnson Matthey was behind
 2 this effort.
 3 BY MR. CHAIKEN:
 4 Q. Were you aware that at the time the term sheet
 5 was entered into or ever before then, that JM Chemicals,
 6 JM Products, didn't have a facility in the state of
 7 Florida?
 8 A. That JM Chemical Products didn't or JM
 9 Products?
 10 Q. Whatever it was called at the time, whatever it
 11 was represented to you, that they did not have an actual
 12 facility at the time?
 13 A. Yeah, I didn't know whether or not they did or
 14 did not.
 15 Q. Did you do any due diligence to that?
 16 A. No. Because, again, Rossi described it as
 17 Johnson Matthey setting up this entity to do this small
 18 batch testing.
 19 Q. Right.
 20 A. And they are going to use our heat to do that.
 21 And he and his lawyer represented that it was a UK
 22 company, totally disconnected from them, that owned and
 23 controlled this operation.
 24 Q. I understand. My question is merely limited to
 25 the facility.

Page 233

1 A. I answered the question.
 2 Q. Okay. Did you, Industrial Heat, send some
 3 employees to help Dr. Rossi find a facility for purposes
 4 of setting up JM Products?
 5 A. He had found --
 6 MR. BELL: Objection to form.
 7 THE WITNESS: He had found a facility on his
 8 own, I believe.
 9 BY MR. CHAIKEN:
 10 Q. Okay. Did your -- did IH contractors or IH
 11 employees ever go and see that facility before the plant
 12 was set up?
 13 A. Yes.
 14 Q. Did that concern you?
 15 A. What's that?
 16 Q. The fact that they were setting up a brand new
 17 facility for purposes of doing the test?
 18 A. To a degree that I have already described,
 19 right? So it was all part of the pitch from Andrea than
 20 Johnson Matthey was there to set up this to do small batch
 21 testing, they were going to use our heat, blah, blah,
 22 blah, blah, blah.
 23 Q. So prior to -- or let's go to the date in which
 24 you entered the term sheet. I believe it was in August of
 25 2013. Sound right?

<p style="text-align: right;">Page 234</p> <p>1 MR. BELL: '14. 2 MR. CHAIKEN: '14. Thank you. '14. I 3 apologize. 4 BY MR. CHAIKEN: 5 Q. August 2014. At the time you entered into the 6 term sheet, was Industrial Heat aware that JM Chemicals 7 was only recently formed? 8 A. I don't recall whether or not we learned that 9 at the time, I mean, shortly after or months after. 10 Q. At the time in which Industrial Heat entered 11 into the term sheet, was it aware that JM Chemicals had no 12 existing facility in Florida? 13 A. I don't know if -- I don't recall being aware 14 if they had a facility or not. And I also don't recall 15 when Andrea got the facility. Right? Or he was saying, 16 Oh, this is where all this will take place. JM will use 17 the front, we will use the back. I don't remember if that 18 happened before or after August 14th. 19 Q. At the time Industrial Heat entered into the 20 term sheet, was Industrial Heat aware that it was going to 21 be Dr. Rossi who was going to be operating JM's facility? 22 A. No. 23 Q. Are you sure about that? 24 A. We did not know that it would be Dr. Rossi that 25 would be operating JM's facility.</p>	<p style="text-align: right;">Page 236</p> <p>1 Q. Do you think Dr. Rossi was intending to deceive 2 Industrial Heat by hiding the fact that Henry Johnson was 3 Dr. Rossi's attorney? 4 MR. BELL: Objection to form. 5 THE WITNESS: I think he was trying to deceive 6 us through the whole scheme. Now, whether or not 7 intentionally hiding Henry Johnson as being his 8 attorney, I'm not sure, you know. 9 BY MR. CHAIKEN: 10 Q. Do you think that he was, in fact, attempting 11 to hide the fact that Henry Johnson was his attorney? 12 A. It appears that way, from this e-mail. There 13 are other e-mails where he acknowledges that Henry Johnson 14 is his attorney. I'm not sure. But here he is hiding 15 that fact. He is not saying that, Their attorney is my 16 owner and also the CEO, the president of JM Chemical 17 Products. He doesn't acknowledge that. 18 MR. BELL: Read the whole thing, if you want. 19 (Exhibit 36, IH11867 through 11870, was marked 20 for Identification.) 21 BY MR. CHAIKEN: 22 Q. Let me show you Exhibit 36. Exhibit 36 has 23 been Bates stamped IH11867 through 11870. And, again, 24 it's a series of e-mails that were forwarded to you. 25 In fact, Dr. Rossi on that same day states:</p>
<p style="text-align: right;">Page 235</p> <p>1 Q. He never told you that? 2 A. No. He told us that JM would have an engineer 3 there. This is James Bass. And that they would be 4 managing their side and that he would be controlling the 5 input power. 6 (Exhibit 35, IH11865 through 11866, was marked 7 for Identification.) 8 BY MR. CHAIKEN: 9 Q. Let me show you what has been marked as 10 Exhibit 35. Exhibit 35 has been Bates stamped IH11865 11 through 11866. It is an e-mail, a series of e-mails from 12 Andrea Rossi to you, as well as Tom Darden. 13 So prior to entering into the contract with -- 14 let's call it the term sheet. Prior to entering into the 15 term sheet, you were aware certainly that Dr. Rossi's 16 attorney was the CEO of the company, right? 17 A. No. He says in this e-mail their attorney is 18 also their CEO. So I am trying to remember, recall a 19 point at which we knew that Hank Johnson was also his 20 attorney, was their attorney. I don't recall 21 specifically. But in this e-mail he is acknowledging, 22 which is what -- this is consistent with what Henry 23 Johnson said. You know, I am president, Andrea says CEO, 24 I believe Henry Johnson said president, of JM Chemical 25 Products.</p>	<p style="text-align: right;">Page 237</p> <p>1 "Correction, the fact that my attorney's also the CEO is a 2 guarantee for us." 3 Do you see that? 4 A. Where is this? 5 Q. Very first -- 6 A. Oh, okay. So he did. So he wasn't trying to 7 hide it. Again, I said I didn't know. 8 But the whole thing was a -- what he was trying 9 to deceive us with is a whole scheme, not any particular 10 point. I imagine that this is a -- did we point out to 11 him or did he automatically correct that? We were 12 surprised. 13 So while we are still on this document, this is 14 an e-mail from Tom, in followup to Andrea. It says: "We 15 were surprised to see your lawyer in the role of customer 16 instead of someone from JM. So this has required some 17 added analysis." 18 So only after being called out on it did he 19 then admit to the fact that, My attorney is also their CEO 20 is a guarantee for us. 21 (Exhibit 37, IH12026, was marked for 22 Identification.) 23 BY MR. CHAIKEN: 24 Q. Let me show you what was marked as Exhibit 37. 25 Exhibit 37 is Bates stamped IH12026. It is an e-mail from</p>

<p style="text-align: right;">Page 238</p> <p>1 Andrea Rossi dated June 10, 2014 to Tom Darden, yourself, 2 Joe Pike. 3 Have you seen this e-mail before? 4 A. I suppose that I have if, it was sent to me. I 5 don't recall reviewing it recently. 6 Q. So, again, this is a June 10, 2014 e-mail. 7 This predates the e-mails I just showed you. And in the 8 middle of the page, I will just read the first three 9 sentences. He says: "I have completed the organization 10 of my plan to put the one megawatt in operation. I 11 confirm all I already said. We have a customer who pays a 12 thousand dollars a day to rent the one megawatt plant. 13 Put it in his factory in Miami, produce catalyzers that he 14 sells." And then he says, I will direct -- "I will direct 15 the operation of the plant for the first year." 16 A. Right. He means the one megawatt plant. 17 Q. Are you sure? 18 A. That is how I read it. And I think any other 19 interpretation would be an incorrect interpretation. Why 20 would he be running -- why would he say, I will operate 21 Johnson Matthey's plant? It doesn't make sense. 22 Q. Where does he say Johnson Matthey in this 23 e-mail? 24 A. That was his whole -- that was his whole pitch 25 at the time. This is Johnson Matthey, Johnson Matthey,</p>	<p style="text-align: right;">Page 240</p> <p>1 THE WITNESS: I think what he is saying here is 2 that, you know, you could continue to sell energy to 3 these guys, if you wanted to, for up to three years. 4 BY MR. CHAIKEN: 5 Q. Who negotiated the term sheet with JM Products 6 on behalf of Industrial Heat? 7 A. Tom and myself. 8 Q. Okay. And who represented Leonardo 9 Corporation? 10 A. Andrea. 11 Q. And who represented JM Products or JM 12 Chemicals? 13 A. Presumably, Henry Johnson. 14 Q. Did you ever exchange drafts of the term sheet 15 with Henry Johnson? 16 A. No. Again, this was all part of Andrea's 17 scheme, you know. I am coordinating with these guys. Let 18 me tell you what they are willing to do. 19 BY MR. CHAIKEN: 20 Q. Isn't it possible that Dr. Rossi was 21 representing JM Products or Chemicals for the purposes of 22 that negotiation? 23 A. Is it possible that -- 24 MR. BELL: Objection to form. 25 BY MR. CHAIKEN:</p>
<p style="text-align: right;">Page 239</p> <p>1 Johnson Matthey. Why would Andrea be saying to us, I am 2 going to operate Johnson Matthey's plant? Clearly, that 3 doesn't make sense. 4 Q. Sure, it does. If, in fact, he intended to 5 operate JM's facility for a year. 6 A. He never intended to do that. That is why he 7 had James Bass involved as their makeshift corporate 8 representative. 9 What he is saying here is, you know, I will 10 direct the operation of the plant, the one megawatt plant 11 as referenced in the prior sentence, for the first year. 12 Q. Did you have a conversation with him after you 13 received that first e-mail where that was clarified? 14 A. I don't recall if I did or not. There is no 15 need to clarify something that is clear. 16 MR. BELL: He is just asking you what you -- 17 what Industrial Heat -- 18 BY MR. CHAIKEN: 19 Q. It says right after that, I will -- after he 20 says, "I will direct the operation of the plant for the 21 first year, the contract will be for three years, 22 renewable," was there a three-year commitment or was there 23 a three-year test having to do with the one megawatt 24 plant? 25 MR. BELL: Objection to form.</p>	<p style="text-align: right;">Page 241</p> <p>1 Q. Was it possible? 2 MR. BELL: Objection to form. 3 THE WITNESS: Again, as I acknowledged earlier, 4 anything is hypothetically possible. 5 BY MR. CHAIKEN: 6 Q. Did Industrial Heat's attorneys review the term 7 sheet prior to it being executed? 8 A. Yes. 9 Q. Which attorneys were those? 10 A. Schell Bray. 11 Q. Industrial Heat is seeking damages against 12 Leonardo Corporation and Dr. Rossi; is that correct? 13 A. I believe so. 14 Q. And Industrial Heat claims it has been damaged; 15 is that correct? 16 A. I believe so. 17 Q. And what are the damages that Industrial Heat 18 is claiming? 19 A. All the out-of-pocket expenses incurred 20 associated in dealing with Andrea. 21 Q. Are there any other damages besides the 22 out-of-pocket expenses incurred? 23 A. Besides reputational damages? I would have to 24 reference our claims. I'm not sure. But it's -- I think 25 it is like a \$20 million number.</p>

<p style="text-align: right;">Page 242</p> <p>1 Q. And how is that \$20 million number computed?</p> <p>2 A. 11 and a half to Andrea directly. 5.05, I</p> <p>3 believe, to AEG, plus equity to AEG, which we would also</p> <p>4 like back. And then also other, you know, the cost of</p> <p>5 building an engineering team, the cost of rebuilding the</p> <p>6 plant, the cost of the facilities, equipment costs, travel</p> <p>7 costs, all the costs associated with anything to with, my</p> <p>8 understanding, the state of the art of the E-Cat.</p> <p>9 Q. And has Industrial Heat sued AmpEnergio for the</p> <p>10 return of the 5.05?</p> <p>11 A. At this time, I don't believe so.</p> <p>12 Q. Does it intend to?</p> <p>13 A. To be determined.</p> <p>14 Q. To be determined by whom?</p> <p>15 A. By events.</p> <p>16 Q. Have you informed AmpEnergio that you intend to</p> <p>17 sue them?</p> <p>18 A. I didn't say we intend to sue them.</p> <p>19 MR. CHAIKEN: Okay. I want to go off the</p> <p>20 record. Well, actually, before I go off the record,</p> <p>21 just in terms of time, I want to give the other</p> <p>22 counsel in the room an opportunity to ask questions.</p> <p>23 Are we not going to have any agreement with respect</p> <p>24 to extending the time beyond the seven hours?</p> <p>25 MR. BELL: It is my understanding, unless there</p>	<p style="text-align: right;">Page 244</p> <p>1 again?</p> <p>2 MR. CHAIKEN: Yeah, I am just trying to put</p> <p>3 this into context.</p> <p>4 BY MR. CHAIKEN:</p> <p>5 Q. It looks as if Tom Darden's commenting on</p> <p>6 information that was being provided by Joe and Daniel Pike</p> <p>7 to one of their contacts.</p> <p>8 Does that look accurate to you?</p> <p>9 A. Yeah. I haven't read the whole thing yet, so</p> <p>10 let me know if I need to.</p> <p>11 Q. I am just trying to put it into context.</p> <p>12 A. Yeah, I think you put it into the right</p> <p>13 context, yes.</p> <p>14 Q. So the comment up above on March 23, 2015, Tom</p> <p>15 Darden says: "My comments are just nuances. We</p> <p>16 definitely are producing steam for a customer. My lack of</p> <p>17 clarity is just around, one, precisely how much, we cannot</p> <p>18 definitively represent this yet. And two, what is the</p> <p>19 nature of the customer. But these are picky nuances, not</p> <p>20 related to the core issue."</p> <p>21 See that?</p> <p>22 A. I see that.</p> <p>23 Q. So at least according to Tom Darden in March of</p> <p>24 2015, the nature of the customer wasn't a core issue.</p> <p>25 Would you agree with that?</p>
<p style="text-align: right;">Page 243</p> <p>1 is some new development that I am not aware of with</p> <p>2 respect to the discussions, that is correct.</p> <p>3 MR. CHAIKEN: Okay. So we are going to stop at</p> <p>4 seven hours. So we can go off the record, take a</p> <p>5 quick break.</p> <p>6 THE VIDEOGRAPHER: We are off the record. The</p> <p>7 time is 3:53 p.m.</p> <p>8 (Thereupon, a recess was taken.)</p> <p>9 THE VIDEOGRAPHER: We are back on the record.</p> <p>10 The time is 3:58 p m.</p> <p>11 (Exhibit 38, IH80561 through 567, was marked</p> <p>12 for Identification.)</p> <p>13 BY MR. CHAIKEN:</p> <p>14 Q. Mr. Vaughn, I am handing you what has been</p> <p>15 marked as Exhibit 38. Exhibit 38 has been Bates stamped</p> <p>16 IH80561 through 567. It is an e-mail chain between Tom</p> <p>17 Darden and Joe and Daniel Pike.</p> <p>18 I think we talked about Joe Pike. Who is</p> <p>19 Daniel Pike?</p> <p>20 A. That is his son.</p> <p>21 Q. Okay. This is an e-mail chain that starts in</p> <p>22 March of 2015. Specifically, it looks like Tom Darden is</p> <p>23 responding to comments made by Joe and Daniel Pike to one</p> <p>24 of their contacts. Do you see that?</p> <p>25 MR. BELL: I'm sorry, what was the question</p>	<p style="text-align: right;">Page 245</p> <p>1 MR. BELL: Objection to form.</p> <p>2 THE WITNESS: I think Tom was saying that the</p> <p>3 core issue was the state of the art, does it work and</p> <p>4 to what degree? He is getting more particular that</p> <p>5 -- one and two are more particular. Who is the</p> <p>6 customer? And then how much steam or presumably</p> <p>7 energy is being supplied? But I believe the core</p> <p>8 issue he is referencing is, does it work and to what</p> <p>9 degree?</p> <p>10 BY MR. CHAIKEN:</p> <p>11 Q. Did Industrial Heat ever tell any of its</p> <p>12 investors or partners that the customer in the group that</p> <p>13 Leonardo had or Industrial Heat had was, in fact, an</p> <p>14 affiliate of Johnson Matthey?</p> <p>15 A. I am not sure. We may have. Just because, you</p> <p>16 know, that's what we were led to believe. But I'm not</p> <p>17 sure.</p> <p>18 Q. Did the tests done in Florida begin in around</p> <p>19 February 2015?</p> <p>20 A. Yes.</p> <p>21 Q. Now, when the test was running, did anyone from</p> <p>22 Industrial Heat ever express anything other than positive</p> <p>23 feedback to Dr. Rossi regarding that test?</p> <p>24 MR. BELL: Can I have the question read back,</p> <p>25 please?</p>

<p style="text-align: right;">Page 246</p> <p>1 (A portion of the record was read by the 2 reporter.) 3 MR. BELL: So from 2-15 to 2-16? February '15 4 to February '16? 5 BY MR. CHAIKEN: 6 Q. You know what, let's bracket it February '15 to 7 November '15 as the time frame. 8 A. Well, definitely we did in December. 9 Q. Okay. 10 A. Through communication from Jones Day. Prior to 11 that, Joe Murray and I tried to go down to do more of an 12 assessment. I believe this was in July of '15. 13 Q. But my question was really narrow. It was, did 14 you ever express anything other than positive feedback 15 during that window? It wasn't whether you visited the 16 plant. 17 A. I don't know. I don't know. 18 MR. CHAIKEN: Okay. 19 MR. BELL: I think you need to let him finish 20 his answer. 21 MR. CHAIKEN: Well, he wasn't answering my 22 question. 23 MR. BELL: You asked -- the question called 24 for -- was about whether he was provided anything 25 other than positive feedback, and he was beginning to</p>	<p style="text-align: right;">Page 248</p> <p>1 Q. Did you bring any other investors? 2 A. I did not bring any others. I believe there 3 was a visit by Tom with others from China. And whether or 4 not those were prospective investors or not, I'm not sure. 5 Q. Why did Industrial Heat bring investors to the 6 facility in Doral? 7 A. One, I am not certain, other than Paul 8 Lamacraft, right, that we did. Two, it would have been, 9 if Tom did, and I'm not sure if he did or not, then it 10 would have been to say, Well, you know, this is one of X 11 number of things we have going on in the LENR world, and 12 who knows whether or not this will pan out. 13 (Exhibit 39, Industrial Heat's Supplement to 14 Defendant Industrial Heat, LLC's Amended Responses 15 and Objections to Plaintiff Andrea Rossi's First Set 16 of Interrogatories, was marked for Identification.) 17 BY MR. CHAIKEN: 18 Q. I will mark this one as Exhibit 39. Let me 19 show you what has been marked as Exhibit 39. 20 A. Thanks. 21 Q. Exhibit 39 are Industrial Heat's Supplement to 22 Defendant Industrial Heat, LLC's Amended Responses and 23 Objections to Plaintiff Andrea Rossi's First Set of 24 Interrogatories. That is a hell of a title. 25 Have you seen -- let me say it this way. I</p>
<p style="text-align: right;">Page 247</p> <p>1 explain the visit, which would have involved feedback 2 and you didn't let him finish. 3 BY MR. CHAIKEN: 4 Q. I will restate my question. Did anyone from 5 Industrial Heat ever express negative feedback to 6 Dr. Rossi from February 2015 to November 2015? 7 A. I would have to go back review the 8 communication between, for example, did T. Barker say 9 anything after his visit? I'm not sure. By and large, 10 our protocol at that time was to allow him to continue to 11 operate the technology to see if we could learn more about 12 his performance before being confrontational. 13 Joe Murray and I tried to go down there in 14 July of '15 and were barred from doing so, Joe was. 15 Presumably, because he is engineer with a skill set 16 necessary to determine exactly what is going on. 17 Q. Did Industrial Heat ever bring potential 18 investors to the facility in Doral? 19 A. As I mentioned before, we took Paul Lamacraft 20 there prior to Woodford's investment. So you could have 21 considered him a potential investor at that point. That 22 visit was very eye-opening. 23 Q. I am not asking you about what happened at the 24 visit; I am just asking if you brought them. 25 A. Sure.</p>	<p style="text-align: right;">Page 249</p> <p>1 don't want to walk through it. I have one specific 2 interrogatory I would like you to review. It is number -- 3 let's see. Interrogatory number five, starts on page 12. 4 The interrogatory number five asks about visits to the 5 Doral facility. 6 A. Mm-hmm. 7 Q. And your response provides, beginning at the 8 bottom of page 13, a list of all the visits made by 9 Industrial Heat to that facility. 10 And if you go to page 14, you will see a list 11 of people that on March 27th, Daniel Pike, Mia Pike, Xu 12 Hang and Zhang Jjian visited the testing facility. 13 Who were all those people? 14 A. I don't know. I will tell you who I do know. 15 Daniel, as I mentioned, is Joe's son. Mia is Daniel's 16 wife. I don't know Xu Hang and Zhang Jjian. I don't know 17 who those guys are. 18 Q. What about the one, very next one, July 7, 19 2015, listed? 20 A. I will tell you who I know. How about that? 21 Steven Hartanto and Hady Hartanto. Hady Hartanto is an 22 investor in Industrial Heat. Steven Hartanto, he helps, 23 you know his dad on his investments, and is an analyst at 24 Cherokee. 25 Q. Okay.</p>

<p style="text-align: right;">Page 258</p> <p>1 seeing the plant and seeing the facility and just,</p> <p>2 you know, saying there is no way that what they are</p> <p>3 claiming could be technically true.</p> <p>4 BY MR. CHAIKEN:</p> <p>5 Q. Did you ever ask Dr. Rossi to work with Joe</p> <p>6 Murray?</p> <p>7 A. Yes. When I said, Joe and I are going to come</p> <p>8 visit you in July, I believe it was, of '15, June or July.</p> <p>9 And he said, you know, No. Joe is not welcome.</p> <p>10 Q. After that, did you make any requests that he</p> <p>11 work with Joe Murray?</p> <p>12 A. I don't remember if we did or not.</p> <p>13 MR. CHAIKEN: Okay. Off the record.</p> <p>14 THE VIDEOGRAPHER: Off the record. The time is</p> <p>15 4:18 p m.</p> <p>16 (Thereupon, a recess was taken.)</p> <p>17 THE VIDEOGRAPHER: We are back on the record.</p> <p>18 The time is 4:25 p m.</p> <p>19 BY MR. CHAIKEN:</p> <p>20 Q. Mr. Vaughn, in front of you is Exhibit 39,</p> <p>21 which is the interrogatory responses. I am going to refer</p> <p>22 you to page 31 of that document. It is interrogatory 16.</p> <p>23 Interrogatory 16 states: Did you or did you not have</p> <p>24 access to \$89 million as of February 15, 2016? If you had</p> <p>25 less than \$89 million, then identify the amount of money</p>	<p style="text-align: right;">Page 260</p> <p>1 Leonardo could not achieve guaranteed performance under</p> <p>2 the license agreement?</p> <p>3 A. My answer would be the same as before. That</p> <p>4 after -- excuse me, Joe Murray and his team had thoroughly</p> <p>5 assessed the technology, as well, that around about that</p> <p>6 time, we begin kind of thinking, all right, it seems that</p> <p>7 there is no way that this technology performs as</p> <p>8 advertised.</p> <p>9 Q. Well, I am looking for a specific date.</p> <p>10 Because it seems, based on your answer here, that you knew</p> <p>11 a specific date and it was well before February 15, 2016.</p> <p>12 MR. BELL: Objection to form.</p> <p>13 THE WITNESS: As I said before, there wasn't a</p> <p>14 specific date. There was a lot of data points</p> <p>15 combined with our analysis of the situation, which</p> <p>16 was a developing analysis, based on the events that</p> <p>17 were occurring.</p> <p>18 BY MR. CHAIKEN:</p> <p>19 Q. How long would it have taken Industrial Heat to</p> <p>20 raise the additional money to pay the \$89 million?</p> <p>21 A. If it worked, it would be very quick. Woodford</p> <p>22 would have been very eager to fund that, as would have</p> <p>23 others.</p> <p>24 Q. 30 days? 60 days?</p> <p>25 A. It likely could have been much quicker than</p>
<p style="text-align: right;">Page 259</p> <p>1 you did have. And the answer states: Yes, Industrial</p> <p>2 Heat did have access to 89 million as of February 15, 2016</p> <p>3 through fundraising from investors.</p> <p>4 Did you have a binding commitment for</p> <p>5 \$89 million as of that date?</p> <p>6 A. Binding commitment, yes, in that Woodford had</p> <p>7 options that it could exercise up to 150 million. But to</p> <p>8 answer your question more specifically, maybe they were</p> <p>9 not required to exercise those options. So outside of</p> <p>10 that, did we have a binding commitment for 89 million?</p> <p>11 No.</p> <p>12 Q. Okay. So that additional investment on</p> <p>13 Woodford's behalf was optional on their part, right?</p> <p>14 A. It was.</p> <p>15 Q. Okay. Then you state: Industrial Heat had</p> <p>16 available cash balance of 16 million and change in its</p> <p>17 accounts on February 15, 2016.</p> <p>18 Is that true?</p> <p>19 A. I suppose it was.</p> <p>20 Q. And then you state: Industrial Heat has not</p> <p>21 called upon investors to fund any other capital as of that</p> <p>22 date because it already knew well before February 15,</p> <p>23 2016, that Rossi and Leonardo could not guarantee</p> <p>24 performance under the license agreement.</p> <p>25 When did Industrial Heat know that Rossi and</p>	<p style="text-align: right;">Page 261</p> <p>1 that if, you know, if it worked.</p> <p>2 Q. And you know this because you talked to</p> <p>3 Woodford about it?</p> <p>4 A. Woodford from the earliest days was always</p> <p>5 asking, Well, if it works, notwithstanding the fact that</p> <p>6 he's not met the obligations of the contract, if it works</p> <p>7 and you guys can prove the technology has been</p> <p>8 transferred, our response is sure. And so, I mean, this</p> <p>9 would not have been a big issue, if the technology worked</p> <p>10 as advertised.</p> <p>11 MR. CHAIKEN: Okay. I am going to end my</p> <p>12 questioning and turn it over to --</p> <p>13 MR. NUNEZ: Let's go off the record, so I can</p> <p>14 get situated.</p> <p>15 THE VIDEOGRAPHER: We are off the record. The</p> <p>16 time is 4:29 p.m.</p> <p>17 (Thereupon, a recess was taken.)</p> <p>18 THE VIDEOGRAPHER: We are back on the record.</p> <p>19 The time is 4:31 p m.</p> <p>20 CROSS-EXAMINATION</p> <p>21 BY MR. NUNEZ:</p> <p>22 Q. Good afternoon, Mr. Vaughn my name is Rudy</p> <p>23 Nunez. We met before. I represent Fulvio Fabiani and</p> <p>24 USQL, LLC, United States Quantum Leap, LLC.</p> <p>25 I know you touched upon it earlier, but can you</p>

<p style="text-align: right;">Page 262</p> <p>1 tell me about the company's knowledge as to who Fulvio 2 Fabiani is? 3 A. He is a technician that has assisted Andrea 4 Rossi. It is my understanding that he was adopted by 5 Maddalena, who is my understanding is Andrea's wife -- 6 Maddalena's mother, when he was younger. And she raised 7 him. And Andrea, out of consideration for that, employed 8 Fulvio. 9 Q. Did you know that before you did any work with 10 him? 11 A. That is a good question. I don't know at what 12 point I learned that. Whether, you know, that came from 13 Andrea before we contracted him or if that came after, 14 when, you know, I got to know Fulvio a little bit. I just 15 don't recall. 16 But preliminarily the reason we contracted him 17 was because Andrea said that he needed him as his 18 technician to work on the electrical side of things. 19 Q. Do you recall if you did any due diligence on 20 Mr. Fabiani and his background? 21 A. His background? I think we looked into it 22 some, but not extensively. I think he is a pretty hard 23 guy to find any information on, if you Google him. I 24 don't think there is a lot out there on him. I think he 25 has a Facebook page, but I don't think there is a lot of</p>	<p style="text-align: right;">Page 264</p> <p>1 A. I do. 2 Q. And what is that? What have I shown you? 3 A. It looks like it is a technical consulting 4 agreement between Fulvio and Industrial Heat, LLC. Or 5 between USQL, United States Quantum Leap, LLC and 6 Industrial Heat, LLC. 7 Q. Would it be fair for me to say, from your 8 testimony a minute ago, that the intent behind that 9 contract was for Mr. Fabiani to assist Mr. Rossi in his 10 work with Industrial Heat? 11 A. I believe so. 12 Q. And what -- on behalf of the company, what were 13 his specific duties pursuant to that contract? 14 A. Fulvio's, pursuant to this contract, what were 15 his duties? 16 Q. Yes, sir. 17 A. Hang on. Let me review it. I believe there 18 was -- you know, one of the topics discussed inventions 19 that he would work on, about they would be property of the 20 company. 21 Q. Well, let me shop you there. That is not a 22 duty of his employment under the contract. That is just a 23 provision in the contract -- 24 A. Okay. 25 Q. -- with regard to any inventions or any new</p>
<p style="text-align: right;">Page 263</p> <p>1 information about his past work. 2 He also, this is just kind of coming to mind as 3 I am talking to you, I am just remembering more about 4 Fulvio, but he also told us that he previously worked -- I 5 can't remember where -- I want to say with the UN in some 6 capacity, or NATO, or I am trying to remember, some 7 organization like that. But, anyway, I don't recall the 8 exact amount of diligence we did into his background. We 9 knew that Andrea wanted him and that was fine if Andrea 10 wanted him to act as his technician. 11 Q. And in that respect did Industrial Heat engage 12 Mr. Fabiani or his company United States Quantum leap to 13 work and provide services for IH, Industrial Heat? 14 A. We did. And really to assist Andrea, right? 15 We were paying him, but he was working at the direction of 16 Andrea. 17 Q. Was that the underlying purpose of your 18 engagement with Mr. Fabiani? 19 A. Correct. 20 (Exhibit 40, Technical Consulting Agreement, 21 was marked for Identification.) 22 BY MR. NUNEZ: 23 Q. Let me show you what I will have marked 24 Exhibit 40 to the deposition. 25 Do you recognize that, Mr. Vaughn?</p>	<p style="text-align: right;">Page 265</p> <p>1 developments, correct? 2 A. Right. Okay. That is fine. 3 Q. Well, I am asking you. You tell me what 4 your -- what the company's -- 5 A. So I can describe to you -- 6 Q. Sure. 7 A. -- what I described to you, which was how he 8 worked in our company. Right? And if I need to get more 9 precise than that, I might have to review the contract. 10 But he -- he assisted Andrea and was kind of directed by 11 Andrea to work on the E-Cat technology. He never worked 12 on technologies for us other than the E-Cat technology we 13 broadly defined, E-Cat Hot Cat, Quad Cat. But broadly 14 speaking, that was his role and responsibility. He 15 reported to Andrea, even though the agreement was with us. 16 He was working at the discretion or direction of Andrea. 17 And he, you know, if and when he had inventive 18 ideas, we helped capture those. And I don't know if we 19 ever filed any IP around it, but we would at least try to 20 capture that information. That is about the extent of, 21 you know. So if you need me to be more particular, 22 meaning what does the contract say -- 23 Q. No, I think that is fine. Let me stop you 24 there. 25 And that contract, I believe it is dated</p>

<p style="text-align: right;">Page 266</p> <p>1 September 2013; is that correct?</p> <p>2 A. That sounds right.</p> <p>3 Q. I think it is on the first page.</p> <p>4 A. I see it back at the back. 9-9-13. Yes. It</p> <p>5 is effective as of September 1, '13. And it looks like he</p> <p>6 signed it, there is a joinder signed on 9-9-13.</p> <p>7 Q. And does that date seem, to your recollection,</p> <p>8 when he actually did start working --</p> <p>9 A. I believe so.</p> <p>10 Q. -- for you guys?</p> <p>11 A. Yeah. I believe so.</p> <p>12 Q. And where was that work taking place at that</p> <p>13 time?</p> <p>14 A. At that time it was in Raleigh.</p> <p>15 Q. Do you recall at that time, did Mr. Fabiani,</p> <p>16 were any of his duties related to collection of data for</p> <p>17 Industrial Heat?</p> <p>18 A. At that time, I am trying to recall if he</p> <p>19 collected data at that time. I think he did help Andrea</p> <p>20 with some of that. Meaning we didn't, you know, Fulvio</p> <p>21 wasn't our data capturing expert. To the de gree that</p> <p>22 Andrea directed him to record data and capture data, he</p> <p>23 may have done that. But I don't recall specifically.</p> <p>24 You know, I remember him more during that</p> <p>25 period of time kind of helping build things and do</p>	<p style="text-align: right;">Page 268</p> <p>1 affiliates?</p> <p>2 A. Yeah, any results, yeah.</p> <p>3 Q. You weren't seeing any results. You weren't</p> <p>4 using Mr. Fabiani's data for those conclusions, were you?</p> <p>5 A. It was a -- again, I guess I will go back to</p> <p>6 kind of the stuff that he provided in Doral. It would be</p> <p>7 of interest to us if we could have all of his data sets,</p> <p>8 to compare those against anything that Andrea may have</p> <p>9 provided or Fabiani.</p> <p>10 Q. Well, let me stop you. Because I understand</p> <p>11 your claims and I understand that is part of your claims</p> <p>12 today.</p> <p>13 A. Right.</p> <p>14 Q. I am ask asking you back in Raleigh, when you</p> <p>15 are making --</p> <p>16 A. Okay. So you are back in Raleigh?</p> <p>17 Q. Yeah, back to Raleigh, when you are making the</p> <p>18 decisions that you are not seeing the result, any result,</p> <p>19 you weren't relying on anything Mr. Fabiani was doing? Or</p> <p>20 you weren't relying on any data that Mr. Fabiani was</p> <p>21 providing you?</p> <p>22 A. To a degree that it was -- I would say that it</p> <p>23 could be some data that we would rely on. For example,</p> <p>24 Fabiani was collecting and reporting input power data that</p> <p>25 would have been of interest to us. Right? So it is hard</p>
<p style="text-align: right;">Page 267</p> <p>1 electrical -- modify electrical input power, things like</p> <p>2 that, at Andrea's direction.</p> <p>3 Q. So your company wasn't relying on him for any</p> <p>4 data collection that you can recall to date?</p> <p>5 MR. BELL: Objection to form.</p> <p>6 THE WITNESS: At that period of time, if he did</p> <p>7 supply us data, you know, we were definitely looking</p> <p>8 at it and it is a data point that is relevant.</p> <p>9 Later, he was providing us some data from the test in</p> <p>10 Doral and then stopped doing that.</p> <p>11 BY MR. NUNEZ:</p> <p>12 Q. Okay. Well, we will get to that.</p> <p>13 A. Okay.</p> <p>14 Q. But in his time in Raleigh, that wasn't his --</p> <p>15 that wasn't part of his duties?</p> <p>16 A. It may have been something that he did, but it</p> <p>17 wasn't our -- it wasn't the primary thing that jumps out</p> <p>18 that he was doing, you know, providing us data.</p> <p>19 Q. And I think you testified a lot today about the</p> <p>20 performance and the measurement of performance of</p> <p>21 Mr. Rossi's invention.</p> <p>22 A. Mm-hmm.</p> <p>23 Q. And I think your testimony was that it wasn't</p> <p>24 reaching -- you weren't seeing the results that you needed</p> <p>25 to under the agreements between Industrial Heat and your</p>	<p style="text-align: right;">Page 269</p> <p>1 to say that he didn't provide us any data that we relied</p> <p>2 on. He may have.</p> <p>3 What -- again, the primary role or</p> <p>4 responsibility that I recollect Fulvio having is modifying</p> <p>5 power supplies and working on designs that Andrea would</p> <p>6 instruct him to work on.</p> <p>7 Q. Do you recall if that technical consulting</p> <p>8 agreement, was it ever extended or did you enter into an</p> <p>9 extension? Because I believe that contract's for one</p> <p>10 year, correct?</p> <p>11 A. I would have to review. But I don't know. I</p> <p>12 would have to review whether or not we extended.</p> <p>13 Is this only a one-year contract or is this a</p> <p>14 two-year contract?</p> <p>15 Q. I think if you go to paragraph eight, duration</p> <p>16 of the agreement.</p> <p>17 A. Mm-hmm. Okay. So I don't recall if we -- if</p> <p>18 this contract was extended and we assigned it -- if there</p> <p>19 was another fully executed contract after this or if we</p> <p>20 just began paying Fulvio month to month after that and he</p> <p>21 was operating in effectively the same capacity.</p> <p>22 I know at one point his contract had lapsed and</p> <p>23 we were just paying him month to month. But I don't</p> <p>24 remember if the initial ones extended and then that</p> <p>25 happened or if that happened after the initial contract.</p>

Page 270

1 Q. Do you recall if there was ever a new contract
2 entered into by Industrial Heat and Mr. Fabiani that
3 increased his duties with regard to data collection?
4 A. I don't recall. I don't recall entering into a
5 contract -- another contract with Fabiani that focussed on
6 his abilities or comments with regard to collecting data.
7 Q. And the reason I ask, obviously now in the
8 complaint there's -- the main charge against him is that
9 he hasn't given you certain data. I mean, that is one of
10 the big things.
11 A. Mm-hmm.
12 Q. But when the contract started, I think his
13 duties were to assist Mr. Rossi. So I wanted to, was
14 there ever a time that in writing increased his duties to
15 require him to give you more than he had in Raleigh?
16 A. Yeah. At some point I believe Fulvio was
17 saying to us, Hey, you know, I will supply you this data.
18 I will send you updates. You need any data, you just let
19 me know. So we said, Great, you know, we need the data.
20 And sometimes he would send it, or periodically he would
21 send it. And then towards the end he stopped providing
22 any data.
23 So that was -- that is the answer to your
24 question. I don't know if that's, you know, what you are
25 looking for.

Page 271

1 Q. So I guess my question is, was that in writing
2 or was that verbal?
3 A. I don't recall precisely, but I would think
4 that there may be e-mails around this with Fabiani. But
5 it may not have been, actually. Because often I would
6 call Fabiani or -- I am trying to remember -- or e-mail
7 him -- or I'm not sure. I don't remember if that's
8 captured in the e-mail.
9 Because -- but I do recall exchanges with him,
10 whether or not it was in e-mail or phone or otherwise,
11 saying, Hey, you know, we need more data. Can you send us
12 more data? Sure. Sure. No problem. I will send you
13 what you want. You know, that was just kind of Fulvio's
14 classic quote. What you want? I will send you what you
15 want. Let me know.
16 Q. Well, let me -- we are short on time, so don't,
17 you know, please excuse me if I cut you off.
18 A. Mm-hmm.
19 Q. Would it be fair to say that there was no
20 written contract between Industrial Heat and Fabiani or
21 United States Quantum Leap that increased or added
22 additional duties to provide data?
23 MR. BELL: Objection to form.
24 THE WITNESS: I don't believe that we entered
25 an additional contract that specified data

Page 272

1 collection.
2 BY MR. NUNEZ:
3 Q. Okay. Now, we talked about Raleigh. And you
4 were discussing some issues with Doral, I think in your
5 answer. So when the plant moved to Doral, Mr. Fabiani
6 also moved, came down to Doral to work with Mr. Rossi; is
7 that correct?
8 A. That is correct. And I don't recall exactly
9 who moved down there first exactly. But pretty much when
10 Rossi and the plant moved down there. Fabiani may have
11 moved before then. I don't recall.
12 Q. Okay. And a couple minutes ago your testimony
13 was that you would ask him to give you more data. He said
14 yes, he would.
15 A. Mm-hmm.
16 Q. So is it correct that he would send you
17 periodically data from the test ongoing in Doral at the
18 Doral facility?
19 A. Periodically I believe that he provided some
20 data, you know. But then he stopped providing it.
21 Q. Do you know the time period around when he
22 stopped providing the data that you are complaining of in
23 the complaint?
24 A. I would have to review the complaint. I mean,
25 clearly, at the end we asked Fulvio to send us all the

Page 273

1 data that he had, and he didn't do that. Prior to that,
2 you know, when is the last time I specifically requested
3 the data from Fulvio? I don't recall. And when is the
4 last time he sent data, regardless of whether or not I
5 explicitly requested it? Because I kind of said, Sure,
6 please, send us monthly data. I don't recall when he
7 stopped sending it.
8 Q. Now, I don't have them and we don't have the
9 time to go through them and look through them, but I know
10 that there are some e-mails in March or April of 2016 when
11 maybe Mr. Murray, Mr. Dameron are requesting from him,
12 Hey, remember to send us the data.
13 Would you agree that those e-mails reflect the
14 time where he was being requested for data that he wasn't
15 turning over?
16 A. That is one time, yes. And I don't know if
17 there were others.
18 I know Joe and I met with him here in Miami and
19 talked about it. And he said, I will prepare it, I will
20 send it to you. No problem. What you want? I mean,
21 typical kind of response.
22 Q. Do you recall the date of that meeting?
23 A. Oh, man. It was after the plant had shut down.
24 I think it was in February. It may have been in March. I
25 don't remember the exact date.

<p style="text-align: right;">Page 278</p> <p>1 don't have it?</p> <p>2 A. He may have been manipulating stuff. We don't</p> <p>3 know. Just because we don't have the data doesn't mean he</p> <p>4 wasn't manipulating anything.</p> <p>5 Q. Okay. So we are -- you are basically acting</p> <p>6 on -- I mean, we are talking about you are speculating.</p> <p>7 Let me strike that.</p> <p>8 We are sitting here in your depo, we are</p> <p>9 getting ready for trial. You are the corporate rep for</p> <p>10 Industrial Heat. Do you have any facts that you could</p> <p>11 state on the record that show that either Mr. Fabiani or</p> <p>12 his company or somebody on behalf of his company</p> <p>13 manipulated the validation and testing of the E-Cat?</p> <p>14 A. We don't have complete discovery from him or</p> <p>15 his data sets.</p> <p>16 Q. And so the answer would be no?</p> <p>17 A. I wouldn't say the answer is no. I would say</p> <p>18 we don't have discovery from him, so we can't answer that</p> <p>19 question.</p> <p>20 Q. Let me try to put it this way. Can you tell us</p> <p>21 here today any facts that support that allegation?</p> <p>22 Leaving aside your caveat you haven't looked at all the</p> <p>23 discovery.</p> <p>24 A. But also he didn't provide us the data. Right?</p> <p>25 Q. I understand he didn't. But the allegation in</p>	<p style="text-align: right;">Page 280</p> <p>1 Q. Did Mr. Fabiani have any involvement in</p> <p>2 convincing Industrial Heat to move the plant?</p> <p>3 A. I'm not sure.</p> <p>4 Q. Okay. Does Industrial Heat have any facts to</p> <p>5 support the allegation that Fabiani helped or was part of</p> <p>6 a scheme to restrict Industrial Heat's access to the JM</p> <p>7 portion of the Doral facility?</p> <p>8 A. I'm not sure.</p> <p>9 Q. Last question, with regard to determining COP</p> <p>10 results, were you using any of Fabiani's data for that in</p> <p>11 North Carolina or in Doral?</p> <p>12 A. I would say the answer to that is probably so.</p> <p>13 And because he was -- if he provided us data from Doral,</p> <p>14 for example, we would want to check that data against data</p> <p>15 provided by either Andrea or Penon. So you would want to</p> <p>16 calculate results with each data set.</p> <p>17 In North Carolina, to the degree that he</p> <p>18 collected data, I am sure we would have also, you know,</p> <p>19 used that data, right, to analyze performance. So yes, I</p> <p>20 am sure that, to the extent that he provided data, we used</p> <p>21 it to analyze performance.</p> <p>22 MR. NUNEZ: All right. That is all I have.</p> <p>23 MR. ARAN: Okay. Let the record reflect -- how</p> <p>24 much time do I have?</p> <p>25 THE VIDEOGRAPHER: 15 minutes.</p>
<p style="text-align: right;">Page 279</p> <p>1 the complaint is he manipulated the validation</p> <p>2 guaranteeing performance testing. So do you have any</p> <p>3 facts as we sit here today, and keeping in mind your</p> <p>4 caveat that you haven't looked through all the discovery?</p> <p>5 A. The fact that he did not provide us the data,</p> <p>6 which he said he would provide us. Right? And then for</p> <p>7 whatever reason --</p> <p>8 Q. Mr. Vaughn I don't want to get -- again, I</p> <p>9 understand you saying he didn't give you the data.</p> <p>10 Do you have any facts that he manipulated</p> <p>11 anything?</p> <p>12 A. We may, if we could get ahold of the data.</p> <p>13 Q. So you are not going to give me a yes or no?</p> <p>14 Do you have any facts?</p> <p>15 A. I am answering the question.</p> <p>16 Q. Are you?</p> <p>17 A. Yeah.</p> <p>18 Q. Tell me again one more time. Do you have any</p> <p>19 facts that he manipulated any data for the testing of the</p> <p>20 E-Cat?</p> <p>21 A. We may, if we had the data to review.</p> <p>22 Q. Now, Industrial Heat also claims that they were</p> <p>23 manipulated into moving the plant from North Carolina to</p> <p>24 Doral, Florida, right?</p> <p>25 A. Mm-hmm.</p>	<p style="text-align: right;">Page 281</p> <p>1 MR. ARAN: I have been given about 15 minutes.</p> <p>2 I did cross-notice this deposition. I know there</p> <p>3 were a lot of discussions. We asked if we could go</p> <p>4 over, so we can have about an hour and a half</p> <p>5 additional time, and that was not agreed to. I'll</p> <p>6 try to do my best in 15 minutes, but obviously I</p> <p>7 cannot, by any means, do a full examination of the</p> <p>8 witness.</p> <p>9 MR. NUNEZ: And I join in that objection.</p> <p>10 MR. ARAN: We will see where that goes, where</p> <p>11 those chips lay on a later date. I am going to go as</p> <p>12 fast as I can.</p> <p>13 Let me ask you if you can pass this on as</p> <p>14 Exhibit 42.</p> <p>15 (Exhibit 42, Term Sheet, was marked for</p> <p>16 Identification.)</p> <p>17 CROSS-EXAMINATION</p> <p>18 BY MR. ARAN:</p> <p>19 Q. And Exhibit 42, even though it says Exhibit 17</p> <p>20 in front, is what we have commonly referred to as the term</p> <p>21 sheet, sir?</p> <p>22 A. Yes.</p> <p>23 Q. Are you familiar with this document?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Did you sign this document on behalf of</p>

<p style="text-align: right;">Page 282</p> <p>1 Industrial Heat?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. May I ask you to look at number 19,</p> <p>4 which is on page two of the document?</p> <p>5 A. Okay.</p> <p>6 Q. It says: "JMC will keep records of the</p> <p>7 operation of the one megawatt plant as reasonably</p> <p>8 requested by Leonardo or IH and will provide copies of</p> <p>9 such records to Leonardo and IH upon request."</p> <p>10 To your knowledge, did you make -- did you or</p> <p>11 anyone at IH make any specific requests of JMC for</p> <p>12 records?</p> <p>13 A. I'm not sure.</p> <p>14 Q. If in fact you had, would I be correct in</p> <p>15 stating that they would have been produced in response</p> <p>16 to --</p> <p>17 A. Correct.</p> <p>18 Q. -- all the discovery that has been ongoing?</p> <p>19 A. Correct.</p> <p>20 Q. And if none was produced, there were no</p> <p>21 specific records made, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. Let me now refer you to what is part of</p> <p>24 Exhibit 13, last page, it says "compliance with OFAC."</p> <p>25 A. Go ahead and ask your question.</p>	<p style="text-align: right;">Page 284</p> <p>1 item number two, the visit of February 9, 2015?</p> <p>2 A. I believe that is correct. Can I review it</p> <p>3 just quickly, to see if he was present at others? I</p> <p>4 believe that is correct.</p> <p>5 Q. And you were present at this meeting also,</p> <p>6 correct?</p> <p>7 A. I was.</p> <p>8 Q. And the other people were Thomas Darden, Andrea</p> <p>9 Rossi, Fulvio Fabiani and Barry West, correct?</p> <p>10 A. February 9th?</p> <p>11 Q. February 9, 2015.</p> <p>12 A. Yes. Yes. I'm sorry, I see that. I didn't</p> <p>13 see that. And Paul Lamacraft.</p> <p>14 Q. Correct. Who is Barry West?</p> <p>15 A. Barry West is an electrical technician that we</p> <p>16 contracted to assist Andrea.</p> <p>17 Q. And he worked at the --</p> <p>18 A. At the Doral.</p> <p>19 Q. At the E-Cat side of the plant?</p> <p>20 A. Right.</p> <p>21 Q. And he was present in this meeting?</p> <p>22 A. Well, not the meeting with -- he was present</p> <p>23 there, but when we met with Bass, it was Tom, Paul</p> <p>24 Lamacraft, Andrea and myself.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 283</p> <p>1 Q. Is there any mention of Johnson Matthey as a</p> <p>2 company or entity in that document?</p> <p>3 A. No, with the explanation that I provided</p> <p>4 earlier.</p> <p>5 Q. There is none, correct?</p> <p>6 A. The explanation that I provided earlier, which</p> <p>7 is --</p> <p>8 Q. We know the explanation, sir, but I only have</p> <p>9 ten minutes.</p> <p>10 A. Keep going.</p> <p>11 Q. Your explanation is on the record.</p> <p>12 A. Okay.</p> <p>13 Q. Now, let me ask you to take a look at</p> <p>14 Exhibit -- I missed one, the response to the</p> <p>15 interrogatories.</p> <p>16 MR. CHAIKEN: Exhibit 39, I think.</p> <p>17 BY MR. ARAN:</p> <p>18 Q. I think you were referred before to the bottom</p> <p>19 of page 13.</p> <p>20 A. Okay.</p> <p>21 Q. And that deals with the number of visits to the</p> <p>22 Doral location.</p> <p>23 A. Okay.</p> <p>24 Q. Am I correct that the only visit to the Doral</p> <p>25 location involving Mr. Bass would be that described in</p>	<p style="text-align: right;">Page 285</p> <p>1 A. So he was present at the facility, but not in</p> <p>2 the meeting. He was on the other side.</p> <p>3 Q. So during that meeting, so the meeting</p> <p>4 described here did not include Mr. West, nor Mr. Fabiani?</p> <p>5 A. Correct.</p> <p>6 Q. What specifically -- so of the two hours that</p> <p>7 the visit took, how much time did you spend speaking or</p> <p>8 meeting specifically with Mr. Bass?</p> <p>9 A. I would guess probably about 45 minutes.</p> <p>10 Q. And of those 45 minutes, what did Mr. Bass --</p> <p>11 what did you ask Mr. Bass, if anything, and what did he</p> <p>12 respond?</p> <p>13 A. I recall Bass running the meeting initially</p> <p>14 and asking Andrea a lot of questions. You know, how is it</p> <p>15 going? When is it going to start up? Blah, blah, blah.</p> <p>16 And then Andrea responding and then Bass asked Tom</p> <p>17 questions. I am trying to remember the specifics. It may</p> <p>18 have been about Tom's background or something like that.</p> <p>19 I am trying to remember if either I or Paul</p> <p>20 Lamacraft had questions of Bass or Andrea. I'm not sure</p> <p>21 that we did. I think mainly we listened while Bass talked</p> <p>22 about what they were doing there and looking forward to</p> <p>23 having the plant online and --</p> <p>24 Q. You mentioned he was asking questions. Were</p> <p>25 those questions being responded to by those persons that</p>

<p style="text-align: right;">Page 286</p> <p>1 he asked?</p> <p>2 A. Yes.</p> <p>3 Q. Did he get answers?</p> <p>4 A. Yes.</p> <p>5 Q. What specifically do you recall him actually</p> <p>6 saying?</p> <p>7 A. Well, he said, for example, to Andrea, you</p> <p>8 know, When is this going to be online? When is it going</p> <p>9 to be ready? And Andrea was saying, Well, we have had a</p> <p>10 little setback, but it will be -- it should be in the next</p> <p>11 week or so. Questions like that.</p> <p>12 Q. Questions of that nature?</p> <p>13 A. Yes.</p> <p>14 Q. Did he make any representations at that meeting</p> <p>15 that the plant was operating correctly? I would assume</p> <p>16 not, correct? Because it wasn't.</p> <p>17 A. Yeah. He was asking, if I recall correctly,</p> <p>18 kind of when is it going to be ready? When is it going to</p> <p>19 be online?</p> <p>20 Q. So were you at any point in time involved or</p> <p>21 present in any conversation with Bass where he was</p> <p>22 actually stating that the amount of steam received by the</p> <p>23 JMC side was sufficient or good or enough?</p> <p>24 A. I was not in a meeting with Bass that he stated</p> <p>25 that.</p>	<p style="text-align: right;">Page 288</p> <p>1 you know, a representative of IH in a meeting with Bass,</p> <p>2 Joe Murray or T. Barker Dameron or others. So it wouldn't</p> <p>3 have had to be Tom or me.</p> <p>4 Q. Did any of those people report to you that they</p> <p>5 had, in fact, met with Mr. Bass?</p> <p>6 A. I don't recall. You know, at one point I think</p> <p>7 Barry reported that he had met Bass on occasion. But not</p> <p>8 had a meeting with him, but just kind of met him. I don't</p> <p>9 recall if others met with him.</p> <p>10 Q. Am I correct in summing up your testimony, and</p> <p>11 I hate to do that, but time is limited, that at least from</p> <p>12 your perspective, you never heard of any conversation or</p> <p>13 representation by Mr. Bass concerning the adequacy or</p> <p>14 sufficiency of the power being received by JMC from the</p> <p>15 E-Cat side of the plant?</p> <p>16 A. What we received in that regard was mainly from</p> <p>17 Hank Johnson, the quarterly, like a request to bill him</p> <p>18 effectively. I don't recall Bass sending</p> <p>19 representations --</p> <p>20 Q. Okay.</p> <p>21 A. -- regarding the performance of the technology.</p> <p>22 Q. And now that you mentioned that, in that</p> <p>23 request by Mr. Johnson to send the invoice, based upon the</p> <p>24 steam received, do you recall whether IH ever sent him an</p> <p>25 invoice?</p>
<p style="text-align: right;">Page 287</p> <p>1 Q. Do you know anybody that was in a meeting with</p> <p>2 Bass when he may have stated that?</p> <p>3 A. Not to my knowledge. We didn't meet with Bass</p> <p>4 frequently. I think -- I think that this was the only</p> <p>5 time that we met with Bass.</p> <p>6 Q. And when you met with Mr. Bass, Mr. Darden was</p> <p>7 also present, correct?</p> <p>8 A. Correct.</p> <p>9 Q. So let me ask you, other than in a meeting, in</p> <p>10 this meeting, did you have any other conversations with</p> <p>11 Mr. Bass? On the phone?</p> <p>12 A. On the phone or e-mail? I don't recall talking</p> <p>13 to him on the phone.</p> <p>14 Q. Okay.</p> <p>15 A. And I am trying to recall if we ever e-mailed</p> <p>16 with him. I'm not sure.</p> <p>17 Q. Okay. Was this the only meeting that IH would</p> <p>18 have had with Mr. Bass as a company?</p> <p>19 A. I'm not sure. But it is the only one that</p> <p>20 comes to mind.</p> <p>21 Q. Okay. And if there would have been another</p> <p>22 meeting with Mr. Bass where the other party present was</p> <p>23 IH, it in all likelihood would have been you or</p> <p>24 Mr. Darden, correct, at that point?</p> <p>25 A. There were other people that could have been,</p>	<p style="text-align: right;">Page 289</p> <p>1 A. I don't believe that we did.</p> <p>2 Q. They did not, correct? No other</p> <p>3 representations that you recall at all from Bass to you or</p> <p>4 to another IH individual?</p> <p>5 A. Aside from those made in the meetings? I mean,</p> <p>6 he did represent to be the engineering manager, plant</p> <p>7 manager for JM Chemical Products. Aside from anything</p> <p>8 made in the meeting of February 9th, I'm not sure if</p> <p>9 anything comes to mind. I am trying to recall if we met</p> <p>10 with -- if anybody else met with him at another time, and</p> <p>11 nothing is coming to mind.</p> <p>12 Q. Okay. And have you since learned whether</p> <p>13 Mr. Bass is, in fact, a licensed engineer with a degree</p> <p>14 from Rutgers University?</p> <p>15 A. I don't know if he is or not.</p> <p>16 Q. Did you do any research to find out if he was?</p> <p>17 A. I, myself, have not. Others may have looked</p> <p>18 into it.</p> <p>19 Q. Did you know that he worked -- he has worked in</p> <p>20 the Armed Forces and dealt with matters that dealt with</p> <p>21 nuclear power?</p> <p>22 A. I did not know that.</p> <p>23 Q. And controls for nuclear power?</p> <p>24 A. I did not know that.</p> <p>25 Q. Any reason to believe that he was not an</p>

Page 290

1 engineer?

2 A. At this point in time or at the time of --

3 Q. Even then.

4 A. You know, we came out of the meeting and Paul

5 Lamacraft's statement to me was, Well, that really felt

6 like a contrived meeting, yeah.

7 Q. So it felt contrived, so all the less perhaps

8 to accept whatever Bass had to say, or question? What do

9 you mean by "contrived"?

10 A. Well, it felt contrived. Meaning it felt like

11 his questions were prepared.

12 Q. Okay.

13 A. And Andrea's answers were prepared. And I

14 said, Yeah, I agree, it felt very contrived.

15 Q. And being contrived, does it suggest to you

16 that the question was not properly answered? Or any basis

17 to believe that what was being answered was not --

18 A. It felt like they went in there with a game

19 plan, right? Of here is a question, here is the answer,

20 here is a question, here is the answer.

21 Q. At that point in time the E-Cat plant had not

22 commenced operation, correct?

23 A. Andrea was still working on it, I believe.

24 Q. So Bass himself couldn't have made any

25 representations concerning the plant or its efficiency?

Page 291

1 A. He was there to represent JM.

2 Q. Or anything else, correct? Could he have done

3 any work at that point in time, if the plant had not been

4 delivered?

5 A. I don't know. You would have to ask Bass.

6 Q. From your perspective. If a plant hadn't

7 arrived --

8 A. It was there, but --

9 Q. Not operational yet?

10 A. Yeah. Bass was an engineering representative

11 and supposedly he could be doing other stuff. I don't

12 know.

13 Q. Okay. Is it IH's position today as you sit

14 here that Mr. Bass committed a fraud by any statements

15 that he may have made to you at that meeting or to IH?

16 A. He participated in one. So he was -- he was

17 participating with Dr. Rossi in a fraudulent

18 representation of this company being, you know, a Johnson

19 Matthey affiliate.

20 Q. Was Mr. Bass there when Mr. Rossi made any of

21 those representations to you or anyone else?

22 A. As I said, I only met Bass in that meeting.

23 Q. And did he make any of those representations in

24 that meeting?

25 A. He represented that he was an engineering plant

Page 292

1 manager for JM. And I can't recall if he said he was

2 affiliated with Johnson Matthey or not.

3 Q. You don't remember one way or the other, do

4 you?

5 A. I don't remember if he said he was affiliated

6 with Johnson Matthey, no.

7 Q. What are the damages that you believe were

8 caused by whatever it is Mr. Bass may or may not have

9 said?

10 A. A prolonged -- a deception, which cost us time

11 and money following the process when --

12 Q. How much?

13 A. 20 million.

14 Q. \$20 million?

15 A. That is what I provided earlier.

16 Q. Were caused by him being in a meeting where he

17 asked some questions?

18 A. Caused by the compounding of factors, of which

19 he was one, that led to us expensing the money we have

20 expensed associated with Rossi and E-Cat.

21 Q. What information do you have to suggest that

22 Mr. Bass knew or -- knew that it was represented that

23 Johnson Matthey was, in fact, the company behind it?

24 A. I know that there are e-mails where Andrea is

25 telling Bass exactly what to say to us when we visit.

Page 293

1 Q. Okay. So Andrea was telling him what to say?

2 A. Yes. So -- and also Andrea was paying him,

3 right? And directing him. So, you know, to the extent

4 that he was a puppet of Andrea's, he was involved in the

5 scheme.

6 Q. But any of those representations that Andrea --

7 that you have seen indicate that Bass knew that Johnson

8 Matthey was representing to be, if that is the case, the

9 owner of JMC?

10 A. I don't know the extent of Bass's knowledge in

11 that regard.

12 Q. But the communications you are relating to, do

13 not have Johnson Matthey as the subject of it, do they?

14 A. Which communications?

15 Q. The communications that you are saying. You

16 are saying that Mr. Bass was told by Mr. -- that you have

17 seen e-mails or whatever, that back and forth?

18 A. Right.

19 Q. That Bass was looking to?

20 A. I don't recall seeing Johnson Matthey

21 explicitly referenced in the communication.

22 Q. So he may have represented to Bass, that,

23 Listen, I want you to talk about A and B or C and B, if,

24 you know, if there is steam, the steam is good. But you

25 never saw anything to say, And by the way, let him know or

Page 294

1 tell him that Johnson Matthey has anything to do with
2 this, correct? You didn't hear that from Bass?
3 MR. BELL: Objection to form.
4 THE WITNESS: We would have to review all of
5 it. I am just going by the few things that I have
6 seen, which did not mention Johnson Matthey, but did
7 tell him what to say to us.
8 MR. ARAN: Understood. Let me have just one
9 moment because I have been told that I have got
10 almost no time left.
11 THE WITNESS: What time is -- what is the time?
12 THE VIDEOGRAPHER: One minute.
13 MR. ARAN: Just go off.
14 THE VIDEOGRAPHER: Off the record. The time is
15 5:15 p.m.
16 (Thereupon, a recess was taken.)
17 THE VIDEOGRAPHER: We are back on the record.
18 The time is 5:18 p.m.
19 BY MR. ARAN:
20 Q. Mr. Vaughn, do you have any reason to believe
21 that Mr. Bass was not JMC's director of engineering?
22 A. Reason to believe that he was not? That is who
23 he represented to be.
24 Q. Is there any reason for you to believe he
25 wasn't?

Page 295

1 A. He was not? I don't have a specific reason
2 that comes to mind.
3 MR. ARAN: Okay. Thank you. Very much. No
4 further questions.
5 THE VIDEOGRAPHER: We are off the record. The
6 time is 5:18 p.m.
7 MR. ANNESSER: Mr. Vaughn, on behalf of IH, you
8 have the right to read or waive.
9 MR. BELL: We are going to read and sign.
10 (The deposition was concluded at 5:18 p.m.)
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Page 296

1 RE: ANDREA ROSSI, ET AL. v. THOMAS DARDEN, ET AL.
DEPO OF: JOHN THOMAS VAUGHN
2 TAKEN : February 13, 2017
3
4
5 EXCEPT FOR ANY CORRECTIONS
MADE ON THE ERRATA SHEET BY
6 ME, I CERTIFY THIS IS A TRUE
AND ACCURATE TRANSCRIPT.
FURTHER DEPONENT SAITH NOT.
7
8
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11 STATE OF FLORIDA)
) SS:
COUNTY OF)
12 MIAMI-DADE
13 Sworn and subscribed to before me this
 day of _____, 2017.
14 PERSONALLY KNOWN _____ OR I.D. _____
15
16
17 Notary Public in and for
the State of Florida at
18 Large.
19 My commission expires:
20
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Page 297

1 ERRATA SHEET
2 IN RE: ANDREA ROSSI, ET AL. v. THOMAS DARDEN, ET AL.
DEPO OF : JOHN THOMAS VAUGHN
3 TAKEN: February 13, 2017 Job No. FLA2506289
4 DO NOT WRITE ON TRANSCRIPT, ENTER ANY CHANGES HERE
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6 PAGE #| LINE #| CHANGE | REASON
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14 State of Florida)
County of)
15 Under penalties of perjury, I declare that I have read
16 by deposition transcript, and it is true and correct
17 subject to any changes in form or substance entered
18 here.
19 _____
Date JOHN THOMAS VAUGHN
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<p style="text-align: right;">Page 298</p> <p>1 CERTIFICATE OF OATH OF WITNESS</p> <p>2</p> <p>3</p> <p>4 STATE OF FLORIDA)</p> <p>5) SS:</p> <p>6 COUNTY OF MIAMI-DADE)</p> <p>7</p> <p>8 I, ELIZABETH CORDOBA, RMR, CRR, FPR, Notary</p> <p>9 Public in and for the State of Florida at Large, certify</p> <p>10 that the witness, JOHN THOMAS VAUGHN, personally appeared</p> <p>11 before me on February 13, 2017 and was duly sworn by me.</p> <p>12 WITNESS my hand and official seal this</p> <p>13 February 26, 2017.</p> <p>14</p> <p>15 <i>E Cordoba</i></p> <p>16 ELIZABETH CORDOBA, RMR, CRR, FPR</p> <p>17 Notary Public, State of Florida</p> <p>18 at Large</p> <p>19</p> <p>20 Notary #EE075383</p> <p>21 My commission expires: 3/17/2019</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 300</p> <p>1 VERITEXT FLORIDA REPORTING CO</p> <p>2 2 South Biscayne Blvd., Suite 2250</p> <p>3 Miami, Florida 33131</p> <p>4 (305) 371-1884</p> <p>5</p> <p>6 February 27, 2017</p> <p>7</p> <p>8 JOHN THOMAS VAUGHN</p> <p>9 c/o BERNARD P. BELL, ESQ</p> <p>10 MILLER FRIEL, PLLC</p> <p>11 1200 NEW HAMPSHIRE AVE, NW</p> <p>12 SUITE 800</p> <p>13 WASHINGTON DC 20036</p> <p>14 RE: ANDREA ROSSI, ET AL. v THOMAS DARDEN, ET AL</p> <p>15 DEPO OF: JOHN THOMAS VAUGHN</p> <p>16 TAKEN : February 13, 2017</p> <p>17 READ & SIGN BY: Within 30 Days</p> <p>18</p> <p>19 Dear JOHN THOMAS VAUGHN:</p> <p>20 This letter is to advise you that the transcript of the</p> <p>21 deposition listed above is completed and is awaiting</p> <p>22 reading and signing</p> <p>23 Please arrange to stop by our office in Suite 2250, 2</p> <p>24 South Biscayne Blvd., Miami, Florida to read and sign the</p> <p>25 transcript. Our office hours are from 8:00 a.m. to 4:00</p> <p>1 p.m. Monday through Friday. Depending on the length of</p> <p>2 the transcript, you should allow yourself sufficient</p> <p>3 time</p> <p>4</p> <p>5 If the reading and signing has not been completed prior</p> <p>6 to the referenced date, we shall conclude that you have</p> <p>7 waived the reading and signing of the deposition</p> <p>8 transcript. Your prompt attention to this matter is</p> <p>9 appreciated</p> <p>10</p> <p>11 Sincerely,</p> <p>12</p> <p>13 ELIZABETH CORDOBA, RMR, CRR, FPR</p> <p>14</p> <p>15 cc: All counsel on appearance page</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 299</p> <p>1 REPORTER'S DEPOSITION CERTIFICATE</p> <p>2</p> <p>3 I, ELIZABETH CORDOBA, RMR, CRR, FPR,</p> <p>4 certify that I was authorized to and did stenographically</p> <p>5 report the deposition of JOHN THOMAS VAUGHN, the witness</p> <p>6 herein on February 13, 2017; that a review of the</p> <p>7 transcript was requested; that the foregoing pages</p> <p>8 numbered from 1 to 301 inclusive is a true and complete</p> <p>9 record of my stenographic notes of the deposition by said</p> <p>10 witness; and that this computer-assisted transcript was</p> <p>11 prepared under my supervision.</p> <p>12 I further certify that I am not a relative,</p> <p>13 employee, attorney or counsel of any of the parties, nor</p> <p>14 am I a relative or employee of any of the parties'</p> <p>15 attorney or counsel connected with the action.</p> <p>16 DATED this February 26, 2017.</p> <p>17</p> <p>18</p> <p>19 <i>E Cordoba</i></p> <p>20 ELIZABETH CORDOBA, RMR, CRR,</p> <p>21 FPR</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 301</p> <p>1 VERITEXT FLORIDA REPORTING CO</p> <p>2 2 South Biscayne Blvd., Suite 2250</p> <p>3 Miami, Florida 33131</p> <p>4 (305) 371-1884</p> <p>5</p> <p>6 February 27, 2017</p> <p>7</p> <p>8 BRIAN CHAIKEN, ESQ</p> <p>9 PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P L</p> <p>10 283 CATALONIA AVENUE</p> <p>11 SUITE 200</p> <p>12 CORAL GABLES FL 33134</p> <p>13</p> <p>14 RE: ANDREA ROSSI, ET AL. v THOMAS DARDEN, ET AL</p> <p>15 DEPO OF: JOHN THOMAS VAUGHN</p> <p>16 TAKEN: February 13, 2017</p> <p>17 READ & SIGN BY: Within 30 Days</p> <p>18</p> <p>19 Dear Counsel:</p> <p>20</p> <p>21 The original transcript of the deposition listed above is</p> <p>22 enclosed for your file. The witness did not waive</p> <p>23 reading and signing and has been sent a letter notifying</p> <p>24 them to come in and read and sign their deposition</p> <p>25 transcript</p> <p>1 The witness will be provided a copy of their deposition</p> <p>2 transcript for reading in our office should they come in</p> <p>3 to review the transcript, and we will forward to you any</p> <p>4 corrections made by the witness at that time, along with</p> <p>5 an original signature page which should be attached to</p> <p>6 the original transcript which is in your possession</p> <p>7</p> <p>8</p> <p>9 Sincerely,</p> <p>10</p> <p>11 ELIZABETH CORDOBA, RMR, CRR, FPR</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>