

EXHIBIT 2

(PUBLIC)

Stacy Ehrlich

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RAI STRATEGIC HOLDINGS,
INC., et al.,

Plaintiffs,

vs.

ALTRIA CLIENT SERVICES,
LLC, et al.,

Defendant.

Civil Action No:

1:20-cv-00393

Remote Video Deposition of

STACY EHRLICH

Wednesday, May 12, 2021

11:02 a.m.

Job No. 193358

Reported by: Laurie Donovan, RPR, CRR, CLR

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2 -----

3 P R O C E E D I N G S

4 11:02 a.m.

5 -----

6 THE VIDEOGRAPHER: Good morning.

7 Today's date is May 12, 2021, and

8 the time is approximately 11:02 Eastern Time.

9 We are on the record. My name is Joseph

10 McDermott. I am a legal videographer in

11 association with TSG Reporting.

12 Due to the severity of COVID-19 and

13 following the practice of social distancing,

14 I will not be in the same room with the

15 witness. Instead, I will record this

16 videotaped deposition remotely.

17 The reporter, Laurie Donovan, also

18 will not be in the same room and will swear

19 the witness remotely.

20 Do all parties stipulate to the

21 validity of the video recording and remote

22 swearing and that it will be admissible in

23 the courtroom as if it had been taken

24 following Rule 30 of the Federal Rules of

25 Civil Procedure, and the state's rule where

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2 Whereupon,

3 STACY EHRLICH,

4 having been first duly sworn, testified

5 upon her oath as follows:

6 EXAMINATION BY COUNSEL FOR PLAINTIFFS

7 and COUNTERCLAIM DEFENDANTS

8 BY MR. BAYUK:

9 Q Good morning, Ms. Ehrlich.

10 A Good morning. How are you?

11 Q Good. How are you doing?

12 A Well. Thanks.

13 Q We've had a chance to meet a couple

14 times now. Again, my name is Frank Bayuk. I'm

15 here today to take your deposition in this case

16 pending in the Eastern District of Virginia. Are

17 you prepared to offer your opinions and give

18 testimony, having been disclosed as an expert

19 witness by the defense in the case?

20 A I am.

21 Q Can you tell me when you were first

22 contacted to work on this case?

23 A I don't -- I actually don't recall

24 offhand, no.

25 Q Do you recall if it was before or after

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2 this case is pending?

3 Do you all agree?

4 MS. UNDERWOOD: Agree.

5 MR. BAYUK: Yes.

6 THE VIDEOGRAPHER: The deponent

7 today is Stacy Ehrlich in the action titled

8 RAI Strategic Holdings, Inc., et al, versus

9 Altria Client Services, LLC, et al, case

10 number 1:20-CV-00393.

11 Counsel may identify themselves at

12 this time, after which the court reporter

13 will swear in the witness.

14 MR. BAYUK: This is Frank Bayuk for

15 plaintiff R.J. Reynolds.

16 MS. UNDERWOOD: Jamie Underwood

17 from Latham & Watkins on behalf of the

18 counterclaim plaintiffs.

19 (Witness duly sworn.)

20 * * * * *

21

22

23

24

25 / / /

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2 you testified in the, the ITC hearing?

3 A You mean at the, at the hearing itself?

4 Q Correct.

5 A I don't recall offhand, actually. I'm

6 sorry.

7 Q Do you recall who it was who first

8 contacted you to work on this case?

9 A It was probably Jamie Underwood.

10 Q And what -- when you were contacted

11 about this case, what did you understand the scope

12 of your work to be?

13 MS. UNDERWOOD: I'm going to just

14 state that you can answer that in a general

15 fashion, but I caution you not to reveal any

16 attorney/client communication.

17 THE WITNESS: Got it. As an FDA

18 expert witness.

19 BY MR. BAYUK:

20 Q Okay, and what topics did you understand

21 you were being retained to give opinions on?

22 MS. UNDERWOOD: Same caution.

23 THE WITNESS: Generally, the

24 FDA-related issues that are associated with

25 this patent litigation

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2 BY MR. BAYUK:

3 Q Okay. Were you asked to offer opinions

4 on patent infringement issues?

5 A No. That's not my area of expertise.

6 Q Were you asked to offer opinions on the

7 validity of any patents?

8 A No. That's not my area of expertise.

9 Q Were you asked to offer any opinions on

10 any technical subjects, including engineering,

11 cigarette design, chemistry, or any other hard

12 science technical area?

13 A No.

14 Q Is your hourly rate that you're charging

15 still \$825 an hour?

16 A I don't recall what my rate is, offhand,

17 but it's probably in that ballpark.

18 Q Has your rate changed at all since you

19 were involved in the ITC case?

20 A Yeah, it did go up. That's why I can't

21 remember what it is currently.

22 Q Okay. Do you remember how much it went

23 up by?

24 A No, because if I did, I could -- I'm not

25 that bad at math. No. If I did, I would, I would

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2 A I'm not going to tell you our whole firm

3 discount structure for various clients. It's not

4 really relevant here.

5 Q Okay. Respectfully, I'm not asking

6 about your whole firm discount structure. I'm

7 asking about you and what you charge and whether

8 what you're charging Philip Morris and Altria in

9 this case is different than what you charge other

10 clients that you work with, and so is there a

11 difference?

12 MS. UNDERWOOD: Asked and answered.

13 THE WITNESS: Yeah, I do -- there,

14 there are various rates that we charge

15 different clients, depending on our

16 relationship with the client.

17 BY MR. BAYUK:

18 Q Do you have any materials with you in

19 hard copy today?

20 A I don't have anything in hard copy. I

21 do have my report open on my computer.

22 Q Okay, and which version of your report

23 is open on your computer?

24 A The most recent one.

25 Q Is that the supplemental or amended one

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2 tell you what that number is.

3 Q But was it your decision to increase

4 your rate between the ITC case and your

5 involvement in the present case?

6 A It was just a change in the calendar

7 year. Our rates typically go up each year.

8 Q Is your rate that you're charging in

9 this case the same that you charge for any work

10 you perform in your role as an attorney at your

11 law firm?

12 A We have various rates and various

13 discount structures, so I can't say that it's

14 exactly the same for every client.

15 Q Okay. Is Altria or Philip Morris

16 getting a discounted rate from you in this case?

17 A It's -- there's a whole, there's a whole

18 range, so no, I wouldn't say it's discounted.

19 Q But some clients do get discounted rates

20 from you?

21 A There have been clients, we make the

22 appropriate decisions. Not really something that

23 is appropriate to discuss.

24 Q Did you say nothing that's appropriate

25 to discuss?

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2 you submitted within the last couple of weeks?

3 A Yes. Correct.

4 Q You submitted your opening expert report

5 in this case back in, in February. Do you recall

6 that?

7 A Yes.

8 Q When did you decide to supplement and

9 amend your report that culminated in the report

10 that was served within the last couple of weeks?

11 MS. UNDERWOOD: And you -- again, I

12 caution you not reveal any attorney/client

13 communications. You can answer to the extent

14 if you recall when you started working on

15 that report.

16 THE WITNESS: I think it was within

17 a week or two of the date that it was filed.

18 BY MR. BAYUK:

19 Q Okay, and what was your understanding as

20 to the reason why you were preparing a

21 supplemental and amended report in the case?

22 MS. UNDERWOOD: Again, I caution

23 you to not reveal any attorney/client

24 communications.

25 THE WITNESS: I believe it was

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2 BY MR. BAYUK:

3 Q Have you ever done that for any other

4 client?

5 A Sure. I've, I've looked at patents and

6 talked to patent experts about FDA-related -- FDA

7 issues related to patents.

8 Q In the context of a PMTA application?

9 A Maybe. I'm not sure if it was in the

10 context of a PMTA application, but that's -- you

11 know, generally I do that with respect to all

12 kinds of FDA submissions, not just in the tobacco

13 area.

14 Q You look at patent issues with respect

15 to FDA submissions?

16 A Sometimes we discuss patents.

17 Q What's -- when you have done it before,

18 what's been the purpose of your looking at patent

19 issues with respect to FDA submissions?

20 A I can't recall specific instances, but

21 when there are FDA-related implications to

22 technology covered by patents, sometimes you

23 discuss the patents.

24 Q Do you intend to offer any technical

25 opinions about the design of any of the VUSE

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2 of those aspects of the technology.

3 Q Do you intend to offer any opinions

4 about patent damages or any damages stemming from

5 alleged infringement of the patents in this case?

6 MS. UNDERWOOD: Objection; vague.

7 THE WITNESS: I will not offer

8 testimony on amounts of damage -- damages,

9 because I'm not a damages expert, but I might

10 offer testimony on the impact of some of the

11 issues on -- or how the issues should impact,

12 potentially, the calculation or the, the

13 scope of the calculation.

14 BY MR. BAYUK:

15 Q On what issue?

16 MS. UNDERWOOD: Objection; vague.

17 (Reporter clarification.)

18 BY MR. BAYUK:

19 Q So what issues are you talking about

20 there?

21 A I'm talking about the issues that are in

22 my report, the FDA-related issues, the importance

23 of the technology from an FDA perspective.

24 Q How did those issues relate to damages?

25 MS. UNDERWOOD: Objection; vague.

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2 products?

3 A Technical opinions?

4 Q Correct.

5 A No.

6 Q Do you intend to offer any opinions on

7 the design of the battery used in any of the VUSE

8 products?

9 A What kind of opinion are you

10 referencing?

11 Q Any opinion.

12 MS. UNDERWOOD: Objection; vague.

13 THE WITNESS: I'm not going to

14 offer a technical, any kind of technical

15 opinions relating to the design of the

16 battery.

17 BY MR. BAYUK:

18 Q Okay. Do you intend to offer any

19 technical opinion on the, the design of any of the

20 VUSE products as it relates to containing e-liquid

21 or preventing the leakage of e-liquid?

22 A I'm not a patent expert, and I'm not

23 going to offer opinions on the technical issues

24 related to that design. I'm an FDA expert. I

25 will opine on the FDA importance and implications

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2 THE WITNESS: Correct.

3 BY MR. BAYUK:

4 Q I'm asking you: How did those issues

5 relate to the damages?

6 MS. UNDERWOOD: Same objection.

7 (Discussion held off the record.)

8 THE WITNESS: As indicated in my

9 report, I'm going to testify that the

10 infringement of the asserted patents is of

11 value to -- of significant value to Reynolds,

12 and that, that value should have an impact on

13 the damages calculation.

14 BY MR. BAYUK:

15 Q You cut out there for one part of the

16 sentence you said there. At least to me.

17 (Whereupon, reporter reads

18 requested material.)

19 BY MR. BAYUK:

20 Q Okay. What is your opinion of how that

21 value should impact damages?

22 A I'm sorry. I missed the beginning of

23 what you just said.

24 Q What is your opinion of how that value

25 should impact damages?

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