

**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

REDACTED

**MEMORANDUM IN SUPPORT OF REYNOLDS'S MOTION TO
EXCLUDE THE TESTIMONY OF STACY EHRLICH**

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INTRODUCTION

RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company (collectively, “Reynolds”) respectfully move the Court for an order excluding the opinions and testimony of Stacy Ehrlich, an expert witness proffered by Altria Client Services LLC, Philip Morris USA, Inc., and Philip Morris Products S.A. (collectively, “PM/Altria”).¹ Ms. Ehrlich opines that Reynolds derives “particular benefit” from the patented technology because it purportedly is “important” to the premarket tobacco application (PMTA) and modified risk tobacco product application (MRTPA) review processes for Reynolds’s VUSE products. Ms. Ehrlich did not quantify any such “particular benefit” or how “important” the patented technology is to the review process. Nevertheless, PM/Altria’s damages expert relies on Ms. Ehrlich’s conclusory opinion to add a [REDACTED] kicker to his proposed royalty rate for one of the asserted patents.

Ms. Ehrlich’s opinions should be excluded because they are not reliable as they are not supported by a reasonable methodology, are not based on sufficient facts or data, and are speculative. Ms. Ehrlich concedes that she does not know what the FDA considers in evaluating the applications and, in particular, does not know how the FDA would view the patented technology during the review process. In rendering her opinions regarding the purported value of the patented technology to Reynolds’s PMTAs, Ms. Ehrlich did not analyze the technical aspects of Reynolds’s PMTAs, nor did she identify or analyze any

¹ Pursuant to L.R. 7(E), undersigned counsel certifies that they conferred with PM/Altria’s counsel on January 11, 2022, and that they were unable to reach a resolution prior to the filing of this motion.

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