

**IN THE 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

**REPLY IN SUPPORT OF REYNOLDS'S MOTION TO
EXCLUDE THE TESTIMONY OF STACY EHRLICH**

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INTRODUCTION

PM/Altria concedes that Ms. Ehrlich, the expert it proffered to opine on the value of the patented technology to Reynolds's PMTAs:

- did not review the technical portions of Reynolds's PMTAs,
- does not know exactly what FDA considers in evaluating the applications,
- does not know how FDA would view the patented technology,
- does not know how much more likely PMT authorization may be based on the patented technology, and
- did not quantify the purported value of the patented technology.

These concessions confirm that Ms. Ehrlich's testimony should be excluded because it is unreliable, not supported by a reasonable methodology, not supported by sufficient facts or data, speculative, untethered to the facts of this case, and would have a greater potential to mislead than to aid the jury.

PM/Altria seeks to have the Court set aside its gatekeeping function because of Ms. Ehrlich's "experiential expertise." Dkt. 1016 at 5-8. But the Supreme Court confirmed in *Kumho Tire Co. v. Carmichael* that a trial court's gatekeeping obligation applies to all expert testimony, even if that testimony is based on, for example, experiential knowledge. 526 U.S. 137, 147 (1999). Regardless of Ms. Ehrlich's qualifications, her testimony should be excluded because she did not review the technical portions of Reynolds's PMTAs that are the subject of her opinions and she conceded that "[t]here's no way of knowing" to what extent the patented technology may affect the chances of PMT authorization. Dkt. 877 at 5.

In addition, Ms. Ehrlich's legal opinions regarding the alleged illegality of Reynolds's VUSE products are not the proper subject of expert testimony. And her testimony regarding topics

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