

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MIDDLESEX COUNTY
DOCKET NO. MID-L-555-06
A.D. # _____

PICINIC,)
)
Plaintiff,) TRANSCRIPT
) OF
vs.) MOTION
)
GEORGIA PACIFIC)
CORPORATION, ET AL.,)
)
Defendants.)

Place: Middlesex Cty. Courthouse
One Kennedy Square
New Brunswick, NJ 08903
Date: March 14, 2008

BEFORE:

HONORABLE ANN MC CORMICK, J.S.C.

TRANSCRIPT ORDERED BY:

KAREN WEINOFISKY, ESQ. (Cohen, Placitella &
Roth, P.C.)

APPEARANCES:

CHRISTOPHER M. PLACITELLA, ESQ. (Cohen, Placitella &
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Attorney for Plaintiff

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Audio Recorded
Recording Operator: E. Barry

I N D E XPage

Hearing

3

1 THE COURT: Okay, this is DeMayo v. Georgia
2 Pacific. Appearances.

3 MR. PLACITELLA: Your Honor, Christopher
4 Placitella on behalf of Mr. Picinic and Mr. DeMayo.

5 MR. KELLY: Good morning, Your Honor, Sean
6 Kelly on behalf of Georgia Pacific in both motions.
7 It's our motion for reconsideration.

8 THE COURT: With a new argument.

9 MR. KELLY: Pardon me?

10 THE COURT: With a new argument. Is that
11 correct?

12 MR. KELLY: I don't -- I don't deem them as
13 new arguments, Judge, other than except, really, just
14 to ask you to take a look at some of the things you've
15 ruled on. We actually, Judge, to tell you the truth,
16 have --

17 THE COURT: Wait a second, I'm getting
18 confused. Hold on.

19 MR. KELLY: Sure.

20 THE COURT: I'm sorry. I confused your
21 motion with somebody else's.

22 MR. KELLY: That's okay.

23 THE COURT: Okay, I apologize. I confused
24 you with somebody else. I confused it with another
25 motion, sorry.

1 MR. KELLY: That's quite all right. Judge,
2 actually, I think I can kind of try to narrow this and
3 frame it so that it's not as painful as it seems on the
4 weight of the papers. I think that -- we've spoken and
5 I think that we're on the same page, to some extent, on
6 some of these issues. Let me just -- if I could just
7 lay out the order, I'd like to approach it.

8 First, for the record, I am asking Your Honor
9 to vacate your prior order. Having observed the look
10 on your face, I'm going to move on to my subarguments.

11 Here's the way I'd like to approach it. We
12 have the mesothelioma and the nonmesothelioma claims.
13 The way that the order is phrased seems to be a little
14 different, frankly, from the understanding that Counsel
15 and I both had with regard to the scope of the records.
16 For instance --

17 THE COURT: Let me pull out a copy of the
18 order.

19 MR. KELLY: Sure.

20 THE COURT: Okay. Is that somewhere in your
21 papers?

22 MR. KELLY: It is Exhibit H in my papers.

23 THE COURT: Okay.

24 MR. KELLY: Okay. The first issue, and it's
25 relatively minor, Avarac One (phonetic), for some

1 reason, does not explicitly include a limitation only
2 to joint compound records, which is really the -- the
3 crux of the relevancy and discoverability issue we had.
4 It's in two and three, so it's really just more since
5 my request for clarification that whenever we
6 ultimately get an order from you, one that we have to
7 produce, that it's limited to gypsum division. It's
8 cleaner that way because that's the only division that
9 was involved in joint compound production manufacturing
10 and so forth. I don't think we have a disagreement on
11 that.

12 MR. PLACITELLA: Only in the issue of notice.
13 Then it would go across the entire company. As it
14 relates to the -- to the mesothelioma claims, I believe
15 it would be limited to the gypsum division because the
16 argument as to the mesothelioma claims is that people
17 who were making the product were getting mesothelioma
18 or using the product were getting mesothelioma then
19 it's relevant. As to the general notice issue, which I
20 think goes up to 1990 --

21 THE COURT: Which is paragraph one.

22 MR. PLACITELLA: Right, that would span the
23 entire corporation, which would be consistent with
24 interrogatory B-33, which is the standard Middlesex
25 County interrogatory which says, "Set forth all the

1 Workers' Compensation claims ever," not limited in
2 time, by the way, filed by against not only Georgia
3 Pacific but any subsidiary, holding company, you name
4 it. So, as it relates to the notice documents, gypsum
5 -- the entire corporation, as it relates to the content
6 part of the order, gypsum division. That's my
7 position.

8 MR. KELLY: Perhaps we didn't have an
9 agreement on this. I thought we actually came in with
10 an understanding that that's the way it was going to be
11 based on our discussions, but be that as it may, Judge,
12 the whole point of this motion was that if you had
13 other people exposed to the same product my client did,
14 Mr. Picinic and Mr. DeMayo, that's the jump off point
15 for the initial motion. That -- remember, you had your
16 cut -- even the cut off for notice, you said, well, it
17 can't be any different than their last exposure to that
18 product at --

19 THE COURT: Exactly, because on the notice
20 issue the issue is whether the company should have
21 known to give a warning.

22 MR. KELLY: Right, about joint compound. My
23 point is, all I'm trying to say is, and this goes to
24 the 3,500 boxes, we make Dixie cups. You know, we make
25 paper towels. The point is that joint compound, which

1 is what these folks are claiming exposure to --

2 THE COURT: Yes, but there's no issue about
3 Dixie cups being asbestos containing, and it is limited
4 to an asbestos related disease. So, I doubt very much
5 that somebody that was making Dixie cups has an
6 asbestos related disease as a Workers' Comp claim.

7 MR. KELLY: The problem goes to where do we
8 look and that -- that's the point and that's why I
9 thought we had an understanding. If the point is we
10 have to examine "all Workers' Compensation claims for
11 all divisions of the company," then we're -- then we
12 have a big problem. I don't -- I don't see a logical
13 distinction between joint compound and the disease it
14 causes in our arguments. It's either -- it's either a
15 joint compound claim or it's not but so we need to
16 limit it to joint compound exposures, that's what these
17 gentlemen had, and we're doing it with meso claims.

18 THE COURT: Well, I'm not familiar with the
19 divisions of your company and what they did and what
20 they didn't do. So, in terms of asking me to limit it,
21 I mean, I see on some hypothetical basis what you're
22 saying, is if -- if Georgia Pacific had a division and
23 all they made was Dixie cups, do you know what I mean?
24 So, really, why search the Workers' Comp records of a
25 division that was only involved in Dixie cups? None of

1 the factories were in the same place as the other
2 factories. It was completely separate.

3 MR. KELLY: Right.

4 THE COURT: You know, I understand your logic
5 there but I don't know enough about the company to try
6 to -- do you agree with this, Mr. Placitella?

7 MR. PLACITELLA: I agree with your logic but
8 I don't think that that's -- that I can parse it out
9 the way Mr. Kelly wants to parse it out, totally.
10 That's why -- that's why I have the dichotomy in my
11 mind, you know, there's an issue related to were people
12 getting sick from it generally, as can that product
13 cause disease versus a notice issue and I believe that
14 we arrived at the cut off for notice, I think, in 1990.
15 So, to my -- to my --

16 THE COURT: Because no one was sure exactly
17 what the date was so that was the date that was kept.

18 MR. PLACITELLA: Correct.

19 MR. KELLY: And we have -- that's another
20 point we'll talk about.

21 MR. PLACITELLA: Correct.

22 MR. KELLY: But the product is joint
23 compound.

24 MR. PLACITELLA: Can I just say something?
25 There is a standard for arguing a motion for

1 reconsideration. All this stuff we did the last time
2 and any investigation that they could have done to make
3 these arguments they could have done after the special
4 master denied their motion the first time. We're now
5 six months later and we're rearguing something that
6 really has been briefed, it's just -- it's just, you
7 know, in different clothing.

8 THE COURT: I know.

9 MR. PLACITELLA: Okay.

10 THE COURT: Technically, you're correct.

11 MR. PLACITELLA: Okay.

12 MR. KELLY: This actually is a new issue,
13 Judge. It really only became an issue when you compare
14 paragraph one to two and three. I'm only asking that
15 the same logic Your Honor used to draft paragraphs two
16 and three or that Counsel's drafting apply to paragraph
17 one and everything else we're just talking about, that
18 we limit the search or the scope of this potential
19 universe to documents from the appropriate division.
20 I'm a little surprised that there's an argument on
21 that.

22 MR. PLACITELLA: Yes, but Judge, B-33, which
23 was arrived at as a standard interrogatory pursuant to
24 court order for 20 years have never limited in time or
25 scope. It asks specifically did it ever happen by any

1 division.

2 The fact that Georgia Pacific arbitrarily
3 just picks a date and says that's all we're going to do
4 is of no moment. Just because I'm the first one to
5 call them on it doesn't mean that they didn't -- they
6 weren't under the obligation to respond to the
7 interrogatory that's been court sanctioned now for 20
8 years that everybody else has to answer.

9 MR. KELLY: Your Honor, the interrogatory,
10 and I think it's apples and oranges, but the
11 interrogatory does qualify it as the gypsum division,
12 that's the division that --

13 MR. PLACITELLA: That's your answer but not
14 the question. The question says any division, any
15 subsidiary to any point in time. You qualified it with
16 your answer.

17 MR. KELLY: Well, you --

18 MR. PLACITELLA: That's what you did, that's
19 not what the court order, standing court order
20 requires.

21 MR. KELLY: Your point -- I think your point
22 was that our answers to interrogatories are somehow
23 inconsistent with our position. It's not inconsistent.
24 It's entirely consistent with Your Honor's order in
25 paragraphs two and three. I'm only asking -- it's all

1 limited to the gypsum division. I'm just asking that
2 paragraph one be consistent with the rest of it.

3 THE COURT: Two and three relate to a
4 different issue, though.

5 MR. KELLY: I'm sorry.

6 THE COURT: Because they -- that potentially
7 could give evidence of the joint compound causing
8 mesothelioma.

9 MR. KELLY: Right.

10 THE COURT: Which is a different issue than
11 the notice.

12 MR. KELLY: Well, it is and isn't because --

13 THE COURT: It is.

14 MR. KELLY: -- if you expand the notice issue
15 to what it really is it says, hey, you should have done
16 something vis-a-vis these two plaintiffs because you
17 had notice that your joint compound could cause
18 disease.

19 THE COURT: No, number one is the notice
20 issue.

21 MR. KELLY: Right.

22 THE COURT: And it includes mesothelioma
23 claims.

24 MR. KELLY: Well, understood.

25 THE COURT: And two and three are the

1 causation issues as to whether it could lead to any
2 admissible evidence to defeat your argument that your
3 joint compound, probably because of the nature of the
4 asbestos, could not have caused mesothelioma.

5 MR. PLACITELLA: Correct.

6 THE COURT: Maybe cross-examination of an
7 expert.

8 MR. PLACITELLA: Correct.

9 THE COURT: So, there's different purposes
10 for the paragraphs.

11 MR. PLACITELLA: And just --

12 MR. KELLY: I didn't want to interrupt Your
13 Honor --

14 MR. PLACITELLA: Just to narrow it.

15 MR. KELLY: -- to respond to that.

16 MR. PLACITELLA: And I do submit and agree
17 that on the issue, at least for purposes of this
18 motion, on the issue of was the stuff in there bad,
19 could it cause mesothelioma, I'm willing to limit my
20 discovery to the issue related to the gypsum division
21 because I just think to get there --

22 THE COURT: Well, doesn't manufacturing and
23 sale of Georgia Pacific's joint compound automatically
24 limit it?

25 MR. KELLY: Well, that's one of the reasons

1 we need the clarification. It should just say to the
2 gypsum division which would include all that -- you
3 see, two and three have slightly different language.

4 THE COURT: But isn't it automatically
5 limited to it?

6 MR. KELLY: If we agree as to that, that's my
7 position.

8 THE COURT: It says arising out of any
9 Georgia Pacific facility that was, at any time,
10 involved with the manufacturing of sale of Georgia
11 Pacific joint compound.

12 MR. KELLY: Right.

13 THE COURT: So, if that facility was only the
14 gypsum division, automatically that's what paragraph
15 two applies to.

16 MR. KELLY: And three.

17 THE COURT: And three.

18 MR. KELLY: And I'm just asking that it apply
19 to one. I don't see the logical distinction between a
20 notice issue on joint compound and a causation issue on
21 joint compound. It's all joint compound and it's all
22 in the gypsum division.

23 THE COURT: No.

24 MR. PLACITELLA: That's what -- we argued
25 this same issue last time.

1 THE COURT: No, I -- number one is notice and
2 if the question is did Georgia Pacific know that
3 asbestos was bad and if it did when did it find out.

4 MR. KELLY: Okay, I obviously disagree that
5 that's the premise of the notice. The issue is was
6 there notice, as phrased in his original motion, that
7 joint compound can be dangerous, not that asbestos as a
8 general sense. That wouldn't be a standard.

9 THE COURT: It's all part of the same issue.

10 MR. KELLY: Well, the distinction, of course,
11 would be that if it's joint compound then necessarily
12 one would have to match two and three because it's the
13 same -- that's the division.

14 THE COURT: No, I -- evidence regarding
15 Georgia Pacific's knowledge about the dangers of
16 asbestos in general can -- could be relevant to the
17 issues. Maybe you'll argue it's not, in this
18 particular case, but certainly it's discoverable
19 because it has the potential to leading to relevant
20 evidence. So, no, I'm not going to limit number one.

21 MR. KELLY: Okay.

22 THE COURT: I mean, the only way that I would
23 even consider limiting it is if Georgia Pacific was
24 split into divisions that clearly some of the divisions
25 had absolutely no possibility whatsoever in anyone's

1 furthest imagination of being involved in something
2 that related to asbestos and no employees transfer
3 between the divisions because they were located in
4 different areas of the company or something so clear
5 that there couldn't be any crossover.

6 Yes, I mean, I -- I would limit this. I
7 think that Mr. Placitella would agree to it.

8 MR. PLACITELLA: I would consent, Your Honor,
9 as we sit here. For instance, let's say it was a Dixie
10 cup factory. It was built in 1980. We'll put aside
11 whether the stuff had asbestos in at that point. It
12 was built in 1980 and --

13 THE COURT: Dixie cups never had asbestos,
14 did they?

15 MR. PLACITELLA: No, no, I'm just saying the
16 factory.

17 THE COURT: Oh, okay.

18 MR. PLACITELLA: And that it was built in
19 1980, they never used asbestos in the plant, they --
20 nobody put it on the pipes, nobody -- no maintenance
21 guy was in there doing anything, then I would consent.
22 I would say there's no reason to put that in issue in
23 this case.

24 THE COURT: Right.

25 MR. PLACITELLA: There's no reason, however,

1 if there is a -- if there's a plant that makes another
2 kind of product and it was --

3 THE COURT: Yes, Dixie cups.

4 MR. PLACITELLA: And it was built in 1966 and
5 they had a whole maintenance force, the only thing they
6 did was rip out and put in asbestos for 20 years --

7 THE COURT: That would be relevant.

8 MR. PLACITELLA: -- that would be relevant.

9 THE COURT: Yes.

10 MR. PLACITELLA: That's the difference.

11 THE COURT: Okay.

12 MR. KELLY: We respectfully disagree, Judge,
13 but if that's going to be the position and you're not
14 inclined to agree with me then I guess --

15 THE COURT: No, actually, I agree with Mr.
16 Placitella.

17 MR. KELLY: I gather that.

18 THE COURT: It's not that I'm inclined to
19 disagree with you, I actually agree with him.

20 MR. KELLY: Okay, all right.

21 THE COURT: Because it has to do with
22 notices. What did Georgia Pacific know about the
23 dangers of asbestos? That's really the issue on the
24 Workers' Comp records. If they had the Dixie cup
25 factory that was built in the '50s or '60s and there

1 was asbestos pipe covering and, you know, when they
2 took it down, let's say they took it down in the '70s
3 and they had all these fellows filing Workers' Comp
4 claims because they has asbestosis, I mean, that --
5 that shows something that they knew.

6 MR. KELLY: Judge, I respectfully disagree
7 that you can make that leap. Now we're talking about
8 pipe covering in plants and suggest that that's notice
9 of something to do with joint compound, which is a
10 whole other animal.

11 THE COURT: No, no, no. What I'm saying to
12 you is that a company's generalized knowledge about the
13 dangers of asbestos could be relevant, may be relevant.
14 That would be left for further determination as to
15 whether it was or was not, but certainly an attempt to
16 find the information could lead to discoverable and
17 relevant and admissible evidence which is why the order
18 is the way it is. So, in that respect I cannot agree
19 with you.

20 Do you have -- do you have anything else?

21 MR. KELLY: I have one more point on that,
22 and the reason I was looking at this, and I was looking
23 for a quote from the opposition because this is a
24 little different argument than I was anticipating, and
25 here's the reason. If you look at page eight of

1 Counsel's opposition it says that the reason they were
2 looking for these records, it says, "Plaintiffs seek
3 the requested Workers' Compensation records for the
4 purpose of establishing that the asbestos incorporated
5 into Georgia Pacific's products was capable of causing
6 asbestos related injury." I get that, I know that's
7 their argument.

8 Now we're hearing about pipe covering
9 exposure as being related to something. The point is
10 they're focusing on what we knew about our product and
11 when we knew it and what we should have done about it.
12 I understand that argument. We have our respective
13 positions on it.

14 Now, we're talking a whole other kettle of
15 fish here in terms of discoverability and relevance and
16 what not. So, that's my point on that, Judge.

17 MR. PLACITELLA: I think it's consistent.

18 THE COURT: What's the issue on the date?

19 MR. KELLY: The date? Well, I think that's a
20 little more straightforward. Deposition testimony set
21 forth in the papers at length, I think with regard to
22 Mr. Picinic, just to start, it's absolutely clear that
23 his cut off is '78.

24 MR. PLACITELLA: That's true.

25 MR. KELLY: Okay, so the 1990, it makes no

1 sense for him. With Mr. DeMayo I would suggest, Your
2 Honor, that there's a couple options. Number one, he
3 doesn't get them at all because he can't establish the
4 date and it shouldn't be my burden to disprove it, even
5 though we have. His deposition can't say I used a GP
6 product in this timeframe, so I think that inability to
7 offer that testimony can't prejudice me in a discovery
8 request. So, I don't think he's entitled to any
9 records as regard to his particular claim. If he is,
10 then logically you have to limit it to '77 which was
11 our proposed cut off when we took the asbestos out. I
12 don't see any other option. Either he doesn't get any
13 of the records because he can't show the date that he
14 used it, therefore, he can't prove there's notice
15 premise.

16 MR. PLACITELLA: But we argued this the last
17 time, Judge. The problem is that the evidence is that
18 they didn't take it out in '77. That's part of the
19 claim. They had stuff in there that contained asbestos
20 and told the world it was asbestos free.

21 THE COURT: Well, you know --

22 MR. PLACITELLA: I mean, there's an internal
23 company document that says it.

24 THE COURT: You know, very honestly, I don't
25 find anything new being submitted to me that I didn't

1 consider before.

2 MR. KELLY: Well, we actually didn't have
3 this, Judge. If you remember, we stood here and Your
4 Honor said, well, wait a minute, Mr. Kelly, I disagree
5 with you on '77 as the cut off. I think it should be
6 their date of last exposure and I think I even put our
7 quote in the transcript.

8 THE COURT: It is the date --

9 MR. KELLY: We didn't have that.

10 THE COURT: It's the date of their last
11 exposure.

12 MR. KELLY: Yeah, and we didn't know that
13 because I wasn't --

14 THE COURT: That's right, and you were going
15 to go back and try to figure out the date --

16 MR. KELLY: Right.

17 THE COURT: -- of last exposure because that
18 would be the last date.

19 MR. KELLY: And that's what I'm giving you
20 today. This is the first time we're having a hearing
21 on this.

22 THE COURT: Well, we don't -- we don't know
23 what his date of last exposure was because he testified
24 that he used it throughout his career, right?

25 MR. KELLY: You mean Mr. DeMayo?

1 THE COURT: DeMayo.

2 MR. KELLY: Okay. No, Mr. DeMayo claims he
3 used it. He really doesn't have very good product ID
4 testimony, I think that's consistent. He can't say --

5 MR. PLACITELLA: He only used it hundreds of
6 times, that wasn't good?

7 MR. KELLY: He used a lot of products and
8 that's the whole point.

9 MR. PLACITELLA: He said Georgia Pacific
10 hundreds of times.

11 MR. KELLY: But he can't say when he used it.
12 If he can't say when he used it --

13 THE COURT: Didn't he say throughout his
14 career?

15 MR. PLACITELLA: Well, no, actually what
16 happened was, to be fair to Counsel, I think when asked
17 he said I remember using it in the '60s and the '70s
18 and he was -- because we weren't addressing, at the
19 time, the issue of, you know, no one knew when he was
20 deposed --

21 THE COURT: Okay.

22 MR. PLACITELLA: -- that the stuff -- to even
23 ask him the question that the stuff in the '80s had
24 asbestos in it.

25 THE COURT: Let me just ask you a question.

1 MR. PLACITELLA: Right.

2 THE COURT: In terms of your case --

3 MR. PLACITELLA: Right.

4 THE COURT: -- if Mr. DeMayo testified that
5 he remembers using it in the '60s and the '70s, how do
6 you get him using it after the '70s?

7 MR. PLACITELLA: Because I asked him on the
8 stand the very question how long did you use it. When
9 we were asking him the questions the first time we were
10 focused on the '60s and the '70s because those are the
11 questions we thought were relevant because that's what
12 was there.

13 MR. KELLY: May I quote?

14 MR. PLACITELLA: I mean, but it's clear, I
15 think, that his testimony today is '60s and '70s,
16 that's his current testimony, so I don't want to
17 mislead the Court.

18 THE COURT: Well, what other testimony is
19 there?

20 MR. PLACITELLA: There is none as it exists
21 today, to my knowledge.

22 THE COURT: Well, then what are you talking
23 about?

24 MR. PLACITELLA: I'm saying when he gets on
25 the stand I have the ability to ask him did you ever

1 use what was considered asbestos free compound in the
2 1980s. I can ask him that question.

3 THE COURT: No, you can ask -- why didn't you
4 submit an affidavit or something to say that he used it
5 in the '80s?

6 MR. PLACITELLA: I should have. I absolutely
7 should have.

8 THE COURT: You should have.

9 MR. PLACITELLA: I absolutely should have.

10 MR. KELLY: I can tell you --

11 MR. PLACITELLA: But the reason I didn't do
12 it because this is a motion for reconsideration, we
13 argued it the last time. We -- we arrived at the date
14 of 1990 and that was it.

15 MR. KELLY: We absolutely --

16 MR. PLACITELLA: I mean, this is nothing new
17 from the last time.

18 THE COURT: No, we left my courtroom, I
19 thought, with there to be further discussions as to
20 the date.

21 MR. KELLY: We never discussed this at
22 the motion, Judge. It wasn't before you, and may I
23 quote --

24 MR. PLACITELLA: Judge, we had a telephone
25 conversation, your -- my -- yourself, myself and Mr.

1 Kelly and that's how we arrived at the 1990 date.

2 MR. KELLY: Well, it certainly wasn't from my
3 ID. I objected to that order, you remember I said it.

4 THE COURT: I know.

5 MR. KELLY: Judge, can I quote? This is Mr.
6 DeMayo, and this is why there's no affidavit:

7 Q "Are you able to tell me the first time you
8 used a Georgia Pacific ready mix joint compound?

9 A No."

10 Q "Are you able to tell me the last time you
11 ever used it?

12 A No."

13 Q "Are you able to tell me the number of times
14 you used it?

15 A No. No, I can't tell you."

16 And he goes on to say:

17 Q "Is there anything that you can tell me that
18 you remember, maybe, perhaps, in your own personal
19 life, what was going on in history, that would give you
20 an indication as to the first time you ever used
21 Georgia Pacific?

22 A No, I can't recall."

23 He's -- there is no date. So, how do we
24 assume that it was even in the '60s or '70s?

25 MR. PLACITELLA: Judge, he says point blank

1 in his testimony the '60s and the '70s. We argued this
2 the last time. It's incredible for a man 35 years ago
3 to say I used Georgia Pacific joint compound on
4 December 3rd, 1965. I submit that that would not be
5 credible testimony. What his testimony was is I used
6 it in the '60s and the '70s and I used it hundreds of
7 times, hundreds of times.

8 MR. KELLY: Judge, with all due respect,
9 Counsel's opposition is not --

10 MR. PLACITELLA: And Judge, we're rearguing
11 stuff that we argued the last time. You're supposed to
12 bring new evidence, something that wasn't considered
13 last time. It's a motion for reconsideration, with all
14 due respect.

15 MR. KELLY: Judge --

16 MR. PLACITELLA: I wasn't supposed to have to
17 rebrief everything this time.

18 MR. KELLY: You will note that not -- nowhere
19 in the opposition briefs by plaintiffs does he dispute
20 what I just read you. In his opposition to motion to
21 reconsideration, he doesn't dispute these dates. He
22 glosses over. I thought that was going to be another
23 point of agreement today.

24 MR. PLACITELLA: Why would I agree? We
25 argued it the last time. The issue on reconsideration

1 is anything new. I incorporated in my brief what we
2 did the last time. Does the Court really want me, on a
3 motion for reconsideration, to reiterate this much
4 evidence? I mean, that's not what the issue is
5 supposed to be here.

6 MR. KELLY: We know that this testimony has
7 never been before you, that's why I submitted it. I
8 objected to the five day order, said Judge, it's
9 contrary to the dep testimony, and I'm now raising it
10 as entirely inconsistent with the 1990. And regardless
11 of what Counsel's position is, we know it's not 1990.
12 We know that now. So, Mr. Picinic clearly has to be
13 '78. I'm not hearing and argument on that. And Mr.
14 DeMayo, I would submit, if he can't establish his
15 notice premise, why are we assuming a worst case
16 scenario for my client?

17 MR. PLACITELLA: Judge, maybe we can cut this
18 short and make it easy, okay, just to see if we can get
19 past it. If the testimony is, as it sits here today,
20 that Mr. DeMayo says I used it in the '60s and
21 throughout the '70s, I think that's pretty clear,
22 despite -- and it's in the papers, despite what Counsel
23 says, then let's cut -- instead of 1990, let's cut it
24 at 1980 on notice, so we don't have that issue, but as
25 to the content, it goes all the way up to the present.

1 So, now we -- to the content, in other words, the issue
2 of does the joint compound cause disease, and for that
3 purpose --

4 THE COURT: Two and three.

5 MR. PLACITELLA: Two and three, so we could
6 stop --

7 MR. KELLY: That's been always going on.

8 THE COURT: Yes.

9 MR. KELLY: The meso claims.

10 THE COURT: Yes.

11 MR. KELLY: I understand that. That's not
12 what we're talking about.

13 MR. PLACITELLA: Well, these are the lung
14 cancer. I mean, I don't think you just get to give me
15 the meso claims.

16 MR. KELLY: Well, lung cancer was never an
17 issue raised.

18 THE COURT: No, no, no, it was only the meso
19 claims.

20 MR. KELLY: Right.

21 THE COURT: That was two and three.

22 MR. PLACITELLA: Okay. If -- if we're -- if
23 we're going to do that, then let's make it simple.
24 Let's have the meso claims through the present day,
25 okay, and --

1 THE COURT: They're not arguing about that.

2 MR. KELLY: We're not even on that --

3 MR. PLACITELLA: Okay, okay.

4 MR. KELLY: We're not even talking about
5 that.

6 MR. PLACITELLA: Through the present day, and
7 if we're going to stand on the record as it exists now,
8 then it's clear at the late -- at the earliest there is
9 a cut off, let's say, for agreement purposes, 1980,
10 okay, 1980. So, they have to give us all notice
11 documents of Workers' Comp claims up to 1980.

12 Now, they've already certified --

13 THE COURT: Prior to '80.

14 MR. PLACITELLA: Right, up to 1980, up to --
15 well, that's why -- prior to, when I say up --

16 THE COURT: 12/31/79.

17 MR. PLACITELLA: Exactly, okay. They've
18 already certified in their interrogatory answers as of
19 2006 that they've checked all the Workers' Compensation
20 claims through 1977. So, I guess the only thing they
21 have to do now is check three more years and then we're
22 done because the -- the production of the disease
23 claims for mesothelioma are all electronic. Mr.
24 Kelly's already told me they've narrowed it down to
25 200. That can't be burdensome. There's only three

1 years for them to look at between '77 and '80. That
2 can't be burdensome and then the issue for this motion
3 is resolved. And when the next guy comes and he says
4 that he worked with Georgia Pacific joint compound in
5 1992 then we'll raise the issue again.

6 MR. KELLY: That mixes an awful lot of
7 concepts, Judge. We have to get to the whole pre-'87/
8 post-'87 thing. I thought I was raising the easy
9 issues first about the cut off dates, so --

10 THE COURT: This is a good cut off date.

11 MR. PLACITELLA: Right.

12 MR. KELLY: Well, he's starting to talk about
13 the '77 prior search and all that. We need to just get
14 to that separately. That has nothing, really, to do
15 with Mr. Picinic or Mr. DeMayo.

16 THE COURT: Well, he is raising the issue of
17 hey, look, Judge, they already said they looked through
18 1977.

19 MR. KELLY: Right.

20 THE COURT: If I consent to it only going
21 through the end of '79 it's three more years. How can
22 they complain about that?

23 MR. PLACITELLA: Correct.

24 MR. KELLY: Well --

25 MR. PLACITELLA: And they can -- and the

1 assertion was less than two years ago they certified
2 that's what they did --

3 MR. KELLY: I can explain to you how --

4 MR. PLACITELLA: -- in June of 2006.

5 MR. KELLY: I can explain to you how it's not
6 that simple but I thought we'd try to resolve the cut
7 off date first because depending on what the cut off
8 date is it does impact it because we have different
9 systems for pre-'87 and post-'87, so --

10 THE COURT: What does '87 have to do with any
11 of this?

12 MR. KELLY: That's --

13 MR. PLACITELLA: Because what they say is,
14 Your Honor, what they say is that as of 1987 all their
15 comp claims are electronic, so --

16 THE COURT: So what?

17 MR. PLACITELLA: Well, I'm saying there's no
18 burden.

19 THE COURT: You're -- you're agreeing to let
20 it go to the end of '79.

21 MR. PLACITELLA: Right, for general notice,
22 correct.

23 THE COURT: Right.

24 MR. PLACITELLA: But he's now talking about
25 the -- the mesothelioma claims.

1 THE COURT: I'm not changing that.

2 MR. PLACITELLA: Okay.

3 MR. KELLY: No, no. Well, I'm not talking
4 about that. I'm focusing on what you're focused on,
5 Judge. I just need to know what the cut off date is
6 because it will impact the other things we decide today
7 because we're looking for a bunch of records that he
8 doesn't have to do in terms of post-'87. So, I guess I
9 need the -- we need to get an understanding as to what
10 you're going to rule on the cut off date for notice.

11 MR. PLACITELLA: I just consented to -- to
12 the December 31, 1979. I consented to it. I figured
13 I'd make it simple.

14 MR. KELLY: I don't want to appear that I'm
15 splitting hairs, Judge. You can rule whatever you want
16 to rule. I think the evidence is what it is for
17 Picinic, '78, I'm happy with that. I don't think Mr.
18 DeMayo should get any of them because of what I read
19 into the record. He can't tell us -- he can't tell us
20 when he used it so he can't establish notice. That's
21 my argument. He'd have to be able to say when he used
22 the product.

23 MR. PLACITELLA: He said it used it in the
24 '60s and the '70s, throughout the '60s and the '70s.
25 They want to split hairs and say the man can't say that

1 he used it December 1, 1966, you know.

2 THE COURT: Where -- does he specifically
3 say, at any point, during the '60s and the '70s?

4 MR. PLACITELLA: Yes, absolutely, on a number
5 of occasions.

6 MR. KELLY: Judge, I'm not doubting his word
7 but I don't have -- he didn't give me that transcript.
8 All I have are --

9 MR. PLACITELLA: It's in the first set of
10 motion papers, Judge. This is a motion for
11 reconsideration.

12 MR. KELLY: Judge, I think what I just read
13 to you is pretty clear, that he can't give a date.

14 MR. PLACITELLA: Let's suppose --

15 THE COURT: So what if he can't give a date?

16 MR. KELLY: I'll tell you why, because let's
17 suppose he used it in '64. We didn't make it then.
18 Let's suppose he --

19 THE COURT: If he testified that he used it
20 in the '60s and '70s what are you going to do about
21 that? That's what he said.

22 MR. PLACITELLA: Yes.

23 THE COURT: i'm -- I'm assuming that Mr.
24 Placitella is correct, that someplace in his deposition
25 he said I used it in the '60s and the '70s.

1 MR. PLACITELLA: On more than one occasion he
2 said that.

3 MR. KELLY: And so his lack of certainty then
4 results in me getting the worst possible cut off date.
5 That's what's happening.

6 MR. PLACITELLA: He just got the best
7 possible cut off date, which was the end of the '70s.

8 MR. KELLY: Let's suppose Mr. DeMayo has his
9 recollection refreshed and says, you know what? I
10 remember, the last time I would have used it is '72.
11 Your Honor would rule that, good, '72 is the cut off
12 date, right? So, just because he can't tell, all of a
13 sudden I'm stuck with a '79 or a '70 -- or an '80 date.

14 THE COURT: No, he told '60s and '70s.

15 MR. KELLY: It could be -- you've heard my
16 argument, Judge, on this.

17 THE COURT: You know what? There's not going
18 to be anymore reconsideration motions on this issue, I
19 hope, because I don't think I can deal with the piles
20 of paperwork that I get every time. I think that Mr.
21 Placitella's offer to limit it to, I guess, 12/31/79 is
22 more than reasonable in view of Mr. DeMayo's testimony
23 and in view of Mr. DeMayo's career and in view of what
24 Mr. DeMayo did as an occupation. So, why don't you
25 just submit an order to me and we'll limit it to

1 instead of 1990 it will be all records up through and
2 until 12/31/79.

3 MR. KELLY: On the notice issue?

4 THE COURT: On the notice issue.

5 MR. PLACITELLA: Correct.

6 MR. KELLY: All right.

7 THE COURT: Did you submit a new order to me?

8 MR. PLACITELLA: Well, I didn't because we
9 have one more issue to get to that's going to impact
10 the order and that's the protective order --

11 THE COURT: Wait, did you submit an order to
12 me in your reconsideration motion?

13 MR. KELLY: No, there were too many issues.
14 I didn't know how it was going to end up, Judge.

15 THE COURT: You -- well, I'm surprised --

16 MR. KELLY: No, I did -- I did send you -- I
17 did give you an order, not on these issues, I gave you
18 an order that says you've reconsidered and we win and
19 the motion is reconsidered. Yes, I have that one. I
20 don't anticipate your signing that one, though. Do you
21 follow me?

22 THE COURT: Not really.

23 MR. KELLY: I have you an order granting our
24 motion for reconsideration.

25 THE COURT: Fine, where is it? Is this

1 really how you submitted your motion, with a big --

2 MR. KELLY: I think that was Mr. Placitella.

3 THE COURT: -- and all this kind of stuff?

4 Because, I'll tell you something.

5 MR. KELLY: May I approach with the order,

6 Your Honor?

7 THE COURT: Everybody's doing this, you know,
8 this is how I'm getting the motion, I just want to show
9 you. I'm getting motions like this with a big elastic
10 around it. Did anybody ever hear of, one, a notice of
11 motion that's stapled separately and then a brief
12 that's a separate document and then a certification
13 with the documents attached that's a separate document?
14 Did anybody realize that if you attach documents to
15 your brief that that's completely inappropriate? I
16 mean, these are a mess. Both of you. Please, the next
17 time somebody files a motion in this case, don't do
18 this to me, and then with a big elastic around me --
19 around it and say, oh, okay, Judge, you find the
20 certification, you find out where we stuck the order in
21 this mess. You figure it, by looking at this, if in
22 fact the documents are really attached to a brief or
23 they're attached to a certification or what, because
24 it's driving me insane, the format of these papers. I
25 mean, when I look at this, I have to look through this

1 whole thing. Where's the brief? Where -- is there a
2 certification? Where is it? It's not how you're
3 supposed to file motions. Do you have an extra copy of
4 the order?

5 MR. PLACITELLA: Right in front of you,
6 Judge.

7 THE COURT: Thank you.

8 MR. PLACITELLA: You're welcome.

9 THE COURT: Okay, go ahead. What other
10 issues are there?

11 MR. KELLY: Now, we've got to get to the
12 tough one. I thought they were the easy issues. With
13 pre-'87 --

14 MR. PLACITELLA: I'm exhausted, so I'll pick
15 on you.

16 MR. PLACITELLA: As set forth in Mr. Stark's
17 affidavit we have two systems. The pre-'87 records
18 we're making available for inspection. They are in
19 boxes, they are -- everything Your Honor is ordering,
20 it's gypsum division, it's not just in divisions, about
21 3,500 boxes of records, which is what paragraph one
22 requires us to produce, all right, they go up to '87.
23 The post-'87 ones we're doing the work on because they,
24 at least, have a code about the body part, foot, hand,
25 whatever it might be. So, we're doing that and we're

1 going to redact them, we're going to produce them,
2 that's our deal.

3 Prior to '87, it's just a matter of producing
4 them according to Rule 418 which nobody disagrees that
5 we can do. The problem is -- it's not a problem but we
6 need something Your Honor, I'm sure, has done many
7 times in the past. We need you to issue a protective
8 order that protects because plaintiff's Counsel is
9 going to be looking at these in raw form. He's going
10 to go through them but, you know, you've done these
11 productions before. He's going to tag what he wants,
12 what he thinks is discoverable under your order. We're
13 going to look at it, we're going to copy it, we'll go
14 through it for privilege, confidentiality, trade
15 secret, privacy and what not, do a privilege log if
16 there's anything in there we think is contrary to your
17 order or private or whatever it might be and then
18 produce them. I mean, that's not rocket science.
19 We've done that before in mass tort cases, but we need
20 you to enter a protective order doing that. Part of
21 that -- and I don't think that there's major
22 disagreement on most of the protective order because we
23 did talk about it but one of the things we do want in
24 that protective order is to let the records that we're
25 producing here in Mr. DeMayo and Mr. Picinic's case

1 only be used in New Jersey by Mr. Placitella and not
2 circulate it all over the world, circumventing other
3 courts that have their own motion practice on
4 discoverability and relatives and what not -- appeal,
5 I have, you know, some language we can talk about, but
6 that's what we need to be able to produce those
7 records.

8 THE COURT: You know, very honestly, I'm not
9 entering protective orders anymore.

10 MR. PLACITELLA: Judge, I was going to say
11 that as the former president of Adler (phonetic) New
12 Jersey, which I guess now has changed its name, I
13 signed a blood oath, I'll never agree to a protective
14 order like that, ever, ever, and I told Mr. Kelly that.
15 I'll never do it. If I get documents that help the
16 Wilentz firm in their case, I'm going to give it to
17 them and if I get documents that help the Wiesocker
18 (phonetic) case -- firm in their case, I'm going to
19 give it to them. I will never, ever agree to such an
20 order, never.

21 THE COURT: You know, I mean, you know about
22 what's happening in New Jersey with the report,
23 guarding, sealing court records and things of that
24 nature. It's a very major issue right now. You know,
25 I mean, clearly if something's a trade secret I'll sign

1 the protective order to preclude, to protect a trade
2 secret, something like that. But, you know, just
3 Judge, we prefer not to have anybody look at it, I'm
4 not signing them anymore, I'm just not.

5 MR. PLACITELLA: And to respond to Mr.
6 Kelly's prior argument, there's one piece of this. He
7 says he wants to make them available to me, which he
8 can do under the court rules, but he really only needs
9 to give me -- I don't want 3,500 boxes, and I'll
10 explain why. Because they looked, as of June 2006,
11 they've looked at every record up through 1977. So,
12 the only records I want to see are from '77 to the end
13 of '79. I don't want to look at all the pre-'77
14 records because they've looked at them already.
15 They've certified them, and if they're going to tell me
16 they can't do that, then what they're saying to me is
17 Chris, go -- I'm going to show you up to '87 anyhow, so
18 why did we just have this argument for an hour?
19 Because --

20 THE COURT: That's a good question.

21 MR. PLACITELLA: Yeah, why do we argue? If
22 he says go look at all the boxes and everything there
23 is going to be up to '87, then why did we argue about
24 it? Why did I even agree? I only want the three years
25 in issue, '78 -- '78, '79, up to 1980, December 31st,

1 and for them, they've made no showing of burden of why
2 they can't look at those records and give them to me
3 and that proves -- and that puts aside all the HIPA
4 issues, everything else because they can look at the
5 records, they can redact them and give them to me.
6 It's three years. Somebody, as of two years ago,
7 looked at all the records from '65 to '77, right? And
8 they didn't make me look at them then. So, for these
9 three years why do I have to look at records all the
10 way to 1987?

11 MR. KELLY: Your Honor, he's got so many
12 false premises in there. No one looked at these
13 records two years ago. What he's talking about is that
14 standard answers to interrogatories, which were served,
15 I don't know when, in these cases, a decade ago? Who
16 knows when that was? I don't know. So, that's what
17 he's focused on when he mentions interrogatory answer
18 number 33.

19 THE COURT: No, I know, but you mean no one
20 ever looked at those records and they certified an
21 answer to interrogatories without having the
22 information?

23 MR. KELLY: No, his point was they looked at
24 it two years ago.

25 MR. PLACITELLA: No, I said they certified it

1 as of two years ago, that's when they certified the
2 answers into this case, that they had looked at them
3 through '77.

4 MR. KELLY: It's the same answer, Judge, that
5 was served. Whenever that inspection was done, it was
6 done, that's not an issue. We've clearly done the
7 search pre-'77 for the gypsum division, that's the
8 answers to interrogatories. What he's talking about
9 is --

10 THE COURT: Eight?

11 MR. KELLY: Pardon?

12 THE COURT: You mean you didn't do them for
13 any other division, you only did them for gypsum?

14 MR. KELLY: And that's what we said in our
15 response.

16 MR. PLACITELLA: Yeah, but that's not what
17 interrogatory B-33 tells them to do.

18 MR. KELLY: All I --

19 MR. PLACITELLA: So, they've been flaunting
20 the order for 20 years.

21 MR. KELLY: And no one's had a problem with
22 it, Judge, because no one wants Dixie cup records.

23 THE COURT: You know, I'm not going there, at
24 this point. There is an outstanding order for all the
25 divisions on item number one.

1 MR. KELLY: Right.

2 THE COURT: But you haven't done that at all.

3 MR. KELLY: And that's the problem. Now, to
4 do that, we have 3,500 boxes of records. It's like you
5 get what you ask for. That's why I said, depending on
6 how we resolve that, maybe we can, you know --

7 THE COURT: So, in other words, if I
8 understand you then --

9 MR. KELLY: You see my point?

10 THE COURT: -- if Mr. Placitella was going to
11 limit this to the gypsum division for '77, '78 and '79,
12 right?

13 MR. PLACITELLA: Yes.

14 THE COURT: Then you would go through the
15 boxes and just produce them to him.

16 MR. KELLY: Well, I think that -- I think
17 that certainly -- that was my problem with paragraph
18 number one. Now you see how I'm sort of coming forth
19 full circle because the order that we had to reconsider
20 today said you have to produce all this stuff up to
21 '90. So, that's -- the universe I presented to you was
22 3,500 boxes. If he's willing to limit that, then let's
23 talk about that and maybe it's not 3,500 boxes.

24 MR. PLACITELLA: Well, Judge, I can --

25 THE COURT: But what you're telling me is

1 that there is a production to be done for the years
2 prior to '77 vis-a-vis the other divisions.

3 MR. PLACITELLA: That was never done.

4 MR. KELLY: Well --

5 THE COURT: That was never done?

6 MR. PLACITELLA: Apparently.

7 MR. KELLY: That's what you put into para-
8 graph one, yes, that's what you've ordered.

9 THE COURT: Well, I think, without looking at
10 the standard interrogatory, I think that Mr. Placitella
11 was correct, it's not limited to a particular division
12 of the company.

13 MR. PLACITELLA: In fact, it expressly says
14 subsidiaries, you know, it's very expansive, not
15 limited.

16 THE COURT: Right. So, basically, you did
17 certify an answer to the inter -- an interrogatory that
18 you're now telling me is not correct.

19 MR. KELLY: No, that's absolutely incorrect,
20 Judge. Our answers are very specific as to what we're
21 -- we're applying to. Why would anybody even consider
22 bringing up the issue of did you look for your --

23 THE COURT: Where is the answer?

24 MR. KELLY: Pardon me?

25 THE COURT: Where is the answer?

1 MR. KELLY: I have a copy, if you'd like to
2 look at it, but it specifically limits it to the gypsum
3 division.

4 MR. PLACITELLA: Well, they limited it to the
5 gypsum division. I --

6 THE COURT: They did, so you knew.

7 MR. PLACITELLA: Yes, yes, they absolutely --

8 THE COURT: Okay, never mind.

9 MR. PLACITELLA: They absolutely did.

10 MR. KELLY: Okay, that's what I said.

11 MR. PLACITELLA: They absolutely did. I
12 didn't say that they properly limited it because that's
13 not what the question asks for.

14 THE COURT: Well, then --

15 MR. KELLY: For 20 years nobody picks up on
16 it, Judge.

17 THE COURT: Then, you know --

18 MR. KELLY: It's a red herring.

19 THE COURT: You're being cute then, Mr.
20 Placitella, because you're saying all I'm asking them
21 to do is to produce to me three years of records.
22 That's not true. You're asking them to produce all the
23 records of pre-'77 regarding all the other divisions,
24 as well as all the divisions, including gypsum, for the
25 three years. So, don't be cute and say --

1 MR. PLACITELLA: No, I'm not, I'm trying
2 to --

3 THE COURT: -- oh, Judge, all I'm asking is
4 for three years of records because that's not what
5 you're asking for and you knew they hadn't done it.

6 MR. PLACITELLA: No, Judge, I don't really
7 know -- for instance --

8 THE COURT: Both of you are giving me a
9 headache, I hope you realize that.

10 MR. PLACITELLA: I appreciate that.

11 MR. KELLY: I thought it was going to be
12 easy, I really did.

13 MR. PLACITELLA: No, I don't think -- it's
14 not that easy because --

15 MR. KELLY: I thought we were going to limit
16 the gypsum division, come to a reasonable date and we
17 could whittle down the boxes and produce them and get a
18 protective order. I'm a little surprised I'm getting
19 pushed back on a lot of what I thought were relatively
20 agreeable points.

21 MR. PLACITELLA: What's -- what's agreeable?
22 That I won't agree to a protective order? I'll never
23 agree to a protective order. That's no surprise.

24 MR. KELLY: It's a protective order, Judge,
25 it's entered all the time. It's very common to say,

1- hey, you can get these documents but they're for use in
2 this case. You've seen these orders.

3 THE COURT: I'm not entering a protective
4 order. I told you, with everything that's going on,
5 haven't you read the Supreme Court committee report by
6 Justice Alban (phonetic) on what they're doing with
7 sealing records? I'm not signing any protective order
8 other than one where there has been a hearing and I am
9 convinced that we're dealing with trade secrets or
10 something of that nature that necessitates a protective
11 order. You know, I don't care, and I tell everybody in
12 my cases this, what you agree to among yourselves, do
13 whatever you want, but once it comes to me I'm not
14 signing it. So, don't do some consent order and expect
15 me to sign it because I'm not.

16 MR. PLACITELLA: You'll never get one from
17 me.

18 MR. KELLY: Well, Judge --

19 MR. PLACITELLA: Judge, maybe I can cut this
20 short and make it easy. I'll compromise again, all
21 right. For purposes of these two cases, because we
22 have trial dates and I don't want to -- I don't want to
23 lengthen the proceedings, he can give me every claim
24 for the gypsum division up to 1980, every claim, okay,
25 every Workers' Comp claim up to 1980 and I'll take

1 every claim, you know, for mesothelioma from the gypsum
2 division through today and I'll save for another day
3 the fight about whether they've complied with B-33,
4 whether they need to give me other documents of other
5 divisions, which I think they have to do under the
6 rule. I can take that back to the Special Master and
7 deal with it there. So, for purposes of this --

8 THE COURT: In a different case.

9 MR. PLACITELLA: In a different case, but for
10 purposes of this motion because of the pending trial
11 dates and I've got to get this stuff done, we'll limit
12 our request to up to 1980 for the notice documents of
13 the gypsum division and from all -- from the beginning
14 for the gypsum division for the mesothelioma documents.
15 That's -- that's what I'm willing to do, with no
16 protective order.

17 MR. KELLY: And no --

18 MR. PLACITELLA: And that's a lot more than I
19 need to do.

20 MR. KELLY: That's fine. With the protective
21 order, Judge, I think we need to make a distinction. I
22 understand he's not going to agree to let's call it a
23 nondisclosure portion, I'll just call it that, in other
24 words, distributing it outside of these cases.

25 THE COURT: I'm not doing that.

1 MR. KELLY: Okay, but there's an up --
2 there's other more -- I understand that.

3 THE COURT: I don't know how more clear I can
4 be about that.

5 MR. KELLY: I'm moving onto that, but there
6 are other -- the more basic provisions of a protective
7 order that I don't think the three of us even have any
8 way to get around, that is, because of the privacy
9 rules that Your Honor said we have to redact the
10 records and that we have to do that. In these cases, I
11 do not --

12 THE COURT: Just comply with HIIPA.

13 MR. KELLY: Yes, I need you to sign a
14 protective order that handles that, that says these
15 documents, you know, cannot be produced, they have to
16 be redacted, you can't give them out, you can't
17 disclose it until counsel gets it. There's a provision
18 in there for us doing the privilege log, the typical
19 stuff that's in a protective order besides the
20 nondisclosure. That does need to be done to comply
21 with the privacy laws.

22 MR. PLACITELLA: Well, I don't --

23 MR. KELLY: And I don't think there's an
24 argument on that.

25 MR. PLACITELLA: I thought the premise of

1 this was they were going to redact any personal
2 information. I don't know what we're doing with --

3 MR. KELLY: I'm talking about the pre-'87.

4 MR. PLACITELLA: We're talking about for
5 protective -- privilege. We -- that was never argued.
6 There's no privilege. These are documents that were
7 part of the litigation.

8 MR. KELLY: Maybe I'm not being clear.

9 MR. PLACITELLA: I don't think so.

10 MR. KELLY: The pre-'87 records, we're making
11 them available to him in raw form. He's going to tab
12 what he wants --

13 MR. PLACITELLA: No, no, no, no, you're going
14 to give me the boxes from '77 to '90 because you've
15 already done everything. That was the understanding.
16 That's why I narrowed it to the gypsum division. I'm
17 not going to go in and look at 3,500 boxes, you're
18 going to do it.

19 MR. KELLY: No, we're not going to do it.
20 We're going to make them available.

21 MR. PLACITELLA: Judge --

22 MR. KELLY: Everybody's agreed that we have
23 that ability to make them available for inspection,
24 Judge. It's a --

25 MR. PLACITELLA: Judge --

1 MR. KELLY: That's all we have to do.

2 MR. PLACITELLA: He just said it was the
3 boxes because it spanned multiple divisions and he
4 couldn't do it.

5 MR. KELLY: Right.

6 MR. PLACITELLA: So, I said we'll limit it to
7 one division for three years. Now he's saying he's not
8 going to do that. Well, guess what? You know what
9 he's going to do? He's going to give me the documents
10 up to '87, anyhow, so why do we even argue about this?
11 Why have we been standing here for an hour if he's
12 going to do it?

13 MR. KELLY: Judge, this is an important
14 point. There -- okay.

15 THE COURT: What I'm going to require you to
16 do is to give him those files. Not 3,500 files. Since
17 it's being -- look, you already certified that there
18 are no such claims before, I forget --

19 MR. KELLY: '77.

20 THE COURT: -- before '77, okay.

21 MR. KELLY: Right.

22 THE COURT: So, with this limitation you have
23 three years. You have '77, '78 and '79, right, for one
24 division.

25 MR. KELLY: Right.

1 THE COURT: You are going to go through the
2 boxes and give him those files.

3 MR. KELLY: Can I address that point, Judge?
4 I'm not trying to be an obstructionist but it's
5 important that you understand this point. This is
6 important, it's not a minor issue. It's not a three
7 year order now, like it sounds. We can't go into these
8 3,500 boxes that are there and say, okay, and certify
9 to Your Honor that it's accurate, that we don't have to
10 look at this group of boxes because this was the group
11 that was looked at before, which is inherent in what I
12 think Your Honor's understanding is, based on what you
13 said. We can't do that. We can't reconstruct what
14 somebody did years ago and said, all right, well, we're
15 not going to look at these boxes because that was a
16 prior search. We can't do that. That's why --

17 THE COURT: You can open the box and say
18 these files are all from 1960, these files are from
19 '68, don't have to look at them again. Pull out the
20 files that relate to '77 through '79.

21 MR. KELLY: It's not -- it's not that simple,
22 Judge. These files are --

23 THE COURT: It's going to be that simple.

24 MR. KELLY: Judge, with all due respect, that
25 is not --

1 THE COURT: You know something? You want
2 everything. You know what I'm tempted to do right now?
3 Produce every single Workers' Comp file that exists in
4 your company in New Jersey in one week. I mean, that's
5 where you're driving me to right now. You want it
6 limited but then you want it limited but then you can't
7 do it and then it's still whatever. So, Mr. Placitella
8 is 100 percent right. What you basically are saying is
9 I want the order limited, Judge, but I'm still giving
10 him 3,500 boxes and he's going to have to figure it
11 out. That's exactly what you're doing.

12 MR. KELLY: I'm not, Judge.

13 THE COURT: Well, then tell me --

14 MR. KELLY: I'll tell you how -- this is the
15 problem.

16 THE COURT: -- what you're doing.

17 MR. KELLY: If we limit it to the gypsum
18 division, then I have a pretty good sense that it's not
19 going to be 3,500 boxes but I can't sit here and say,
20 Judge, that I know what the number is because this is
21 just --

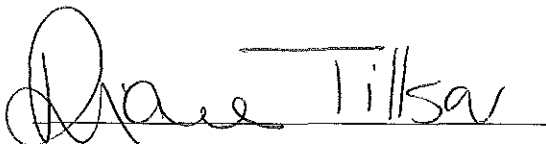
22 THE COURT: Well, you know something? You
23 come to court, you want a limitation and you don't even
24 have the information to give me as to how the limita-
25 tion would work. That's no good. Don't -- you are

1 going to produce to Mr. Placitella within two weeks
2 those files from the gypsum division for the years 1977
3 through 1979, and that's it.

4 MR. KELLY: Thank you.

5 (Proceedings concluded)
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9 I, Diane Tillson, the assigned transcriber,
10 do hereby certify that the foregoing transcript of
11 proceedings on tape number 1, index number from 2781 to
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