

**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

**REYNOLDS'S OPPOSITION TO PHILIP MORRIS'S MOTION TO INCLUDE A  
SUMMARY OF CLAIM CONSTRUCTIONS IN THE JUROR NOTEBOOKS**

## ARGUMENT

The Court should deny Philip Morris's request to provide jurors with a chart of claims for which the Court has concluded that no construction is necessary, for three reasons.

*First*, the chart is unnecessary. The parties' Joint Proposed Preliminary and Final Jury Instructions jointly requested that the Court instruct the jury that "I have determined that all of the claim terms should be given their plain and ordinary meaning." (Dkt. 1204-2 at 9, 65). Those joint proposed instructions are consistent with the Court's claim construction order (Dkt. 360) ("conclud[ing] that none of the fifteen terms in dispute should be modified") as well as its ruling denying Philip Morris's *Daubert* Motion to Exclude Opinions of Experts Based on Rejected Claim Constructions (Dkt. 1184 at 21 ("The Court previously held that ... all terms should be given their ordinary and customary meaning.")). These rulings are law of the case, and Philip Morris's proposed chart merely repeats the already clear proposed instructions based upon them.

*Second*, Philip Morris's additional chart will confuse the jurors. It would be confusing to present a chart listing only *some* claims as having their plain and ordinary meaning when the parties have jointly requested an instruction that "*all* of the claim terms should be given their plain and ordinary meaning" (emphasis added). Nor does the proposed chart include all of the claim limitations that the jury will be asked to consider for the questions of infringement and invalidity—all of which will be given their plain and ordinary meaning. By selectively placing only a handful of the asserted claim limitations before the jury, the chart poses a risk of creating an impression that these limitations are somehow more important than the other claims or limitations.

*Third*, Philip Morris's arguments improperly attempt to relitigate their already-rejected *Daubert* motion (see Dkt. 1184 at 20-24), a ruling Philip Morris mentions nowhere in its brief but which is law of the case. See June 2, 2022 Hr'g Tr. at 10:20-23. In rejecting Philip Morris's *Daubert* motion the Court concluded that "it is appropriate for the Parties to introduce evidence

regarding the plain and ordinary meaning of the claim terms during trial,” and Reynolds’s expert testimony “will be appropriate for, and helpful to, the jury in understanding the plain meaning of the terms.” Dkt. 1184 at 21-22. Indeed, the Court observed that Philip Morris “does not argue that any of the characterizations in [Reynolds’s] expert reports contradict the plain meaning of a term.” *Id.* at 21. Philip Morris’s suggestion that Reynolds intends to violate the Court’s Order by eliciting improper testimony on claim construction is therefore unfounded. Reynolds will not “improperly intrude on the Court’s obligation to construe the claims to the jury,” (Dkt. 1184 at 22), but rather explain the plain and ordinary meaning of claim terms to the jury, just as Judge O’Grady has twice authorized. Raising an objection to Philip Morris’s superfluous chart does not indicate otherwise.

### **CONCLUSION**

The Court should deny Plaintiff Philip Morris’s motion to include a summary chart of claim construction rulings in the juror notebooks.

Dated: June 7, 2022

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of June, 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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