

1 THE COURT: I wasn't extending the time.

2 MR. LUKACS: Okay.

3 THE COURT: I mean, that doesn't mean that we don't  
4 have trial the other days. Those are just days where I'm not  
5 going to go to the ten-to-four schedule. Let's go later and  
6 start earlier to try to recover some of the lost time. I had  
7 done that when we lost Monday due to the Court closure. Now we  
8 lost more time.

9 MR. LUKACS: Okay.

10 (The jury entered the courtroom at 3:02 p.m.)

11 THE COURT: It's all right.

12 Everyone, please be seated.

13 OPENING STATEMENT ON BEHALF OF DEFENDANTS

14 MR. PACE: Thank you, Your Honor.

15 And good afternoon, everyone.

16 This is a case about written promises, and it's about  
17 blatant lies. It's about fake-testing results. It's about  
18 fake invoices. It's about a fake customer. It's about high  
19 hopes that my clients had for technology and how those hopes  
20 were destroyed when it turned out in the real world the  
21 technology didn't work.

22 Now, you heard Mr. Chaiken discuss with you that my  
23 clients should be paying \$89 million for something that  
24 occurred in Florida, for a testing that occurred in Florida.  
25 But you know what? He didn't tell you anything about that

1 test, did he? Let me tell you about this supposed test.

2 I want to put up on the screen right now two images,  
3 if we can, that you are going to see of -- of this plant.  
4 These are the devices that were in Florida. If I can zoom in,  
5 in fact, just on the upper corner, when we talk about a E-Cat,  
6 I want this to help everyone, that's what we're talking about.  
7 It's a little box. It's a box, water goes into the box, the  
8 box is supposed to turn that water into steam.

9 Now, there were 115 of these magic boxes that were in  
10 a container down in Florida, and that Plaintiffs are claiming  
11 for what was -- what occurred with those boxes for a one-year  
12 period in Florida entitles them to \$89 million.

13 Now, let me explain what was supposed to be happening  
14 with these boxes in Florida. According to what the Plaintiffs  
15 were claiming, or did claim, these boxes were producing every  
16 day enough steam to fill up this courtroom hundreds of times.  
17 Not once. Not twice. Hundreds of times every day, day in and  
18 day out.

19 Steam, as you know, 212 degrees Fahrenheit, roughly,  
20 when it start -- water starts to boil, that's when it starts to  
21 turn into steam. This -- this container -- these pictures that  
22 I'm showing you here, right here, this would have been an oven.  
23 It would have been turning it, they would have been running out  
24 steam 212 agrees, constantly, all day long.

25 And yet look at this picture I want to show you that

1 we obtained during the course of this discovery.

2 Here's Dr. Rossi. He's not only close to these E-Cat  
3 boxes that are supposed to be pumping out courtrooms full of  
4 steam at 212 degrees Fahrenheit, he's touching them. I'm not  
5 sure if you can see them there, but he actually has a  
6 stethoscope. He's putting a stethoscope up to them, and he's  
7 trying to listen to these little E-cat boxes. And, yeah, he's  
8 wearing a jacket. Supposedly next to device that's producing  
9 hundreds of courtrooms worth of super hot steam, this man is  
10 wearing a jacket and using a stethoscope to try to listen to  
11 the devices. This is what they're claiming should be -- earn  
12 them \$89 million.

13 Still there's more. I showed you a picture. If I can  
14 show you here again, this is the -- sort of these E-Cat boxes,  
15 they were set up all in the container. There's 115 of them.  
16 That's what he was supposed to be working on down in Florida  
17 with these magic boxes.

18 Now, in that first picture there, none of those  
19 worked. They didn't work. They were never operative. There  
20 was 51 of them that didn't work at all the entire time period.  
21 You're supposed to run 115. 51 never worked. Out of the  
22 remaining 64, some worked sometimes, some worked other times.  
23 In fact, when an engineer from Industrial Heat finally got  
24 inside this warehouse and finally got inside the E-Cat plant to  
25 look at it, this is what he was finding, in terms of some of

1 these separate reactors, some of these separate E-Cat boxes.  
2 They clearly weren't being used.

3 He found corrosion, he found capped water lines, he  
4 found clear evidence that they had never used some of these  
5 things during the entire one-year time period. Again, this is  
6 what Plaintiffs claim earned them \$89 million.

7 I want to tell you a little bit more about those magic  
8 boxes and what Plaintiffs claim occurred in Florida. The  
9 amount of water that Plaintiffs say that they were turning into  
10 steam every day is the size of a large swimming pool, about  
11 9,000 gallons of water. Every day they were able to turn 9,000  
12 gallons of water into steam. And steam expands greatly, and so  
13 that turns out to be -- one swimming pool would be well over a  
14 thousand swimming pools worth of steam.

15 But what did some -- what did our people discover when  
16 they went down and looked at the operations in Florida and  
17 discovered what was going on? If I could show you here, there  
18 are -- in order for these magic boxes to work, the water has to  
19 get into them, so you have to have little pumps. You have to  
20 have pumps to bring the water into them. The grand total of  
21 the pumps that were working -- these are -- this is a picture  
22 of six of them. There was three sets more like this, so it's  
23 24 of these pumps. These 24 pumps together, working 24 hours a  
24 day, working as hard as they possibly can at their maximum can  
25 move about half a swimming pool a day, so less than 5,000

1 gallons. So if you're claiming to us that you're turning 9,000  
2 gallons of water into steam, but it's impossible for you to get  
3 9,000 gallons of water into your magic boxes, that can't be  
4 true, that can't be credible, and that doesn't earn you  
5 \$89 million.

6 I can give you several more examples, but I'm going to  
7 just limit myself to -- really just to one more. So the magic  
8 boxes, the E-Cat boxes in Florida, they required electricity to  
9 work, so the -- there's a tube in the inside of the box.  
10 Electricity goes into the tube, the tube is supposed to heat up  
11 and turn all the water around it into steam. That's basically  
12 how the E-Cat device is supposed to work.

13 So what happened is there were folks in Florida who  
14 were telling us, including Fulvio Fabiani, who's not here  
15 today, but he'll be here during this trial, was reporting to  
16 us, Here's how much electricity these guys are using down in  
17 Florida. Here's information you need to know about how the  
18 plant is operating.

19 Once the lawsuit got filed, we went to Florida Power &  
20 Light, went to FPL and said, Hey, give us the power records for  
21 this warehouse in Florida where these tests were occurring.  
22 Because we know the information we were being told by  
23 Plaintiffs, we know the information we were being told by  
24 Fulvio Fabiani, let's compare it. You would think that they  
25 would have some similarity. This is the comparison.

1           And, in fact, there were days in here when Plaintiffs  
2 and Fulvio Fabiani are claiming that they were using more  
3 energy than FPL was even selling them. In any event, their  
4 numbers were completely out of whack with what FPL was  
5 reporting, you know, was reporting was being provided.

6           So we're going to get to the question now, I think,  
7 of, well, why were these boxes in Florida then? Why did you  
8 let -- you heard from the Plaintiffs, we agree, my clients  
9 owned these E-Cat boxes. They did. They were -- they -- they  
10 paid the \$1.5 million. They then paid an additional \$10  
11 million. So they paid a lot of money; they were theirs. Why  
12 in the world would they let them go to Florida? Fair question.

13           After my clients invested over \$11 million in  
14 Plaintiffs, provided over \$11 million to Leonardo Corporation,  
15 they wanted to see if these devices could work in a real world  
16 setting, in a context with a real business. They offered some  
17 of these solutions in North Carolina to Andrea Rossi, and the  
18 evidence is going to show you that he got -- that he regularly  
19 rejected them. But even Andrea Rossi would say to my clients,  
20 a phrase he used is, The marketplace is truth.

21           That means if you really want to show the value of  
22 this technology that I've supposedly created, you need to get a  
23 real business to use it. That's what -- that's what's going to  
24 convince people that this is useful technology. It's not just  
25 something you can do in a lab, it's not just something that can

1 be done, you know, off in a -- you know, in a very careful  
2 setting. It can actually work in the real world.

3 Now, Plaintiffs would not agree to do -- to any of the  
4 options that were provided to them in North Carolina, which is  
5 where my clients are based; there's where they wanted to keep  
6 the technology. So then he came along -- but then they came  
7 along at one point with an idea, with a solution. They said,  
8 Well, I found the customer, you know, this whole idea of doing  
9 something in the real world, the marketplace is truth, he comes  
10 back and says that he's found a customer that can actually use  
11 this E-Cat technology. I've got an e-mail from you here. This  
12 is June of 2014. This is Andrea Rossi writing to my clients,  
13 he's writing to -- you see the Thomas Darden, you see  
14 J.T. Vaughn. He tells us, Leonardo Corporation has found the  
15 solution. A customer has been found.

16 That's not I'm a customer, or I'm going to open a  
17 company or anything like that. He's saying, We found -- we  
18 found the customer to use the M1 plant to use the E-Cat boxes,  
19 to use the E-Cat boxes and his chemical additives and -- and  
20 catalyzers.

21 What you really need to take from this is somebody has  
22 a business. There's a real business that has a real use for  
23 this technology, exactly what Industrial Heat wanted, exactly  
24 what IPH wanted, exactly what my clients wanted. This customer  
25 even has a factory, a factory that exists down in Florida. Let

1 me move the plant, let me take these E-cat boxes that you paid  
2 for, Industrial Heat, that are yours, let me take them down to  
3 Florida because I have a real customer who's going to make real  
4 a real use of this.

5 In fact, it got even more attractive for my clients  
6 because what Andrea Rossi told my clients is that this company  
7 that's going to operate in Florida is an affiliate of a larger  
8 company called Johnson Matthey. Now, a lot of us haven't heard  
9 much about Johnson Matthey. It's a large chemical company in  
10 the United Kingdom, in England. It's got over 10,000  
11 employees. It's got offices all over the world. My client was  
12 so convinced of this that my client even prepared a document, a  
13 contract to enter with Johnson Matthey saying, Okay, that's --  
14 that's great, this is -- remember we talked, a real customer,  
15 proving something works in the real world. Well, if you can --  
16 if you can provide a benefit or service to one of these  
17 multinational companies with over 10,000 employees, that's  
18 pretty good. That's a real customer.

19 It went even further, and Plaintiffs talked about --  
20 had a meeting in North Carolina. And in this meeting,  
21 North Carolina, they brought Mr. Johnson, and he came up and  
22 talked about this new company, this subsidiary called -- it was  
23 going to be called JM Products, at the time JM Chemical  
24 Products. The name got changed over time. And they talked  
25 about this company, this subsidiary, and how it was connected



1 to Johnson Matthey; in fact, how it was owned by Johnson  
2 Matthey. Indeed, Henry Johnson even signed a document. They  
3 had him sign a piece of paper.

4 Give me just one second. He -- he swore to my clients  
5 that this company of his, this small company, was owned by an  
6 entity formed in the United Kingdom. There will be no  
7 evidence -- the evidence will be unquestioned that that's a  
8 lie. No doubt about it, no dispute about it. They can't deny  
9 it. In fact, this company, JM Chemical Products, now the  
10 Defendant in this case, or the third-party Defendants in this  
11 case, JM Products, it's owned by a trust. It's owned by a  
12 trust that was set up in the United States. It's owned by a  
13 trust that was set up by Henry Johnson. He knew exactly who  
14 owned JM Products. He knew it wasn't owned in the United  
15 Kingdom, but he knew he was pulling the wool over my -- the  
16 eyes of my client by trying to get him to think that it was  
17 associated with a real customer.

18 The parties eventually do sign this agreement. They  
19 signed this contract that says, We're going to let these E-Cat  
20 boxes go down to Florida, and we're going to let Andrea Rossi  
21 use them in Florida to provide benefits to this real customer,  
22 JM Products. And, in fact, you'll notice here, it's very  
23 clear, this document that's signed in August of 2013 -- of  
24 2014, it says that this JM Products operates a production  
25 facility in Miami. So they've got a real business going down

1 there. They're representing we've got a real business. And we  
2 require low temperature steam. We need what Leonardo  
3 Corporation is selling.

4 Well, it turns out, that my clients discover later on,  
5 is that JM Products was a company set up by Henry Johnson at  
6 Andrea Rossi's direction. It had no products, it had no  
7 employees, it had no assets. It was under the complete control  
8 of Andrea Rossi. In fact, it had no supposed manufacturing  
9 facility in Florida. Indeed, days after my client signed this  
10 term sheet, what happened, Andrea Rossi had to go out and find  
11 a warehouse. He didn't have one. So he said, well, they fell  
12 for it, you know, they've agreed to sign up for us. We're  
13 supposed to have a production facility. Maybe we should run  
14 out and grab one.

15 It's not even JM Products does it. He gets it from  
16 Leonardo and then says, JM Products, I'll give you half of  
17 them. This is what's -- this is the nature of the  
18 relationship. This is pulling the wool over my clients' eyes.

19 My clients agree, as a result, to allow their -- these  
20 E-Cat boxes to go down to Florida. And the deception continues  
21 even after everyone gets to Florida.

22 If I can go to the February 2015 e-mail.

23 This is an e-mail from Andrea Rossi that he's sending  
24 to my clients, Thomas Darden, J.T. Vaughn, several others, and  
25 you can see here this is -- this is right after they're

1 supposedly starting their task. And what -- what does he tell  
2 my clients? Today the director of JM phoned me and said they  
3 are satisfied. Monday he will write you a letter about the  
4 energy they're receiving.

5 So he's making it sound like there's some independent  
6 party that he's dealing with. Oh, I -- I actually phoned this  
7 guy. During his deposition, what he's testified to is we're  
8 not quite sure who the director of JM Products is, but he says  
9 that he ran the entire facility in Doral. So unless he was  
10 calling himself, I'm not sure how this phone call occurred.

11 But it makes a reference to a letter in there, right?  
12 It says that you're going to start getting something from this  
13 JM Products company. They're going to start sending you  
14 letters telling you about essentially how great it is, the  
15 power that they're getting.

16 And sure enough, my clients start to get letters.  
17 They start to get letters from Henry Johnson on behalf of this  
18 separate company that's saying, Here's the power that we're  
19 getting from the Leonardo Corporation, and that, you know, on a  
20 monthly basis, for example.

21 What my clients don't know is Andrea Rossi wrote this  
22 letter. In fact, they kept a copy of the letter that he wrote.  
23 He would write the letter, he would then send it over to  
24 Henry Johnson to have it filled out, and then have  
25 Henry Johnson sign his name to it. Henry Johnson had no idea

1 how much power JM Products used. In fact, it had no use for  
2 any of the steam that was going over there. He simply did  
3 whatever Andrea Rossi told him to do. Andrea Rossi would say,  
4 Just tell them this much, and he'd turn around, and he'd go  
5 ahead, and that's what he'd tell my clients.

6 And then it doesn't end there because then they also  
7 enlisted one of the other parties you've seen in the courtroom,  
8 James Bass. He was presented to Industrial Heat and to others  
9 as the director of engineering for this company, this separate  
10 independent customer called JM Products. He's supposed to be  
11 the director of engineering. Now, as a director of  
12 engineering, you would assume, as my clients assumed, that he  
13 would know something about what was going on at JM Products,  
14 maybe how they were using this power that they were receiving.

15 Here's an e-mail from James Bass asking Andrea Rossi,  
16 What do I say? How do you measure the output? He has no idea  
17 what JM Products is doing because it's not a real company. And  
18 what does Andrea Rossi tell him? It's simple, we need -- I  
19 won't get into the technical, but one megawatt hour per hour,  
20 that's what that little reference to. It's -- it's amount of  
21 power that could power an entire residential subdivision. It's  
22 massive. But -- but still, he says, Tell them -- he's putting  
23 it in quotes, When you talk to somebody, tell them we need  
24 this -- all this power for our production.

25 There is no production. There's nothing they're

1 making at JM Products.

2 Says, Obviously, we measured the energy input. You  
3 know, he says -- you know, Mr. Bass, lie, tell them we're  
4 measuring the energy you're getting even though everyone knows  
5 that you're not. Mr. Bass has admitted that they're not.  
6 Mr. Rossi, Andrea Rossi has admitted that they're not. You are  
7 not supposed to give more information. You are sure -- you for  
8 sure are not supposed to show them anything about the plant of  
9 JM, of JM Products. Exactly as you did with the IH, that's  
10 short for Industrial Heat, persons.

11 They kept my clients in the dark purposely. They  
12 would not let my clients see anything about what was going on  
13 at JM Products.

14 So when Industrial Heat was told that there was a real  
15 customer that was using this steam in Florida, and that --  
16 this, ladies and gentlemen, is the amazing production process,  
17 after we finally had a chance to get discovery and someone had  
18 finally had a chance to take a picture inside of this  
19 JM Products facility. It's pipes. That's not a massive  
20 production facility. That's not something that needs the  
21 amount of energy they could -- they could support an entire  
22 residential subdivision.

23 Now, what the Plaintiffs also didn't tell you is that  
24 those pipes you just saw, they're in a container. They're in a  
25 box in this warehouse in Florida. I don't know if you can see

1 it too well here, but there's a little black box on that image,  
2 that's where -- that's where those pipes are. That's the  
3 entire JM Products production facility. But you see the fake  
4 wall in front of it? That was put up to keep my clients out.  
5 My clients were never allowed on the other side of that wall.  
6 They were strictly told, You can't go there because JM Products  
7 is engaged in this secretive manufacturing process. You've now  
8 seen what that secretive manufacturing process is, ladies and  
9 gentlemen. It's the series of pipes in a container box that  
10 are doing nothing.

11 And also, do you remember when Mr. Chaiken was up  
12 here, and he talked to you about Andrea Rossi got approval, got  
13 Government approval to have his operations in Florida? I want  
14 you to take a look at what this Government approval is. It's a  
15 fire certificate. Not only is it just a fire certificate, but  
16 look what it tells you about JM Products. Does it tell you  
17 JM Products changing the world? Does it tell you JM Products  
18 using massive amounts of electricity? Does it say JM Products,  
19 you know, handling chemicals?

20 The word's "occupancy." They just had a couple of big  
21 containers in a giant warehouse in Florida. It was easy for  
22 them to convince the fire department folks. At the very least,  
23 this is by no means some special Florida regulatory approval  
24 for anything. There was no approval that was required.

25 So I've explained -- and I have to keep an eye on the

1 time. You've been very patient with me.

2 I've explained the test that was done in Florida for  
3 which they say my clients should pay them \$89 million, and  
4 we've seen that that was a sham. That was a fake customer.  
5 Turns out after this lawsuit gets filed, my clients go back and  
6 start looking at some of the other things that happened when  
7 they start realizing what's going on, and turns out that's not  
8 the only lies that have been told to my client.

9 You heard and you saw on your time line, you saw  
10 Mr. Chaiken talk to you about a -- I think the reference, if  
11 you recall, is to a validation test. So it was a short test,  
12 it was 24 hours. It was done in Italy, not -- not too long  
13 after the license agreement was signed. Under that license  
14 agreement, the Plaintiffs were required to do -- were required  
15 to do this test of that whole -- if you remember that image I  
16 showed you, they were supposed to do a test of a hundred --  
17 over a hundred of these E-Cat boxes in Florida. This was -- it  
18 was supposed to show us that it would work for a 24-hour  
19 period. But days before that test began, Andrea Rossi came to  
20 my clients, and here is another story.

21 He says he met with health officials in Italy. They  
22 told him there's a problem with going forward running this  
23 test. But he says they found -- they worked together and found  
24 an acceptable solution. At the end, he says, I'll activate  
25 only half of the reactors -- that's the -- that's his phrase

1 for the E-Cat, the magic boxes. So now instead of testing over  
2 a hundred E-Cat reactors, he tells my clients, You can't do  
3 that. We can only test at most 30 of these reactors.

4 Turns out this is not true. This is not what  
5 happened, but my clients weren't told all the information. My  
6 clients weren't told -- this is what my clients were told, this  
7 is what my clients relied upon.

8 Now, I should tell you 'cause this is actually  
9 important as well. When Dr. Rossi said this, what did my --  
10 what my clients did say, Well, wait a second, that's not what's  
11 in the license agreement. We're willing to accept it because  
12 they believed him. But what did they do? They wrote it down.  
13 They wrote -- it's called -- they wrote an amendment to the  
14 license agreement. That's what you do. If you've got a  
15 written agreement with written promises that you agree you're  
16 going to follow, then if you're not going to follow them, you  
17 put it in writing, and you have it signed by all the parties.  
18 That's called an amendment to an agreement, an amendment to a  
19 license agreement. That's exactly what they did here. They  
20 wrote down the changes, and then everybody signed it. Andrea  
21 Rossi signed it, Tom Darden signed it, that third company that  
22 you heard Mr. Chaiken refer to called AmpEnergo -- I'm going to  
23 call them AEG because I butcher the name AmpEnergo.

24 After that, however, Andrea Rossi changed the goal --  
25 or the goalpost again, and rather than even testing 30 boxes,



1 he decided that the test would only be limited to 18 boxes.

2 So my clients originally agreeing to test over a  
3 hundred of these E-Cat boxes and see that all hundred-some-odd  
4 of them were working and all going great, turned out they only  
5 ended up testing at the end of the day 18.

6 Now, remember what I told you about Florida, how all  
7 those E-cat boxes that were down there, there was 115 sent  
8 there, most of them never worked. That's what made my clients  
9 start realizing maybe most of those didn't even work back in  
10 Italy. But we got suckered into allowing only 18 of them to be  
11 tested when there was a hundred of them that were supposed to  
12 be used.

13 Mr. Chaiken spoke to you about the license agreement  
14 for some time. I don't think he showed you very much of the  
15 license agreement. I want to be able to talk to you a little  
16 bit about that.

17 I want to start with one thing because Mr. Chaiken was  
18 talking to you about Cherokee. Remember, he was kind of -- and  
19 never really defining it for you, but he was saying Cherokee  
20 was going to go this, and Cherokee was going to do that.

21 This is a license agreement. You can read it. You're  
22 going to get a chance to read it. It doesn't once mention  
23 Cherokee. Nowhere. It never says Cherokee is going to make  
24 any payments. It never says Cherokee is going to be providing  
25 any financial backing.

1           So, now, they claim that there were other promises  
2 that were being made to them that aren't reflected in the  
3 license agreement. But that's not what they said when they  
4 signed the license agreement.

5           In fact, when they signed the license agreement, they  
6 agreed at that time that the agreement, it contained all of  
7 their promises, every single one of them. And it says it  
8 supersedes. That means it gets rid of any prior agreements,  
9 oral or written. These are the things you put in your  
10 contracts and make sure everybody understands. If there is  
11 something you are supposedly relying on, make sure it is in  
12 writing. Don't kid yourself. There is nothing special about  
13 the particular day that this was signed on. If Dr. Rossi was  
14 telling you the truth and if he walked in and suddenly there  
15 was a different name on the documents than what he was going to  
16 sign, instead of him signing an agreement with Google, he  
17 signed an agreement with Gaga, he could have said, I'm not  
18 signing. Or write it in that Industrial Heat is going to be  
19 backed by somebody.

20           Not in here. Didn't happen. Because it's not true.

21           I want to talk just quickly, if I can, about the  
22 payments. And Mr. Chaiken explained some of this to you  
23 already, so I'll go relatively quickly, which is to say the  
24 license agreement, to start, involved the payment of 1.5  
25 million dollars. That's a substantial payment. And that's for

1 the magic boxes, the E-Cat boxes that my clients purchased.  
2 When you put all of those together, they would call them an  
3 E-Cat plant. Mr. Chaiken called them a 1MW plant. I apologize  
4 for all the different phrases and terms, and over time, you'll  
5 get, you know, you will hear them enough. But for now, put all  
6 the boxes together, you call them a plant. So 1.5 million  
7 dollars for a plant.

8 There was the next payment, 10 million dollars. That  
9 was for all the technology that the Plaintiffs had. It's  
10 called -- it was kind of -- it is called intellectual property  
11 or IP. That means everything you knew. So 1.5 million  
12 dollars, you get a bunch of these E-Cat magic boxes. 10  
13 million dollars more, you get everything that I know about this  
14 technology. That's what -- that's what the promise was.

15 And then the last payment was if you can go out and  
16 show in the real world that this thing can perform at an  
17 amazingly high level, not only that, but that you do it as soon  
18 as you send us this plant, as soon as we get this the plant,  
19 you turn around and you run it and you show us how, you know,  
20 how amazing it is.

21 Now, I have already talked to you about the test that  
22 they actually ended up eventually doing, which was the one  
23 where we've already seen where Mr. Rossi is next to practically  
24 a furnace and wearing a jacket. But they also didn't try to  
25 test it or didn't test it promptly. That's what the agreement

1 says. The agreement -- Mr. Chaiken told you that all of these  
2 E-Cat boxes arrived where my clients are located in North  
3 Carolina. They arrived in August of 2013. Nothing happened in  
4 August of 2013. Nothing happened in September of 2013.  
5 Nothing happened in October of 2013.

6 So then Mr. Chaiken also says, Well, but no one ever  
7 told Dr. Rossi that the time might be running out.

8 Oh, they more than told him. They actually created a  
9 document about it. It's called the second amendment.  
10 Remember, we talked about this. If you have got a contract, if  
11 you've made written promises, if you want to change it, you put  
12 it in writing, and you sign it.

13 Well, everybody realized that the time period for  
14 running that guaranteed performance test had run out by  
15 October, because you had to start it immediately. Immediately  
16 when something shows up in August is not, you know -- is not  
17 October. Maybe it's September. I would think probably more  
18 like August, but in any event. So they put it in writing.  
19 They said, oh, we are willing -- they're willing to extend the  
20 time. We will give you more time. But you have to test  
21 something that's a little bit different than what you said.  
22 You now have created a new device. It's called a six-cylinder  
23 unit. I shouldn't say new device. Created an alternative  
24 device called a six-cylinder unit, that we want you to test  
25 that instead.

1           Now, you don't need to understand a whole lot about  
2 this six-cylinder unit. I've thrown a lot at you already, and  
3 I apologize for that. But here is all that you really need to  
4 know, that you didn't hear Mr. Chaiken once say anything about  
5 the six-cylinder unit. I am guessing this is the first time  
6 you are hearing it. No one has ever tested it. No one even  
7 claims that they ever tested a six-cylinder unit. So the  
8 parties were willing to extend the time period, but only if  
9 they made a change.

10           Dr. Rossi didn't -- you know, he signed this document,  
11 but he never ran the test on this type of unit. Again, written  
12 promises, you can change written promises, but if you are going  
13 to change the written promises, you put it in writing. That's  
14 the pattern here.

15           In fact, they even said that in the license agreement.  
16 If I could look at Section 16.9 -- I'm moving around on you  
17 here a lot, but just for a second here. That's not just good  
18 practice. That's not just the way that wise people operate.  
19 That's not the way that business people operate.

20           By the way, Andrea Rossi, the testimony you will hear,  
21 has owned a number of different businesses. He is not an  
22 unsophisticated individual. But they even put in writing.  
23 They said, Look, you can change this thing, but if you are  
24 going to change it, you have got to write it down.

25           It's a written instrument signed by the parties. They

1 did it on a couple of occasions. According to Andrea Rossi  
2 though, later on they never did it. He doesn't have an  
3 explanation for it. He doesn't have any signed contract or  
4 signed amendment. He knew his time had expired.

5           Instead, he was more focused on conning Industrial  
6 Heat and IPH to shipping their -- these boxes down in Florida  
7 for their supposed fake customer. That's their approach.  
8 Along with Henry Johnson and James Bass, they created and  
9 presented to my client a fake customer, JM Products, a company  
10 with no business, under the hidden control of Andrea Rossi.  
11 Along with Fulvio Fabiani, as well as Johnson, they provided my  
12 clients with false information and false data to promote what  
13 they were doing in Florida.

14           Now, I have one final point, and I am almost done, and  
15 I appreciate your tolerance. My clients are Tom Darden  
16 J.T. Vaughn, and their colleagues have been successful  
17 entrepreneurs in a number of projects addresses environmental  
18 challenges. That's included a large number of projects  
19 cleaning up contaminated property so they can be back to a  
20 productive use. It's involved converting businesses into using  
21 clean renewable energy sources. That's what they have focused  
22 their efforts and their successes on.

23           Now, you heard Plaintiffs' Counsel talk to you about  
24 this 50 million dollars, this 50 million dollar payment.  
25 But -- and I think he said this, but I wanted to make sure that

1 everyone heard it. Tom Darden did not receive a penny of that  
2 50 million dollars. J.T. Vaughn did not receive a penny of  
3 that 50 million dollars. A company invested 50 million dollars  
4 in their companies that were pursuing LENR technologies. In  
5 fact, you remember Mr. Chaiken literally told you, he described  
6 my clients as the leading LENR investors. They are. That's  
7 why the money was invested with them. That's where the money  
8 went to, to making an effort to try to find a technology that  
9 works. It didn't go into Andrea's, because his technology  
10 doesn't work.

11 Now, Plaintiffs read to you various messages that  
12 Industrial Heat has sent to investors over time, their  
13 investors. But Mr. Chaiken was highly selective in what he was  
14 reading to you.

15 They also argue their claim is predicated on this idea  
16 that Industrial Heat only said great things about Andrea Rossi  
17 until March of 2013 when they got that 50 million dollar  
18 investment, and then they turned on him. That's their theory.  
19 Turned on him like that.

20 Mr. Chaiken showed you part of this document. This is  
21 a document from July 2013. So this is well before that money  
22 was paid. This is -- and this is the very document that says  
23 other things; for example, it calls Andrea Rossi a key employee  
24 under a section called Risk Factors. Having Andrea Rossi as  
25 your key employee is a risk. What else does it say? Rossi has

1 a history of failed business relationships and conflicts. And  
2 he is difficult to communicate and work with.

3           However, he appeared to have a remarkable technology.  
4 So the principals of IH -- that's Industrial Heat -- were  
5 willing to invest a great deal of time and to be more tolerant  
6 of eccentric or difficult interpersonal characteristics than  
7 one actually -- more than one normally would or that Rossi had  
8 experienced with others in his prior business relationship.

9           This led to an unusual and attractive business  
10 structure. Industrial Heat, IH, took excessive risk with  
11 relatively small amounts of capital fund, but no large payments  
12 would be owed unless the technology proved to be extremely  
13 successful. This is what Industrial Heat and its parent  
14 company and another company were telling investigators. This  
15 is what they believed. They thought there was a remarkable  
16 technology here. And as a result, they were extremely  
17 tolerant. They were trying to find ways that they could make  
18 this work.

19           THE COURT: Five minutes.

20           MR. PACE: Thank you, Your Honor.

21           And as we have discussed, though, over the last 40  
22 minutes, the fact of the matter is these E-Cat boxes, they're  
23 not filled with magic. Turned out that they were just simply  
24 filled with lies. That's when my clients' tolerance ended. My  
25 clients were tricked by the Plaintiffs. They were tricked by



1 the fake company of JM Products. They were tricked by the fake  
2 data that was being provided them by people like Fulvio  
3 Fabiani.

4 In the end, my clients don't owe anyone \$89 million.  
5 What my clients are owed is the return of the millions of  
6 dollars, well over 10 -- well over \$11 million that they paid  
7 out because of the broken promises made to them and the lies  
8 that were told to them.

9 Thank you.

10 THE COURT: Mr. Leon De La Barra.

11 MR. LEON DE LA BARRA: Thank you, Your Honor.

12 OPENING STATEMENT ON BEHALF OF THE THIRD-PARTY DEFENDANTS

13 J.M. PRODUCTS, ET AL.

14 MR. LEON DE LA BARRA: Ladies and gentlemen, I want to  
15 begin by addressing one very important issue. As Your Honor  
16 mentioned earlier: What the attorneys say is not evidence.  
17 What Mr. Pace just said is not evidence. What Mr. Chaiken said  
18 earlier is not evidence. Consequently, what I am about to tell  
19 you is not evidence. Over the course of the next few weeks,  
20 you will hear sworn testimony and review multiple documents.  
21 That is the evidence that you will rely on when you return your  
22 verdict.

23 That being said, please indulge me some time to walk  
24 through the facts and circumstances of this case and the  
25 reasons that, what the evidence will show, there is no scheme