

# EXHIBIT D

**From:** [Schubert, Jared \(NY\)](#)  
**To:** [Michalik, John M.](#); [RJREDVA](#); [cmolster@molsterlaw.com](mailto:cmolster@molsterlaw.com)  
**Cc:** [#C-M PMIEDVA - LW TEAM](#)  
**Subject:** PMI/Altria v. Reynolds - Motions in Limine  
**Date:** Wednesday, January 26, 2022 12:18:37 PM

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John,

We write to follow up on the parties' prior discussions regarding Reynolds' MIL Nos. 4-6, and 10 (as filed).

**RJR's MIL #4:** RJR seeks to exclude "all evidence and argument regarding any request for, or alleged entitlement to, an injunction." We believe that RJR's request is overbroad as drafted. During the meet and confer process, RJR had indicated it might propose stipulated language to eliminate this MIL. RJR ultimately did not, but we remain open to finding a way to conserve judicial resources. To that end, PMI/Altria proposes that the parties agree to not (i) reference PMP's claim for injunctive relief in front of the jury and (ii) present argument, evidence, or testimony solely related to PMP's claim for injunctive relief. This proposal would moot RJR's MIL #4.

**RJR's MIL #5:** RJR seeks to exclude "all evidence and argument regarding any request for or alleged entitlement to an award of enhanced damages or attorneys' fees." Dkt. 832 at 9. PMI/Altria is willing to agree to this motion, so long as it is mutual and makes clear that it does not render otherwise relevant evidence inadmissible. PMI/Altria therefore proposes that the parties agree to the following stipulation: "No party will reference any request for costs, attorneys' fees, or enhanced damages at trial. This agreement does not preclude any party from presenting otherwise relevant evidence, including but not limited to evidence related to damages and willfulness." This proposal would moot RJR's MIL #5.

**RJR's MIL #6:** Reynolds seeks to exclude "any argument, evidence, or testimony regarding Reynolds not obtaining or relying on an opinion of counsel or suggesting that Reynolds should have obtained one (and any other adverse inference related to absence of an opinion of counsel)." Dkt. 839 at 6. As discussed during the meet and confer process, we would like Reynolds to confirm that it will not present certain argument, evidence, or testimony at trial, as described below. We don't believe Reynolds was willing to give that confirmation, which is necessary to evaluate the need for this motion. To streamline the issues and avoid unnecessary briefing, please confirm Reynolds will not present argument, evidence, or testimony at trial suggesting that Reynolds:

1. Relied on legal advice or an opinion of counsel letter for the asserted patents, including to argue alleged non-infringement, invalidity, or a lack of willfulness;
2. Had, after being on notice of an asserted patent, a good faith belief that it was not infringing that patent; and
3. Implemented processes or procedures to avoid infringing any of the asserted patents;

If Reynolds confirms that it will not make any of the above arguments at trial, we may be able to resolve Reynolds' MIL #6.

**RJR's MIL #10:** RJR seeks to exclude introducing "any evidence or argument that RJR infringed or has been accused of infringing third-party patents" with a carve out regarding the Fontem litigation.

During the meet and confer process, RJR had indicated it might propose stipulated language to eliminate this MIL. RJR ultimately did not, but we remain open to finding a way to conserve judicial resources. To that end, we propose the following stipulation: “No party will present argument, evidence, or testimony that Reynolds infringed or has been accused of infringing a patent owned by a third-party, other than a Fontem entity. For clarity, this agreement does not preclude any party from presenting argument, evidence, or testimony relating to PMI/Altria’s infringement allegations in this case or Fontem’s infringements allegations against Reynolds in their prior litigations.” This proposal would moot RJR’s MIL #10.

Please let us know RJR’s position on the above MILs by 5 pm ET on Thursday.

Regards,

**Jared S. Schubert**

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