

1 is in, the parties' lawyers present their closing arguments to  
2 summarize and interpret the evidence for you, and then I give  
3 you instructions on the law, and then you go to the jury room  
4 to deliberate.

5 At this time, we will hear the parties' opening  
6 statements. We will hear, first, from the Plaintiffs, and then  
7 we will take a brief recess before we hear the remaining  
8 arguments -- or statements, I'm sorry.

9 OPENING STATEMENT ON BEHALF OF PLAINTIFFS

10 MR. CHAIKEN: Ladies and gentlemen of the jury, my  
11 name is Brian Chaiken, and along with my cocounsel, John  
12 Annesser, John Lukacs, Rob Bernstein, we have the privilege to  
13 represent Dr. Andrea Rossi, who is in the courtroom today, and  
14 his company Leonardo Corporation.

15 Dr. Rossi is the inventor and creator of an amazing  
16 technology that you are going to learn a lot about over the  
17 next several weeks. The Defendants in this case understood the  
18 value of that technology, and they sought to obtain a license  
19 to it. They negotiated a license agreement with my client,  
20 Dr. Rossi. They agreed to pay him money for it. They received  
21 the benefit for it. They received the intellectual property  
22 and the trade secrets that went along with it. But when it  
23 came time to pay him in full, they refused. And that's why we  
24 are all here today.

25 The evidence in this case is going to show that for

1 the three years following the entrance of that license  
2 agreement, the Defendants made numerous statements to the  
3 public about this technology. They claimed it had the  
4 potential to change the world. They claimed that it was  
5 independently validated, independently tested, that it worked  
6 and, in fact, that it was worth well over \$2 billion. With a  
7 "B," 2 billion.

8 They are going to come here today, and they are going  
9 to argue that despite making all of those statements about this  
10 technology, that it is worth zero today. That's what they are  
11 going to tell you.

12 Dr. Andrea Rossi was born in Italy. You heard a  
13 little bit about that earlier. He was educated in Italy. He  
14 obtained the equivalent of a Ph.D. in Italy. He spent the  
15 next -- excuse me -- he spent the last 20 years or so  
16 developing and creating what's called the E-Cat technology.

17 My mouth sometimes gets a little dry. I apologize.

18 Let me spell that out for you. E-Cat, E-C-A-T.

19 Now, what is the E-Cat technology? The E-Cat  
20 technology allows for the creation, by using its device, to  
21 create excess energy. That means energy goes in, more energy  
22 comes out. And the beauty of this technology is that it is  
23 inexpensive, and it's clean energy, meaning it doesn't emit any  
24 radioactive waste or harmful things to the environment.

25 The Judge in this case, Your Honor, had mentioned

1 something called L-E-N-R. Low-Energy Nuclear Reaction. E-Cat  
2 technology falls within the field of LENR technology.

3 I am going to read to you some statements made by a  
4 leader in LENR technology about Dr. Rossi and the E-Cat. I am  
5 going to try to read slowly because sometimes I read too fast  
6 and the court reporter can't take it all down.

7 First: This new energy source produces clean and  
8 affordable energy because it emits no pollution or radiation  
9 and creates no radioactive waste. Moreover, the minute amount  
10 of raw energy required is abundantly available. Thus, the cost  
11 structure of LENR energy sources is much better than even  
12 today's most advanced coal and natural gas energy sources.  
13 Commercializing LENR technology would lead to clean, abundant  
14 energy.

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

22 Third: The E-Cat has been tested extensively by an  
23 independent committee of Swedish and Italian scientists.  
24 Published reports of such tests placed its coefficient of  
25 performance, that's COP, between 2.6 and 5.6.

1           Let me briefly stop to explain what that means. COP,  
2 coefficient of performance, you are going to hear a lot about  
3 over the next several weeks. COP. It is a very simple  
4 mathematical formula. It's calculated by putting energy output  
5 divided by energy input. So if I put one unit of energy in,  
6 and five came out, we'd have a COP of 5. Pretty simple.

7           The fourth statement I am going to read to you: In  
8 December of 2012 and March of 2013, representatives of Bologna  
9 University, Uppsala University, and the Royal Institute of  
10 Technology in Sweden conducted independent tests of high  
11 temperature E-Cats. The published report of the tests  
12 concluded the E-Cat has an energy density beyond any known  
13 battery, fuel or chemical. The E-Cats created excess energy of  
14 three to five times as much. A published report of the March  
15 2014 test indicates the E-Cat produce a COP of over 3, over a  
16 32-day test period.

17           Fifth: Dr. Rossi has accomplished two critical  
18 things. First, he has the truly novel means of causing the  
19 reaction to occur. And the logic or rationale for why his idea  
20 works is very strong.

21           Said another way, Rossi's system logically will  
22 generate more energy than others.

23           The second area in which Rossi has been a leader is  
24 with materials. He focused on nickle instead of the hugely  
25 more expensive palladium and platinum which behaved similarly.

1 While the success with any of these would be very valuable, the  
2 fact that he could experiment with such an inexpensive material  
3 gave him an advantage.

4 And sixth and last, with respect to the \$2 billion  
5 figure, we are going to provide a draft of the test report  
6 prepared by the Royal Swedish Academy of Scientists which  
7 awards the Nobel Prize in physics. The report described a  
8 32-day test conducted by a number of prominent European  
9 physicists, apparently, including members of the committee that  
10 selects the Nobel Prize winner. And it concludes that  
11 Dr. Rossi has discovered a new source of energy with properties  
12 rivalling nuclear fission but without releasing radiation or  
13 producing radioactive waste. So this technology seems to be  
14 without precedent and extremely valuable.

15 Now, the reference material for all of those  
16 statements that I just read to you come from the same source.  
17 You will probably be surprised to learn that that source is the  
18 Defendants. Mr. Darden, Mr. Vaughn and their companies said  
19 all of those things about my client and his technology.

20 Before you, we set up this rather large time line.  
21 Now, my team and I, during the course of this case, we are  
22 going to populate this time line. We are going to populate it  
23 with evidence in this case. Above the line, we are going to  
24 populate it with statements made in writing by the Defendants  
25 in this case to my clients or to their investors.

1           Below the line, we are going to populate this time  
2 line with statements that the Defendants claim they made orally  
3 or statements that they made in writing which contradict what  
4 they said above the line.

5           Let me give you a little bit of a preview of what that  
6 evidence is going to be. And I will start walking along the  
7 time line. In June of 2013, Defendants Mr. Vaughn, Mr. Darden,  
8 were first introduced to my client, Dr. Andrea Rossi. At the  
9 time, Mr. Darden was the CEO of Cherokee. Mr. Darden was an  
10 investment manager at Cherokee. Cherokee holds itself out as a  
11 sophisticated, experienced investment fund that has invested  
12 and raised over \$2.2 billion over the last 30 years. After  
13 they were introduced, they started negotiating the license  
14 agreement.

15           I think it is still going. Thanks, guys.

16           At all times during the negotiations, Mr. Darden,  
17 Mr. Vaughn representing themselves as part of Cherokee. At all  
18 times during those negotiations, Dr. Rossi represented himself  
19 as the inventor and creator of the E-Cat technology through his  
20 corporation Leonardo Corporation.

21           Let's fast-forward to October 24, 2013, two days  
22 before the license agreement is signed by the parties.  
23 Defendant Darden forms a new entity called Industrial Heat,  
24 LLC. The very next day, October 25, 2013, an e-mail is sent to  
25 the employees of Cherokee, and you see it on the screen in

1 front of you.

2           Specifically, they write to the employees of Cherokee,  
3 "Please join Tom Darden and John Mazzarino as the partner of  
4 Tom Darden, along with Dr. Andrea Rossi, to celebrate and  
5 congratulate Cherokee and Leonardo companies on their joint  
6 venture for the future success of cold fusion." That is  
7 consistent with what they told Dr. Rossi during the  
8 negotiations.

9           The very next day, the parties, Dr. Rossi is invited  
10 to sign the license agreement. He shows up at the offices of  
11 Cherokee. He is told for the first time, We just formed a new  
12 entity called Industrial Heat. Don't worry, though. It is  
13 going to be backed, it's going to be funded by Cherokee, it is  
14 going to be a wholly owned subsidiary of Cherokee. Don't  
15 worry. It's going to be able to make the payments to you. You  
16 have nothing to worry about, Dr. Rossi.

17           So based on those representations, Dr. Rossi signed an  
18 agreement on behalf of Leonardo with this new entity Industrial  
19 Heat. And but for those representations, Dr. Rossi never would  
20 have agreed to an exclusive license of his game-changing  
21 technology with a newly created entity that didn't have a dime  
22 in its newly created bank account.

23           Let's fast-forward. Actually, let 's go to the next  
24 day. The agreement is signed. Let me tell you a little bit  
25 about some of the more -- most specific and interesting terms

1 of this license agreement. In order to avoid having the types  
2 of disputes that we have before you today, the parties actually  
3 agreed to an independent third party to decide, to kind of be  
4 the referee, to make sure that if the parties had  
5 disagreements, he would be the arbiter. He would be the judge.  
6 He would say, I am going to make the final decisions. And they  
7 call that person -- if you want to pull it up, Rob -- an Expert  
8 Responsible For Validation or ERV. You are going to read the  
9 term in the contract which discusses the ERV.

10 Now, a contract provided that Defendant Industrial  
11 Heat would pay, in return for getting that exclusive license to  
12 this technology, they would pay Dr. Rossi \$100 million. They  
13 are going to pay it in three separate tranches or installments.

14 First, they agreed to pay \$1.5 million upon the  
15 execution of the agreement. In return for that, they became  
16 the owners of the device, the equipment that actually produced  
17 the energy. And that was called, pursuant to the agreement,  
18 the one-megawatt E-Cat. Second, upon the completion, the  
19 successful completion, as determined by the expert responsible  
20 for validation, of a one-day test of this one-megawatt E-Cat,  
21 certified in writing by that expert responsible for validation,  
22 Dr. Rossi would be entitled to a payment of \$10 million, at  
23 which point, he would, then, turn over all of the intellectual  
24 property to the Defendants.

25 Third, Dr. Rossi would be entitled to a payment of



1 \$89 million. For that, he had to run a test of the  
2 one-megawatt E-Cat for a period of 400 days. And if it  
3 successfully performed for 350 of those days, he would be  
4 entitled to that \$89 million.

5 Let's go back to the date of the contract, October 26,  
6 2013. That first payment is made, \$1.5 million, upon signing  
7 of the contract. Interestingly, half of that, 750,000 of it  
8 came from an entity called Cherokee, not Industrial Heat.

9 Let's fast-forward to February 2013. The Defendants  
10 create one, what will be many, investor PowerPoints. In that  
11 PowerPoint, they write specifically, "Cherokee is the lead  
12 investor with more than 2.5 million invested to date, and  
13 Cherokee will continue to invest."

14 Now, starting in February and moving forward, a few  
15 months later, the parties begin preparations for the validation  
16 test, the one-day test that would earn my client \$10 million.  
17 And, in fact, leading up to the test, they had to agree to that  
18 ERV, that expert responsible for validation. In fact, in April  
19 of 2013, you are going to see that Mr. Darden specifically  
20 agrees to use a gentleman by the name of Dr. Fabio Penon as the  
21 expert responsible for validation.

22 You are going to hear from Mr. Penon -- excuse me --  
23 from Dr. Penon during the course of this trial. He is going to  
24 come and he is going to testify. He is going to testify that  
25 he created a protocol for purposes of these tests. The parties

1 agreed to that protocol. They selected various pieces of  
2 equipment for purposes of measuring the necessary things to  
3 show success. And he is going to explain to you what the  
4 results of those tests were.

5 April 30th, May 1st, 2013, the test is performed, the  
6 validation test is performed. Dr. Penon, five days later,  
7 issues his final report, says, E-Cat performed successfully,  
8 Dr. Rossi's entitled to receive a 10 million dollar payment.  
9 He puts that in writing. Five days later, another independent  
10 third party, another nuclear engineer issues another report,  
11 and he says, Dr. Rossi has successfully transferred his  
12 intellectual property to the Defendants, is entitled to receive  
13 that 10 million dollar payment. In fact, 10 million dollar  
14 payment is made.

15 Upon the completion of that test, the evidence will  
16 show, that the Defendants wasted no time telling their  
17 investors and potential investors that the E-Cat technology  
18 actually works and that Dr. Rossi has successfully transferred  
19 his intellectual property to them. In May of 2013 -- not going  
20 to show a copy of this, but -- in May of 2013, Industrial Heat  
21 reported to its investors that their initial technology creates  
22 excess energy between 3 and 20 times the amount of energy  
23 required to operate the device. A month later, July -- two  
24 months later, July 2013, Defendants write to their investors  
25 that they successfully operated and built a reactor independent

1 of Dr. Rossi. That means, they didn't need him to successfully  
2 build and run the equipment.

3 Let's fast-forward to August of 2013. The equipment,  
4 the one-megawatt plant, is delivered to the Defendants in  
5 North Carolina where they have a facility.

6 So here we are, August on our time line. Now, this is  
7 a significant date because the parties' agreement states that  
8 the guaranteed performance test is supposed to begin  
9 immediately upon delivery of the one-megawatt plant to the  
10 Defendants, August of 2013. Now, at this time, as you've heard  
11 me say already, the one-megawatt unit is owned and controlled  
12 by the Defendants, they have it, it's in their plant. The test  
13 doesn't start in August 2013. Why?

14 I'll give you three reasons. First, the Defendants,  
15 at that time, didn't have the money to pay my client if the  
16 test was successful. Two, the Defendants didn't obtain  
17 healthcare authorizations from the state of North Carolina,  
18 which would allow them to operate a low-energy nuclear reactor.  
19 Three, a group of independent third-party professors from some  
20 prestigious universities in Europe told the Defendants and  
21 Dr. Rossi that they wanted to test the stuff.

22 The Defendants recognized that such an independent  
23 third-party test would be very valuable to their marketing  
24 efforts, and, therefore, they said, let's wait on the  
25 guaranteed performance test, let's have these third parties do

1 it. Dr. Rossi recognized that, he agreed, he said, we can  
2 delay it.

3 So from August 2013 to the spring of 2014, the parties  
4 prepared for and allowed those independent professors to run  
5 that test. In fact, that test was successfully completed by  
6 those professors. They issued a report stating, that they  
7 received positive COP from Dr. Rossi's E-Cat. Thank you.

8 Now, while they're preparing to run that test, a few  
9 things happened. First, in October of 2013, the Defendants are  
10 going to tell you that Dr. Rossi, by not having a test start in  
11 August of 2000 -- in August 2013, they're going to say that the  
12 time for performance of that guaranteed performance test had  
13 expired. They're going to claim that they told him  
14 specifically in October of 2013, that he no longer had the  
15 opportunity or the rights to collect the 89 million dollars.

16 MR. PACE: Your Honor, I am going to object to the  
17 cartoon characters. They weren't referenced to Defendants  
18 prior to the opening statement.

19 THE COURT: Please remove.

20 MR. CHAIKEN: They're going to tell you, ladies and  
21 gentlemen, that my client was made aware, that he would not  
22 have the opportunity to earn 89 million dollars, and despite  
23 being told that, he continued to work for them for free all the  
24 way through 2016 -- it's over there.

25 What they're not going to tell you is that, although

1 Mr. Darden is going to make that claim that he told that to  
2 Dr. Rossi orally, that the evidence in this case is going to  
3 contradict that statement. In fact, there's going to be a lot  
4 of written evidence showing that the Defendants knew,  
5 understood, and even agreed to allow that guaranteed  
6 performance test to take place. What also -- another thing  
7 they're not going to tell you is that before we came here  
8 today, during the discovery period of this case, they produced  
9 over 65,000 documents to me and my team.

10 Not one of those documents, out of 65,000, will you  
11 find a single communication where they say the time for the  
12 guaranteed permission test had expired or that Dr. Rossi was  
13 going to be unable to collect that 89 million dollars. Not  
14 one.

15 Mr. Darden's oral statement in October of 2013 is also  
16 going to be contradicted. It's going to be contradicted by  
17 Mr. Vaughn -- thank you -- Mr. Vaughn's going to testify that  
18 his company, Industrial Heat, never told Dr. Rossi that the  
19 time for the guaranteed performance test had expired. Why?  
20 Because they were afraid that if they told him that, he would  
21 stop working and their ability to continue to market this  
22 technology would be lost.

23 You're going to see throughout the course of this  
24 case, that there is going to be a mountain of written evidence  
25 which shows that Defendants agreed to the guaranteed

1 performance test when it was performed. Now, let's  
2 fast-forward back to our time line. Spring of 2014, the test,  
3 in Europe, those independent third-party professors issue their  
4 report. Dr. Rossi attends that test, Mr. Darden attends that  
5 test, Mr. Vaughn attends that test, their chief engineer, a  
6 gentleman by the name of T. Barker Dameron, who you're going to  
7 hear from in this case, he attends that test. They come back,  
8 Mr. Darden wastes no time telling his investors once again,  
9 hey, this technology works. He writes to his investors and  
10 says these independent professors have verified that this  
11 technology works.

12 Now, they're back from Europe, Dr. Rossi says, we've  
13 had the independent test, it's validated, let's get started on  
14 the guaranteed performance test. And he writes an e-mail to  
15 Mr. Darden and Mr. Vaughn. He says, I am writing with a plan  
16 of operation, let's go get the authorizations that we need from  
17 the North Carolina healthcare office. And he says, Mr. Darden,  
18 you've told me that you have an expert working on getting those  
19 authorizations, let's go, let's get started.

20 How does Mr. Darden respond? Does he say, Dr. Rossi,  
21 I don't know what you're talking about? I told you back in  
22 October the time for the test is expired. You can't collect  
23 the 89 million dollars anymore.

24 Doesn't say that at all. Heck, doesn't say anything  
25 about starting the test, getting healthcare authorizations. He

1 says nothing.

2 Dr. Rossi again tries via a written e-mail, in May --  
3 following up May 2014, he says, I'm happy to do this test for  
4 you right there in your facility, in North Carolina. I will  
5 even set up a drying facility. I know how to do it. Let's  
6 find a customer. We'll attach my E-Cat to it. I'll provide  
7 you with steam that can dry various products. And he  
8 says, hey, your engineer Mr. Dameron, he used to work for  
9 GlaxoSmithKline, huge pharmaceutical company. He says, Why  
10 don't you get Glaxo on the line? We can dry their products for  
11 them.

12 Response from Mr. Darden, silence.

13 Finally, frustrated with his inability to get the test  
14 started, he says, you know what? Dr. Rossi says, I'll find my  
15 own customer, and I'll get my own healthcare authorizations,  
16 and I'm going to get this thing started. And in fact, that's  
17 what he does. He lives in Miami. He goes to the Florida  
18 healthcare office. He gets the authorization he needs. And he  
19 finds a customer, a customer that can use the steam for an  
20 experimental process to dry various products. And he brings  
21 that to Defendants and says, let's go, let's get started. All  
22 the while, the Defendants continue to market his technology.

23 Let's fast-forward to July 2014 -- actually, I take  
24 that back. Before we get to July -- thank you -- June 2014,  
25 Mr. Vaughn e-mails Mr. Darden in response to what's going on

1 with Dr. Rossi's request. And you'll see that Mr. Vaughn  
2 admits that Dr. Rossi no longer has an obligation at this time  
3 to continue to consult with, to assist, to help Industrial Heat  
4 in any way, shape, or form. He says it right there in his  
5 e-mail. He says, this consulting obligation has already  
6 expired.

7           The very next month, July 2014, Industrial Heat is  
8 attempting to raise 200 million dollars. They create a  
9 confidential memorandum for that purpose. In that confidential  
10 memorandum, did they tell the potential investors that  
11 Dr. Rossi no longer has an obligation -- excuse me, no longer  
12 has a right to achieve that 89 million dollar payment? The  
13 opposite takes place. They state right there, Dr. Rossi still  
14 would be entitled to receive 89 million dollars on the  
15 successful completion of that 350-day or 400-day test.

16           In addition to that, they concede that Dr. Rossi is  
17 the key to their plans. In their investment memorandum, they  
18 specifically state that they have a dependence on one key  
19 person, and it's not Mr. Darden, and it's not Mr. Vaughn. In  
20 fact, they state the future success of Industrial Heat is  
21 dependent upon one key individual, Dr. Andrea Rossi. And if  
22 the services of such individual were no longer to be available,  
23 its future success would likely be materially and adversely  
24 affected. They're telling their investors that they've got  
25 LeBron James on their team, and if they want to go to the NBA



1       finals, they're going to ride him there.

2               August 2014, still moving along our time line, the  
3       one-megawatt unit is shipped to Miami, pursuant to an  
4       agreement. This agreement was made by Leonardo Corporation,  
5       Industrial Heat, one of our third-party Defendants,  
6       JM Products.

7               Now, you've heard one of the reasons why the  
8       Defendants are going to say they don't have an obligation to  
9       pay my client the 89 million dollars. They're going to say the  
10      test didn't start on time.

11              JM Products is the second reason they're going to  
12      claim they shouldn't have to pay my client. They're going to  
13      claim that Dr. Rossi misrepresented to them who JM Products  
14      was, what JM Products was all about. They're going to claim,  
15      that JM Products wasn't a real company and it didn't have a  
16      real manufacturing process.

17              The evidence is going to show, that the Defendants, a  
18      sophisticated investment company led by a gentleman who is  
19      graduated from Yale Law School, was fully informed of  
20      everything that JM Products was, everything that JM Products  
21      did well before they executed that agreement to merely ship the  
22      one-megawatt unit down to Florida. Specifically, the  
23      Defendants were fully informed, JM Products was a newly formed  
24      entity prior to them entering into that term sheet. Second,  
25      Dr. Rossi's real estate attorney Mr. Johnson, who's sitting

1 here before you, was the incorporator of that entity. He was  
2 named as the president of that entity. They had met him before  
3 they entered the license agreement. They knew that he had no  
4 manufacturing experience whatsoever. They knew that Dr. Rossi,  
5 as he had told them early that year, April, May 2014, had found  
6 the customer, was going to create the facility, was going to  
7 build that facility from scratch.

8 The evidence is going to show, that their engineer,  
9 Mr. Dameron actually flew to Miami, visited a newly leased  
10 facility to help create and set up the facility for purposes of  
11 running the tests. The evidence is going to show that they  
12 knew the entire time that Dr. Rossi was going to run that  
13 facility.

14 They're going to say that they were tricked, they were  
15 duped, they shouldn't have to pay. The evidence is going to  
16 show that's not true.

17 Let's fast-forward, February 2015, the equipment is  
18 now in Miami. They're getting ready to start the guaranteed  
19 performance test -- over here -- you're going to see  
20 Dr. Fabio Penon, the expert responsible for validation, and in  
21 February, the beginning of February 2015, Dr. Penon is going to  
22 e-mail Mr. Darden, Mr. Rossi and he's going to say, here's my  
23 protocol, here's the test plan for the guaranteed performance  
24 test. Now, February 18th -- to the 331 -- February 18th, 2015,  
25 Dr. Rossi e-mails Mr. Darden and he says, the ERV has arrived,

1 the plant is ready to start. Does Mr. Darden respond by  
2 saying, I don't know what you are talking about? Why do you  
3 have the expert responsible for validation there? I told you  
4 back in October of 2013 that you couldn't do it.

5 Doesn't say that.

6 What does he say? He says, Thanks for the positive  
7 news for us and the world.

8 Next one, February 18 through February to 20th,  
9 Dr. Penon, Mr. Darden trade e-mails discussing the protocol for  
10 the one-megawatt plant. Again, does Tom Darden say, can't do  
11 it, can't run the tests? Does he say, I don't know what you're  
12 doing in Miami, because I'm not paying you that 89 billion  
13 dollars?

14 Doesn't say any of that.

15 Instead, he writes an e-mail to Mr. Penon -- excuse  
16 me, to Dr. Penon and says, Thank you very much for your  
17 important work. This evaluation will have the eyes of the  
18 world on it once we release any information. And then once  
19 they start up the test, he responds to Dr. Rossi, Congrats on  
20 the startup. This demonstration will have a great impact  
21 beginning in about a month when we have the visitor from  
22 overseas.

23 He doesn't say, Stop, don't run this test, I'm not  
24 paying you.

25 He says, Congrats.

1           Two days later, the test starts up. Dr. Rossi writes  
2 another e-mail to Defendants, Darden and Vaughn. He says, I'm  
3 having problems with some of the equipment, it's still  
4 performing, but I'm having some problems.

5           Why is that important? Because the evidence is going  
6 to show that over the course of that 350-day test, Dr. Rossi  
7 didn't hide anything from the Defendants. He told them when he  
8 was having problems. He told them when he was having issues.  
9 If someone was trying to deceive someone else, why would they  
10 tell them in writing of all the problems they were having?

11           Now, it's around this time, February, March 2015,  
12 you're going to hear some testimony from Mr. Darden. He's  
13 going to say, I knew back then that something funny was going  
14 on there, that this test couldn't be relied on, something fishy  
15 was happening in his plan.

16           He's not going to be able to put any physical evidence  
17 or any written evidence to support that, but he's going to say,  
18 I knew something was wrong.

19           But despite his suspicions that something was wrong,  
20 it didn't stop him from bringing investors to the facility to  
21 talk to Dr. Rossi, to learn about the E-Cat technology, to  
22 understand what he was doing. In fact, the evidence is going  
23 to show, that several times between February 2015 and July of  
24 2015 and even later, he brought potential investors to the  
25 plant to talk to Dr. Rossi.

1           And that brings us to -- let's see-- we also knew in  
2           March of 2015, the test has been running for several weeks now.  
3           Unequivocally, we know that this plant was producing steam.  
4           How do we know? Because Mr. Darden himself put it in writing.  
5           In fact, you're going to see an e-mail from Mr. Darden,  
6           March 23, 2015. He writes to one of his investors. He says  
7           specifically, we're definitely producing steam for a customer.  
8           My lack of clarity is just around precisely how much. We  
9           cannot definitively represent this yet. What is the nature of  
10          the customer?

11           But these are picky nuances, not related to the core  
12          issue. What does that mean? That means the Defendants in this  
13          case didn't care what the customer was doing. They never asked  
14          to see what was going on in the JM Products side of the  
15          facility, it didn't matter because they were able to bring  
16          investigators in, and they were able to raise money without  
17          knowing what was going on on that side of the plant. The fact  
18          is and the evidence will show, the Defendants didn't care what  
19          was going on in the JM Products side of the facility until this  
20          lawsuit was filed. They never asked to go see it. It wasn't  
21          of interest.

22           May 2015, payday. Defendants successfully sell  
23          4 percent of their company in exchange for 50 million dollars.  
24          That's a 1 billion dollar valuation. They kept 96 percent,  
25          they gave out 4 percent of their shares for 50 million dollars.

1 Company called Woodford gave them that money.

2 Oh, they're going to claim that money didn't go into  
3 their pockets. That, instead, it was used to invest in other  
4 LENR technologies. Ladies and gentlemen, the evidence will  
5 show, that they still have ownership of those technologies.  
6 They still have the right to get the benefit of those  
7 technologies. My client has no right to those technologies and  
8 will receive no benefit from those technologies.

9 THE COURT: Three minutes.

10 MR. CHAIKEN: Thank you, Your Honor.

11 The evidence is going to show, immediately after  
12 receiving that 50 million dollars, the story changed. The  
13 narrative changed. Suddenly Dr. Rossi was no longer -- was no  
14 longer cooperative. The test results were no longer going to  
15 be valid. The technology, we're not sure if it works anymore.  
16 The evidence will show, they completely changed their tune  
17 after they received the money. The Defendants are going to  
18 give you a lot of defenses in this case. They're going to  
19 give -- they're going to raise a lot of excuses as to why they  
20 should have to pay the 89 million dollars to my client. And  
21 for a few of them, the last one they're going to tell you is,  
22 is that the test results, verified and certified by the  
23 agreed-upon experts for validation, they were impossible,  
24 they're going to tell you. They're going to tell you that the  
25 plant design couldn't possibly have dissipated the amount of

1 heat it was creating. They're going to tell you that the  
2 equipment couldn't possibly have pumped the amount of water  
3 that could have gone through it. They're going to tell you  
4 that the electricity records and the energy records don't line  
5 up with FPL.

6 And I'm going to tell you, the evidence is going to  
7 show, we have a response to all of those things. And at the  
8 end of the day, at the end of the day, the evidence is going to  
9 show, Defendants entered into a contract, Defendants received  
10 the benefit of that contract to the tune of over 50 million  
11 dollars. And the evidence is going to show, that they refused  
12 to pay my client what he was owed, which is 89 million dollars.

13 Thank you, Your Honor.

14 THE COURT: Thank you.

15 Ladies and gentlemen, we're going to give you now a  
16 10-minute recess. We'll be taking you to the jury room. My  
17 courtroom deputy will meet you there and ask you to fill out a  
18 form that gives us your contact information that we can have  
19 during the trial to reach you, if we need to. She's also going  
20 to give each one of you my business card. It has the phone  
21 number to my office. That is the phone number to call from now  
22 on, for any reason, if you're running late or have any other  
23 issue. Please do not discuss the case. We'll bring you back  
24 inside so you can hear the remaining opening statements, and  
25 we're in recess.