

1. An order from the U.S. District Court for the Southern District of New York declining to compel the Defendant to remove all redactions it had made on the basis of relevance in otherwise responsive documents but ordering certain redactions to be removed.

In *Kaiser Aluminum Warrick, LLC v. US Magnesium LLC*, 22-CV-3105 (JGK) (KHP), 2023 WL 2482933 (S.D.N.Y. Feb. 27, 2023), U.S. Magistrate Judge Katharine H. Parker addressed whether Defendant's redactions for relevance in otherwise responsive documents were appropriate.

In this breach-of-contract litigation related to a magnesium supply contract, Plaintiff objected to Defendant's production of certain documents in redacted form where Defendant had applied the redactions to material it claimed was not relevant and moved to compel Defendant to reproduce the documents in unredacted form. *Id.* at *1. Plaintiff argued that redactions for relevance are "disfavored when there is a protective order in place." Defendant responded that the information redacted was irrelevant and competitively sensitive and therefore should not be produced. After Plaintiff filed its motion to compel, the court reviewed in camera samples of the redacted documents, which consisted 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.

Magistrate Judge Parker began her analysis by noting that Federal Rule of Civil Procedure 26 allows parties to obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case and that irrelevant information "falls outside of the scope of information that is discoverable under the express language of the rule."

But Magistrate Judge Parker noted that courts have disallowed relevancy redactions from otherwise responsive documents because (1) a party should not be permitted to determine whether portions of a document being produced are irrelevant; (2) relevance redactions may eliminate context needed for an adversary to understand the unredacted portions of a document; (3) where a stipulated protective order is in place, the producing party's information is protected; and (4) redactions take time and are expensive and therefore inconsistent with Rule 1's mandate that cases be administered so as to promote a "just, speedy, and inexpensive" resolution of the case.

Magistrate Judge Parker concluded that relevancy redactions can be appropriate in some cases. *Id.* at *2. She explained that a party regularly makes relevancy determinations when it reviews its own documents, and parties must sign discovery responses certifying that they have made a reasonable inquiry for responsive and relevant documents and that they have fulfilled their production obligations subject to proper objections. She found "no reason ... to find that a party is less able to make good faith relevance determinations as to portions of documents than as to whole documents."

Magistrate Judge Parker next noted that even though redactions may be time consuming and expensive, if a party wishes to undertake the expense voluntarily and it can do so in a timely manner without affecting the discovery schedule or prejudicing the other party, then such

redactions would be consistent with Rule 26(b)(3) and Rule 1, which is designed to “discourage over-use, misuse, and abuse of procedural tools that increase cost and result in delay” and instead encourage cooperation of counsel and a proportional use of discovery tools when seeking information from and producing information to an adversary.

Magistrate Judge Parker also noted that redactions may “breed suspicions” or deprive the other party of needed context, but she found that if a party is clear about the reason for the redactions and is conservative in the number of redactions, the other party would not be stripped of necessary context. Moreover, motion practice 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.

Ultimately, Magistrate Judge Parker concluded that relevancy redactions must be evaluated on a case-by-case basis, must be consistent with Rule 1 and Rule 26, and must not deprive the other party of context.

Applying these concepts, Magistrate Judge Parker found that certain of Defendant’s redactions were not appropriate. *Id.* at *3. In particular, she concluded that Defendant should not have redacted financial tables that included information about magnesium production, nor should Defendant have redacted headings and column/row descriptions (because absent the column and row descriptors, Plaintiff was unable to appreciate what was redacted and could not know that information on magnesium inventory and purchases also was redacted). She also concluded that Defendant should not have redacted graphs and their titles.

Magistrate Judge Parker declined to order Defendant to reproduce all of the documents in unredacted form (although she noted that she would be fully within her discretion to do so) because that would run contrary to her prior conclusion that some of the redacted information was not relevant.