

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

RAI STRATEGIC HOLDINGS, INC. AND
R.J. REYNOLDS VAPOR COMPANY

Plaintiffs and
Counterclaim Defendants,

v.

ALTRIA CLIENT SERVICES LLC; PHILIP
MORRIS USA INC.; and PHILIP MORRIS
PRODUCTS S.A.

Defendants and
Counterclaim Plaintiffs.

Case No. 1:20-cv-00393-LO-TCB

ORAL ARGUMENT REQUESTED



**PMI/ALTRIA'S OPPOSITION TO RJR'S MOTION TO EXCLUDE
THE TESTIMONY OF STACY EHRLICH**

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I. INTRODUCTION

The Court should deny RJR's motion to exclude the opinions of PMI/Altria's regulatory expert, Stacy Ehrlich. None of RJR's four arguments provides a basis for exclusion.

First, Ms. Ehrlich's opinions are supported by a reliable methodology and based on sufficient facts and data. She anchors her opinions in her experiential expertise from decades of work before the U.S. Food and Drug Administration ("FDA"), relevant materials on which others in her field reasonably rely, input from PMI/Altria's technical experts, and extensive record evidence. In light of the specialized e-cigarette industry at issue in this case, Ms. Ehrlich's testimony is essential to help the jury understand what RJR describes as FDA's "complex regulatory scheme." Dkt. 825 at 6.

Second, Ms. Ehrlich's opinions are not speculative, far from it. RJR's contrary arguments seek to impose requirements on Ms. Ehrlich's testimony that contradict the law. For example, Ms. Ehrlich is not required to know FDA's state of mind or be able to predict its actions. Nor is she required to quantify the value RJR receives from using PMI/Altria's patented technology. At most, RJR's criticisms go to weight, not admissibly, and are not grounds for exclusion.

Third, Ms. Ehrlich does not offer legal opinions. The opinions that RJR seeks to exclude are FDA's own characterizations of e-cigarettes or observations about the landscape of tobacco product regulation and related industry practices.

Fourth, Ms. Ehrlich's opinions are highly probative to multiple damages issues and, contrary to RJR's argument, do not encompass "extraneous topics." Mot. at 1. Since RJR's argument merely rehearses the meritless positions that RJR advances in its Motion *in Limine* Nos. 1-3, and 11 (Dkts. 825, 870), these arguments should be rejected for the reasons set forth in PMI/Altria's oppositions to those motions.

Ms. Ehrlich is undisputedly qualified, and her opinions are reliable, relevant, and will help

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