

**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.: 1:20cv00393-LO-TCB

REYNOLDS'S RESPONSE TO PMI/ALTRIA'S MAY 13 LETTER

Reynolds submits this response to PMI/Altria's May 13 letter to the Court.

PMI/Altria's letter presents no impediment to starting trial on June 6 as scheduled.

Indeed, PMI/Altria's letter asks the Court to change its schedule, and that of the summoned jurors, only so that PMI/Altria may call its witnesses in its apparent preferred order. But PMI/Altria's letter identifies no good cause to postpone trial, even by a day. In fact, the letter indicates that Mr. McAlexander and Mr. Meyer both are available to testify early in the week of June 6, during PMI/Altria's case-in-chief. Dkt. 1227 at 2. The Court should proceed with trial on June 6 as ordered.

Moreover, counsel for PMI/Altria was aware of its experts' other scheduled trial since January 28, 2022. *See* Dkt. 1227 at 1 ("On January 28, 2022, Judge Gilstrap set three cases for trial on June 6, 2022."). That trial had already been set when PMI/Altria told this Court during the February 2 hearing "I would obviously need to confirm, but I anticipate that those dates would be fine"—referring to the June 6 trial date the Court ultimately set. *See* Dkt. 1136 at 8.

That remained the case when, at a February 7 hearing, counsel repeated that “[w]e were able to make all the dates that you had offered work”—including the current June 6 trial date. *See* Dkt. 1135 at 4. Yet, PMI/Altria never so much as mentioned this “conflict” to the Court—and did not confer with Reynolds—until filing its letter last Friday.

PMI/Altria should not be permitted to turn its long-known scheduling concerns into this Court’s problem on the eve of trial. PMI/Altria’s letter demonstrates:

- On **January 28, 2022**, Judge Gilstrap in Eastern District of Texas set a June 6 start for a trial involving Mr. McAlexander and Mr. Meyer. Dkt. 1227 at 1.
- On **February 2, 2022**, counsel for PMI/Altria told the Court it would “need to confirm” but “anticipate[d] that [June 6] would be fine” to start trial. Dkt. 1136 at 8.
- On **February 7, 2022**, counsel for PMI/Altria told the Court, presumably after taking steps to confirm, PMI/Altria “were able to make [June 6] work.” Counsel for PMI/Altria made no mention of any conflict the week of June 6. Dkt. 1135 at 4.
- On **February 18, 2022**, Judge Gilstrap confirmed the other trials involving Mr. McAlexander and Mr. Meyer were set for June 6. Dkt. 1227 at 2.
- On **March 18, 2022**, this Court held a two-plus hour hearing on the parties’ motions *in limine* and *Daubert* motions. Counsel for PMI/Altria made no mention of any scheduling concerns for the week of June 6.
- On **May 13, 2022**, PMI/Altria asked the Court to postpone the start of trial by one day *without informing Reynolds or asking for its position* despite PMI/Altria’s awareness of this scheduling issue since January 28.

If a June 6 start date for trial was not workable for PMI/Altria, it should have been candid in its February representations to the Court regarding its availability for the June 6 trial date, and it should have informed the Court and Reynolds of the potential problem sooner than three weeks before trial.

The Court, the parties, and all witnesses planned for a trial where the evidence and closing arguments will end on Thursday, June 16. Pushing the start date out a day could

unnecessarily push that end date out by four days (from Thursday June 16 to Monday June 20) and imposes additional burdens on the Court, the jury, and other witnesses who already have arranged their schedules to be present during the two weeks set for trial back in February. If PMI/Altria needs to present *its* witnesses in its case-in-chief out of its preferred order, it is a problem of its own making, and, in either event, does not justify postponing the start of trial. The Court should hold PMI/Altria to its word and maintain the June 6 trial date.

Dated: May 17, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2022, a true and correct copy of the foregoing was served using the Court's CM/ECF system, with electronic notification of such filing to all counsel of record.

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