

STATE OF MINNESOTA
COUNTY OF RAMSEY

EMPLOYMENT
DISTRICT COURT
SECOND JUDICIAL DISTRICT

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

Plaintiffs,

vs.

3M Company,

Defendant.

) Court File No. 62-C4-04-012239

) [T. Warner]

) **MEMORANDUM OF LAW IN SUPPORT**
) **OF MOTION TO JOIN FOUR**
) **ADDITIONAL PLAINTIFFS AND**
) **AMEND COMPLAINT**

) [Class Action]

INTRODUCTION

This Court's June 14, 2005 Phase One Scheduling Order sets January 3, 2006 as the deadline for "joining any additional parties . . . whether by amendment or third party practice." Coler Aff., Ex. 1.¹ Within the timeframe of this Order, four additional former and current 3M salaried employees seek joinder as named plaintiffs and plaintiffs seek to amend the First Amended Complaint to incorporate the facts relevant to the added plaintiffs and make other minor changes. Plaintiffs' proposed Second Amended Complaint, redlined to show changes from the First Amended Complaint, is attached as Exhibit 2. A clean, non-redlined version is attached to the proposed Order. Plaintiffs respectfully ask the Court to grant this Motion to Join Four Additional Plaintiffs and Amend Complaint because it is timely under the scheduling order

¹ All exhibits are attached to the Affidavit of Susan M. Coler in Support of Motion to Join Four Additional Plaintiffs and Amend Complaint ("Coler Aff.") and shall be referenced hereafter as "Ex. ___."

and meets the criteria for joining additional parties and amending a complaint under Minn. R. Civ. P. 20.01 and 15.01 respectively.²

RELEVANT FACTS AND PROCEDURAL POSTURE

The four persons for whom joinder as additional plaintiffs and amendment of the First Amended Complaint are sought are Robert W. Coats, Rosemary J. Sterrett, Mark D. Swanson, and Thomas R. Bulen. Each of these persons falls within the class definition alleged in the First Amended Complaint by original plaintiffs Clifford L. Whitaker and Michael V. Mucci. Each is a former or current 3M salaried employee who is over forty-five years of age and worked in Minnesota during the liability period in a salaried position below the level of director or salary grade 18. Coler Aff. at ¶ 3. Each claims that 3M has engaged in a pattern or practice of age discrimination that has damaged their careers. Ex. 2 at ¶¶ 1, 5-8. As did the original plaintiffs, the additional plaintiffs claim that 3M discriminated against them and against other salaried employees over the age of 45 throughout the State of Minnesota

by assigning them lower performance ratings, virtually shutting them out of intensive leadership training opportunities, denying them promotions, awarding them smaller pay increases and fewer stock options than their younger peers, and disproportionately terminating them from employment, including through “retirement” or resignation” in response to threatened imminent involuntary termination.

Id. and *passim*. Each of the additional plaintiffs is represented by plaintiffs’ counsel in this case, Sprenger & Lang PLLC. Coler Aff. at ¶ 3.

As alleged in the proposed Second Amended Complaint:

5. Robert W. Coats (“Coats”) is a 60-year-old individual (born May 27, 1945) residing in St. Paul, Minnesota, who was employed by 3M from 1969

² Pursuant to Minn. Gen. R. Prac. 115.10, plaintiffs have proposed that defendant 3M Company stipulate to the joinder of the four additional plaintiffs and amendment of the Complaint. Coler Aff. at ¶ 2. If the defendant agrees, plaintiffs will submit the stipulation and withdraw this motion. *Id.*

through 2004, most recently in Ramsey County, Minnesota. Coats was in sales, training and management at 3M, achieving the position of Global Marketing Manager in the Industrial Tape and Specialties division in 1996. Throughout his career he typically received good evaluations. In 1999, 3M moved him from a management to sales position. Since 2001, his career at 3M has been damaged as a result of 3M's discrimination. Despite consistent exemplary performance, 3M among other things has delayed providing Coats Green Belt training, demoted him two job grades, failed to consider him for positions appropriate to his experience and performance, rated him lower than appropriate on performance reviews, and gave him a smaller percentage salary increase than younger sales people in his department. Because of this treatment and its adverse effect on his career, Coats retired from 3M in January 2005.

6. Rosemary J. Sterrett ("Sterrett") is a 57-year-old individual (born February 11, 1948), residing in Inver Grove Heights and employed by 3M in Ramsey County. Sterrett began working for 3M in 1982 and currently is a Data Administration Coordinator in the Medical division. She typically has received good reviews. Since 2001, Sterrett's career at 3M has been damaged as a result of 3M's age discrimination, including 3M giving her an unfair performance review for her work in 2004, unfairly putting her on an Informal Performance Correction Plan and telling her that her job was in jeopardy if she did not succeed in completing the plan, and giving her smaller percentage salary increases.

7. Mark D. Swanson ("Swanson") is a 54-year-old individual (born June 9, 1951) residing in River Falls, Wisconsin and employed by 3M in Ramsey County, Minnesota. He began working for 3M in 1980, initially as a facilities analyst. After completing an MBA program in Marketing in 1993, Swanson moved into marketing at 3M. He has worked in the Medical division since 1995, achieving the position of Global Market Development Manager. Since 2001, his career at 3M has been damaged as a result of 3M's discrimination, including unfair performance evaluations, being placed on corrective action plans, and a recent demotion of two job grade levels from management to an administrative position.

8. Thomas R. Bulen ("Bulen") is a 54-year-old individual (born June 23, 1951), residing in White Bear Lake, Minnesota and employed by 3M in Ramsey County, Minnesota. Bulen began working for 3M in 1985 as an Advanced Technical Service Engineer in the Medical business. 3M promoted him to Senior Technical Service Engineer in 1996 and he had a track record of receiving good evaluations. Since 2001, his career at 3M has been damaged as a result of 3M's discrimination, including 3M's unfair review of his performance in 2002 and failure to promote him.

Ex. 2. at ¶¶ 5-8.

On June 14, 2005, the Court entered its Phase One Scheduling Order, which states:

4. The deadline for joining any additional parties including third party defendants, whether by amendment or third party practice, is **January 3, 2006**.

Ex. 1 at ¶ 4. The parties currently are engaging in phase one discovery, but the deadline for completion of that phase does not occur until May 26, 2006. *Id.* at ¶ 7.

ARGUMENT

I. **JOINDER OF COATS, STERRETT, SWANSON, AND BULEN AS PLAINTIFFS IS APPROPRIATE UNDER MINN. R. CIV. P. 20.01**

Pursuant to Minn. R. Civ. P. 20.01:

All persons may join in one action as plaintiffs if they assert any right to relief, jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of fact or law common to all these persons will arise in the action.

The decision to grant permissive joinder is left to the discretion of the Court. *Benson-Moosbrugger v. Day*, 2002 Minn. App. Lexis 830, at *14-15 (Minn. Ct. App. July 16, 2002) (unpublished; Ex. 3). *See also* Minn. R. Civ. P. 21 ("Parties may be dropped or added by order of the court on motion of any party or upon the court's own initiative at any stage of the action and on such terms as are just.").

Here, the four additional plaintiffs – Robert W. Coats, Rosemary J. Sterrett, Mark D. Swanson, and Thomas R. Bulen – for whom joinder is sought, all assert rights to relief on behalf of themselves and others similarly situated. In the proposed Second Amended Complaint, they allege, as did the original plaintiffs Whitaker and Mucci, that their employer 3M Company has engaged in a pattern or practice of age discrimination against them in violation of the Minnesota Human Rights Act, Minn. Stat. § 363A, *et seq.* ("MHRA"). Ex. 2 at ¶ 1. As did Whitaker and Mucci, the additional plaintiffs claim that 3M's discriminatory policies or practices with respect to performance evaluation, training, promotions, pay and terminations, represent a pattern or