

1 Then the Defendants present their witnesses, and the
2 Plaintiffs and third-party Defendants may cross-examine them.

3 You should base your decision on all the evidence
4 regardless of which party presented it.

5 After all the evidence is in, the parties' lawyers
6 will present their closing arguments to summarize and interpret
7 the evidence for you and then I give you instructions on the
8 law.

9 We will hear from Plaintiffs.

10 OPENING STATEMENT ON BEHALF OF THE PLAINTIFFS

11 MR. CHAIKEN: Your Honor, thank you very much,
12 esteemed Counsel, ladies and gentlemen of the jury.

13 My name is Brian Chaiken. Together with my cocounsel,
14 John Annesser, John Lukacs, and Rob Bernstein, we represent the
15 Plaintiffs in this case, Dr. Andrea Rossi and the Leonardo
16 Corporation. Sorry. It has been a long day already. Excuse
17 me.

18 Dr. Andrea Rossi, a Plaintiff in this case, is the
19 inventor of an amazing technology. And the Defendants in this
20 case recognized that and sought to enter into an agreement to
21 license that technology. My client agreed to do so, turned
22 over his intellectual property to the Defendants in this case,
23 the Defendants marketed that technology, profited by the
24 technology, and when it came time to pay my client, they
25 refused to do so.

1 The evidence in this case is going to show that for
2 the approximately three years following entering into that
3 license agreement, the Defendants in this case told people that
4 this was a world-changing technology, that it had been
5 independently validated and tested by third parties, and that
6 it was worth in excess of \$2 billion. That's billion with a B.

7 The Defense in this case are going to come to you, and
8 they are going to tell you, the jury, that this technology
9 today is now worth zero. But previously when they were
10 marketing it, they told people it was worth \$2 billion.

11 Let me tell you a little bit about Dr. Rossi.
12 Dr. Rossi was born in Italy, he was educated in Italy. He
13 received his Ph.D. there. He currently lives in Miami,
14 Florida. He has spent much of the last 20 years creating and
15 developing the E-Cat technology. Let me tell you what the
16 E-Cat technology is.

17 You've heard a phrase earlier today called LENR. It
18 stands for low-energy nuclear reactions. What does that mean?
19 That means Dr. Rossi's created a device that creates more
20 energy than it uses. Importantly, this technology also does it
21 in a clean and efficient manner. What does that mean? That
22 means that it doesn't create any radioactive wastes or anything
23 that's harmful to the environment.

24 Dr. Rossi's technology has been patented in the
25 United States, in Europe, in Japan and many other countries

1 around the world.

2 I am going to tell you a little bit about what a
3 leading source who claims to be a leader in LENR technology
4 said about Dr. Rossi and his technology. I'm going to read to
5 you, so I apologize for that. But there are a few quotes that
6 I want you to hear.

7 This leading -- this leader in LENR technology stated,
8 This new energy source produces clean and affordable energy
9 because it emits no radiation, uses no radioactive material,
10 and creates no radioactive waste.

11 Moreover, a minute amount of raw material required is
12 abundantly available. Thus, the cost structure of LENR energy
13 sources is much better than even today's most advanced coal and
14 natural gas energy sources. Commercializing LENR technology
15 would lead to clean abundant energy.

16 To create fusion, to create fusion energy, you have to
17 break the bonds in atoms, and that takes a tremendous amount of
18 force. That's why the big government fusion projects have to
19 use massive lasers or extreme heat, millions of degrees
20 Centigrade to break the bonds. Breaking those bonds at much
21 lower temperatures is inconsistent with the laws of physics as
22 they're now known.

23 However, the E-Cat, that's the device that Dr. Rossi
24 has created, has been tested extensively by an independent
25 committee of Swedish and Italian scientists. Published reports

1 of such tests place its coefficient of performance -- that's a
2 term you are going to hear throughout this case. Coefficient
3 of performance, COP, and I will explain what that means.

4 The COP, the published reports state that COP had been
5 between 2.6 and 5.6.

6 Now, a COP is a very simple mathematical equation.
7 Simply power out divided by power in. So if the power in was
8 one unit of energy and the power out was 5 units of energy, you
9 would have the COP of five. Five times as much energy produced
10 than went in.

11 In December 2012 and March 2013, representatives of
12 the Bologna University, Uppsala University, and the Royal
13 Institute of Technology in Sweden conducted independent tests
14 of high temperature E-Cats. The published report of the tests
15 concluded that E-Cat has an energy density beyond any known
16 battery, fuel or chemical. The E-Cats created excess energy
17 three to five times as much. In a published report of the
18 March 2014 test, indicates the E-Cat produced a COP over 3X
19 over the 32-day period.

20 Dr. Rossi has accomplished two critical things.
21 First, he has a truly novel means of causing the reaction to
22 occur, and the logic or rationale for why this would work is
23 very strong. Said another way, Rossi's system would logically
24 generate more energy than others.

25 The second area in which Rossi has been a leader is

1 with materials. He focused on nickel instead of a hugely more
2 expensive palladium and platinum, which behaves similarly.
3 While success with these would be very valuable, the fact that
4 he could experiment with such an inexpensive material gave him
5 an advantage.

6 With respect to the \$2 billion figure, we will provide
7 a draft of the test report prepared by the Royal Swedish
8 Academy of Scientists, which awards the Nobel Prize in physics.
9 Their report describes a 32-day test conducted by a number of
10 prominent European physicists, apparently, including members of
11 the committee that selects the Nobel Prize winners. And it
12 concludes that Rossi has discovered a new source of energy with
13 properties rivaling nuclear fission but without releasing
14 radiation or producing radioactive waste. So this technology
15 seems to be without precedence and extremely valued.

16 Now, the reference material from which I just read all
17 comes from the same source. And I'm hoping you will be
18 surprised to learn that that source were the Defendants,
19 Mr. Darden, Mr. Vaughn, and their companies. All of those
20 statements, the evidence will show, were made by the Defendants
21 in this case.

22 Ladies and gentlemen, my cocounsel and I intend to
23 create a time line for you to see exactly what happened in this
24 case. Over the course of the trial, we're going to present a
25 large chart, and there is going to be a large line going for

1 the relevant time period in this case, which is 2012 to 2016.

2 Now, that's a long time, and that's a lot of facts.

3 When we show you that time line, we are going to place
4 data points showing statements made by the Defendants in
5 writing to whether it be my client or to the -- or to members
6 of the public. To contrast that, we are going to show data
7 points for statements made by the Defendant or that statement
8 that they claimed they made below the line. Either they claim
9 they made them or they made them internally. And you are going
10 to see that those things contrast.

11 And we're going to tell a story, and that story is
12 going to show a very telling picture, and that picture will be
13 the Defendants believed that the technology was all good and
14 continued to tell my client that the technology was good, that
15 he was honoring the agreement. And there came a point in
16 time --

17 THE COURT: I'm sorry. You will need to use the
18 microphone at the podium.

19 MR. CHAIKEN: I'm sorry.

20 THE COURT: That one keeps coming in and out. It is
21 not very good.

22 MR. CHAIKEN: I apologize.

23 THE COURT: That's all right.

24 MR. CHAIKEN: Is there a handheld I could use?

25 I was saying, that point in time, that's going to be

1 May 2015. What happened in May 2015? The Defendants
2 successfully sold 4 percent of their company for \$50 million.
3 That amounts to a \$1 billion dollar. They sold shares of
4 stock, just 4 percent. They maintained 96 percent and received
5 \$50 million in return.

6 Right after that date, the narrative changed.
7 Suddenly Dr. Rossi wasn't complying. Suddenly Dr. Rossi was
8 being difficult. Suddenly his test results didn't look so
9 valid anymore. Suddenly what we had thought and what my client
10 thought was a very good relationship turned sour.

11 Let me preview a little bit of what the actual written
12 evidence is going to show. You're going to find that in June
13 of 2012 -- and I'm going to walk you through the time line just
14 so you can get a little flavor for what the next several weeks
15 is going to look like.

16 In June of 2012, the Defendants, Mr. Darden and
17 Mr. Vaughn met Dr. Rossi. At that time Mr. Darden and
18 Mr. Vaughn were employees of a company called Cherokee.
19 Mr. Darden was the CEO of Cherokee, and he holds a law degree
20 from Yale Law School. Mr. Vaughn was listed as an investment
21 manager with Cherokee. Cherokee claims to be a sophisticated
22 experienced investment fund that has raised over \$2.2 billion
23 over the last 30 years.

24 Shortly after the initial meeting, Dr. Rossi and
25 Cherokee began negotiating an agreement. Mr. Darden

1 represented himself and his team as Cherokee. Dr. Rossi
2 represented himself as the creator and inventor of the E-Cat
3 technology with his company Leonardo Corporation. At all times
4 during negotiation, Dr. Rossi was negotiating with Cherokee.
5 On April -- excuse me. On October 24th, 2012, two days before
6 the parties entered into their agreement, Mr. Darden created a
7 new entity called Industrial Heat LLC. And you have heard that
8 name before.

9 Industrial Heat LLC is the name of the entity that
10 actually entered into the agreement.

11 The very next day, October 25th, 2012, the Cherokee
12 employees, the Cherokee staff -- I am going to show you my
13 first exhibit, if I can make this work. You know what? I'll
14 just read it to you.

15 The Cherokee staff was given an e-mail. The e-mail
16 stated, Please join Tom Darden and John Mazzarino along with
17 Dr. Andrea Rossi to celebrate and congratulate Cherokee and
18 Leonardo companies on their joint venture.

19 The very next day Dr. Rossi was invited to come and
20 sign the license agreement. He shows up at the office and is
21 told for the first time that Cherokee has created a new entity
22 called Industrial Heat, and he's told that Industrial Heat is
23 fully funded and fully backed by Cherokee.

24 Don't worry. All is good. We have the finances, we
25 have the financial resources. We are going to honor our

1 contract.

2 At that time, Mr. Rossi didn't have an attorney in the
3 room -- excuse me. Dr. Rossi didn't have an attorney in the
4 room, but Cherokee did. But for the representations made at
5 that time, Dr. Rossi would not have entered into a contract to
6 license his technology with a newly formed entity that didn't
7 have a dime in its newly formed bank account. But he does, he
8 signs the contract at that time.

9 Now, let me run through some of the very key
10 provisions of that agreement.

11 The parties understood that there potentially could be
12 disputes in the future with respect to the very same things
13 we're talking about here today, some of the very disputes that
14 you are going to be asked to hear about. And they recognize
15 this. So they agreed in the license agreement to have an
16 independent third party become the referee for purposes of
17 determining two things: Number one, whether or not the
18 technology actually works; number two, whether or not the
19 intellectual property was actually transferred from Dr. Rossi
20 to the Defendants in this case.

21 The agreement called this person the expert
22 responsible for validation or ERV, as in an acronym. And you
23 are going to hear more about the ERV in this case.

24 The parties further agreed that Industrial Heat would
25 pay Leonardo Corporation \$100 million in exchange for the

1 exclusive license of the technology in certain territories.

2 That payment was to be made in three different tranches. Let
3 me explain what those three tranches were.

4 The first tranche was 1 and half million dollars upon
5 the execution of the license agreement. Excuse me a second.

6 After making that one and a half million dollar
7 payment, Industrial Heat would then be the owner of the
8 one-megawatt E-Cat device. And you are going to hear a lot
9 about the one-megawatt E-Cat device during the course of this
10 trial.

11 The second tranche was to be a payment of \$10 million.
12 That \$10 million was predicated upon a one-day validation test.
13 The expert responsible for validation was to design a protocol.
14 He was going to follow that protocol. If the one-megawatt
15 E-Cat performed as the parties agreed upon, then Dr. Rossi
16 would be entitled to a \$10 million payment. After receiving
17 that \$10 million payment, Dr. Rossi would then transfer all of
18 his intellectual property and trade secrets to the Defendants.

19 The third tranche, the last one, was for \$89 million.
20 In order for Dr. Rossi to be entitled to \$89 million, the
21 one-megawatt E-Cat had to perform consistently for 350 out of
22 400 days. The expert responsible for validation had to monitor
23 that test and provide a written report at the end certifying
24 that it had met the requirements under the contract.

25 Now, the day of the contract, let's go back to that

1 date, October 26, 2012, the \$1.5 million was paid.

2 Interestingly enough, \$750,000 of that \$1.5 million was paid
3 for by not Industrial Heat, but was paid for by Cherokee.

4 Let's fast-forward. February 2013, the parties have
5 been working together now for five months. They're starting to
6 get ready for that first test, the validation test that would
7 entitle my client to \$10 million.

8 The Defendants at that time create one of many
9 PowerPoints they would create describing the technology. The
10 Defendants are going to tell you that Cherokee had nothing to
11 do with this contract. But in February 2013, they created a
12 PowerPoint which says specifically that Cherokee is the lead
13 investor of Industrial Heat with more than \$2.5 million
14 invested to date and that Cherokee would continue to invest.

15 A few months later the parties agree upon the expert
16 responsible for validation. They agreed upon a gentleman by
17 the name of Dr. Fabio Penon. Mr. Penon -- excuse me --
18 Dr. Penon is a nuclear engineer, and you are going to hear more
19 from Dr. Penon through the course of this trial. He is going
20 to come and testify about the protocols that he created, why he
21 created them, and the results of the test.

22 On April 29, 2013, the day before that validation test
23 that would entitle my client to \$10 million, Defendant
24 Industrial Heat assigned the rights under the license agreement
25 so that another entity called IPH International BV -- and you

1 heard a little bit about IPH as part of the opening today. The
2 evidence is going to show that IPH International BV was created
3 by Mr. Darden for purposes of holding the intellectual property
4 of my client, Dr. Rossi. It's going to show that IPH has no
5 employees, and the evidence is also going to show that
6 Industrial Heat itself for most of the relevant time period in
7 this case had no employees and that both of those Defendants,
8 Industrial Heat and IPH, were serviced by employees of
9 Cherokee.

10 After the parties agreed to the test protocol provided
11 by Dr. Penon in April 30th, May 1st of 2013, the validation
12 test took place. Five days later Dr. Penon issued his report,
13 said E-Cat worked just fine, it hit the COP that it needed to
14 hit, Dr. Rossi is entitled to \$10 million.

15 Five days after that, another independent third-party
16 expert, another nuclear engineer, took a look at all the
17 intellectual property that Dr. Rossi handed over to Defendant
18 Industrial Heat, affirmed that he in fact did provide all of
19 the intellectual property that he was supposed to provide and
20 confirmed that in writing. Thereafter, \$10 million was paid to
21 my client.

22 Upon conclusion of this test, the Defendants wasted no
23 time in telling investors of the success. They wrote to
24 investors, Our initial technology creates excess energy,
25 between three and 20 times the energy required to operate the

1 device. They wrote -- from May -- excuse me, from April 30th,
2 May 3rd, three performance tests with excess ratios between
3 three and 20, university professors from Italy and Sweden
4 released two tests with affirming results. July 2013, another
5 communication from the Defendants. Defendants claim they
6 successfully operated and built a reactor independent of
7 Dr. Rossi. They are telling investors that the intellectual
8 property has been transferred. We are able to conduct this
9 technology and use this technology as Dr. Rossi asked us to.

10 August 2013, the one-megawatt plans now owned by
11 Industrial Heat is delivered to North Carolina where the
12 Defendants are located. September 2013, Defendants again
13 create an investor PowerPoint stating that they have learned
14 how to build and fuel the reactors for the technology. They
15 claim that experts independently evaluate the E-Cat energy,
16 density, and COP with affirmative results.

17 I know this is repetitive, but I'm telling you, the
18 Defendants continued to communicate to their investors that
19 this technology works and it will continue to work.

20 October 2013, Mr. Darden e-mails a third party. Says
21 that, We have reproduced three reactors and produced
22 significant excess energy. He also states at that time,
23 October 2013, We are getting ready to operate a six-cylinder --
24 excuse me, a six-reactor boiler to use for the 350-day test
25 required by our agreement with Dr. Rossi.

1 Now, this is an important point. The license
2 agreement called for a guaranteed performance test, the 350-day
3 test, to take place immediately after delivery of the
4 one-megawatt units in North Carolina.

5 THE COURT: Either hold the microphone closer to
6 yourself, Mr. Chaiken, or use the microphone at the podium,
7 please.

8 MR. CHAIKEN: I'm sorry.

9 Remember that at this time Industrial Heat owned and
10 controlled the one-megawatt unit, and they could have started
11 the test any time they wanted to. But despite their
12 contractual obligation to start the 350-day test, they didn't
13 do so. The evidence will show they didn't do so for three
14 reasons: One, if the test was successful, they didn't have the
15 money to pay Dr. Rossi. Two, they didn't obtain regulatory
16 approval to conduct the test. This was a low-energy nuclear
17 reactor. My client will testify that there was a significant
18 chance that a regulatory authority could come and stop the test
19 in the middle if he didn't get approval to run it or at least
20 clearance to run a test of this nature. Three, a group of
21 highly renowned scientists in Europe wanted to do an
22 independent test of the E-Cat at that time, and the Defendants
23 understood that such independent validation would be more
24 helpful to their marketing results than allowing Dr. Rossi to
25 start a 350-day test that could possibly cost them \$89 million.

1 Dr. Rossi understood the value of the independent third-party
2 test and agreed to delay it.

3 Defendants are now going to claim that because the
4 guaranteed performance test did not start immediately after it
5 was delivered, my client lost the ability to get the
6 \$89 million. Let me say that again. They are going to claim
7 that because the guaranteed performance test did not start
8 immediately after it was delivered, my client knowingly and
9 willingly gave up his retitlement to collect \$89 million.

10 In fact, Mr. Darden is going to testify that he told
11 Dr. Rossi specifically that. He is going to say, I told
12 Dr. Rossi that the time for the guaranteed performance test had
13 expired and that you no longer have the opportunity to make
14 that money.

15 Now, that testimony is going to be contradicted by
16 several things. First, it's going to be contradicted by
17 Mr. Vaughn. Mr. Vaughn is going to testify and he did testify
18 as the corporate representative of Industrial Heat that
19 Dr. Rossi was never told that, and there was a reason he was
20 never told that. He was never told that because they were
21 afraid if they did, he would stop working on it, and they
22 wouldn't be able to continue to test the machinery, and really
23 they wouldn't be able to continue to raise money.

24 It is also going to be -- Mr. Darden's testimony is
25 also going to be contradicted by the written evidence in this

1 case. During the course of this case, Defendants turned over
2 more than 65,000 documents. Not one of those documents will
3 you find anything in writing stating that the time for the
4 guaranteed performance test had passed, or, Dr. Rossi, you
5 can't earn \$89 million anymore.

6 Not one document. You are going to see a mountain of
7 evidence, written evidence, that the Defendants told their
8 investors and third parties that in fact the guaranteed
9 performance test was going to take place well after it was
10 delivered to North Carolina in August of 2013.

11 In the springtime of 2014 -- we're going to
12 fast-forward a little bit -- that test in Europe with those
13 renowned professors takes place. That test is attended by
14 Dr. Rossi, Mr. Darden, Mr. Vaughn, their chief engineer --
15 excuse me -- their chief engineer, a gentleman by the name of
16 T. Barker Dameron, all attend that test. They come back from
17 the test not knowing what the results are going to be. And
18 Dr. Rossi returns his attention back to performing the
19 guaranteed performance test, the 350-day test that is going to
20 earn him \$89 million. But not before Mr. Darden updates his
21 investors.

22 In March 2014, Mr. Darden e-mails his investors and
23 states, The third independent professor's test, also known as
24 the Lugano test -- and you will hear a little bit more about
25 that during the course of this case -- the professors reported

1 that the new device was generating four to six times as much
2 energy as it's consuming. Again, they're reconfirming, they're
3 reaffirming that this technology works.

4 The very next month, April 2014, Dr. Rossi e-mails
5 Defendants Darden and Vaughn. He says, I don't know what the
6 results of the Lugano test are. I have nothing to do with
7 those results. But I want to start the one-megawatt test. I'm
8 ready to go. Let's go get the necessary authorizations. I'm
9 ready to put this in operation in your facility in North
10 Carolina.

11 And he reiterates something that he's told by Tom
12 Darden at the time. He says, Mr. Darden, you told me that your
13 expert is working on getting those authorizations, I'm ready to
14 go.

15 What's the response? The response isn't, hey, the
16 time for the guaranteed performance test is expired. It's not,
17 hey, I am going to get those authorizations. Let's get started
18 because time is of the essence.

19 He doesn't hear anything in response to his request.

20 In May of 2014, he reiterates the request in writing.
21 He writes another e-mail to Mr. Darden and Mr. Vaughn. He
22 says, I am prepared to start this test. In fact, I will set up
23 a drying operation to make use of the energy from the
24 one-megawatt plant in your facility in Raleigh, North Carolina.
25 Let's go. Let's get it started. And if you can't get it

1 started, if you can't get the necessary authorizations, I'll
2 go -- I'm living in Florida. I will go get it from the State
3 of Florida, and I'll take care of it myself.

4 And then he offers to the Defendants -- he says, you
5 know what, your engineer Mr. Dameron used to work for a
6 pharmaceutical giant, GlaxoSmithKline. Why don't you have him
7 contact GlaxoSmithKline? I'll be happy to set up my
8 one-megawatt plant so that we can drive some of their
9 pharmaceuticals.

10 What does he receive in response? Silence. After
11 getting no feedback from the Defendants for months, Dr. Rossi
12 takes it upon himself to get the necessary authorizations from
13 the state healthcare department here in Florida. Writes an
14 e-mail to the Defendant and says, I've got it. I've found a
15 customer what we can use here in Florida. Let's move the
16 one-megawatt plant to Florida. I'm ready to test.

17 He says, I will operate the plant under the safe terms
18 I told you I would back in April or May.

19 Now, June 2014, you are going to see an e-mail from
20 Mr. Vaughn. Mr. Vaughn is going to write to Mr. Darden that,
21 You know what, Dr. Rossi no longer has contractual obligation
22 to continue to consult with us and to continue to assist us
23 with the one-megawatt technology.

24 You see, the license agreement, a term I didn't tell
25 you about earlier, provides that Dr. Rossi was only obligated

1 to assist Industrial Heat for 12 months following the
2 validation test which took place back in April or May of 2013.
3 So here we are in June of 2014, Dr. Rossi's obligation to
4 continue to consult with Industrial Heat was over, yet he
5 continued to do so.

6 July 2014, Industrial Heat is trying to raise
7 \$200 million. They prepared a confidential investment
8 memorandum for their investors. They discuss their financial
9 obligations. Did they say in their confidential memorandum
10 that Dr. Rossi had no right to collect \$89 million? Nope.

11 In fact, they stated the opposite. They said in July
12 of 2014, they may still be obligated to pay Dr. Rossi
13 \$89 million if the guaranteed performance test is successful.
14 Significantly, they also told their investors that they had
15 some dependence on key personnel. Guess who that key personnel
16 was? That's right. It was Dr. Rossi. In fact, I'm going to
17 read you what they wrote. They wrote to their investors, The
18 future success of Industrial Heat is heavily dependent on one
19 key individual, Dr. Andrea Rossi. And if the services of such
20 individual were no longer to be available to Industrial Heat,
21 its future success would likely be materially and adversely
22 affected.

23 Those aren't my client's words. Those are Defendants'
24 words.

25 August 2014, Industrial Heat, Dr. Rossi and

1 JM Products, represented back here, enter into a term sheet.
2 What does this mean? The term sheet provided for the shipment
3 of the one-megawatt plant to be delivered from North Carolina
4 to Florida for purposes of this test. Significantly, at this
5 time, after it's shipped, Defendant IPH, who earlier had been
6 assigned the rights under the license agreement, starts
7 incurring expenses.

8 Why would IPH, which did not own the physical
9 one-megawatt plant, begin to incur expenses at that time?
10 There's only one reason. Because the contractual test, the
11 contractual guaranteed performance test and the work regarding
12 it was being performed here in Miami, despite Defendants'
13 statements that the time for the guaranteed performance test
14 had expired.

15 Now, the Defendants are going to make a big deal about
16 the term sheet. They are going to tell you that Dr. Rossi and
17 Mr. Johnson made misrepresentations regarding who JM Products
18 was and what JM Products and the business of JM Products.

19 Now, I'll tell you, the evidence is going to show that
20 before the Defendants agreed to ship the one-megawatt plant
21 from North Carolina to Florida, they knew several things. They
22 knew that JM Products was a newly formed entity. They knew
23 that Mr. Johnson, who was also Dr. Rossi's real estate
24 attorney, was going to be the president of JM Products.
25 Mr. Johnson has no manufacturing experience whatsoever. They

1 knew that Dr. Rossi was setting up an entirely new operation at
2 a newly leased facility for purposes of setting up the
3 operations of both JM Products as well as the test of the
4 one-megawatt plant. And they knew that Dr. Rossi was going to
5 direct his operations.

6 The Defendants' own witnesses, Mr. Dameron,
7 Mr. West -- Mr. Jerry West is an electrician of the
8 Defendants -- sent down to assist Dr. Rossi in setting up that
9 plant, they are going to testify in this case. They're going
10 to testify that they saw absolutely no evidence of any
11 manipulation of any test procedures or any test data.

12 Following the agreement to send the one-megawatt unit
13 down to Florida, you're going to find more written evidence
14 that Defendants knew exactly what was going on and that they
15 knew that this was going to be the guaranteed performance test.

16 In September of 2014, Mr. Vaughn e-mails a third party
17 and says that, Dr. Rossi wants to take the one-megawatt unit to
18 Florida to begin operating it continuously pursuant to the
19 requirements of our contract with him.

20 He also writes an internal e-mail to Mr. Darden.
21 Says, Rossi begins working on his one-megawatt unit to prepare
22 it to continue to operate continuously for 350 days pursuant to
23 the agreement with Industrial Heat.

24 October 2014, another PowerPoint presentation is
25 created by Industrial Heat. They create a budget, and they

1 say, Our budget amounts are provisional and subject to change
2 pending the results of the performance of Rossi's one-megawatt
3 plant.

4 And in fact, they put a line item in their budget, a
5 contingent success fee -- for how much money? \$89 million --
6 if Dr. Rossi would be successful with the tests for the
7 one-megawatt plant.

8 Again, these are their written materials created by
9 the Defendants in this case.

10 Later in October, Mr. Darden writes an e-mail
11 explaining how he's going to deal with Dr. Rossi's technology.
12 And he writes, I believe we should pursue Dr. Rossi's
13 technology and maybe use it to complement the technology of
14 others.

15 We believe this e-mail evidence is the Defendants'
16 strategy from the outset. They were going to gain access to
17 Dr. Rossi's technology, they were going to exploit it by
18 sharing it with other LENR technologies that they had invested
19 in to which Dr. Rossi had no interest whatsoever, and then dump
20 Dr. Rossi when he was no longer useful. The evidence will show
21 that that's exactly what they've done in this case.

22 Now, throughout the end of 2014, Dr. Rossi started
23 preparing for and geared up for the guaranteed performance test
24 with the assistance of Industrial Heat and their employees.

25 Let's fast-forward to 2015, February. Dr. Fabio Penon

1 e-mails a test protocol to Dr. Rossi and Mr. Darden and says,
2 Pursuant to the license agreement, I'm going to -- this is the
3 schedule and the plan for the test.

4 Does Tom Darden respond by saying, I don't know what
5 you are talking about, Dr. Penon, The guaranteed performance
6 test can no longer happen?

7 That's not how he responds.

8 February 18, Dr. Rossi e-mails Mr. Darden and says,
9 Yesterday, the ERV engineer Penon has arrived and started the
10 work in the factory of Miami.

11 Does Tom Darden respond and say, I don't know what you
12 are talking about. Why would the ERV be employed or engaged at
13 this time?

14 That's not what he says. He says, instead, Thanks for
15 this update and positive news for us and for the world.

16 The next two days Mr. Darden and Dr. Penon exchanged
17 e-mails with respect to the protocol for that test. Mr. Darden
18 writes to Dr. Penon, Thanks very much for your important work.
19 This evaluation will have the eyes of the world on it once we
20 release any information. He further writes, Congrats on the
21 startup. This demonstration will have a great impact beginning
22 about a month when we have the visitor from overseas.

23 Does that sound like he's trying to tell them the
24 guaranteed performance test can no longer happen and that
25 Dr. Rossi doesn't have the right to achieve an \$89 million

1 payment?

2 I will tell you about the visitor overseas in a few
3 minutes.

4 But in February -- a couple days later, the test
5 begins. Dr. Rossi e-mails Defendants Darden and Vaughn. And
6 he writes, I am having problems with some of the small
7 reactors. However, COP, the coefficient of performance is much
8 higher than expected, but I am working 22 out of 30 hours
9 straight, and I am sleeping in the container -- it is a
10 shipping container that holds the one-megawatt unit -- while it
11 is functioning.

12 Why is this important? It is important because
13 Dr. Rossi is explaining all of the problems that he is having
14 with the test.

15 Now, the Defendants later on in this case are going to
16 get a chance to speak, and they are going to tell you that
17 Dr. Rossi tried -- the test results are bogus and this whole
18 thing was a sham.

19 Why would Dr. Rossi tell them of the problems he was
20 having in the plant if this was a sham?

21 Now, it's around this time, February 2015, March 2015,
22 Mr. Darden is going to testify that he suspected that something
23 was wrong with the plant and that there was some funny business
24 going on in the plant and that he knew it was happening right
25 then and there.

1 THE COURT: Five minutes.

2 MR. CHAIKEN: Thank you, Your Honor.

3 Now, these suspicions didn't stop him from bringing
4 investors into the plant for purposes of seeing how the
5 technology works, for purposes of talking to Dr. Rossi, for
6 purposes of gaining more money. And the evidence will show
7 that the E-Cat was without a doubt during the course of this
8 test producing steam and that Mr. Darden didn't care what was
9 going on in the JM Product side of the facility. And how do we
10 know that? Because we have an e-mail from Mr. Darden saying
11 exactly that.

12 In March 2015, Mr. Darden wrote an e-mail to an
13 investor of his. And he wrote, We definitely are producing
14 steam for a customer. My lack of clarity is just around, one,
15 precisely how much. We cannot definitively represent this.
16 And, two, what is the nature of the customer?

17 Mr. Darden didn't care what was going on in the
18 JM Product side of the facility. What he cared about was
19 raising money. And in fact, in May of 2015, they closed on
20 that \$50 million investment, and they sold, as I told you
21 earlier, 4 percent of their company in exchange for that 50
22 million.

23 Immediate ly after closing on that \$50 million, the
24 narrative changed. And suddenly their communications to
25 investors showed, hey, maybe Dr. Rossi's technology isn't so

1 great. Maybe what's going on in that plant isn't so great.
2 And they wrote, Soon we will negotiate with Rossi regarding
3 audits of the one-megawatt unit's performance by a reputable
4 independent organization.

5 You are not going to see a single e-mail from the
6 Defendants asking Dr. Rossi to submit his test to a different
7 organization. Why? Because Dr. Penon was already doing it.

8 May 28, 2015, Dr. Penon issues a quarterly report to
9 the Defendants in this case setting forth exactly what's going
10 on at the plant and setting forth the results. How did the
11 Defendants respond to that? Did they say, This isn't the test,
12 or, There's a problem with your results?

13 Not at all. Instead, they forward Dr. Penon's e-mail
14 to their attorneys.

15 I know I have only got a few minutes left, Your Honor.

16 THE COURT: Three.

17 MR. CHAIKEN: Three. I will wrap this up.

18 The Defendants are going to provide you -- they are
19 going to get a chance to speak, and they're going to tell you
20 their side of the story. And they're going to say, We have a
21 lot of different reasons, we have a lot of defenses, we have a
22 lot of excuses why we shouldn't have to pay Dr. Rossi.

23 I told you a little bit about some of those pieces.
24 The time for the guaranteed performance test didn't start
25 immediately after it was delivered. They are going to say that

1 there were some shenanigans with JM Products and that Dr. Rossi
2 misrepresented to them what JM Products was. They are going to
3 throw as much mud against the wall as they can, and they're
4 going to hope that something sticks.

5 I am going to tell you right now, there is no excuse,
6 there's no valid excuse to why they refused to pay my client
7 \$89 million. The evidence is going to show they entered into a
8 contract, they received the benefit of that contract, they
9 profited from that contract to the tune of \$50 million. And
10 now, once they were asked to pay, they refused to do so.

11 Thank you.

12 THE COURT: Ladies and gentlemen, we are going to take
13 a 10-minute recess. My courtroom deputy will meet you in the
14 jury room, and she is going to ask that you fill out certain
15 forms giving us your contact information. That is for her use
16 and mine alone, no one else will have access to that.

17 She will also give you -- each one of you my business
18 card which has our direct phone number. Keep hold on to that
19 card and keep it with you throughout the trial. Should you
20 have any emergency situation or if you are running late or you
21 need to reach us, that's the number to call. Then we will
22 resume, and we will hear Defendants' opening statement.

23 COURT SECURITY OFFICER: All rise.

24 (The jury exited the courtroom at 3:49 p.m.)

25 THE COURT: All right. We are in recess.