

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,

v.

**ORDER**

3M Company,

Defendant.

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The above-entitled matter came on for a hearing before the Honorable Teresa R. Warner, District Court Judge, 1070 Ramsey County Courthouse, 15 W. Kellogg Blvd., St. Paul, Minnesota, 55102, on July 12, 2005 on Plaintiffs' Motion to Compel Selected Race and Gender Documents, and Plaintiffs' Motion to Unseal (1) Affidavit of Janet R. Thornton, Ph.D. and (2) Memorandum of law in support of Plaintiffs' Motion to Compel.

Susan M. Coler, Esq., Sprenger and Lang, PLLC, 310 Fourth Avenue, South, Suite 600, Minneapolis, MN, 55415, and Thomas Henderson, Esq., 1614 Twentieth St., N.W., Washington D.C. 20009, appeared representing the Plaintiffs.

Thomas W. Tinkham, Esq., Douglas R. Christensen, Esq., and Holly S. A. Eng, Esq., Dorsey and Whitney, LLP, 50 South Sixth Street, Suite 1500, Minneapolis, MN 55402-1498, appeared representing the Defendant.

Based upon the entire file, record and proceedings herein, the arguments of counsel and the written memoranda submitted herein:

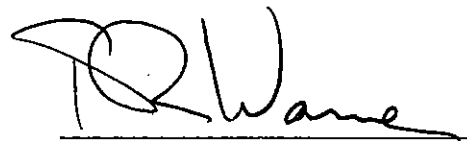
**IT IS HEREBY ORDERED** that:

1. Plaintiffs' Motion to Compel Selected Race and Gender Documents is **DENIED**.
2. Plaintiffs' Motion to Unseal (1) Affidavit of Janet R. Thornton, Ph.D. and (2) Memorandum of law in support of Plaintiffs' Motion to Compel is **DENIED**.
3. That the attached Memorandum is incorporated herein and made part of this Order and constitutes the Court's Findings of Fact and Conclusions of Law to the extent required by Rule 52.01 of the Minnesota Rules of Civil Procedure.

**IT IS SO ORDERED.**

By the Court:

Date: September 16, 2005

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

Teresa R. Warner  
Ramsey County District Court Judge

## MEMORANDUM

### **Motion to Compel Race and Gender Documents**

Plaintiffs served Document Production Requests on Defendant, 3M, seeking documents concerning the impact of policies and procedures on employees by age, race and gender. 3M produced the requested documents relating to age, but refuses to produce the documents pertaining to race or gender.

Plaintiffs seek these documents to examine how 3M responded to disparities, if any occurred, in the impact of policies on race and gender. Plaintiff believes that the documents will show that 3M took action to prevent disparate treatment of employees based on race or gender. Plaintiffs then wish to use this to support their claim of intentional age discrimination by showing that 3M did not take action to prevent disparate treatment of employees based on age.

Defendant, 3M argues that Plaintiffs' request is overbroad, unrelated to their claims, and nothing more than an improper "fishing expedition." 3M asks this Court to deny Plaintiffs' Motion.

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action...The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Minn. R. Civ. P. 26.02(a).

Here, the subject matter of Plaintiffs suit is age discrimination. Plaintiffs request for documents relating to 3M's policies concerning race and gender disparities are not relevant to the subject matter involved in this action. Plaintiffs' Motion to Compel Selected Race and Gender Documents is denied.

## **Motion to Unseal**

The parties in this case have entered into a Stipulation and Protective Order (“SPO”). The SPO directs the parties to file under seal any court submission that contains material designated “Confidential” by a party. Pursuant to the SPO, Plaintiffs submitted the Affidavit of Janet R. Thornton, Ph.D. and a Memorandum of Law in Support of Plaintiffs’ Motion to Compel (“submissions”) under seal. Plaintiffs now ask this Court to unseal the two submissions.

The SPO provides that either party may seek the unsealing of filings through a motion to this Court, and that the party seeking to keep a filing sealed has the burden of proving that the filing satisfies the requirements.

Plaintiffs argue that the submissions do not independently meet the definition of “Confidential,” and should therefore be unsealed. Defendant, 3M argues that the submissions satisfy the requirements and should remain sealed.

The SPO provides that “the parties agree that the Court shall order the disputed seal removed if the document does not independently meet the requirements for designation as Confidential set forth in paragraph 2.” Paragraph 2 says that confidential information includes 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.

The information contained in the submissions pertains to leadership development and succession planning programs. This information relates to 3M’s employment policies and practices. 3M demonstrated that much of the information contained in the

submissions is not publicized to outsiders or, in some cases, its own employees.

Defendant, 3M has satisfied its burden, Plaintiffs' Motion to Unseal the submissions is denied.

TRW