

4. An opinion from the U.S. District Court for the Middle District of Florida refusing to compel Defendant to produce the entire set of documents hitting on certain search terms, regardless of their responsiveness, based on a “handful” of deficiencies in Defendant’s production.

In *Davis v. Lockheed Martin Corporation*, 2023 WL 6845250 (M.D. Fla. Oct. 17, 2023), U.S. Magistrate Judge Daniel C. Irick addressed whether Plaintiff had identified sufficient deficiencies in Defendants’ production to require Defendant to produce all documents that hit on the agreed search terms regardless of responsiveness.

The discovery dispute in this toxic-tort case revolved around Defendant’s production of documents concerning the chemical compound hexavalent chromium. Pursuant to the parties’ agreed-on ESI protocol, Defendant identified and reviewed a subset of about 15,000 documents that hit on search terms related to hexavalent chromium. Defendant then conducted a responsiveness review on those documents and produced about 2,800 documents to Plaintiff. Plaintiff later claimed to have discovered two hexavalent chromium documents that were responsive to Plaintiff’s discovery requests but not produced by Defendant. *Id.* at *1.

Following a hearing on a motion by Plaintiff to compel production of additional hexavalent chromium documents, the court directed Defendant to re-review portions of its ESI and produce any additional responsive and non-privileged documents. While complying with this order, Defendant discovered and disclosed a handful of previously unproduced hexavalent chromium documents. Plaintiff then filed a second motion to compel, this time requesting that Defendant produce all the remaining 15,000 documents that hit on the hexavalent chromium search terms. *Id.* at *2.

Magistrate Judge Irick denied Plaintiff’s motion, finding that Plaintiff was attempting to avoid Defendant’s responsiveness review by another means. He explained that there was no legal support for the proposition that an error in Defendant’s production would entitle Plaintiff to “unfettered access to all the raw results from Defendant’s ESI searches.” He further noted “it is commonly understood that discovery is not perfect,” and Plaintiff’s identification of an error in Defendant’s production provided no basis for the broad relief that Plaintiff was requesting.

Magistrate Judge Irick further explained that he would not compel the production of thousands of documents that Defendant had reviewed and found to be unresponsive to Plaintiff’s discovery requests. *Id.* at *3. He explained that Defendant had consistently asserted that it complied with its discovery obligations in response to Plaintiff’s document requests and had stated that it had “produced all responsive, non-privileged documents identified from a reasonable review of the results from searches conducted pursuant to the agreed-upon ESI protocols.” Magistrate Judge Irick concluded that in the face of those long-standing discovery responses, Plaintiff had provided no legal authority that would allow him to compel the production of thousands of nonresponsive documents.