

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, :
 :
Plaintiff, : Civil No.
 : 2:15-cv-00828-DN-EJF

-v- :

RAPOWER-3, LLC, INTERNATIONAL :
AUTOMATED SYSTEMS, INC., : Deposition of:
LTB1, LLC, R. GREGORY : NELDON JOHNSON
SHEPARD, NELDON JOHNSON, and
ROGER FREEBORN, :

Defendants. :

Place: UNITED STATES
ATTORNEY'S OFFICE
111 South Main Street
Suite 1800
Salt Lake City, Utah 84111

Date: June 28, 2017
9:10 a.m.

Reporter: Vickie Larsen, CSR/RMR

Excerpts from
Plaintiff
Exhibit
573

A P P E A R A N C E S

For the Plaintiff:

Erin Healy-Gallagher
Erin Hines
Chris Moran (present by phone)
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For the Defendants, RaPower-3, LLC, International
Automated Systems, Inc., LTB1, LLC, and Neldon
Johnson:

Denver C. Snuffer, Jr.
NELSON, SNUFFER, DAHLE & POULSEN
10885 South State Street
Sandy, Utah 84070
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Also Present:

Tom Mancini
Glenda Johnson

-oOo-

1 June 28, 2017

9:10 a.m.

2 P R O C E E D I N G S

3
4 NELDON JOHNSON,

5 called as a witness, having been duly sworn,

6 was examined and testified as follows:

7
8 MS. HEALY-GALLAGHER: All right. We're
9 on the record in the case of the United States v.
10 RaPower-3, et al., on June 28th, and we're starting at
11 approximately 9:10 a.m.

12 My name is Erin Healy-Gallagher of the
13 U.S. Department of Justice's Tax Division, appearing
14 on behalf of the United States.

15 Counsel, would you please make your
16 appearance.

17 MR. SNUFFER: My name is Denver Snuffer,
18 and I'm on behalf of Mr. Neldon Johnson today.

19 It's my understanding that there is a
20 protective order that's in place in this case, and
21 it's also my understanding that whatever the scope of
22 the questions are today, that the protective order
23 would apply to the testimony of this witness.

24 And I haven't seen the protective order,
25 haven't read it, but I discussed it with the client

1 and I know that there is one, and I think it's
2 applicable.

3 MS. HEALY-GALLAGHER: Well, there are
4 provisions in the protective order for invoking it, so
5 that's up to you at your discretion.

6 Mr. Don Reay is not present today. He
7 represents R. Gregory Shepard and Roger Freeborn.

8 And, Mr. Snuffer, am I correct you also
9 represent International Automated Systems, RaPower-3,
10 LLC, and LTBl, LLC?

11 MR. SNUFFER: Right. All of -- all of
12 those parties. But today's deposition is, as I
13 understand it, of Neldon Johnson individually.

14 MS. HEALY-GALLAGHER: That's correct.

15 MS. HINES: Erin R. Hines, also appearing
16 on behalf of the United States.

17 MS. HEALY-GALLAGHER: And we have
18 Christopher Moran on the phone.

19 Also present with us in the room are
20 Dr. Tom Mancini and Mrs. Glenda Johnson.

21 All right. This deposition will be
22 governed by the Federal Rules of Civil Procedure and
23 the rules of the District of Utah.

24 The exhibits will be marked and kept here
25 for the course of this week of depositions, after

1 Q. No bookkeeping?

2 A. There hasn't been any bookkeeping for
3 that company. I don't even know if it has a bank
4 account, to tell you the truth.

5 Q. And is the same true for LTB1, LLC?

6 A. That's correct. Excuse me. That's
7 correct, yes.

8 Q. Does XSun Energy, LLC do anything other
9 than marketing the technology?

10 A. No.

11 Q. Okay. Let's talk about SOLCOI, LLC. Are
12 you familiar with that entity?

13 A. Yes, I am.

14 Q. Who owns SOLCOI, LLC?

15 A. There again, without having the
16 documents, I don't really know. But I think I still
17 own 10 percent.

18 Q. Who is the manager of SOLCOI, LLC?

19 A. That -- that's me. That's Neldon
20 Johnson.

21 Q. Do you recall when SOLCOI, LLC was
22 formed?

23 A. It's been a while. 2008, '9. Or it
24 could even be later than that. I don't know. Could
25 have been before that, too. I don't know.

1 Q. Do you make the decisions for SOLCOI,
2 LLC?

3 A. I do.

4 Q. Since SOLCOI was formed, has anyone else
5 made decisions for that entity?

6 A. No.

7 Q. What, if any, role does Mrs. Glenda
8 Johnson play with respect to SOLCOI?

9 A. She, again, as a favor to me does the
10 bookkeeping and controls the money.

11 Q. Anything else?

12 A. No.

13 Q. What does SOLCOI do?

14 A. Just the marketing. It has marketing
15 arrangements with IAS with a contract on royalties.

16 Q. How is SOLCOI's marketing different from
17 RaPower-3's or XSun Energy's?

18 A. Just probably the size of the projects.
19 They have a different entity, there's different
20 requirements to -- different sales structure,
21 different entity that they're able to work with rather
22 than the -- the XSun or the RaPower.

23 Q. So what's different about the SOLCOI
24 structure and system?

25 A. They're able, then -- they're able to

1 separately negotiate contracts without having a -- a
2 set structure on -- on the way the negotiations of the
3 separate contracts are arranged.

4 Q. Who negotiates on behalf of SOLCO?

5 A. I -- I -- I do all the negotiations on
6 behalf of -- of SOLCO as their manager.

7 Q. How many customers does SOLCO have?

8 A. I don't know for sure.

9 Q. More than five?

10 A. Could be, but I don't know for sure. I
11 -- I don't keep track of that unless I need -- need to
12 know for some reason.

13 Q. Who does keep track?

14 A. Well, my wife does the bookkeeping, and
15 so she -- Glenda Johnson probably has a record of it
16 on her computer system. So...

17 But she does it, you know, as a favor for
18 me.

19 Q. So do you have an idea of SOLCO's sales
20 since it was formed?

21 A. Well, I know of a couple.

22 Q. I mean gross. Gross sales?

23 A. I -- it's in the tens of millions of
24 dollars. I don't know. They're under contract. They
25 have -- they haven't collected all that money, but

1 there's money in escrow accounts, as far as from what
2 I understand, to complete the project.

3 Q. Do you have an idea of the number of
4 customers that XSun Energy has?

5 A. I don't know right off the top of my
6 head, no.

7 Q. Do you have an idea of XSun Energy's
8 gross sales?

9 A. No, I'm -- I don't even venture on that
10 one. I -- without looking at the books, I really
11 wouldn't know.

12 Q. Does SOLCOI sell lenses or does it sell
13 something else?

14 A. No, it does sell lenses, but the projects
15 are negotiated on a different basis and there's
16 different requirements on -- on the legal structures
17 that we enter into that we require them to have, I
18 think, in order to do business on that level.

19 Q. Does XSun Energy sell lenses or does it
20 sell something else?

21 A. Mostly just lenses.

22 Q. And RaPower-3 sells lenses; correct?

23 A. That's correct.

24 Q. And are they the same lenses, whether
25 it's RaPower-3, XSun Energy, or SOLCOI that's doing

1 the selling?

2 A. Yeah. Well, you know, we could enter
3 into a contract for different sizes of lenses, and I
4 suppose that --

5 Q. I'm sorry, I'm going to stop you right
6 there.

7 Different physical sizes of the physical
8 lens or a different quantity of lenses?

9 A. No. We can -- the size of the lenses are
10 -- are -- are variable according to the -- the mold
11 that goes on the machine.

12 Q. Okay. Well, let me -- let me ask
13 potentially a better question.

14 A. Okay.

15 Q. In the past, as of today, have RaPower-3,
16 XSun Energy, and SOLCOI sold the same lenses?

17 A. Yes. Yes, that's correct.

18 Q. Is there any difference in pricing of
19 those lenses between XSun Energy, SOLCO, and
20 RaPower-3?

21 A. No, the pricing is the same.

22 Q. For lenses sold by RaPower-3, XSun
23 Energy, and SOLCOI, LLC, is it Cobblestone Center that
24 manufactures the infrastructure for those lenses?

25 A. That's correct, yes.

1 Q. Okay. And is the idea that those -- that
2 the lenses sold by XSun Energy, RaPower-3, and SOLCOI
3 would ultimately be operated and maintained by LTB,
4 LLC or LTB1, LLC?

5 A. It depends on the contracts. The
6 contracts are not -- the people that buy the lenses
7 are not obligated to use LTB or any -- any -- any
8 operational company. That's their choice.

9 Q. To your knowledge, has anyone who has
10 bought lenses chosen a company other than LTB, LLC or
11 LTB1, LLC?

12 A. No, not that I know of.

13 MS. HEALY-GALLAGHER: Let's go off the
14 record for a quick second.

15 (There was a discussion held off the record.)

16 (Exhibit 509 was marked for identification.)

17 MS. HEALY-GALLAGHER: All right.

18 Mr. Johnson, we have set up what has been marked as
19 Plaintiff's Exhibit 509, which is a disk exhibit. And
20 like we talked about, what we're going to do is walk
21 through some files on this disk, and I will call those
22 out for the record as we go through.

23 Q. First off, Mr. Johnson, do you recall
24 that on April 4, 2017, the United States counsel made
25 a site visit to Millard County, Utah?

1 A. You can -- you can -- any -- any agency
2 that deals with solar energy, for example, have --
3 have those legal requirements. But you could put --

4 Q. Sir, that's not my question.

5 A. I don't know.

6 Q. Where can I find Rocky Mountain Power's
7 requirements for interconnecting with its system?

8 A. You can ask Rocky Mountain Power. I
9 don't know.

10 Q. Do you have a copy of their requirements?

11 A. Yeah, we do somewhere.

12 Q. Did you produce it to the United States?

13 A. I don't know. I -- I wasn't -- Rocky
14 Mountain Power stuff, it wasn't ours. I'm sure you
15 did, but I don't know what was produced and what
16 wasn't. But we knew we had it. It was in somewhere.
17 It may even be in the business plan, I don't even
18 know.

19 Q. All right.

20 A. But, yeah, you have access to it.

21 Q. Another question I have, sir: You say
22 you currently have contracts that would obligate you
23 to go into full-blown production as soon as you're
24 connected to the grid. Did I understand that
25 correctly?

1 A. There's a timeframe which we have -- we
2 would be obligated to meet in order to release the
3 money to us. There's a timeframe on the releasing of
4 the money to us and the timeframe of which we must
5 start producing power.

6 Q. How many such contracts are outstanding?

7 A. I'm not sure. There are at least one or
8 two, but -- and they're big contractors, but they're
9 all -- but they're not just -- they're not -- there's
10 one that already has their money in escrow.

11 Q. Who's that?

12 A. I'm not sure. It's a company in -- back
13 east. But there's -- but --

14 Q. I'm sorry. I'm sorry, sir.

15 And with which entity is that contract
16 made?

17 A. SOCOI -- I mean SOLCO.

18 Q. So SOLCOI entered a contract with a
19 company back east you say?

20 A. Right.

21 Q. And you don't know the name of that
22 company?

23 A. I do know the name, but I don't remember
24 the names. I just don't know them. I just don't ever
25 do that.

1 Q. When did SOLCOI enter that contract?

2 A. Two or three years ago.

3 Q. Did you sign that contract on behalf of
4 SOLCO?

5 A. I did.

6 Q. And did that company back east pay any
7 money to SOLCO?

8 A. Yes, they did.

9 Q. How much?

10 A. I think it was a million dollars.

11 Q. What was that \$1 million for?

12 A. It was a down payment on -- on the
13 contract that they then could exercise the other
14 contracts. There's three other contracts they wanted
15 to exercise.

16 Q. What does that mean?

17 A. It means that they -- this gives them the
18 right to exercise those other contracts. I can't stop
19 them from exercising those other contracts.

20 Q. What do you mean exercising "those
21 other"? What are those three other contracts for?

22 A. It was -- it was for a large power plant.
23 So I can't stop them from exercising
24 those other contracts once we get -- once we
25 accomplish -- once we put power to the grid, I can't

1 stop them from exercising those contracts.

2 Q. So does that mean those three other
3 contracts would obligate --

4 A. Yes.

5 Q. -- SOLCO, or another entity that is at
6 your direction, to build power plants --

7 A. Yes.

8 Q. -- for these people?

9 A. Yes.

10 Q. Okay. All right.

11 So that's one company back east that
12 SOLCO has a contract with?

13 A. Right.

14 Q. What, if any, other contracts are
15 outstanding?

16 A. Well, they're not -- they're not
17 contracts, but they're the same way. These other
18 companies want -- entered into the same kind of a
19 contract that this group has.

20 Q. How many other companies?

21 A. Well, the ones we've talked to are the --

22 Q. No, sir. I'm not interested in who you
23 talked to.

24 What other companies have entered
25 contracts?

1 generated.

2 Q. But they are not connected to any
3 particular -- sir, let me finish. Sir, let me finish
4 the question.

5 A. Okay. Sorry.

6 Q. The serial numbers are not connected to
7 any specific lens; correct?

8 A. No. They designate where lenses are at
9 at any given time for tracking. So they know what
10 pallet those lenses are in.

11 Q. How do they know?

12 A. Because the programs are -- is there and
13 tells me where the lenses are at.

14 Q. What program?

15 A. The program which we buy them off and
16 they say, okay, we purchased these lenses, now
17 they're -- they're in the warehouse.

18 Q. Sir, what's the name of the program?

19 A. It's just my own program. I wrote it.

20 Q. Where is this program stored?

21 A. On the Internet. It's stored on the
22 Internet that generates --

23 Q. Which -- how do I access it? Which
24 website?

25 A. You don't access it. What you do is you

1 buy a lens, and then it generates you a number and it
2 tells you what -- what serial numbers are on it, and
3 it's stored on the database on the -- on the website,
4 on the Cloud, or whatever you want to talk about.

5 Q. And that program, sir, according to your
6 testimony, indicates exactly where that lens is,
7 whether on a pallet or on a tower?

8 A. Yes, it can. It can track.

9 Q. It can or does it, sir?

10 A. I don't know. I think that it does, but
11 it may not. Depends how good my employees are.

12 Q. Mr. Johnson, do you know how many lenses
13 have been sold by any entity?

14 A. No, I don't.

15 Q. The current price of a lens, Mr. Johnson,
16 the total price is currently \$3,500; is that right?

17 A. That's correct.

18 Q. Who decided that \$3,500 should be the
19 price of a lens currently?

20 A. I did.

21 Q. Anyone else?

22 A. No. I had people evaluate certain
23 things, but I decided how to -- how to price.

24 Q. Who evaluated things with respect to the
25 price of the lens?

1 before and I didn't think I was guilty now.

2 Q. And, Mr. Johnson, you've said before that
3 you believe the IRS has exonerated you?

4 A. Well, they gave me my tax credit.

5 Q. So that's what I want to understand. Who
6 -- how did you arrive at that understanding?

7 A. Paul Jones.

8 Q. Paul Jones?

9 A. Uh-huh.

10 Q. What did Paul Jones tell you?

11 A. He told me that they -- they gave me my
12 tax credits.

13 Q. And when you say they gave you your tax
14 credits, you mean the IRS?

15 A. The IRS.

16 Q. And what do you mean when you say the IRS
17 gave you your tax credits?

18 A. Just that they allowed them.

19 Q. For what tax year?

20 A. Well, the tax year they weren't doing the
21 audit. So...

22 Q. When did Paul Jones tell you that?

23 A. When they -- when they did it. I don't
24 remember the date.

25 Q. Was it last year?

1 A. Whenever they got through and give it to
2 me. I'm not sure -- I'm sure you got the records, but
3 I don't.

4 Q. Well, sir, I'm trying to understand what
5 your recollection is.

6 Was it ten years ago?

7 A. Okay. No, it wasn't ten years. No. It
8 was -- it was last year.

9 Q. It was within the last year?

10 A. But I don't know when. I don't remember
11 when.

12 Q. And did Paul Jones simply say that the
13 IRS allowed your tax credits?

14 A. No. He showed me.

15 Q. Did he say the IRS has exonerated you?
16 Is that what he said?

17 A. Well, no, he didn't say that. I
18 interpreted it to mean that. That's my -- probably my
19 words, not his. But he -- but I felt like that that's
20 -- that is, if you allowed them, then I would assume
21 that exonerate would mean the same thing as allowed,
22 but maybe I'm wrong.

23 Q. Do you have anything in writing from the
24 IRS to that effect?

25 A. Yeah, they -- they -- the letter that

1 Paul Jones has, and I'm sure they sent me one, but I
2 never read it.

3 Q. Have you produced that letter to the
4 United States?

5 A. No. I assume Paul Jones, if you ask him,
6 would do that. I assumed you had it.

7 Q. Well, I'm going to ask you to produce
8 that letter to the United States.

9 A. Fine, I'll ask Paul Jones to give it to
10 me. I probably had it, but I probably threw it away.
11 I figure that's what I pay my attorney to do is read
12 those things, not me.

13 MRS. JOHNSON: Are you going to have a
14 list of everything that I need to give to you?

15 MS. HEALY-GALLAGHER: I'm going to talk
16 with Mr. Snuffer after the deposition.

17 MRS. JOHNSON: You make sure.

18 MR. SNUFFER: Right. I haven't commented
19 on any of this.

20 Q. BY MS. HEALY-GALLAGHER: Mr. Johnson,
21 have you ever, other than any situation with the IRS
22 in 2012, have you ever been arrested?

23 A. Yeah, I was arrested.

24 Q. Have you ever been convicted of any
25 crime?