

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

1 to defraud Mr. Pace's clients.

2 Now, we have heard a lot of talk about a license
3 agreement. You may remember, license agreement was entered
4 into in October of 2012. That is nearly two years before the
5 formation of JM Products or two years before Mr. Darden and
6 Mr. Vaughn meet Mr. Henry Johnson. Now, those two events would
7 have occurred around June or July 2014. Similarly, that is
8 over two years before Mr. James Bass comes into the picture.
9 That would happen in late 2014 to early 2015.

10 Now, we have heard a lot about this license agreement.
11 Everyone knows it required a one-year test. Upon completion of
12 that one-year test, Dr. Andrea Rossi and the other corporations
13 would be entitled to an \$89 million payment. Mr. Chaiken spoke
14 about the license agreement. Mr. Pace showed you several
15 portions of the license agreement.

16 What he didn't show you was a single provision
17 requiring a customer to be used in connection with the test or
18 with the technology at all. That's because there is no
19 requirement. In fact, Mr. Vaughn, as a corporate
20 representative for Industrial Heat, will testify that they
21 didn't care about a customer. It simply wasn't important to
22 them.

23 With that being said, fast-forward to July of 2014,
24 around this time frame, discussions were starting between
25 Dr. Andrea Rossi, Defendants Mr. Darden, Mr. Vaughn about

1 beginning a test and perhaps moving the plant down to Florida.

2 Now, what Mr. Pace didn't tell you is that my client,

3 Mr. Henry Johnson, only met with Defendants on one occasion.

4 In that occasion, it was made very clear to Defendants Darden

5 and Vaughn -- consequently Industrial Heat and IPH -- that

6 Mr. Johnson was the president of JM Products and would only

7 handle the corporate matters. In fact, they were well aware

8 that Mr. Johnson was Mr. Rossi's real estate attorney. In

9 fact, you will hear testimony from Mr. Johnson himself where he

10 says, We figured there would be a technical person running the

11 operation. Mr. Johnson clearly didn't have any manufacturing

12 experience. They knew that he wouldn't be the person to run

13 the operation down in Florida. Similarly, Mr. Pace stated that

14 his clients were told that there -- were never told that there

15 wasn't a facility down in Doral or that there was -- and that

16 there wasn't a use for the steam. That's clearly false.

17 That's going to be contradicted by his own clients.

18 Mr. Darden will testify that he knew -- they knew that

19 JM Products was a newly formed entity and that it was going to

20 have a new facility. Similarly, Industrial Heat of which

21 Mr. Vaughn will testify, the corporate representative, he will

22 testify that Industrial heat knew that JM Products would have a

23 new facility for the sole purpose of experimenting with new

24 processes. Industrial Heat and IPH claim that Rossi and

25 Johnson made certain representations about Johnson Matthey.

1 Mr. Pace showed you -- Madam Court Reporter, can you switch,
2 please.

3 THE COURT REPORTER: Yes.

4 MR. LEON DE LA BARRA: Bear with me. I'm not the best
5 with technology.

6 You will note right up here. This is the actual term
7 sheet that was signed by the parties. You will note that
8 Johnson Matthey is nowhere in here. That's because such
9 representations was never made. Mr. Pace showed you a draft of
10 the agreement. That draft was quickly corrected to reflect the
11 true party that was entering into this agreement.

12 Now, Mr. Johnson did not know -- will testify that he
13 did not know what Johnson Matthey was at the time. In fact, at
14 the meeting I mentioned, Mr. Johnson will testify that the only
15 reference to Johnson Matthey made at that meeting was quite
16 simply that Johnson Matthey would be a supplier of materials
17 for JM Products.

18 Mr. Vaughn and Industrial Heat will testify that they
19 have no recollection of anything Mr. Johnson said at that
20 meeting.

21 Now, this is the term sheet that was eventually
22 entered into. Over the course of the next few weeks, between
23 the date of the meeting in July through August 13th when this
24 term sheet was eventually signed by the parties, Industrial
25 Heat and Dr. Rossi went back and forth over several terms in

1 the agreement. It is undisputed that Industrial Heat
2 negotiated the terms of this agreement and, in fact, even had
3 their attorneys at the time review it. Again, this has been
4 stipulated to. It is undisputed in this case.

5 Conversely, Mr. Johnson did not make any comments or
6 any revisions to the term sheet.

7 And, like I said, in mid-August Leonard, Industrial
8 Heat, and JM products signed and entered into this term sheet.

9 Now, what did this term sheet provide? I want you to
10 pay particular attention to a few paragraphs here.

11 Paragraph 7, states that Industrial Heat will provide
12 maintenance for the plant.

13 Paragraph 8 provides that Leonardo would be
14 responsible for the operation of the one-megawatt plant.

15 Paragraph 9 states something crucial to this case.
16 The personnel of JM Products will not have access to the inside
17 of the one-megawatt plant for the information about how the
18 plant operates.

19 If I go down to paragraph 14, the term sheet expressly
20 provided Industrial Heat the ability to provide whatever
21 security, whatever monitoring and whatever control measures it
22 deemed appropriate to protect the plant and to properly analyze
23 its performance.

24 Around the same time the term sheet was entered into,
25 you saw a document that's titled Compliance With OFAC. OFAC is

1 an acronym. It simply stands for Office of Foreign Asset
2 Control. Throughout the trial, you will get the chance to
3 review this document. You will notice that this document
4 contains no reference to a specific company, especially no
5 reference to Johnson Matthey as being the owner of JM Products.

6 Now, it is true, the document does say that it --
7 JM Products is owned by an entity in the United Kingdom.
8 However, Mr. Johnson will testify there was a specific intent
9 for this -- for JM Products to be owned by a trust or an entity
10 in the United Kingdom. You will learn throughout the trial
11 that there was simply no intent to deceive Industrial Heat into
12 entering into this agreement.

13 Now, Mr. Bass, what can I tell you about my client,
14 Mr. James Bass? He's an engineer. Graduated at the top of his
15 class *summa cum laude* from Rutgers University. His background
16 is in electrical engineering, specifically with controls or
17 control boards or what he likes to call closed loop systems.
18 Now, he has worked hard his entire life and is now
19 self-employed. He has a company. He works as an independent
20 contractor.

21 So here is Mr. Bass, he's working as an independent
22 contractor. Around the time that JM Products is getting into
23 shape, a contract has just expired, and an old colleague
24 reaches out to him. He says, Hey, Jim, I have a job
25 opportunity for you. It is this great client. It's called

1 JM Products. They're in need of an electrical engineer.

2 So what does he do? He meets with JM Products. He is
3 intrigued, and he decides just to hop aboard.

4 Now, what is the scope of his work? The scope of his
5 work, you will learn throughout the weeks of trial, the primary
6 focus was to create a control board for JM Products. This
7 control board was to facilitate the processes that, if their
8 experiments proved fruitful, could be used in their production
9 facility. Given his scope of work and given his background, he
10 was given the title of director of engineering. Industrial
11 Heat will testify that they have absolutely no reason to
12 believe that Mr. Bass was in fact -- was not, in fact, the
13 director of engineering. Simply put, it's because he was.

14 There is no dispute that Mr. Bass was involved in
15 moving the plant to Florida. Again, this is a stipulated fact,
16 something that Defendants -- sorry -- Industrial Heat and IPH
17 do not dispute.

18 So we fast-forward to about December of 2014 when the
19 plant arrives in Florida. When the plant arrives, they start
20 to install the plant. And in about February of 2015 Mr. Darden
21 will testify that at that time -- he is going to claim that at
22 that time, they knew -- himself and Mr. Vaughn, Industrial
23 Heat, and IPH -- they knew that this test was not going to be
24 legitimate. They knew that something bad was going on down
25 there. I believe Mr. Chaiken alluded to that.

1 Despite these supposed claims, despite these supposed
2 beliefs that they had back in February of 2015, Industrial Heat
3 nor IPH ever requested additional equipment to be installed at
4 the plant to ensure that they could have proper monitoring or
5 the return of the plant itself. Those are two contractual
6 rights that they had pursuant to the term sheet.

7 Now, shortly after those statements are made, the test
8 begins, and as the test begins and the plant's running,
9 Dr. Rossi, JM Products, they experiment and use the steam to
10 process different materials. You will hear testimony that
11 JM Products experimented with, amongst other things, platinum
12 sponges and graphene.

13 Throughout the operation of the plant in Florida,
14 throughout JM Products' use of the steam, Industrial Heat never
15 once sent an invoice or demanded any payment from JM Products
16 for the use of that steam. Industrial Heat nor IPH ever
17 requested JM Products, Mr. Johnson, or Mr. Bass for that
18 matter, to maintain any records of the E-Cat plant's operation
19 or, similarly, asked for any specifics about the business of
20 JM Products or to maintain any records about the business of
21 JM Products and what it was that they were doing down there.

22 Now, Dr. Penon, who Mr. Chaiken mentioned was the ERV
23 in connection with the license agreement, Mr. Penon will
24 testify that there was no measurement needed on the JM Products
25 side of the facility. Now, he created the test protocol. The

1 test protocol did not require any measurements to be taken on
2 the JM Products side of the facility. Simply put, this wasn't
3 relevant.

4 I believe I mentioned this, but just in case,
5 Mr. Bass, his scope of employment again had nothing to do --
6 strike that. Let me backtrack for a second. Mr. Bass was not
7 responsible for the measurement or the operation of the E-Cat
8 plant. Similarly, he wasn't responsible for the testing at
9 JM Products either. As I mentioned, he worked on control
10 boards. That was the scope of his business.

11 JM Products, Mr. Johnson, Mr. Bass, none of them ever
12 provided the coefficient of performance, which is the COP, to
13 Industrial Heat or IPH. That is the key element -- that is the
14 key indicator of the E-Cat plant's performance. The testimony
15 will show that none of my clients ever provided a COP to
16 Industrial Heat or IPH. They simply never relied on anything
17 my clients ever represented or ever stated as to the
18 performance of the E-Cat plant that is the subject of this
19 litigation.

20 So the test finishes. Leonardo demands of 11 million
21 dollar. Industrial Heat and IPH say -- simply say, No, you are
22 not entitled to it. So here we are.

23 THE COURT: Five minutes.

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

25 So here we are. Industrial Heat and IPH claim it's an

1 elaborate scheme to deceive them as to the operation of the
2 one-megawatt plant.

3 I want to reiterate something. My clients have no
4 stake in the outcome of the tests. They have no claim to
5 89 million dollars in dispute. JM Products, Mr. Johnson,
6 Mr. Bass did not play any role in the operation or the
7 measurement of the E-Cat plant that is the primary focus of
8 this litigation.

9 Industrial Heat and IPH never requested either of
10 them -- any of them, I should say -- to take measurements or
11 provide any reports about the plant. JM Products, Mr. Johnson,
12 Mr. Bass did not make any representations about the COP, which,
13 again, was the key indicator of the plant's performance.
14 Dr. Penon will testify that the test protocol did not require
15 any measurement on the JM Products side. It is undisputed that
16 Mr. Bass played no role in Industrial Heat and IPH's
17 decision-making to bring the plant to Florida.

18 After you have heard all of this evidence, I will ask
19 you to return your verdict for JM Products, Mr. Johnson and
20 Mr. Bass. Thank you.

21 THE COURT: Thank you.

22 Mr. Nunez.

23 MR. NUNEZ: Thank you, Your Honor.

24

25