

1 MR. PACE: Thank you, Your Honor.

2 OPENING STATEMENT ON BEHALF OF DEFENDANTS

3 MR. PACE: Ladies and gentlemen, I want to take some
4 time to talk about some of the most important aspects in this
5 case. I want to talk about some of the contract issues that
6 you've heard about. But what we really want to start on is
7 talking about some of those things that Counsel before me
8 simply glossed over, that he dismissed by making a reference to
9 some shenanigans.

10 This is a case about fake customers. This is a case
11 about fake data. This is a case about fake information. This
12 is a case about my clients being lied to in terms of the
13 technology that they were obtaining, in terms of the results
14 that they were supposed to be receiving. It is about my
15 clients investing in the technology, what the -- what my
16 Counsel has referenced so lightly was \$11 million -- over
17 \$11 million that they actually paid out on this technology in
18 the early belief that it was technology that was actually going
19 to work and actually have an impact in the real world, only
20 ultimately to be faced with having to deal with a fake
21 customer, a fake company, fake data, and ultimately fake
22 testing results that lead them to realize that no more money
23 was going to go into this investment. And, in fact, they were
24 entitled to get back the \$11 million that they had already paid
25 out.

1 I do want to address this in terms of a time line for
2 you, and I actually have a time line to present to you. But
3 before I get there, I want to start with this point that I was
4 just making for you, which is to say that there is a time -- my
5 clients had purchased certain technology. They wanted to see
6 it operate in their home base in North Carolina. That's where
7 they were. They wanted to see it work in their backyard. Show
8 me what this can do. Let me see how it operates. And that's
9 what the Plaintiffs, what Mr. Rossi, and his company Leonardo
10 didn't want to have that happen.

11 So -- if we could go to the June 20, 2014, e-mail,
12 Page 10.

13 So when my clients pressed to have this occur, this
14 testing occur in North Carolina, Dr. Rossi came up with an
15 alternative. He said -- he comes and says he has found a
16 solution -- this was in June of 2014 -- he's found a customer
17 that is going to use his technology in a real-world setting, a
18 chemical -- making chemicals and additives, chemical additives
19 and catalyzers. He says that this customer has a factory in
20 Florida.

21 Now, this all sounds very serious, very real, very
22 concrete. Got a real process that you are working on. He's
23 got a factory. And apparently we even have a gender because it
24 is at "his" factory in Florida. And then he makes clear that
25 the customer won't have any access to the technology, but the

1 workers will -- but he has workers, and the workers will be
2 told how to operate the system.

3 Now, none of what is being told to my clients during
4 this time period -- because we will see in a moment that this
5 is actually about a company called JM Products, and it's a
6 company here in June 2014 that had no facility at all. It had
7 no factory at all. It had no chemical additives process at
8 all, had no employees at all, certainly no one to be
9 instructed. And, subsequently, we would be told was actually
10 being run by Andrea Rossi. So as opposed to finding a
11 customer, is not what you say if you talk about yourself. You
12 don't find a customer, you -- if he, in fact, were the
13 customer. He is trying to give the impression purposely,
14 There's somebody in Florida. Let me take my technology away
15 from you in North Carolina. Let me take it down to Florida far
16 away from you, and then let me -- and then I am going to
17 pretend to run a test and pretend to operate it down there in
18 Florida or operate it in Florida. But in either event, I need
19 to get it away from you.

20 Now, who does he team with to do this? He teams with
21 one of the other parties here, Henry John son.

22 If we can go to my next exhibit. Is there 7?

23 And one of the ways that they sell this new company
24 on -- to my clients is they explain to my clients that it's a
25 company that's connected to a very important British company, a

1 very large publicly traded British company called Johnson
2 Matthey, that not surprisingly is involved in the chemical
3 business.

4 So they come and say, Well, this is an affiliate of
5 Johnson Matthey that you are going to be dealing with. That
6 furthers my clients' interest because they think that's a
7 well-known, reputable company. If you are going to be doing
8 something with them in Florida, maybe that's okay for us to
9 send our plant down.

10 And so the parties put together -- my clients put
11 together a document to reflect this. Okay. Here's what you
12 are telling me. We are going send our plant down to Florida,
13 and we are going to go to Florida to work for Johnson Matthey
14 which is the company they thought that they were going to get
15 involved with, they thought they were having activity with.

16 Then what comes along is the Plaintiffs say, oh, well,
17 we can't have the contract signed by Johnson Matthey because
18 they don't want to have themselves too publicly known to be
19 associated with this business, so we are going to use another
20 name. We are going to call it JM Products or, at that time, JM
21 Chemical Products.

22 My clients were certainly a little suspicious or
23 questionable about that activity, and so what they had is they
24 had Henry Johnson certify -- if I can go to my next document.
25 He said, okay, well, you know what, if you are going to tell us

1 that this name is something a little different, it's a
2 subsidiary. At least assure us or guarantee us that this
3 company we are going to contract with is owned by, it says here
4 as you can read, "an entity formed in the United Kingdom."
5 It's another way of saying an English company which, in fact,
6 is what Johnson Matthey was. And then once they had that, they
7 said, okay, we are convinced. You've got the connection. You
8 are not a sham company. They would find out later that they
9 were.

10 And then they, in fact, entered this document that
11 Counsel referred to, I believe as the "term sheet." That's the
12 correct reference to it. They finalized the term sheet for
13 sending their plant that they paid over \$1.5 million for, down
14 to Florida at the request of Andrea Rossi.

15 And then when we -- go to Exhibit 44. So they end up
16 signing a term sheet. But again, as we talked about, that term
17 sheet makes it very clear that there is a company in existence.
18 My clients were never told that there is no real company. We
19 don't even have a factory yet. They didn't even have a
20 location at the time that these documents were sold.

21 At the time that Henry Johnson and Andrea Rossi were
22 trying to convince my client to send their plant down to
23 Florida, they didn't have a warehouse even. Yet, they came in
24 making promises. No, we have got a factory down there in
25 Florida. We need this. We are ready to use your E-Cat

1 technology. And they lure this plant away from my client, away
2 from my client being able to watch it operate, and send it down
3 to Florida out of their, kind of, general supervision.

4 You have also heard they, then, move -- so what they
5 have done, then, is that they moved this plant -- the plant's a
6 container.

7 In fact -- can you do me a favor? Can you put up the
8 two pictures of the E-Cat just so people have an image.
9 Because I know it's so hard for me to talk about these things
10 and you don't get to actually see something. So let me take
11 this down, if I can, just for a second.

12 Okay. So we've -- we've talked about this E-Cat
13 plant. Can I just explain to everyone for a second what we are
14 talking about? You are looking here at the inside of, kind of,
15 a shipping container. An E-Cat plant is a number of -- is a
16 bunch of little devices, each of which put water into, it's
17 supposed to heat it up, turn that water into steam, and then
18 send the steam out.

19 So what you are seeing in your picture here is these
20 boxes made out of blue are a number of different E-Cat options.
21 There is actually about 115 of them in this one little
22 container. That's Dr. Rossi there in the middle of this
23 picture. So this is what an E-Cat plant, the inside of it,
24 looks like.

25 But if I can go to the warehouse photograph. So next,

1 this plant, that container, my clients agree allowed to be
2 shipped down to Florida. And, again, this kind of ruse
3 continues that it's down there in Florida because I have got a
4 real customer that I'm supposed to be working for, that we're
5 providing this steam energy to.

6 Again, the February 27th e-mail. I want to provide
7 you just one example. This is an e-mail you can see here from
8 Andrea Rossi to Tom Darden to J.T. Vaughn. And what we can see
9 here at the very beginning of the e-mail, itself, you can see
10 just a line down there where he says, "Today the director of JM
11 phoned me and said they are satisfied. Monday he will write
12 you a letter with a report of the energy they received from us
13 during the month of February."

14 Again, this is clearly -- this is not Andrea Rossi
15 saying I am just giving you my own information. He's saying,
16 Oh, I've got a real third party who is involved here, somebody
17 who is independent, somebody who is separate, and somebody that
18 I am actually, honestly dealing with. And my clients, of
19 course, are taking comfort and assurance in that, that there is
20 an independent party that's operating here, and, in fact,
21 Andrea Rossi isn't alone in this regard.

22 If I can put up just -- if you can put up just one of
23 the JM Products letters. Henry Johnson is sending letters to
24 my client on behalf of JM Products. And if we can highlight
25 this here for a second. Notice a reference, a connection to a

1 Johnson Matthew instead of Matthey. Clever. Johnson Matthew
2 platinum sponges. And this is Mr. Johnson on behalf of
3 JM Products telling my client how much energy that they've
4 received, how much steam power they have been getting from this
5 E-Cat plant.

6 Unbeknownst to us at the time, what the letter doesn't
7 say is -- and the evidence will show you, however, is that
8 Andrea Rossi actually wrote this letter and that all that Henry
9 Johnson did was sign it, that JM Products had no ability to
10 determine how much steam or energy they were being provided.
11 They simply put whatever Andrea Rossi said because he, in fact,
12 wrote the letter. And they don't tell you that JM Products had
13 absolutely no use for this massive amount of steam that was
14 supposedly being produced.

15 My clients went down and visited this plant on more
16 than one occasion. During that time, they actually met James
17 Bass. James Bass also presented himself as being involved with
18 JM Products and being able to independently provide assurances
19 to my clients that JM Products was a real company that was
20 receiving this steam power.

21 In fact, if we can put up an e-mail from -- between
22 Mr. Rossi -- Andrea Rossi and Mr. Bass from March of 2015.
23 And, in fact, if we can go to the first -- the lower e-mail for
24 just a second.

25 So this is Mr. Bass. He is writing to Andrea Rossi

1 before one of these meetings occurs when somebody is going to
2 come into the warehouse. And he is asking, How do you know how
3 much power is being delivered? Because he has no idea, but
4 he's got to handle a meeting. And so he's saying, I've got to
5 meet with somebody. If I need to tell them, I need to have
6 some idea of what's going on. Somebody tell me something.

7 So we can close that and go up to Andrea Rossi's
8 response. So he's asked, What should I be telling these
9 people? Andrea Rossi, The answer is simple. We need all of
10 this energy for our production. Obviously, we measure the
11 energy input. He knows they don't, but he wants this to be
12 communicated. You are not supposed to give more information.
13 You are sure -- you for sure are not supposed to tell them
14 anything about the plant of JM, that's JM Products, exactly as
15 you did with the IH persons, that's the Industrial Heat
16 persons. In other words, keep everybody -- make sure it is a
17 mystery to everybody. I am going to tell you what to do. You
18 go out and do it and keep the wool pulled over these people's
19 eyes.

20 Now, we're also talking about a test, and he's made
21 several references to a test that's being conducted in Florida.
22 And results of those tests -- remember them referencing an
23 individual named Fabio Penon? Well, let's talk about a few
24 aspects of that test, if we can, for a second because what
25 opposing Counsel said was that Defendants' position is that

1 this testing that supposedly occurred in Florida doesn't count
2 because it started too late under the parties' contract. And
3 that's true.

4 In fact, we will explain to you. I have a time line
5 that I want to talk to you about for a few minutes shortly.
6 But I also want you to understand that that is just a fraction
7 of the problems of what was going on down in this warehouse in
8 Florida and why the results of what were going on in Florida
9 are completely unreliable.

10 So I'll give you one example, if I can start with
11 Exhibit 54. What -- what was being claimed by Andrea Rossi, by
12 Leonardo Corporation, what was being claimed by Henry Johnson,
13 by James Bass, by JM Products, was that a massive amount of
14 water was being turned into steam on an everyday basis and
15 being provided as power over to JM products. This is the basis
16 for this test that you are supposed to be turning all of this
17 water into steam and providing it -- and pushing it out of the
18 E-Cat device, the E-Cat plant.

19 One of the things you are going to see and you are
20 going to hear from our witness's testimony, however, is --
21 actually, let me take a step back, if I can, because I want to
22 give you some perspective.

23 What they claim is every day -- I am probably about 15
24 feet away from you all -- a pool the size of 15 feet, of 20
25 feet, 4 feet deep, it's about 9,000 gallons of water. They

1 claim every day about that much water was going through this
2 E-Cat plant and being turned into steam. And in case you want
3 to know, when water is turned into steam, it expands 17,000 --
4 1700 times. So we are not talking a big pool of water. We are
5 1700 pools of steam being produced in this warehouse on a given
6 day, according to what they are claiming was happening.

7 Now, for those who, I'm sure, people are aware, but
8 just in case for those who are not, steam -- water turns into
9 steam right around 212 degrees Farenheit. You will see a lot
10 of references to Celsius in this case; it's 100 degrees
11 Celsius, extraordinarily hot.

12 If this warehouse was, in fact, producing 1700
13 swimming pools' worth of steam on an everyday basis, day in and
14 day out, it would have turned itself into an oven. The people
15 inside of the container would have been unable to survive, and
16 yet this is exactly what these individuals are claiming.

17 In fact, we have witnesses who have gone back and
18 looked at if as much steam was being produced, how hot would it
19 have gotten in there. And it would have gotten into the
20 hundreds and hundreds of degrees. It would have gotten to,
21 essentially, the boiling point of water.

22 You are also going to hear testimony, people who come
23 into this warehouse and were fine. In fact, they went into the
24 container, the E-Cat plant container while it was supposedly
25 running and were fine.

1 And, in fact, even Plaintiff -- even Dr. Rossi has
2 recognized that if, in fact, all of that heat was really being
3 generated, it really would be dangerous for somebody's health.
4 Now, he claims there's a way of -- that he developed; he
5 designed a way of getting some of this heat or a large part of
6 the heat out of that warehouse. But what you are going to hear
7 about that is, he'll explain this, kind of, elaborate system of
8 pipes and fans that we use to take that heat out of the
9 warehouse. You are going to see a lot of pictures of this
10 warehouse. You are not going to see one picture of those pipes
11 and that fan and any of that stuff operating. You are going to
12 hear about a lot of people who were inside that warehouse, none
13 of whom saw this.

14 You are going to see some third parties. Remember the
15 Judge instructed you, you should particularly give or consider
16 interests of the parties when providing testimony. All right?
17 So parties who are involved in the lawsuit, maybe they've got
18 an interest. But a third party has no interest. The third
19 party is going to come in and say there was no such device in
20 this warehouse. I would have seen it if it was in the
21 warehouse.

22 I've described for you yet another problem with this
23 results that we were being told, the things we were saying were
24 supposedly happening in Florida. And I will stick with my
25 swimming pool example, if I can, for just a second, because

1 that swimming pool, that 20 feet by 15 feet by 4 feet of water,
2 that massive amount of water, well, to turn it into steam, what
3 you have to do is actually get it into these E-Cat devices. It
4 doesn't magically go there. You have these little pumps.

5 Can I -- can you put up just for a second the image of
6 the -- the E-Cat image, and then I will get to the pumps for a
7 second.

8 So I showed you a minute ago what these devices looked
9 like. I don't know how well you can see this picture, but if
10 you can see, there's kind of -- there's four layers here. And
11 in front of each of those layers, you can count them, there are
12 six little devices. Those are called pumps. Those are water
13 pumps. These are the devices that are supposed to take the
14 water from a tank and bring it into these E-Cat devices so that
15 they can turn it into the steam, allegedly. That's what's
16 being claimed.

17 Can I get my close-up of the pumps.

18 The problem is, you just saw a picture of these, there
19 is only 24 of them connected to this one unit that was
20 producing, supposedly producing all the steam. We know the
21 maximum amount of water that those pumps can move in an hour.
22 You can multiply it by 24. You can multiply it by the total
23 number of pumps. What you come up with, what you recognize is
24 even if these pumps were working as hard as they possibly can
25 24/7, doing everything at their maximum capacity, they move

1 about half the water of that swimming pool. So there is no way
2 that they, in fact, as they claimed to us, We were turning a
3 swimming pool worth of water into 1700 swimming pools' worth of
4 steam every day, well, now we know couldn't have been doing it
5 on the steam side, you would have burned everybody out of
6 there. Couldn't have been doing it on the water side because
7 you couldn't have moved the water out of there with the pumps.

8 And, in fact, there is another element that goes in
9 here. In order to make this water into steam, allegedly, you
10 have to use some electricity. You have to put electricity into
11 these E-Cat devices. I am purposely not talking about the
12 details of the technology, but it is just another thing, you've
13 got to use electricity to help heat them up.

14 If we can go to that exhibit, the chart.

15 We've talked about the problem with the steam. We've
16 talked about the problem with the water. What else happens?
17 After this lawsuit is filed, we go get the electrical bills
18 from FPL. And lo and behold, we find a problem with the
19 electricity as well, that what -- the electricity that they are
20 claiming to use is not consistent with what the electricity
21 that FPL is telling us is actually -- was being used at this
22 warehouse. In fact, there's days when they claim that they
23 were using more power than FPL was even selling to them.

24 And so further evidence -- and, in fact, we were
25 getting this data -- the data that they are providing to us is

1 coming not only from Plaintiffs, it's coming from one of the
2 Defendants in this -- third-party Defendants in this case,
3 Fulvio Fabiani and his company U.S. Quantum Leap.

4 And, again, this is -- we are receiving the false
5 information while it is operating. Oh, here's how much
6 electricity we are using. We don't find this out until we
7 actually -- the lawsuit is filed, and we go to FPL and say,
8 Please give us your records. And then we look at the FPL
9 records and say, Well, wait a second. How can you some days be
10 using so much less power than FPL says and then other days
11 miraculously you are using even more power than FPL is
12 supposedly selling to you?

13 Let me -- I have beaten that up enough. I understand.
14 But you are going to hear a lot of evidence about this testing,
15 and you are going to understand, hopefully now, why from my
16 clients' standpoint, by this point in time, they have said that
17 test is not valid. We know it's not valid. We have shown you
18 repeatedly that it's not valid. You can't use that test to
19 claim that you are entitled to any money from us.

20 Now, I did promise you a while ago a time line. So I
21 want to actually show you a time line and take us all the way
22 back. And I do appreciate your patience.

23 So, now, if I can, let me -- I'm going to take you all
24 way back and see if I can kind of walk through some of these
25 events. I'm sorry. I actually didn't even take the time, did

1 I, to tell you a little bit about my clients, and I should
2 have. And I apologize. I was a little fired up when I got up
3 here this afternoon.

4 My client Tom Darden and his colleagues have been
5 successful entrepreneurs in a number of projects, often
6 involving environmental challenges. They have invested, for
7 example, a real estate company -- or real estate entities that
8 buy property that have been contaminated, and then they clean
9 it up, and then they turn around and they sell. They put it
10 back to more productive uses and hopefully possible uses.

11 They have been involved in projects to convert
12 businesses into using clean energy sources as opposed to things
13 like fossil fuels and focusing on those kind of assets and
14 those kind investments that others have shunned and others have
15 turned away from.

16 Now, in 2012, Tom Darden and some of his colleagues
17 developed an interest in a new area, but they're still
18 environmentally related. This was the possibility of
19 alternative energy sources, something that could be a
20 replacement for fossil fuels. And it's in connection with that
21 interest that he met Andrea Rossi in 2012 and what, then, led
22 to a very long series of negotiations and discussions that
23 ultimately led to them entering this license agreement that we
24 are all going to sit down and look here in just a couple
25 minutes. In fact, you can just even look from the time period.

1 They met over the summer. They don't even sign this agreement
2 until October of 2016.

3 There is also another party involved, and that's
4 important -- they are going to become important, and let me
5 explain to you why. This agreement that is entered is not just
6 with Industrial Heat and Andrea Rossi and his company Leonardo.
7 There is also a third company involved Ampenergo, called
8 Ampenergo. We will call it AEG because I keep mispronouncing
9 Ampenergo.

10 But -- and AEG is going to tell you, and they are
11 going to contradict the things that you just heard Counsel come
12 up here and say that was going on before this license agreement
13 was signed. They are actually aligned with Dr. Rossi. They
14 were a company that was formed to helped him market his
15 technology, to try to find somebody like an Industrial Heat to
16 sell his technology to. And their testimony is going to be
17 that they knew when all of this occurred that there was no
18 Cherokee -- my opposing Counsel has made reference to Cherokee
19 Funds or a Cherokee company that was being invested. They knew
20 that.

21 In fact, it was Tom Darden and some of his colleagues,
22 including John Mazzarino, who were going to create a new
23 company to invest in this new technology. It's a risky
24 endeavor, but they were going to pursue it. And not only did
25 they pursue it, you have already heard the evidence, this is

1 not like the JM Products that has no money, that has no
2 employees, that has no funds other than what Leonardo was
3 provided. What have you already heard here today? This
4 Industrial Heat that he wants to make fun of paid \$1.5 million
5 for the E-Cat plant.

6 They had \$10 million then paid after a validation test
7 that we will talk about because it was done inappropriately.
8 It was done to deceive us. But still this is not -- this is a
9 real business with real funds that were being developed and
10 being collected. They were being obtained by people like Tom
11 Darden, by people like J.T. Vaughn, by people like John
12 Mazzarino, who were working hard, not just at this effort but
13 in a lot of other efforts because they were committed to this
14 technology, to trying to find this new technology.

15 In fact, I am going to get -- I need to get back to my
16 time line, but I just feel like I have got to stop here for a
17 second because all I kept hearing was that this money, you
18 heard \$50 million, is that a number that any of you have heard
19 before? He must have said it 10 times. Let's be clear about
20 the money that we are talking about. We'll get to it in a
21 minute because it is well down my time line, but I want to stop
22 and talk about it.

23 None, not a penny of that money went into Tom Darden's
24 pocket. Not a penny of that money went into J.T. Vaughn's
25 pocket. All of that money that was being invested was being

1 put into new technologies, into other technologies. And, in
2 fact, why was it not being put into Dr. Rossi's technology?

3 Well, you've already figured out why. Because it
4 wasn't working. Because it didn't work, and they couldn't get
5 it to work, and so they were going to investigate in other
6 technologies, and they have invested in other technologies.

7 Now, Plaintiffs have made this statement for which
8 there will be zero proof that somehow my clients wanted to get
9 Dr. Rossi's technology, give it to others and then cut
10 Dr. Rossi out. They don't have a shred of evidence of that
11 because it never occurred. My clients never gave Dr. Rossi's
12 technology to anyone else. In, fact they maintained it as
13 confidential and as secret because they owned it.

14 We will talk about the license agreement in just a
15 minute, but they owned it. They got it transferred to them.
16 But they had no desire to share it with anyone else because
17 even though they believed in it initially, even though they did
18 believe it in 2012, they believed it in 2013, they believed in
19 2014, bless their heart, they were still believing it in 2015,
20 but at some point, they realized it is not really where the
21 investment is. It is not the opportunity. It has not proven
22 itself in the real world with real-world applications.

23 So let me turn -- I'm trying to be cognizant of my
24 time here. I have now mentioned a lot with this license
25 agreement, and I haven't even sat down and showed it to you.

1 My opposing Counsel, I don't think showed you very much of it,
2 so let's -- if we can take just a few minutes. Because in my
3 time line, there is a license agreement that has been entered.
4 It's very important. People put their promises in writing.
5 They signed their name to it. They are supposed to follow it.

6 If we could start with the license agreement. And
7 this is the agreement that everyone signed. You heard
8 Plaintiffs' version of what occurred. Let me tell you what, in
9 fact, occurred.

10 Andrea Rossi absolutely knew and had been told that
11 the company that was going to invest in his technology was a
12 new company that was going to be funded and financed by certain
13 individuals, that they were in the process of raising that
14 money, and that's what resulted in this company being formed
15 with Industrial Heat.

16 You are going to see Ampenergo. I told you about
17 them. They are the company that was helping Dr. Rossi market
18 his technology. They are a sophisticated company. They knew
19 absolutely what was going on. I don't believe you heard a
20 firearm next to Dr. Rossi's head, did you? Now, if somebody's
21 also so smart to invent this brilliant technology, if somebody
22 who's owned -- and he will testify to this -- multiple
23 companies, he has been running multiple companies for a large
24 period of time, he is not going to be fooled if somebody
25 surprises him at the last second and says, you know what, I

1 know you thought you were signing a contract with IBM, but you
2 are signing a contract with MBI. Oh, I don't know better, I'm
3 signing it. No. He knew exactly what was going on because the
4 parties had talked about it. He knew exactly the company that
5 was investing in him.

6 What else can I tell you? Mr. Chaiken made a number
7 of references to something called Cherokee. This is a long
8 document. You're going to get a chance to see it. You're
9 going to get a chance to read it all if you want to read it
10 all. What you are not going to find in there is a reference to
11 Cherokee.

12 If that was so important to Dr. Rossi and to Leonardo
13 and to anyone else, it would have been pretty easy to write it
14 in. It's not in there. Never talked about Cherokee
15 guaranteeing any money. Never talking about Cherokee owning or
16 somehow controlling Industrial Heat. It simply doesn't exist.

17 Now, in fact, one of the things that does exist in
18 this agreement -- can we go to 16.8 -- is the provision they
19 put in that says, Hey, everything that matters between us,
20 we've put here in writing. Let's -- I want you to see the
21 actual language because I'm summarizing it.

22 Really what it says here is these things that are in
23 writing, such as this license agreement, contains the entire
24 agreement among the parties. It is everything. There is
25 nothing magical out there somewhere. And then it says that it

1 supersedes, that really means replaces, that means gets rid of,
2 all prior agreements, written or oral. This is the thing you
3 put in an agreement when everyone agrees our deal is put in
4 writing and reflected here. This is what our deal is. I am
5 signing it, and I'm signing it on to this kind of provision.

6 So let me turn everything over to the blank screen for
7 a second. Let me just turn to the license agreement and talk
8 just a little bit more about what my client thought they were
9 getting into.

10 According to -- I'm sorry. I started to get away from
11 the microphone. I can't do that. According to Dr. Rossi, his
12 technology was able to have -- it was not just something that
13 could work in the laboratory, it is something that could work
14 in the real world that you could actually take it and use it to
15 produce something real. That was an important part to my
16 client looking at this endeavor.

17 So what my client -- so the way that this deal was set
18 up -- if I can have 3.2A -- we've talked about this already a
19 little bit. There was a first payment, \$1.5 million. That was
20 for the E-Cat. That was for the plant. That picture you saw
21 earlier with all those funny little boxes. That was
22 \$1.5 million was paid upfront and was paid, no dispute, you
23 heard it. They, then, owned this E-Cat plant, this container.

24 Next, after that, the license agreement provided for a
25 \$10-million payment. But to get that \$10-million payment,

1 Leonardo, Andrea Rossi's company had to do at least two things.
2 One, they had to pass a validation case, which we are going to
3 talk about in a second. And, two, they had to transfer, they
4 had to give all of their intellectual property, all of their
5 technology to Industrial Heat with the idea that, give us
6 everything and then we will be able to use it. We will be able
7 to put it into place. We will be able to do something with it.

8 Those are two very large payments. But the way that
9 the license agreement was set up, it was set up that there was
10 also an additional payment that could be achieved.

11 If you put Section 5.

12 I told you this was supposed to have real-world
13 application. So you pay \$1.5 million, that's lot of money,
14 \$1.5 million, you get the actual device, the plant, this E-Cat
15 plant. You pay 10 million more dollars, you get all of the
16 technology, everything. Everything that's known, the way that
17 the license agreement works.

18 Why would there be any more payment? Well, there is
19 an additional payment if you can show -- if Dr. Rossi and his
20 company could show that this thing could have, essentially, a
21 real-world impact. It is not just something that works in a
22 lab somewhere. Take that plant, that big old plant and run it
23 consecutively -- you know, run it for 350 out of 400 days and
24 achieve certain results out of it. This plant is supposed to
25 do be able to produce a massive amount of energy. Run the

1 entire plant for 350 out of 400 days. That's going to tell --
2 that's something that's commercially sellable.

3 If you can show in a lab that you can do something,
4 that's fine. If you want to make an impact on the world or on
5 the environment, you actually better be able to do something
6 other than that. You have to show you can do something in the
7 real world. And that's what this additional payment was pegged
8 to.

9 Now, I should say, while you have this on the screen,
10 you will note that I said 350 within a 400-day period. I
11 should have made the point here as well where it says
12 commencing on the date immediately following delivery of the
13 plant to the company. You heard Mr. Chaiken tell you that
14 happened in August of 2013.

15 I'm not saying that he is not exactly right. One of
16 our arguments, one of our positions is that they didn't do the
17 test on time. I told you a lot of reasons why what they did in
18 Florida was a -- you know, was an unreliable, was a sham. But
19 you don't even have to get that far because the fact of the
20 matter is there was a time period when this was supposed to be
21 done, and it wasn't.

22 I want to talk to you --

23 THE COURT: Five minutes.

24 MR. PACE: Thank you, Your Honor.

25 So if I can turn just for a second -- well, I'm sorry.

1 Let me change my focus here. I wasn't aware of my time limit.

2 The evidence is going to show, first, that the parties
3 entered this license agreement. Second, that on two different
4 occasions the parties deviated from this written license
5 agreement. And what they did on each occasion is they wrote up
6 the deviation. They wrote down here's how things are
7 different. And they had all the parties sign it. That's the
8 way that it works when you have a contract. If you're not
9 going to follow the contract, you agree, and then you put
10 something in writing that says here's how we changed the
11 contract. That's never -- they have no evidence, there is no
12 evidence that that occurred.

13 Same thing when we are talking here about the testing
14 results. What you heard is certain descriptions that were
15 being made by my clients, one, when they weren't provided all
16 the information, and, two, during time periods before certain
17 things occurred.

18 No doubt, in 2013, in 2014, they were trying to be
19 optimistic. They were trying -- they understood that we are
20 not here to say anything to the contrary. They understood it
21 was a risky endeavor. They understood that there was a
22 possibility that they could be investing in a technology that
23 wouldn't work.

24 What they didn't sign up for was that someone was
25 going to be deceiving them. They didn't sign up for a fake

1 customer called JM Products to be formed. They didn't sign up
2 to get fake testing data from Fabio -- Fulvio Fabiani, out
3 of -- fake measurement data out of Henry Johnson, fake
4 information during plant visits from James Bass. They didn't
5 sign up for testing results that are simply impossible given
6 just the general realities of the operation of that plant.
7 None of that is what they signed up for. None of that
8 obligated them to pay \$89 million.

9 In fact, what the testimony is going to show you here
10 is, not only were they tricked into shipping this plant down to
11 Florida, not only where they deceived into the operations of
12 the plant in Florida, but, in fact, going all the way back to
13 Italy to that initial test period when they paid out the
14 \$10 million. You are going to find out that, again, Andrea
15 Rossi controlling the situation, made false statements to my
16 clients about limitations that were placed on him by an Italian
17 health official that, in fact, weren't true.

18 At the end of the day, ladies and gentlemen, my
19 clients don't owe anybody \$89 million. What the verdict we'll
20 be asking you is that my clients should be paid back all of the
21 money that they paid, well over \$11 million; money paid to
22 Leonardo Corporation, money paid to USQL and Fulvio Fabiani and
23 money paid to a number of other individuals.

24 Thank you, Your Honor.

25 THE COURT: Thank you.

1 Ladies and gentlemen, I know you have been here since
2 early this morning. We will adjourn now for the day.

3 Some of you have written us some notes. The lawyers
4 and I will discuss those notes. I ask that you all return
5 tomorrow morning at 10:00. Please be gathered in the jury room
6 at 10:00.

7 Furthermore, one of your members needs to be
8 fingerprinted tomorrow, so we will stop at 2:00 p.m. to allow
9 you to get to that on time. So your schedule tomorrow is from
10 10:00 to 2:00.

11 Please remember my instructions not to discuss this
12 case with anyone, not to do any reading or research about it,
13 and avoid contact with the parties and the lawyers.

14 We'll see you tomorrow at 10:00. Have a good evening.

15 COURT SECURITY OFFICER: All rise.

16 (The jury exited the courtroom at 4:46 p.m.)

17 THE COURT: A few housekeeping matters. First of all,
18 as I said earlier, the third-party Defendants will present
19 their opening statements tomorrow first thing. You heard me
20 indicate our schedule for tomorrow. It's because one of the
21 jurors has to go be fingerprinted, and he said if he left by
22 2:00, that would be possible.

23 I am going to -- my courtroom deputy will be giving
24 you a revised trial schedule adding additional hours to the
25 schedule as I had gone over with you to make up for the court

1 closure on Monday, July 3rd, so we don't lose time. You will
2 be receiving that, in all likelihood, tomorrow morning.

3 You have seen these juror notes. You all let me know
4 tomorrow what you would like to do as to these two jurors. The
5 one is Etienne, Juror No. 2, and the other one is Chacon, who
6 realized he had a vacation July 13th.

7 I'll see everyone tomorrow morning.

8 MR. PACE: Your Honor, can we raise one thing? The
9 Plaintiffs have subpoenaed Tom Darden.

10 THE COURT: I'm sorry. I can't address it now. If
11 you like, we can address it first thing in the morning.

12 MR. PACE: Oh, yes, if we could do it in the morning,
13 that would be --

14 THE COURT: Stephanie and I are here starting with
15 hearings at 8:15.

16 MR. PACE: All right. Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. LUKACS: Your Honor, can we see the notes?

19 THE COURT: Certainly.

20 MR. LUKACS: Thank you. May we approach?

21 THE COURT: Certainly.

22 (The proceedings adjourned at 4:49 p.m.)
23
24
25