

EXHIBIT E

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PHILIP MORRIS PRODCUTS S.A.,)
)
 Counterclaim Plaintiff,) Civil Action
) No. 1:20-cv-00393-LMB/TCB
)
 v.) June 15, 2022
) 11:24 a.m.
 R.J. REYNOLDS VAPOR COMPANY,)
)
 Counterclaim Defendant.)
)

VOLUME 6 - MORNING SESSION
(Verdict)
TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE LEONIE M. BRINKEMA,
UNITED STATES DISTRICT COURT JUDGE

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11:24AM **1** **MORNING SESSION, JUNE 15, 2022**

11:24AM **2** (11:24 a.m.)

11:25AM **3** THE COURTROOM CLERK: Civil Action 20-393, Philip Morris

11:25AM **4** Products S.A. versus R.J. Reynolds Vapor Company.

11:25AM **5** Would counsel please note their appearances for the record

11:25AM **6** MR. GRANT: Good morning, Your Honor. Max Grant from

11:25AM **7** Philip Morris with Dr. Moira Gilchrist, Clem Naples, Greg

11:25AM **8** Sobolski, Fred Sandford, Larry Gotts and a crew of people here

11:25AM **9** for the plaintiff.

11:25AM **10** THE COURT: Good morning.

11:25AM **11** MS. PARKER: Good morning, Your Honor. Stephanie Parker

11:25AM **12** for Reynolds, David Maiorana, Jason Burnette and Bill Devitt.

11:25AM **13** Thank you.

11:25AM **14** THE COURT: All right. Now, the parties are all here? We

11:25AM **15** said we would hope up the verdict for a few minutes.

11:25AM **16** MR. GRANT: Correct. We appreciate the Court's courtesy.

11:25AM **17** THE COURT: All right. That's fine. We'll bring the jury

11:25AM **18** in.

11:25AM **19** THE COURT SECURITY OFFICER: Yes, Judge.

11:26AM **20** (Jury in at 11:26 a.m.)

11:26AM **21** THE COURTROOM CLERK: Mr. Foreperson, has the jury reached

11:26AM **22** its verdict?

11:26AM **23** THE FOREPERSON: Yes.

11:26AM **24** THE COURTROOM CLERK: Could you hand it to the court

11:33AM 1 parties for your work.

11:33AM 2 You know, being a juror is a very important civic

11:33AM 3 function. I mean, it's like voting. You know, it's one of the

11:33AM 4 things that makes our democracy work, and it's because of folks

11:33AM 5 like yourselves who are willing to take time out of your very

11:33AM 6 busy personal schedules to sit in a courtroom and listen to the

11:33AM 7 evidence and then render decisions. We couldn't do it without

11:33AM 8 you. So I want to thank you, but your term is now finished.

11:33AM 9 If you will just check out with the Clerk's Office before

11:33AM 10 you leave so that your parking and other things can be taken care

11:34AM 11 of. I hope you enjoy the afternoon, but you're free to go.

11:34AM 12 We're going to stay in session for a few minutes.

11:34AM 13 (Jury dismissed at 11:34 a.m.)

11:34AM 14 THE COURT: All right. So I'll enter a judgment

11:34AM 15 consistent with the jury's verdict, and I want to head off some

11:34AM 16 potential post-trial issues right now.

11:34AM 17 As you all know, the Federal Circuit and the Supreme Court

11:34AM 18 and the statute, 35 U.S.C. 285, do provide that attorneys' fees

11:34AM 19 are available to the prevailing party but only in exceptional

11:34AM 20 circumstances. I'm -- have a seat. I'm saving both parties

11:35AM 21 several hundred thousand dollars probably and the lawyers a lot

11:35AM 22 of time, but I am not going to entertain any post-trial motion

11:35AM 23 for attorneys' fees in this case.

11:35AM 24 First of all, it is a mixed victory for the plaintiff, but

11:35AM 25 there's -- because the -- you didn't get nearly as many damages

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11:37AM 1 exceptional case, and there is no need to waste any time or money

11:37AM 2 on briefing attorneys' fees.

11:37AM 3 I also recognize, because this has been a hotly litigated

11:37AM 4 case, that there may be a request to file post-trial motions. I

11:37AM 5 will give the parties 14 days to file any post-trial motions, and

11:37AM 6 I'm limiting them to 15 pages.

11:37AM 7 This case, in my view, has been overly litigated. I've

11:37AM 8 never had so many motions in limine while a trial was in

11:37AM 9 progress, most of which I thought were really meritless. They

11:37AM 10 were preemptive strikes that were not necessary.

11:37AM 11 I did enjoy the trial, and I did think that overall it was

11:37AM 12 a well-trying case. It was overtried, but I know patent cases

11:37AM 13 tend to be that way because there's so much money involved. Way

11:37AM 14 too many lawyers involved for my taste, but that's what the jury

11:37AM 15 has done. And I will look at your motions, but I feel that this

11:38AM 16 was a very good jury, and their verdict was an interesting

11:38AM 17 verdict and one that shows that they thought carefully about the

11:38AM 18 case, so it's highly unlikely I'm going to take it away. All

11:38AM 19 right. Then we'll recess court for the day.

11:38AM 20 (Proceedings adjourned at 11:38 a.m.)

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11:35AM 1 as was expected, but this is not an exceptional case in my view

11:35AM 2 at all.

11:35AM 3 The Court has to look at multiple factors in determining

11:35AM 4 whether a case is exceptional. This is a case in which the

11:35AM 5 litigation positions of both parties had merit. Obviously some

11:35AM 6 claims were successful and some claims were unsuccessful. The

11:35AM 7 conduct of the attorneys on both sides had issues, although the

11:35AM 8 trial itself was well-conducted.

11:35AM 9 I was very concerned in just the brief time that I was on

11:35AM 10 this case in that very unpleasant exchange in the Figlar

11:36AM 11 deposition. I read the transcript portions in which one attorney

11:36AM 12 used the term "cut the crap," which is not an appropriate way for

11:36AM 13 lawyers to speak in any kind of process, and where the opposing

11:36AM 14 counsel had to invoke what should not be done in the 4th Circuit,

11:36AM 15 had to violate Ralston Purina and told the witness to stop

11:36AM 16 answering questions. That kind of litigation conduct is

11:36AM 17 absolutely unacceptable on both sides.

11:36AM 18 During the course of this trial, reference was made to the

11:36AM 19 Chinese origin of some of the Reynolds products. Judge O'Grady

11:36AM 20 had indicated previously that that was not to come into the case.

11:36AM 21 I thought that that was unfair and inappropriate.

11:36AM 22 And there was a contact this morning, an ex parte contact

11:36AM 23 with chambers staff, addressing the issue of attorneys' fees,

11:36AM 24 which also was inappropriate.

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3 C E R T I F I C A T E

4 I, Scott L. Wallace, RDR-CRR, certify that

5 the foregoing is a correct transcript from the record of

6 proceedings in the above-entitled matter.

7 /s/ Scott L. Wallace 6/15/22

8 Scott L. Wallace, RDR, CRR Date

9 Official Court Reporter

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