

# Exhibit 11

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

<b>PHILIP MORRIS PRODCUTS S.A.,</b>	)	
	)	
<b>Counterclaim Plaintiff,</b>	)	Civil Action
	)	No. 1:20-cv-00393-LMB/TCB
	)	
<b>v.</b>	)	June 13, 2022
	)	9:23 a.m.
<b>R.J. REYNOLDS VAPOR COMPANY,</b>	)	
	)	
<b>Counterclaim Defendant.</b>	)	
	)	
	)	

**VOLUME 4 - MORNING SESSION  
TRANSCRIPT OF JURY TRIAL PROCEEDINGS  
BEFORE THE HONORABLE LEONIE M. BRINKEMA,  
UNITED STATES DISTRICT COURT JUDGE**

APPEARANCES:

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1           That was not an opposed jury instruction. That was an  
2 agreed instruction, but for the record, is either side objecting  
3 to that being the way in which claim construction is handled in  
4 this case?

5           MR. GRANT: Your Honor, the only objection I want to  
6 ensure that's preserved for the record is one that's in our  
7 written motion, and that's in a proposed jury instruction, which  
8 is the two findings that Judge O'Grady made, which is, of course,  
9 experts get to talk about plain meaning. However, he found twice  
10 that plain meaning of "blind hole" does not exclude and includes  
11 structures that have open sides, and so we filed a motion on  
12 that.

13           They shouldn't be entitled to argue contrary to that  
14 finding. We've included a jury instruction, and I do believe  
15 that if they argue that in closing, we will have preserved the  
16 issue. That's the only claim construction issue that I see as  
17 requiring preservation.

18           THE COURT: All right. Let me hear from Reynolds on that.

19           MR. MAIORANA: Thank you, Your Honor. So this issue about  
20 the disclaimer is what we talked about on Friday, that the file  
21 history has been put before all these witnesses with no objection  
22 from anyone. And then you'll recall Mr. Grant came up after  
23 Mr. Kodama's direct, and said he had an evidentiary issue and  
24 started arguing an objection that wasn't made, and I raised Local  
25 Rule 83.1(j) saying he needs to do the cross.

1           It's the same exact issue we've already presented to Your  
2 Honor, and Your Honor has already denied it. So this -- now they  
3 filed a motion -- I understand they want to preserve the  
4 objection, but now we have to respond to a motion on an argument  
5 that we already won, and I think it's not a good use of the  
6 Court's time.

7           With respect to the plain and ordinary meaning, certainly,  
8 as you know, Your Honor, we presented claim construction  
9 arguments to Judge O'Grady in the *Markman* proceeding, so we would  
10 like to preserve that we have made those claim constructions and  
11 that Judge O'Grady found that the claim terms all have their  
12 plain and ordinary meaning. For purposes of appeal, we want to  
13 preserve that objection, but we don't have an objection to  
14 proceeding under Judge O'Grady's *Markman* order, as you've said.

15           THE COURT: All right. Well, I've expressed my  
16 discomfort, but, again, I feel that has been the law of the case  
17 for some time, and both sides have an objection to the case going  
18 in the jury in the format that it's going to go.

19           Both sides should think about what that means down the  
20 road because one of you, I'm assuming -- well, it's possible you  
21 could both lose, that's actually maybe more than just possible.  
22 But anyway, I mean, you could have the jury find in either side's  
23 favor, but of course, that opens up still the right to appeal,  
24 and this is a wide-open issue in the appellate record, all right?  
25 And so I just think both sides should be thinking about that.

1           If there were a way of cleaning up that record, I would be  
2 willing to entertain that. Otherwise, that's how it goes to the  
3 jury, all right?

4           MR. MAIORANA: And given that all the evidence is in, Your  
5 Honor, I don't see a practical way to clean that issue up. I  
6 completely concur with Your Honor's concern, and given that claim  
7 construction is *de novo*, it's going to be considered by the Court  
8 of Appeals at the Federal Circuit *de novo*, but we have the order  
9 from Judge O'Grady that we had to present the evidence based on  
10 that. Certainly we want to preserve our objections to that, and  
11 we certainly don't concede or acquiesce to what Mr. Grant just  
12 said, that Judge O'Grady said a blind hole can never have open  
13 sides. That's for the jury to decide. That's a question of  
14 infringement, which is what Judge O'Grady said, and I just want  
15 to make sure I'm not acquiescing to Mr. Grant's statement.

16           THE COURT: I'll look at the papers. Obviously, I want to  
17 give it careful attention, so the plan is to reconvene at 2:00,  
18 and again, that should give again, especially my court reporter,  
19 an opportunity so the transcript issue will not be a problem in  
20 terms of what was raised earlier, all right? All right. We'll  
21 see you back at 2:00.

22           (Thereupon, a luncheon recess was had beginning at  
23 12:09 p.m.)

24

25

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