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 ARGUMENTS AND OBJECTIONS REGARDING DISPUTED FINAL JURY INSTRUCTIONS (DKT. 1204-1) AND VERDICT FORM

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REYNOLDS'S ARGUMENTS AND OBJECTIONS REGARDING DISPUTED FINAL JURY INSTRUCTIONS (DKT. 1204-1) AND VERDICT FORM

Defendant Reynolds respectfully submits the following arguments and objections regarding the disputed issues remaining as to the parties' Joint Proposed Final Jury Instructions (Dkt. 1204-1), and the parties proposed verdict forms (Dkts. 1302 (Reynold's proposed verdict form), Dkt. 1313-1 (Philip Morris's proposed verdict form)). Reynolds also responds to Philip Morris's additional proposed instructions (Dkt. 1314).

By presenting these arguments and objections on the remaining issues, Reynolds does not concede that Plaintiff Philip Morris Products, S.A. ("Philip Morris") has presented or will present legally sufficient evidence for the jury to resolve the matters addressed by these instructions. Reynolds reserves its right to propose additional instructions and submit additional argument under Rule 51(a)(2).

Due to the narrowing of the case and issues, the following requested instructions are no longer relevant and Reynolds respectfully requests that they be withdrawn: Final Proposed Instructions Nos. 10, 19, 24, 25, 26, 27, 28, 32, 36, 37, 43, 54.

Proposed Final Instruction No. 8 – Distinction Between Fact and Expert Testimony

The Court has recognized that Dr. James Figlar, a witness for Reynolds, "represents the difficulties in cleanly drawing the line between witness testimony that will fall into either lay or expert testimony" because of his educational background (he "has a doctorate in Chemistry") and his "experience with the relevant technology as the Vice President of Scientific and Regulatory Affairs for RAI." Dkt. 1184 at 12. The Court ruled that Dr. Figlar "can offer testimony on the relevant technology to the extent that there is an established foundation for that testimony and the testimony is based on Dr. Figlar's personal knowledge or perceptions from his work and experience at RAI," while he "is precluded from discussing theories of infringement, theories of invalidity, or the patent claims." *Id.*

Reynolds's requested instruction, identified in italicized language, is an accurate statement of the law, it is consistent with the Court's order, and it will be helpful to the jury in evaluating the testimony of fact witnesses, like Dr. Figlar, who have specialized knowledge relevant to the issues in the case. *See, e.g.*, *MCI Telecomms. Corp. v. Wanzer*, 897 F.2d 703, 706 (4th Cir. 1990) (internal quotations omitted) ("The modern trend favors the admission of opinion testimony [under Rule 701], provided that it is well founded on personal knowledge as distinguished from hypothetical facts," and the opinion is offered "on the basis of relevant historical or narrative facts that the witness has perceived."); *Henderson v. Corelogic Nat'l Background Data, LLC*, No. 3:12CV97, 2016 WL 354751, at *2 (E.D. Va. Jan. 27, 2016) ("[T]estimony may qualify as lay witness testimony even where the subject matter is 'specialized' or 'technical,' as long as the testimony: (1) is based on the layperson's personal knowledge, typically in the form of industry experience; and (2) 'results from a process of reasoning familiar in everyday life.'" (quoting Fed. R. Evid. 701 Advisory Committee's Notes (2000)); *B & G Plastics, Inc. v. Eastern Creative Indus., Inc.*, 2004 WL 307276, *8 (S.D.N.Y. 2004) (permitting fact witness opinion testimony on technical issues

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