

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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Clifford L. Whitaker and Michael V. Mucci,  
On behalf of themselves and all others  
Similarly situated,

Court File No.: c4-04-12239

Plaintiffs,

INTERIM ORDER REGARDING  
DOCUMENT PRESERVATION

v.

3M Company,

Defendant.

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**1. Order to Meet and Confer**

To further the just, speedy, and economical management of discovery, the parties are ORDERED to meet and confer as soon as practicable, no later than 30 days after the date of this Order, to develop a plan for the preservation of documents, data, and tangible things reasonably anticipated to be subject to discovery in this action. The resulting preservation plan may be submitted to this Court as a proposed order under Minn. R. Civ. P. 16.05 and 26.06.

**2. Subjects for Consideration**

The parties should attempt to reach agreement on all issues regarding the preservation of documents, data, and tangible things. These issues include, but are not necessarily limited to:

- (a) the extent of the preservation obligation, identifying the types of material to be preserved, subject matter, time frame, authors and addressees, and key words to be used in identifying responsive materials;
- (b) the identification of persons responsible for carrying out preservation obligations on behalf of each party;
- (c) the form and method of providing notice of the duty to preserve to persons identified as custodians of documents, data, and tangible things;
- (d) mechanisms for monitoring, certifying, or auditing custodian compliance with preservation obligations;
- (e) whether preservation will require suspending or modifying any routine business processes or procedures, with special attention to document management programs and the recycling of computer data storage media;
- (f) the methods to preserve any volatile but potentially discoverable material, such as voicemail, active data in databases, or electronic messages;
- (g) the anticipated costs of preservation and ways to reduce or share these costs; and
- (h) a mechanism to review and modify the preservation obligation as discovery proceeds, eliminating or adding particular categories of documents, data, and tangible things.

### **3. Duty to Preserve**

(a) Until the parties reach agreement on a preservation plan, all parties and their counsel are reminded of their duty to preserve evidence that may be relevant to this action. The duty extends to documents, data, and tangible things in the possession,

custody and control of the parties to this action, and any employees, agents; contractors, carriers, bailees, or other nonparties who possess materials reasonably anticipated to be subject to discovery in this action. Counsel shall exercise reasonable efforts to identify and notify such nonparties, including employees of corporate or institutional parties.

(b) The phrase "documents, data, and tangible things" shall include writings; records; files; correspondence; reports; memoranda; calendars; diaries; minutes; electronic messages; voicemail; email; telephone message records or logs; computer and network activity logs; hard drives; backup data; removable computer storage media such as tapes, disks, and cards; printouts; document image files; web pages; databases; spreadsheets; software; books; ledgers; journals; orders; invoices; bills; vouchers; checks; statements; worksheets; summaries; compilations; computations; charts; diagrams; graphic presentations; drawings; films; charts; digital or chemical process photographs; video, phonographic, tape, or digital recordings or transcripts thereof; drafts; jottings; and notes. Information that serves to identify, locate, or link such material, such as file inventories, file folders, indices, and metadata, is also included in this definition.

(c) The term "preservation" shall be interpreted broadly to accomplish the goal of maintaining the integrity of all documents, data, and tangible things reasonably anticipated to be subject to discovery under Minn. R. Civ. P. 26.01, 45.01-04 and 56.05 in this action. Preservation includes taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of such material, as well as negligent or intentional handling that would make material incomplete or inaccessible.

(d) If the business practices of any party involve the routine destruction, recycling, relocation, or mutation of such materials, the party must, to the extent practicable for the pendency of this order, either

- (1) halt such business processes;
- (2) sequester or remove such material from the business process; or
- (3) arrange for the preservation of complete and accurate duplicates or copies of such material, suitable for later discovery if requested.

(e) Before the conference to develop a preservation plan, a party may apply to the Court for further instructions regarding the duty to preserve specific categories of documents, data, or tangible things. A party may seek permission to resume routine business processes relating to the storage or destruction of specific categories of documents, data, or tangible things, upon a showing of undue cost, burden, or overbreadth.

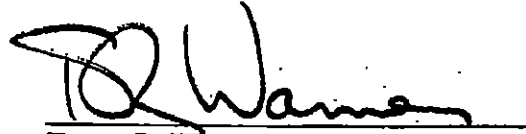
#### **4. Procedure in the Event No Agreement Is Reached**

If, after conferring to develop a preservation plan, counsel do not reach agreement on the subjects listed under paragraph 2 of this Order or on other material aspects of preservation, the parties are to submit to the Court within three days of the conference a statement of the unresolved issues together with each party's proposal for the resolution of the issues. In framing an order regarding the preservation of documents, data, and

tangible things, the Court will consider those statements as well as any statements made in any applications under paragraph 3(e) of this order.

IT IS SO ORDERED.

Date: July 7, 2005

A handwritten signature in black ink, appearing to read "Teresa R. Warner", written over a horizontal line.

Teresa R. Warner  
District Court Judge