

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

Case Type: Employment

Court File No. C4-04-12239

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Clifford L. Whitaker and  
Michael V. Mucci,  
on behalf of themselves  
and all others similarly situated,

Plaintiffs,

**ORDER REGARDING STIPULATION  
AND PROTECTIVE ORDER**

v.

3M Company,

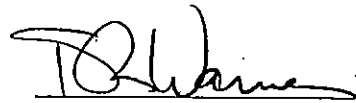
Defendant.

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The Court has reviewed the Stipulation and Protective Order submitted by the parties on May 27, 2005. Being satisfied that the parties have demonstrated good cause for the protections requested with respect to confidential discovery matters, the Court hereby adopts the terms and conditions of the Stipulation and Protective Order as an Order of this Court.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: June 10, 2005



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The Honorable Teresa R. Warner  
Judge of District Court

STATE OF MINNESOTA  
COUNTY OF RAMSEY

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SECOND JUDICIAL DISTRICT

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Michael V. Mucci,  
on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

3M Company,

Defendant.

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**STIPULATION AND  
PROTECTIVE ORDER**

The above-named Plaintiffs, individually and on behalf of all others similarly situated, and the above-named Defendant (collectively the "Parties"), by and through their respective counsel of record, hereby stipulate and agree to the following Stipulation and Protective Order in the above-captioned matter.

During the course of discovery in this action the Parties hereto, as well as third parties, may be under an obligation to disclose information, documents, data, and/or other materials (referred to collectively as "information") that constitutes confidential information as defined below. Disclosure of such information during discovery shall occur only upon the terms and conditions set forth herein.

1. Purpose. As described in this Stipulation, information produced in this litigation may be designated "Confidential" or "Attorneys' Eyes Only" (as set forth below) by either the party who produces the information in discovery or the other party (in both cases the

“Designating Party”). The non-Designating Party shall use such Confidential or Attorneys’ Eyes Only information solely for the purposes of this litigation and not for any business, commercial, competitive, or any other purpose. Nothing in this Stipulation and Protective Order, however, is intended to preclude a non-Designating Party from participating in, or counsel for a non-Designating Party from representing a client in, a concurrent or subsequent litigation in which Confidential or Attorneys’ Eyes Only information received by the non-Designating Party in this litigation might also be relevant, provided that (i) neither the non-Designating Party nor counsel for the non-Designating Party may use such Confidential or Attorneys’ Eyes Only information for any purpose in such concurrent or subsequent litigation (including but not limited to quotation, citation, summarization, use as an exhibit or as proof of any claim made) unless specifically and expressly authorized by the Designating Party in the course of such litigation, but (ii) neither the non-Designating Party nor counsel for the non-Designating Party will be precluded from relying upon any independent recollection of the substance of the Confidential or Attorneys’ Eyes Only information in such concurrent or subsequent litigation, consistent with the protections and limitations on disclosure set forth in this Stipulation and Protective Order.

2. Confidential Information. Confidential information shall include information, documents, data, portions of deposition transcripts, interrogatory answers, responses to requests for admission, and any other discovery materials designated as Confidential, that meets the standards of Minn. R. Civ. P. 26.03, including, but not limited to: (1) information that has not been made publicly available about 3M’s market analyses, strategic planning, research and development, and finances; and (2) proprietary information that has not been made publicly available regarding 3M’s employment policies, practices, and related training or learning programs. In addition, individually identifiable personnel information about 3M’s employees

and former employees, such as performance ratings, compensation information, health or medical information, information relating to a spouse, partner, or dependent, discipline documentation, information regarding a failure to be selected for a job, training or development opportunity, or other employment benefit, and the reasons for or nature of termination of employment, may be designated as Confidential. All "Confidential" designations are to be made by counsel for the Designating Party after personal review of such information in good faith and upon a reasonable basis for believing that the information is Confidential under the terms of this Stipulation and Protective Order. Any information designated Confidential shall be treated as such, unless and until counsel agree in writing that the information may be declassified or the Court issues an order that the information does not constitute Confidential information. This Paragraph shall be interpreted to be consistent with the procedures set forth in Paragraph 5 below governing objections to "Confidential" designations.

3. Attorneys' Eyes Only Information. The Parties acknowledge that certain of the Confidential information produced in discovery may be of such an exceptionally sensitive nature that it is appropriate to further designate such Confidential information as "Attorneys' Eyes Only." All such designations are to be made by counsel for the Designating Party after personal review of such information in good faith and upon a reasonable basis for believing that the Confidential information is of an exceptionally sensitive nature. Any Confidential information designated Attorneys' Eyes Only shall be treated as such, unless and until counsel agree in writing that the material may be declassified or the Court issues an order that the Confidential information is not to be treated as Attorneys Eyes Only. This Paragraph shall be interpreted to be consistent with the procedures set forth in Paragraph 5 below governing objections to "Attorneys Eyes Only" designations.

4. Method of Designating Confidential or Attorneys' Eyes Only. Any information the Designating Party intends to be Confidential or Attorneys' Eyes Only shall be so designated prior to production by stamping "Confidential" or "Attorneys' Eyes Only" on the first page of the document (in the case of a document) or in a similarly conspicuous fashion (in the case of non-documentary information). In addition:

- (a) Information produced prior to the entry of this Stipulation and Protective Order may be designated Confidential or Attorneys' Eyes Only by the Designating Party within ten (10) business days of the date of the Stipulation and Protective Order, unless already so designated at the time of production, in which case no further designation or re-designation need be made. Any such designation shall be in writing delivered to the non-Designating Party. Along with such written designation, the Designating Party seasonably shall serve the non-Designating Party with stamped copies of any documents so designated.
- (b) Information produced by a third party in response to a subpoena may be designated Confidential or Attorneys' Eyes Only by a Designating Party within ten (10) business days after it is produced to that Party. Any such designation shall be in writing delivered to the non-Designating Party. All parties shall, upon receipt of such notice, apply the appropriate confidentiality designation to all copies of said documents.
- (c) Either Party may designate portions of deposition testimony as Confidential or Attorneys' Eyes Only at the time of the deposition or within thirty (30) days after receipt of the initial deposition transcript by the Designating Party. If a portion of deposition testimony is designated Confidential or Attorneys' Eyes Only, the court reporter shall mark that portion of the transcript accordingly in the text of the transcript itself.

5. Contesting Confidential and/or Attorneys' Eyes Only Designations. A non-Designating Party may object to the designation of information as Confidential or Attorneys' Eyes Only by notifying counsel for the Designating Party in writing at any time during the litigation. The Parties, through their counsel, will first try to resolve any disputes in good faith on an informal basis, but if a resolution is not reached, either Party may seek appropriate relief from the Court within thirty (30) days of notifying the other Party in writing that an impasse has

been reached. Until the Court issues an order resolving the dispute, the Parties shall treat the disputed documents as Confidential or Attorneys' Eyes Only. Appropriate relief shall include the right to petition for an award of fees and costs reasonably expended in raising the disputed matter with the Court, if the petitioning Party reasonably believes that the other Party lacked a good faith basis, under the terms of this Stipulation and Protective Order and governing law, for its opposition to the petitioning Party's position in the dispute, or that the other Party unreasonably delayed in withdrawing its opposition, thereby requiring the petitioning Party to incur unnecessary fees and costs. In either case, however, the Party against whom an award of fees and costs is sought shall be entitled to raise any and all mitigating factors, including that the petitioning Party presented new or more fully developed arguments to the Court than it raised during the informal dispute resolution process between the Parties. Further, the Parties agree that a Confidential or Attorneys' Eyes Only designation is not appropriate for information that has come into the possession of a Party opposing such designation through means other than the discovery process, provided that the opposing Party must have obtained the information consistent with any contractual, legal, or ethical obligations or rights of either Party, a Party's counsel, or a third party regarding the use or disclosure of such information. The Party proposing Confidential or Attorneys' Eyes Only designations has the burden of proving that the challenged information satisfies all requirements for such designations under this Stipulation and Protective Order.

6. Persons Allowed Access to Confidential Information. Information designated Confidential shall be maintained in confidence and shall not be disclosed or made available to any person other than:

- (a) The Named Plaintiffs on the condition that each Named Plaintiff acknowledges that he is bound by this Stipulation and Protective Order by

signing a copy of Exhibit A;

- (b) Officers, employees, and agents of Defendant involved in the defense of the action, on the condition that any such person who handles information designated as Confidential by Plaintiffs acknowledges that he or she is bound by this Stipulation and Protective Order by signing a copy of Exhibit A;
- (c) Counsel of record and their staff who are assisting in the litigation;
- (d) Persons noticed for deposition or designated as trial witnesses, on the condition that each person to whom the disclosure is made (i) is only shown documents and information that counsel, in good faith, decides are required for preparation for testimony or to testify, and (ii) acknowledges that he or she is bound by this Stipulation and Protective Order by signing a copy of Exhibit A;
- (e) Outside consultants or experts retained for purposes of testifying or assisting trial counsel in the litigation, on the condition that each person to whom the disclosure is made acknowledges that they are bound by this Stipulation and Protective Order by signing a copy of Exhibit A;
- (f) The Court, court personnel, and court reporters for the litigation; and
- (g) Persons designated by the Court in the interest of justice, upon such terms as the Court may deem proper.

Nothing contained in this Stipulation and Protective Order shall prevent any Party from disclosing its own Confidential information, as may be consistent with applicable law.

7. Persons Allowed Access To Attorneys' Eyes Only Information. Information designated Attorneys' Eyes Only shall be maintained in confidence and shall not be disclosed or made available to any person other than:

- (a) Counsel of record and Defendant's corporate counsel involved in the defense of the action, and their respective staffs, and any other agents of Defendant who are assisting in the litigation;
- (b) Any person involved in the preparation of or who had authorized access to the contents of the Attorneys' Eyes Only document as an employee of Defendant;
- (c) In the case of a disclosure by Plaintiffs' counsel, any person designated to

testify on behalf of 3M pursuant to Minn. R. Civ. P. 30.02(f), but only if Plaintiffs' counsel has a good faith basis for showing such Attorneys' Eyes Only information to the deponent, in light of the subject matter of the 30.02(f) deposition. Further, if Plaintiffs' counsel intends to show such 30.02(f) deponent information designated by Plaintiffs as Attorneys' Eyes Only information, Plaintiffs' counsel will either notify 3M's counsel at least five (5) business days prior to the deposition or, if no prior notice is given, the 30.02(f) deponent shall be allowed a reasonable time to review the information in private with counsel and the review time shall be deemed included in the time allotted for that deponent's deposition. Nothing in this subparagraph (c) limits in any way 3M's ability to share its own Attorneys' Eyes Only information with its employees, as it may see fit;

- (d) Any plaintiff or putative class member whom Designating Party notices for deposition, but only if (i) the Designating Party notifies non-Designating Party at least five (5) business days prior to the deposition that it intends to show the Attorneys' Eyes Only information to the plaintiff or putative class member deponent, and (ii) before being shown the specified Attorneys' Eyes Only information by the non-Designating Party, the plaintiff or putative class member deponent acknowledges that he or she is bound by this Stipulation and Protective Order by signing a copy of Exhibit A, or (iii) in the alternative, if the Designating Party wishes to question a plaintiff or putative class member deponent about Attorneys' Eyes Only information and provides no prior notice, the deponent shall be allowed a reasonable time to review the information in private with counsel and the review time shall be deemed included in the time allotted for that deponent's deposition;
- (e) Outside consultants or experts retained for purposes of testifying or assisting trial counsel in the litigation, on the condition that each person to whom the disclosure is made acknowledges that they are bound by this Stipulation and Protective Order by signing a copy of Exhibit A;
- (f) The Court, court personnel, and court reporters for the litigation; and
- (g) Persons designated by the Court in the interest of justice, upon such terms as the Court may deem proper.

Nothing contained in this Stipulation and Protective Order shall prevent any Party from disclosing its own Attorneys' Eyes Only information, as may be consistent with applicable law.

8. Use of Attorneys' Eyes Only Information in Deposition. No person may refuse to answer any question at a deposition on the sole ground that the question requires the person to

reveal Attorneys' Eyes Only material. The deposition must proceed upon the following basis: Prior to answering the deposition question or questions all persons present shall be advised of the terms and conditions of this Stipulation and Protective Order and, at the request of the Designating Party, all persons not authorized to receive Attorneys' Eyes Only material under this Stipulation and Protective Order shall leave the room during the time in which this material is disclosed or discussed.

9. No Publication. Except to the extent permitted under other provisions of this Stipulation and Protective Order, neither Party nor its counsel shall in any way, directly or indirectly, publish or disseminate any Confidential or Attorneys' Eyes Only information without the permission of the Designating Party. The prohibitions in this Paragraph 9 include, but are not limited to, any acts to post on a website(s), any acts to publish in any internet "chat room" or public discussion site, and/or any acts otherwise to disseminate the information. Portions of affidavits, deposition transcripts, expert reports, briefs, and other court filings quoting, excerpting or summarizing Confidential or Attorneys' Eyes Only information shall be similarly protected from dissemination / disclosure. The prohibitions in this Paragraph, however, do not include court filings that are not required to be maintained under seal pursuant to the provisions of Paragraph 10.

10. Court Filings. Any Confidential or Attorneys' Eyes Only information filed with the Court, including portions of affidavits, deposition transcripts, expert reports, briefs, and other court filings quoting, excerpting, or summarizing Confidential or Attorneys' Eyes Only information (including, but not limited to, statistical or other data analysis that has been conducted utilizing 3M's systems data), shall be filed under seal. Sealing shall be accomplished

by filing the documents or portions of documents in a sealed envelope or container on which the following notice shall be attached:

CONFIDENTIAL – UNDER PROTECTIVE ORDER

The enclosed document has been filed under seal pursuant to the terms of a Protective Order in this action. This envelope shall not be opened or its contents disclosed or examined except by order of the Court.

Either Party may notify the other in writing within ten days after the filing of a document under seal that it believes the seal should not be maintained as to part or all of the document. The Parties, through their counsel, will try to resolve any dispute about sealing in good faith on an informal basis, including the possibility of agreeing to the filing of a redacted version of any court submission in addition to a sealed filing of that same submission. If a resolution is reached, the Parties shall inform the Court. If a resolution is not reached, either Party may seek appropriate relief from the Court, within thirty days after notifying the other Party that an impasse has been reached. Until the Court issues an order resolving the dispute, the seal shall be maintained. The Parties agree that the Court shall order the disputed seal removed if the document (or portion of the document) does not independently meet the requirements for designation as Confidential set forth in paragraph 2. In making this determination, the Court shall consider each document (or portion of a document) on a case-by-case basis, recognizing, for example, that a statistical analysis or summary based on underlying Confidential information is not necessarily Confidential unless the summary itself meets the requirements for designation as Confidential but also recognizing that the statistical analysis or summary may properly be designated as Confidential for reasons other than or in addition to the reasons for the designation of the underlying Confidential information. For illustrative purposes only, a document containing a statistical analysis or other type of summary of the overall distribution of

performance ratings at 3M, but not disclosing the actual performance rating received by any individual employee, may not be Confidential, even though the individualized data on which such a summary is based likely would be Confidential for reasons of individual privacy. By comparison, a statistical analysis or summary of 3M's compensation, based on but not disclosing the actual compensation received by any individual employee (which individualized data might be Confidential for reasons of individual privacy), may still be Confidential if it permitted a competitor to determine how much 3M would pay a person in a given position with a given set of attributes relevant to pay, because such information might have significant value to 3M's competitors seeking to recruit and hire for similar positions. In any event, the Party seeking to have or keep the document(s) or portion of document(s) under seal has the burden of proving that the document (or portion of the document) independently meets the requirements for designation as Confidential set forth in paragraph 2. Even if a brief or expert report is sealed, counsel for Named Plaintiffs may disclose such document to Named Plaintiffs and putative class members if: (a) it does not disclose individually identifiable (whether by name or by context) personnel information about 3M's employees or former employees relating to: (i) performance ratings; (ii) compensation information; (iii) health or medical information; (iv) information relating to a spouse, partner, or dependent; (v) discipline documentation; (vi) information regarding a failure to be selected for a job, training or development opportunity, or other employment benefit; and (vii) the reasons for or nature of termination of employment; and (b) each person to whom the disclosure is made acknowledges that he or she is bound by this Stipulation and Protective Order by signing a copy of Exhibit A. Finally, nothing in this Paragraph is intended to preclude a Party from seeking an order from the Court that a document(s) or portion of a document(s) not originally filed under seal be placed under seal.

11. After the Litigation. At the conclusion of the litigation, all Confidential or Attorneys' Eyes Only information, all documents containing information derived from Confidential or Attorneys' Eyes Only information, and all copies thereof, shall be either: (a) if produced by the Designating Party, then returned to the Designating Party within thirty (30) days, or (b) destroyed within thirty (30) days, provided that a Party destroying such documents and information must certify to the Designating Party's counsel that the documents or information has been destroyed with a written certification of destruction provided to the Designating Party. The terms of this Stipulation and Protective Order, insofar as they restrict communication, disclosures, or use of Confidential or Attorneys' Eyes Only information, shall survive and remain in force after the conclusion of the litigation.

12. Work Product and Briefs. After the conclusion of the litigation, counsel may maintain their work product, expert reports and expert discovery, and all briefs, pleadings, or other filings with the Court that include Confidential or Attorneys' Eyes Only information, but these materials shall remain subject to the terms of this Stipulation and Protective Order.

13. No Waiver of Confidentiality, Attorneys' Eyes Only, Attorney-Client Privilege, or Work Product Doctrine. Nothing in this Stipulation and Protective Order shall be deemed to require disclosure of Confidential information, Attorneys' Eyes Only information, or material protected by the attorney-client privilege or the work-product doctrine. The inadvertent production of any other information or document during this litigation shall be without prejudice to any claim that the inadvertently disclosed document contains Confidential information, Attorneys' Eyes Only information, attorney-client privileged information, information protected by the attorney work-product doctrine, or information protected by any other legally recognized privilege, and the Designating Party shall not be held to have waived any rights by an inadvertent

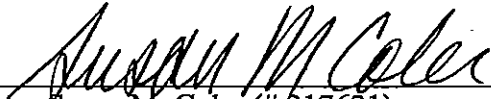
production. If a Designating Party inadvertently produces a document, the non-Designating Party shall return the original and all copies of the document pursuant to a written request and shall not use any information thus obtained unless allowed to do so by the Court, except that the non-Designating Party may use information obtained from an inadvertently produced, non-privileged, non-work product document prior to the Designating Party's request for its return to challenge the status of such document, either with respect to inadvertent production or Confidential or Attorneys' Eyes Only status. The Party contending that a Confidential or Attorneys' Eyes Only document had been inadvertently produced without such designation seasonably shall serve the non-Designating Party with stamped copies of any document so re-designated.

14. Limitations. Nothing in this Stipulation and Protective Order shall be construed to limit any Party from arguing for or against discovery on any grounds otherwise available. Further, the Parties do not intend by this Stipulation and Protective Order to take any position as to what, if any, protections may be appropriate during trial or any other Court proceedings as to any information designated as Confidential or Attorneys' Eyes Only.

15. Modification. This Stipulation and Protective Order does not prevent disclosure beyond its terms if the Designating Party consents to the disclosure in writing, or if the Court orders such disclosure. Further, the Parties may modify this Agreement in writing and with approval by the Court. Any Party may request modification of this Order from the Court, after written notice to the other Party.

Dated: May 25, 2005

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Dated: May 25, 2005

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