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Published on www.lorman.com - September 2018

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Written by Laura E. Gorman - 5/30/2018

It has long been the case that parties to litigation may redact privileged information (attorney-client communications and materials prepared in anticipation of litigation) from documents otherwise relevant to the litigation that have been requested by another party. See e.g., Federal Rule of Civil Procedure 26(b)(5). The rules also state that parties should also redact certain personal information, such as Social Security numbers, before filing materials with the court. But are parties allowed to redact portions of documents they consider irrelevant to the litigation when other portions of the same documents are relevant? Before a party is faced with a discovery request for production of information that may be irrelevant, it is important to know whether a court may compel production of documents in their entirety when the documents may have information in them that is irrelevant to the litigation and that the producing party does not want disclosed to the opposing side or the public.

Following the 2015 amendments, Federal Rule of Civil Procedure 26(b)(1) now states that parties to a case "may obtain discovery regarding any nonprivileged matter that is relevant to any

party's claim or defense and proportional to the needs of the case." This proportionality standard is considered in light of six factors: 1) the importance of the issues at stake in the action, 2) the amount in controversy, 3) the parties' relative access to relevant information, 4) the parties' resources, 5) the importance of the discovery in resolving the issues, and 6) whether the burden or expense of the proposed discovery outweighs its likely benefit. Based on the express reading of the rule, it seems a party should almost always be permitted to redact information that does not pertain to the litigation. However, some courts have found just the opposite, unless there is a persuasive reason to withhold the irrelevant information.

In a federal case in Florida, In re Takata Airbag Prods. Liab. Litig. (S.D. Fla. Mar. 1, 2016), the court permitted redaction of seven distinct categories of irrelevant information in documents that were otherwise discoverable because the irrelevant information was sensitive business information that the defendants claimed should not be available to competitors. The defendants expressed concern that they would be required to give the plaintiffs "copious amounts of information" that could disclose "competitively sensitive information with no bearing on this case." The defendants were apprehensive that this information could be disclosed to competitors or the media, even with a protective order in place. The court quoted U.S. Supreme Court Chief Justice Roberts' comment to Rule 26 stating that Rule 26 "crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of

proportionality," and that a party is not entitled to discovery of "every piece of relevant information." From that premise, the Takata court concluded that it was only logical "that a party is similarly not entitled to receive every piece of irrelevant information in responsive documents if the producing party has a persuasive reason for why such information should be withheld."

In the more recent case of IDC Fin. Pub., Inc. v. BondDesk Grp., LLC (E.D. Wis. Oct. 26, 2017), a federal court in Wisconsin ordered the defendants to produce the unredacted copies of over 600 documents that it had redacted for irrelevance, as the court believed that allowing for the redaction of irrelevant information creates the "potential for abuse" because permitting litigants to unilaterally decide what is germane to a case deprives other parties from seeing information in context and fuels mistrust in the discovery process. This decision was made even in light of the fact defendants argued that "the parameters of the case should not allow the plaintiffs to peruse and explore all other aspects of the [company's] contractual and financial relationships with its customers." The court pointed out that despite the 2015 amendments to the rule emphasizing proportionality, the rules still permit discovery of information even if it is inadmissible as evidence and that even irrelevant information within a document that contains relevant information may be highly useful to provide context for the relevant information.

The bottom line is that a party who wants to redact information it considers relevant bears the burden of convincing the court

that it should be allowed to do so. In the event no persuasive argument exists to withhold the irrelevant information, consideration should always be given as to whether the document can be protected as confidential pursuant to a protective order and thus protected from disclosure outside of the litigation.

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