

Uncovering Relevancy Redactions

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Under the Federal Rules of Civil Procedure, parties may obtain discovery regarding any nonprivileged matter that is relevant to either party's claim or defense and proportionate to the needs of the case. While irrelevant information falls outside the scope of the express language of the rule, courts are generally reluctant to allow parties to redact irrelevant information contained within an otherwise responsive document.

A recent decision from the Southern District of New York provides helpful guidance on when relevancy redactions may be appropriate and how parties can avoid motions practice to resolve disputes over their scope.

The case *Kaiser Aluminum Warrick, LLC v. U.S. Magnesium, LLC*, No. 22-cv-3105 (JGK) (KHP) (S.D.N.Y. Feb. 27, 2023) concerned the defendant's failure to fulfill its contract to supply magnesium to the plaintiff. The defendant relied on a force majeure defense, citing unexpected equipment failures. During discovery, the defendant produced several otherwise responsive documents with relevance redactions, to which the plaintiff objected. The plaintiff moved the court to require the defendant to produce the challenged documents in full "arguing that redactions for relevance are disfavored when there is a protective order in place, as one is here." *Id.* at *1. The defendant responded that the redacted information was "irrelevant and competitively sensitive, and therefore, it should not be required to be produced in unredacted form." *Id.*

The court held that where relevancy redactions "are consistent with Rule 1 and Rule 26 and do not deprive the other party of context, they may be appropriate" but advised that "a party should request permission to make such redactions in advance of production." *Id.* at *2. Even where there is a stipulated protective order in place, "a party should not necessarily be denied the opportunity to redact if redacting would not otherwise prejudice the other side or delay the case." *Id.* The court acknowledged that a particular concern with relevancy redactions "is that they can lead to motion practice . . . which often creates additional expense and delay" and suggested that such a risk could be minimized "if a producing party discusses its desire to make such redactions with its adversary in advance of its production and seeks advance permission from the Court to make them." *Id.*

Following in camera review, the court found that the challenged documents "consist[ed] of monthly reports containing detailed financial information, results of research on competitors in the market, and reports on segments of the business unrelated to magnesium operations (such as information about its lithium plant and production). They also contain[ed] information about magnesium production." *Id.* at *1. While the defendant had not sought permission to make relevancy redactions, the court had "already resolved discovery disputes in [defendant's] favor concerning production of information about its Lithium plant and finances, holding this information to be irrelevant to the force majeure defense and not proportional to the needs of the case." *Id.* at *2. Therefore, preventing the defendant from redacting such information would "run[] contrary to" the court's prior discovery rulings. *Id.*

However, the court challenged the extent of defendant's redactions, advising that "[h]ad [the defendant] sought permission before redacting, the court would have advised it to redact in a different manner than it did." *Id.* While the court upheld the majority of the relevancy redactions, it ordered the defendant to unredact certain relevant information regarding the company's magnesium operations and all column/row descriptors and graph titles contained within the reports so that the plaintiff would have the context necessary to determine the type of information that was redacted.

Overall, there are two main lessons to take away from this opinion. First, relevancy redactions should be applied conservatively in a way that preserves necessary context for the opposing party. Second, while some discovery

disputes are inevitable, the need for motions practice can be significantly minimized if the parties discuss how they are going to handle relevancy redactions with each other and with the court in advance of production.

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