

**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

**COUNTERCLAIM PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION  
FOR SCHEDULING ORDER SETTING IN LIMINE/DAUBERT MOTION DATES**

## I. INTRODUCTION

Counterclaim Plaintiffs Altria Client Services, LLC, Philip Morris USA Inc., and Philip Morris Products S.A. (collectively, “PMP/Altria”) request that the Court adopt their proposed schedule for motions *in limine* and *Daubert* motions to occur in August-September 2021.

This case has been pending for 15 months, and is trial ready. The parties have now completed discovery<sup>1</sup> and filed their pretrial disclosures, including exhibit and witness lists. The Court held a Final Pretrial Conference in May, and set trial for April 4, 2022 (which was delayed due to a backlog created by the COVID-19 pandemic). Dkt. 657. But the Court also indicated at the Final Pretrial Conference that, if the Court’s schedule opened up before April 2022 (i.e., a continuance in its criminal docket), the case could proceed to trial sooner—and potentially as early as Fall 2021.

To ensure the case is ready to proceed consistent with the Court’s direction, including at an earlier date if one becomes available, the parties need to complete briefing on motions *in limine* and *Daubert* motions by early Fall 2021. PMP/Altria proposed a briefing schedule to Reynolds that would accomplish this. Reynolds, on the other hand, counter-proposed a schedule providing for completion of briefing in February 2022 that ignores the Court’s statement regarding a potentially earlier trial date. PMP/Altria raise this issue in the instant motion so that the Court may determine its preferred schedule for finalizing these remaining pre-trial motions, the last issues remaining to enable the case to be tried, so that the parties can plan accordingly.

## II. ARGUMENT

The only remaining dates to be scheduled in advance of trial in this case are dates for motions *in limine* and *Daubert* motions, which should be heard “at least 14 days before trial.” Dkt.

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<sup>1</sup> Subject to a handful of minor open follow-up items.

97 at 24, 26. Given that the case is otherwise trial-ready, PMP/Altria proposed to Reynolds that the parties set the schedule for motions *in limine* and *Daubert* motions to occur in August-September 2021, as set forth below. Ex. 1 (6/22/21 J. Koh email).

Event	Deadline
Exchange Motion <i>in Limine</i> topics	August 6 at 6 PM
Meet and confer on Motion <i>in Limine</i> topics	August 10 by 6 PM
Opening Motions <i>in Limine</i> and Daubert Motions	August 20
Oppositions to Motions <i>in Limine</i> and Daubert Motions	September 3
Replies to Motions <i>in Limine</i> and Daubert Motions	September 10

Reynolds rejected PMP/Altria's proposed schedule, and refused to consider anything close to it. Instead, Reynolds proposed that the parties *wait seven months to begin* briefing motions *in limine* and *Daubert* motions—in January 2022. Ex. 2 (6/25/21 J. Michalik email). Reynolds contends that there are “a number of issues” that may be resolved between now and the currently scheduled April 2022 trial that may “impact” the issues for motions *in limine* or *Daubert* motions, pointing to the pending summary judgment motions, the ongoing ITC proceedings on Reynolds' patents, and Reynolds' pending *inter partes* review (IPR) petitions (in which an institution decision is expected September-November 2021).

None of Reynolds' excuses for still further delay of this case warrant deferring *in limine* or *Daubert* motion briefing (or rulings).<sup>2</sup> This Court routinely conducts such pre-trial briefing while summary judgment motions are under advisement. The ongoing ITC proceedings are relevant, if at all, solely to injunctive remedy that will be taken up post-verdict and thus have no bearing on *in*

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<sup>2</sup> The Court will recall that Reynolds' attempts to avoid the completion of depositions and fact discovery were the subject of three separate motions. Dkts. 615, 649, 711. In rejecting the last of those three motions, the Court stated that “[t]ime is of the essence” and that “further delay” was not warranted. Dkt. 743.

*limine* and *Daubert* motions. And any institution decisions in the pending IPRs are irrelevant to the *in limine* and *Daubert* motions; the petitions themselves are absent from Reynolds' exhibit list and are not the subject of any expert reports/testimony.

There is no reason to drag out completion of the pretrial record pertaining to Reynolds' infringement of PMP/Altria's five asserted patents.

### III. CONCLUSION

PMP/Altria respectfully request that the Court enter a schedule that requires motions *in limine* and *Daubert* motion briefing to proceed in August-September 2021 in order to permit trial in Fall 2021 should such earlier trial date become available.

Dated: July 2, 2021

Respectfully submitted,

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