Ohio Business Litigation Blog

A blog about Ohio business litigation and beyond.

Monday, December 20, 2010

Ohio Northern District Rules Against Allowing Redaction of Non-Responsive Information In Document Production Discovery Dispute

During litigation, information that is considered discoverable under the civil rules is quite broad. Under Federal Rule of Civil Procedure 26(b)(1), "[p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense."

However, when involved in litigation, parties typically want to disclose as little information as possible to an opposing side. Notwithstanding disingenuous motives and disputes, the line between information that is considered discoverable and information that is not can be a fine one; the validity of various tactics and arguments to withhold and conceal information in discovery can be as well. In Arcelormittal Cleveland Inc. v. Jewel Coke Company, L.P. (N.D.Ohio Dec. 16, 2010), a $100 million dollar breach of contract dispute involving furnace coke, the Ohio Northern District ruled on the legitimacy of one such tactic, the ability of a party to redact information from its document production that it considers unresponsive or confidential.

In Arcelormittal, the defendant, in response to plaintiff's document requests, produced documents with many portions containing redacted information. Unsatisfied with this production, the plaintiffs filed a motion to compel, requesting the court to order production of non-redacted versions of all documents that the defendant produced. The defendant argued that redactions were allowable because the information was unresponsive and confidential. On the other hand, the plaintiff argued that "irrelevance" was not a proper ground to redact information.

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The court noted a split in authority among courts on the issue of whether redaction is an appropriate way to shield irrelevant or confidential information material from discovery. *Compare* Spano v. Boeing Co., 2008 WL 1774460, at *2 (S.D. Ill, Apr. 16, 2008) (redaction is a proper way for a defendant to produce a document that contains both relevant and irrelevant information), Beauchem v. Rockford Products Corp., 2002 WL 1870050 (N.D. Ill. Aug. 13, 2002) (same), & Schiller v. City of New York, 2006 WL 3592547 (S.D.N.Y. Dec. 7, 2006) (same) *with* Orin Power Midwest, L.P. v. America Coal Sales CO., 2008 WL 4462301, at *2 (W.D.Pa. Sept. 30, 2008) (holding that redaction is not allowed under rule 34) & Metronic Sofamor Danek, Inc. v. Michelson, 2002 WL 33003691, at *4-5 (W.D.Tenn., Jan. 30, 2002) (same).

In making its ruling the court relied heavily on a recent decision by Ohio's Southern District in Beverage Distributors, Inc. v. Miller Brewing Co., 2010 WL 1727640 (S.D.Ohio, April 28, 2010), which had previously analyzed the same split in authority in a similar decision. The court noted the important themes that the Beverage Distributors court recognized when reconciling the two lines of authority:

> "(1) redaction of otherwise discoverable documents is the exception rather than the rule; (2) that ordinarily, the fact that the producing party is not harmed by producing irrelevant information or by producing sensitive information which is subject to a protective order restricting its dissemination and use renders redaction both unnecessary and potentially disruptive to the orderly resolution of the case; and (3) that the Court should not be burdened with an in camera inspection of redacted documents merely to confirm the relevance or irrelevance of redacted information, but only when necessary to protect privileged material whose production might waive the privilege."

With these three general themes in mind, the court found that there was no compelling reason for the defendant not to disclose information solely on the grounds that the defendant believed that the non-disclosed materials were not relevant or responsive. Therefore, the Northern District granted the plaintiffs motion to compel production of the redacted information.

Discovery disputes can be tricky. While this ruling may not apply in every situation, I think that the court made the right decision in this case. I think that the ruling is in line with recent changes to the federal rules that are meant to reduce the time and expense of litigation. If courts allow parties to redact all information in its document production that it believes is irrelevant and non-responsive, this would eventually have the effect of adding additional time and expense to litigation, as parties would likely spend extra time redacting information before production, and more disputes would likely arise over whether information redacted was actually non-responsive. If parties truly have information that is highly confidential and need to protect, they can seek a protective order from the court.

Posted by Aaron Minc at 1:34 PM

Labels: Discovery Dispute, Motion to Compel, Ohio Northern District, Oho Business Litigation, Redaction

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- Class Certification (1)
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- consideration (1)
- Contract Interpretation (1)
- Copyright infringement (2)
- corporation by estoppel (1)
- Credit Card Debt (1)
- De facto corporation (1)
- Debt (1)
- Debt Collection (1)
- Declaratory Judgment (1)
- Defamation (1)
- Disclaimer (1)
- Discovery Dispute (3)
- Diversity Jurisdiction (1)
- Drive-up Windows (1)
- Energy Star Litigation (1)
- Enforceability of Account Agreements (1)
- Essential Purpose Doctrine (1)
- Evidence (2)
- Expert Witnesses (2)
- Facebook (1)
- Federal Rules (2)
- Foreclosure (1)
- Forum Non Conveniens (1)
- forum selection clause (1)
- Franchise Law (1)
- Fraud (1)
- FRCP 26 (1)
- Hearsay (1)
- Independent contractor (1)
- inequitable conduct (1)
- Interesting Articles (2)

- Lanham Act Claim (1)
- Lawyer (2)
- Legal Writing (1)
- Limited Warranty (1)
- Litigaiton (1)
- Litigation (1)
- Litigation New (1)
- Loan Modification (1)
- Magnetized Floors (1)
- Mist (1)
- Mistake (1)
- Motion to Compel (3)
- motion to dismiss (1)
- mutuality of obligation (1)
- Necessary Party (1)
- non competition agreement (2)
- Ohio (8)
- Ohio Bar Exam Results (1)
- Ohio Business Litigation (5)
- Ohio Business Litigation Blog (7)
- Ohio Law (1)
- Ohio Northern District (1)
- Oho Business Litigation (1)
- Patent Infringement (1)
- Patent Prosecution (1)
- Personal Jurisdiction (2)
- physicians (1)
- Picture (1)
- Pleading Standard (2)
- Preliminary Injunction (1)
- Protective Order (1)
- Random (1)
- Real Estate Deal (1)
- reasonable (1)
- Red Light Cameras (1)
- Redaction (1)
- Removal (1)
- res judicata (1)

- Sales Agreement (1)
- SCOTUS (1)
- screen shots (1)
- SEC (1)
- Settlement Agreement (1)
- Sovereign Immunity (1)
- stream of commerce (1)
- substantial similarity (1)
- summary judgment (2)
- Unconscionability (1)
- Unjust Enrichment (2)
- Unwanted Gift (1)
- useful article (1)
- Venezuela (1)
- Web sites (1)
- What Happened this week (1)
- Whirlpool (1)
- Whole Foods (1)
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- 10(d) (1)
- 6th Circuit (2)
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- business litigation (9)
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- Business Litigation News (1)
- Civil Procedure (2)
- Class Action (2)
- Class Certification (1)
- Cleveland (2)
- consideration (1)
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- Copyright infringement (2)
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- Debt Collection (1)
- Declaratory Judgment (1)
- Defamation (1)
- Disclaimer (1)
- Discovery Dispute (3)
- Diversity Jurisdiction (1)
- Drive-up Windows (1)
- Energy Star Litigation (1)
- Enforceability of Account Agreements (1)
- Essential Purpose Doctrine (1)
- Evidence (2)
- Expert Witnesses (2)
- Facebook (1)
- Federal Rules (2)
- Foreclosure (1)
- Forum Non Conveniens (1)
- forum selection clause (1)
- Franchise Law (1)
- Fraud (1)
- FRCP 26 (1)
- Hearsay (1)
- Independent contractor (1)
- inequitable conduct (1)
- Interesting Articles (2)
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- Litigaiton (1)
- Litigation (1)
- Litigation New (1)
- Loan Modification (1)
- Magnetized Floors (1)
- Mist (1)
- Mistake (1)
- Motion to Compel (3)
- motion to dismiss (1)
- mutuality of obligation (1)
- Necessary Party (1)
- non competition agreement (2)
- Ohio (8)
- Ohio Bar Exam Results (1)
- Ohio Business Litigation (5)
- Ohio Business Litigation Blog (7)
- Ohio Law (1)
- Ohio Northern District (1)
- Oho Business Litigation (1)
- Patent Infringement (1)
- Patent Prosecution (1)
- Personal Jurisdiction (2)
- physicians (1)

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- Pleading Standard (2)
- Preliminary Injunction (1)
- Protective Order (1)
- Random (1)
- Real Estate Deal (1)
- reasonable (1)
- Red Light Cameras (1)
- Redaction (1)
- Removal (1)
- res judicata (1)
- Sales Agreement (1)
- SCOTUS (1)
- screen shots (1)
- SEC (1)
- Settlement Agreement (1)
- Sovereign Immunity (1)
- stream of commerce (1)
- substantial similarity (1)
- summary judgment (2)
- Unconscionability (1)
- Unjust Enrichment (2)
- Unwanted Gift (1)
- useful article (1)
- Venezuela (1)
- Web sites (1)
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- Whirlpool (1)
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