

STATE OF MINNESOTA  
COUNTY OF RAMSEY

EMPLOYMENT  
DISTRICT COURT  
SECOND JUDICIAL DISTRICT

Clifford L. Whitaker, Michael V. Mucci,  
Robert W. Coats, Rosemary J. Sterrett,  
Mark D. Swanson, and Thomas R.  
Bulen, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

vs.

3M Company,

Defendant.

Court File No. 62-C4-04-012239

[T. Warner]

**SECOND AMENDED COMPLAINT**

[Class Action]

Plaintiffs, as and for their causes of action against the above-named defendant, state and allege as follows:

**INTRODUCTION**

1. Since 2001, if not earlier, 3M has engaged in an interwoven set of personnel actions designed to elevate younger employees to the company's leadership and to remove employees over the age of 45 — perceived as less able or willing to accept and apply new business methodologies adopted by the company. 3M has effectuated this campaign through its performance appraisal system and ratings, its policy and practice of selection for intensive leadership training, and its promotion, pay, and termination policies, practices and decisions. As a result, 3M has engaged in a pattern or practice of discrimination against salaried employees over the age of 45 throughout the State of Minnesota, including the plaintiffs, 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.

2. 3M’s actions have violated the Minnesota Human Rights Act (“MHRA”), Minn. Stat. § 363A.01, *et seq.* Plaintiffs bring this action on behalf of themselves and a class in excess of 7,000 salaried 3M employees over the age of 45 who are or were employed in Minnesota. They seek injunctive relief to stop this widespread violation of the MHRA and monetary relief both to compensate for the damage already caused to themselves and other class members and to deter 3M and other employers from engaging in similar violations in the future.

### **PARTIES**

3. Clifford L. Whitaker (“Whitaker”) is a 61-year-old individual (born January 27, 1944) residing in Mahtomedi, Minnesota and employed by 3M in Ramsey County, Minnesota. Whitaker began his career at 3M in 1967, and by 1988 he was Laboratory Manager in the Research and Development organization. He received consistently good evaluations and was assessed as capable of advancing to a Director-level position. Since 2001, his career at 3M has been damaged as a result of 3M’s discrimination.

4. Michael Mucci (“Mucci”) is a 56-year-old individual (born September 12, 1949) residing in Hudson, Wisconsin, who was employed by 3M from 1977 to September 30, 2004, most recently in Ramsey County, Minnesota. By 1999, Mucci was instrumental in the development of a new product for 3M and held the position of Senior Specialist Special Projects in the Technical Services group. In 2000, Mucci accepted a choice to transfer to the Product Development group as a Senior Specialist Technical Services with the understanding that his duties and function would not materially change. Since 2001, Mucci’s career at 3M, like Whitaker’s, has been damaged as a result of 3M’s age discrimination. As described more fully

below, this discriminatory conduct culminated in Mucci's termination when 3M eliminated Mucci's job effective September 30, 2004. Mucci refused overtures from 3M that he accept severance benefits conditioned upon a release of all claims against 3M.

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 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.

9. 3M Company is incorporated in the State of Delaware and has its corporate headquarters at 3M Center, St. Paul, Minnesota. 3M does business in this District and throughout the State of Minnesota. In addition to its corporate headquarters and primary research and development, administrative and product information facilities in St. Paul, 3M employs or has employed class members in sales, fabricating or manufacturing facilities in Alexandria, Cottage Grove, Eagan, Eden Prairie, Fairmont, Hutchinson, New Ulm, Oakdale, Staples and Stillwater, Minnesota. A new Chief Executive Officer and Chairman ("CEO") took over leadership of 3M in 2001. He promptly instituted new business strategies and practices

designed to increase the profitability and performance of the company. With these strategies, a number of new and revised personnel policies and practices were implemented that have caused and contributed substantially to the discrimination suffered by employees over the age of 45.

### **FACTUAL BACKGROUND**

#### **I. Discrimination in Performance Appraisals.**

10. 3M has a company-wide system of conducting performance evaluations of its salaried employees, referred to as the “Employee Contribution and Development Process” or “EC&DP.” The performance evaluation purports to reflect an employee’s “level of contribution,” “leadership attributes,” job “placement recommendation,” “job change priority,” “potential recommendation” (as to whether an employee is capable of advancing to senior management or corporate leadership positions), and “next recommended job,” although the particular content, scales and other features have changed from time to time within the relevant period. The EC&DP process and forms lack objective criteria or measures and permit supervisors and managers to make subjective, unconstrained decisions, including decisions based on the age of employees.

11. 3M uses EC&DP ratings for a number of purposes, including to determine employee compensation, profit sharing for eligible employees, job placement, promotion, and termination, and to identify and select employees for special training programs.

12. EC&DP forms are filled out for each employee annually. An employee’s supervisor gives initial, proposed EC&DP ratings. However, final employee EC&DP ratings are assigned by two successively higher groups of managers referred to as “Management Team Review” or “MTRs,” which purport to act on the basis of group consensus. Through this centralized process,

managers without specific knowledge of an employee's performance, contribution or potential assign ratings to that employee.

13. Since 2001, 3M has adopted a policy and practice of imposing quotas on the distribution of high, mid-range and low EC&DP ratings that supervisors and MTRs can assign to employees. Specifically, 3M directs individual supervisors and, in turn, MTRs to produce predetermined percentages or specific numbers of high, mid-range and low EC&DP ratings for the group of employees they rate. For 2001, 3M openly mandated that, within a given group of employees, 20% be rated "High" and 10% be rated "Lower" contributors. Since 2002, although stating that it has abandoned such forced distributions of ratings, 3M mandates that managers and MTRs assign a given percentage of employees to each of five separate ratings ("1" through "5" with "5" as the highest), those percentages purportedly based on the relative success of the business unit in which they are employed. As a result, employees are assigned ratings that do not reflect their performance, contribution or potential in order to achieve a forced, predetermined quota on the distribution of ratings.

14. The MTR decision-making process and the judgments necessitated by the forced distribution system have resulted in MTRs assigning ratings based on age stereotypes and known age preferences of corporate executives.

15. 3M has engaged in a pattern or practice of intentionally and willfully assigning low EC&DP ratings to employees over the age of 45. Employees over 45 are assigned disproportionately low ratings that do not reflect their actual performance, contribution or potential in order to fill forced distribution rating quotas, and disproportionately fewer higher ratings compared to their younger peers with equivalent or lesser performance, contribution or potential.

16. In addition, employees selected for and undergoing “Black Belt” training (see Part II., below) are assigned EC&DP ratings by the “Master Black Belt” who serves as their supervisor. Although these “Black Belts” no longer work in the position or group in which they were employed prior to their selection, they are included in that group for purposes of applying the forced distribution of EC&DP ratings. Because “Black Belts” disproportionately receive high EC&DP ratings, employees actually working in that group are given disproportionately lower EC&DP ratings unrelated to their performance, contribution or potential, in order to accommodate the high-rated Black Belt participants in filling the rating quotas for that group. Because “Black Belts” are disproportionately 45 or younger, and other salaried employees are disproportionately over 45, the inclusion of “Black Belts” in the rating quota groups results in MTRs assigning lower ratings to employees over the age of 45.

17. The effect of 3M’s EC&DP policies, including its policy or practice of imposing forced distribution quotas on the ratings MTRs can assign to employees, rating employees on the basis of subjective criteria, and centrally assigning ratings, including through persons without specific knowledge of the performance of the employees being rated, have an unjustifiable disparate impact on employees over the age of 45 — that is, they are not manifestly related to job performance and do not significantly further an important business purpose.

18. Whitaker, Mucci, Coats, Sterrett, Swanson and Bulen (together “plaintiffs”) are victims of 3M’s pattern or practice of discrimination against employees over the age of 45 in performance appraisals, and are among those who have suffered the adverse impact of these policies or practices.

19. When 3M instituted quotas on the distribution of “Top” and “Lower” contributors in its performance appraisals for 2001, although Whitaker was assigned an employee contribution

rating of “Good,” at the same time he was assigned a rating of “Lower” under the new “Level of Contribution” category pursuant to the forced distribution quotas for those new ratings. The next year, Whitaker was removed as Laboratory Manager in Research and Development and made Senior Manufacturing Engineer in Stationery Products — a position of less responsibility usually held by junior employees — where he initially received a contribution rating of “Good.” However, for 2003, notwithstanding two recognition awards, he was assigned a contribution rating of “2” pursuant to the revised forced distribution rating quota system, and was assigned a below average score for the newly added “Leadership Attributes” ratings. As a result of 3M’s discrimination in performance appraisals, Whitaker has less responsibility, has been denied training, advancement and promotions, and has been denied appropriate merit pay increases and stock options.

20. Similarly, although previously assigned contribution ratings of “Good” or “Exceptional,” Mucci was assigned a contribution rating of “1” or “Unsatisfactory” for 2002 pursuant to the revised forced distribution rating quota system. As a consequence of 3M’s discrimination in performance appraisals, Mucci has been denied training, advancement and promotions, appropriate merit pay increases and stock options, and was placed on a “Formal Performance Correction Plan,” by which his employment could be terminated at any time and which has led to his termination (see Part V., below).

21. Coats received a G rating in 1999 and an “E” for 2000, both with a development recommendation of “I,” meaning that he was “ready now for a move to a different job involving increased responsibility.” He received no promotion or increased responsibilities. Even with the “E” in 2000, Coats was not rated as high potential. In 2001, Coats received a “3,” which was a lower rating than his performance warranted. In 2002, he achieved the sales increase that 3M

told him would achieve a high rating. 3M again unfairly gave him a “3.” For his performance in 2003, 3M unfairly rated him at “3” but indicated he was ready for a “move to a different job for career broadening experience.” No such change to broaden Coats’ career was forthcoming. Instead, 3M demoted him two job grades.

22. Sterrett received good ratings in performance evaluations for years prior to 2004, including comments that she “is always looking for opportunities to enhance her skill sets and learn new processes as available,” that she “possesses an excellent customer mindset,” that “she has earned a reputation as a dependable and professional team player, and she has “done an effective job of managing her day to day workload while taking on additional projects to support the department.” She received an unfair performance review for her work in 2004 including several “2” leadership ratings. In 2005, she was placed on an Informal Performance Correction Plan, told her job was in jeopardy, and unfairly accused of not handling her day to day workload and of being resistant to change.

23. In performance evaluations for years prior to 2002, Swanson regularly received good ratings. In early 2001, his then manager informed him that he should be eligible for a high potential rating in the next year. Instead, he received an unfair performance review for his work in 2002, including a “2” contribution rating. 3M imposed an Informal Performance Correction Plan on Swanson that he completed successfully. He was rated “3” for his work in 2003. However, 3M again gave him an unfair “2” rating in 2004, a year in which he had achieved a huge contract “win” with sales gains potential of over \$30 million. Swanson was unfairly demoted two job grade levels in 2004 as part of an alleged reorganization and put in an administrative position with different medical products. He was unfairly placed on another Informal Performance Correction Plan in late 2005.

24. In 2001, Bulen received a contribution rating of “4” with a development recommendation of “1,” meaning that he is “ready now for a move to a different job involving increased responsibility.” He received no promotion or increased responsibilities. The next year, 2002, 3M rated him at “2.” Because of the unfairness of that evaluation, Bulen sought and made a lateral position change from the Medical to Pharmaceutical division. He received a “3” and “well placed” rating in 2003. In 2004 3M again rated Bulen at “4,” this time with a “P” rating for potential, indicating he has skills to move to the management level at 3M. However, 3M still has not promoted him.

## **II. Discrimination in Selection for Training Programs.**

### **A. Selections for Six Sigma Black Belt Program.**

25. In 2001, 3M adopted the “Six Sigma” management methodology as a company-wide strategy. Six Sigma emphasizes use of quantifiable data for discrete projects to improve output by minimizing errors and variation and to reduce the cost, including the human cost, of production and other functions.

26. Six Sigma projects typically are led by employees selected to be “Black Belts.” A “Black Belt” is provided a two-year course of specialized training. It begins with a four-week classroom training regimen that takes place over a four month period. During the remainder of their training, “Black Belts” serve as Six Sigma project leaders. While serving as “Black Belts,” employees are supervised by “Master Black Belts,” who also receive intensive training.

27. “Black Belts” typically receive promotions of one or two salary grades shortly after their two-year commitments to Six Sigma projects have been completed. During and after their “Black Belt” or “Master Black Belt” service, employees also are advantaged in the performance appraisal process, and in compensation and termination decisions.

28. Between 2001 and the present, 3M executives selected about 1,000 persons company-wide as “Black Belts” and under 100 as “Master Black Belts.” There is no application process for selection.

29. “Master Black Belts” typically are selected from grades 16 and 17, and “Black Belts” from grades 11 to 15. All or almost all of them also have been rated as “high potential” on their performance reviews, a highly subjective assessment discussed above. There are no objective criteria for selection other than grade level.

30. 3M has passed over older employees in this subjective selection process. During the four-year period from 2001 to 2004, a distinct minority of the persons selected as “Black Belts” have been over the age of 45, despite the fact that employees over 45 represent a significant majority of the workforce in grades 11 to 15. Plaintiffs are unaware of the selection of any Black Belt over the age of 55. 3M also selects relatively few employees in grades 16 and 17 over the age of 45 for the “Master Black Belt” program compared to their presence in those grades.

31. 3M also provides salaried employees much lesser training in Six Sigma methodology that qualifies them as “Green Belts.” 3M expected to give all salaried employees “Green Belt” training by the end of 2004. This “Green Belt” training does not qualify employees or substitute for training as a “Black Belt.”

32. The disproportionate selection of younger employees for Six Sigma “Black Belt” and “Master Black Belt” training is the product of intentional and willful age discrimination emanating from the highest ranks of 3M. 3M’s CEO publicly has stated that he views Six Sigma as a “low-risk way to spot up-and-coming managers,” and has equated being young with being energetic. This stereotypical perspective and preference for younger employees has been

accepted and applied by the persons selecting participants for training and as a policy or practice of 3M.

33. Alternatively, the subjective methodology for selecting persons for Six Sigma “Black Belt” and “Master Black Belt” training has an unjustified disparate impact on employees over the age of 45.

**B. Accelerated Leadership Development Program.**

34. In 2001, 3M adopted an advanced training program to identify and develop leaders of the company referred to as the Accelerated Leadership Development Program (“ALDP”). The ALDP is an intensive classroom experience, lasting 30 consecutive days including weekends, for groups of 40 employees at a time. There is no application process for participation in ALDP. Participants generally have been rated as high potential on their performance appraisals and are selected by top executives, but there are no objective criteria for selection. At least during the early years of ALDP’s operation, 3M’s CEO and the Vice President of Human Resources reviewed all selections.

35. After completing their ALDP training, participants are advantaged in the performance appraisal process, and in promotion, pay and termination decisions.

36. One of the purposes of the ALDP program is to advance younger employees into leadership positions. As 3M’s 2003 annual report states, “This intense, high-energy learning experience gets more future 3M leaders into the leadership development process – *and often earlier in their careers.*” (Emphasis added.) Between 2001 and 2004, 3M has selected very few salaried employees over the age of 45 for ALDP training.

37. The disproportionate selection of younger employees for ALDP training is the product of intentional and willful age discrimination emanating from the highest ranks of 3M.

38. Alternatively, the subjective methodology for selecting persons for ALDP training has an unjustified disparate impact on employees over 45.

**C. Other Training, Assessment and Development Programs.**

39. 3M has adopted other training, assessment and development programs, including but not limited to the Executive Conference, and the Pre-Managerial Assessment Program (“Pre-MAP”), a program to identify personal development needs for employees whose performance has demonstrated that they might have the potential to advance to supervisory or managerial positions within 3M. Between 2001 and the present, 3M has selected few salaried employees over the age of 45 for such programs.

40. The disproportionate selection of younger employees for such programs is the product of intentional and willful age discrimination emanating from the highest ranks of 3M. This stereotypical perspective and preference for younger employees has been accepted and applied by the persons selecting participants for such programs and as a policy or practice of 3M.

41. Alternatively, the methodology for selecting persons for such programs has an unjustified disparate impact on employees over the age of 45.

42. The plaintiffs are victims of 3M’s pattern or practice of discrimination against employees over the age of 45 in selection for specialized training and the opportunities it provides, and are among those who have suffered the adverse impact of these policies or practices.

43. None of the plaintiffs has been selected for Black Belt, Master Black Belt, ALDP, or any other leadership training, assessment, or development program.

44. 3M’s refusal to select the plaintiffs is not from their lack of effort or qualifications. Swanson told the Master Black Belt in the Medical division that he wanted to get involved in Six

Sigma. He was never selected. Likewise, Bulen told the Black Belt for his department both in a conversation and in an email that he wanted Black Belt training. The Black Belt told Bulen that there were no openings but said he would ask about it. He also told Bulen that nothing was likely to happen. Indeed, nothing happened. Nor has Bulen's "P" rating in 2004 resulted in his selection for Black Belt or other training. Whitaker has not been selected even though he has been identified as capable of advancing to a Director-level position and his career development plan has indicated that he should receive expanded training in Six Sigma skills. Coats was scheduled for Green Belt training after a sales meeting in Dallas, Texas in 2001. The day before the training, his manager told him, without explanation, that he would not be trained and should return to Minnesota. Coats finally received Green Belt training in 2004, not long before he informed 3M he was intending to retire. Accordingly, he was deprived of the necessary prerequisite for selection for Black Belt training for a significant period of time.

45. As with other employees over 45, the plaintiffs therefore have been denied training and other opportunities and advantages afforded younger employees selected for these specialized programs.

### **III. Discrimination in Promotions.**

46. 3M has a centralized system for salaried employees to seek and obtain promotions referred to as the "Job Information System" or "JIS." The JIS is a computer-based site where job descriptions and qualifications for vacant positions up to salary grade 17 are posted and employees can identify and apply for those positions. Applications for a position through the JIS include the employees' past two EC&DP forms. An application may lead to an interview by the manager selecting candidates for the vacant position.

47. 3M has no system for employees to apply for positions in salary grades 18 and above. 3M executives select persons to fill these positions.

48. Employees annually identify the next and longer-range jobs they are interested in obtaining on their EC&DP forms, together with their willingness to relocate.

49. The ratings employees are assigned by MTRs on their performance evaluations directly affect employees' opportunities to obtain promotions. Employees' EC&DP forms contain a "placement recommendation," a "job change priority", a "potential recommendation" as to whether they are perceived as able to advance to either a Director-level or senior management position, a "next recommended job" and an "action plan" which, in some circumstances is to include a next recommended job, all in addition to the ratings for level of contribution and leadership attributes.

50. MTRs also identify lists or slates of candidates for promotions and future promotions in connection with their meetings to assign forced distributions of performance appraisal ratings.

51. The qualifications of many vacant salaried positions since 2001, as described in the JIS or in criteria used by those making selections, have required or preferred "Master Black Belt" or "Black Belt" certification, training or experience, or other leadership in applying Six Sigma methodology.

52. 3M has a policy or has engaged in a pattern or practice of giving a preference in filling vacancies to "Black Belts" who are completing their two year training, over other or more qualified candidates, and of selecting younger employees for promotions instead of qualified employees over the age of 45.

53. 3M also promotes employees to other positions that have not been listed or identified as vacancies on the JIS or for which employees can submit applications. 3M has a policy or has

engaged in a pattern or practice of filling these positions through the promotion of “Black Belts” completing their two-year project training as a preference over other qualified candidates, and promotion of younger employees instead of qualified employees over the age of 45.

54. 3M removes employees over the age of 45 from their positions in order to create vacancies that 3M then fills by promoting “Black Belts” completing their two year training.

55. Because employees over the age of 45 disproportionately have been excluded from selection for “Master Black Belt,” “Black Belt” and ALDP training and experience, as discussed above, these employees have been excluded from, or disadvantaged in, obtaining promotions, and have been deterred and discouraged from applying for promotions.

56. The denial of promotions to employees over 45 and disproportionate selection of younger employees for promotions are the product of intentional and willful age discrimination emanating from the highest ranks of 3M.

57. Alternatively, the subjective methodology for selecting employees for promotions and the preferences for “Black Belts” or ALDP graduates, have an unjustified disparate impact on employees over 45.

58. The plaintiffs are victims of 3M’s pattern or practice of discrimination against employees over the age of 45 in selection for promotions, and are among those who have suffered the adverse impact of these policies or practices.

59. Although Whitaker sought and has been identified as capable of advancing to a Director-level position and sought such a position, he has not been promoted. To the contrary, he was removed from his Laboratory Manager position in a consolidation and those responsibilities were given to a younger employee. Within a year, that employee was appointed to a “Master Black Belt” position, Whitaker was not afforded the opportunity to fill the vacant

Laboratory Manager position, the position was not filled and its responsibilities were given to several younger employees. At approximately the same time a Director-level position in the Stationery Products Laboratory became vacant. Whitaker was denied even the opportunity to interview for the position despite his extensive experience, and the position was filled by a younger "Master Black Belt" who had also attended ALDP training. Further, the organization to which he was moved has since been reorganized to accommodate the placement of "Black Belts," and some of his responsibilities, again, have been assigned to a younger "Black Belt." Thus, Whitaker has been denied positions, job responsibilities, promotions and accompanying opportunities, compensation and benefits by 3M's discriminatory practices.

60. Although Mucci consistently expressed his interest in moving to a higher position and, in 1999, was informed by his then-supervisor that the level of work he was performing matched that of a Division Scientist, a higher level position with increased responsibility, he was not promoted. To the contrary, his position and that of two other employees over 45 have been eliminated. Mucci's subsequent applications for vacant positions were denied and the positions were filled with younger employees. Mucci has thus been denied promotions and accompanying opportunities, compensation and benefits by 3M's discriminatory practices.

61. Although he received an "E" for his work in 2000 and his managers stated in writing in 2001 that they were working to provide him with additional responsibilities, 3M did not identify Coats as high potential and never offered him any promotions commensurate with his experience and performance. He was not provided any "career broadening experience" in 2003 after being given a "C" development recommendation for just such a placement. He also was not selected for positions for which he applied, including the Twin Cities Branch Manager position awarded to a younger employee, a grade 17 Sales Marketing position in Detroit, and a

National Sales Manager position in Safety Security. Instead, 3M demoted Coats in 2003 from a grade 15 Sales Manager position to an S-5 (equivalent to grade 13) Sales Representative position.

62. In the period from 2001 to the present Swanson has applied for and indicated an interest in various promotions and job changes, which would have enhanced his career progression. He was qualified for these positions, but was not selected. In 2003, Swanson's primary and next level managers stated in his performance evaluation that he was ready for a move to a different job for career broadening and said that they were "committed to helping [Swanson] find a position that best suits him so he can better contribute to the company's growth." Swanson is not aware of any efforts by these managers to assist him with this career progression. To the contrary, they demoted him the following year. In his preferred career area of market development in the Medical division, most people receiving career progression opportunities since 2001 were younger than Swanson.

63. 3M has denied promotion opportunities to Bulen, as well. 3M rated him as "I" or ready for a different job with increased responsibilities in 2001. Instead of promoting him, 3M unfairly rated him a "2" the following year, causing him to seek a lateral job change from the Medical to Pharmaceutical division. Despite Bulen's achievement of a "3" performance rating in 2003 and a "4" in 2004 with a high potential rating, 3M has told Bulen that there are no promotion opportunities for him in his current group. Bulen has indicated a willingness to relocate if necessary, and has applied for numerous positions throughout the company, but 3M has not promoted him nor has he been able to find opportunities elsewhere within the company. 3M has placed Black Belts into a number of the positions for which Bulen applied. Bulen further

has observed that some JIS job descriptions appear to be written narrowly, leading him to conclude that the job descriptions were tailored for the selection of specific persons.

#### **IV. Discrimination in Compensation.**

64. Compensation for 3M salaried employees is centralized. 3M establishes a salary range for each job grade and awards pay increases to individual employees largely based upon the contribution ratings MTRs assign in their EC&DP forms. In addition, for salaried employees in job grades 12 and above and equivalent positions, compensation includes an award of stock options based on contribution and leadership attribute ratings MTRs assign in their EC&DP forms.

65. The contribution ratings MTRs assign employees in their EC&DP forms largely determine whether they receive individual pay increases and the size of any increase. Salary increases are a percentage of current salary, depending on where the employees' salaries fall within the salary ranges for their job grades and the time since they last received pay increases. A lower contribution rating results in no pay increase, while a high contribution rating results in a pay increase of a percentage of current salary.

66. The contribution rating and leadership attribute scores MTRs assign in the EC&DP forms of employees in job grades 12 through 17 determine the number of stock options they receive annually. High contribution and leadership scores result in employees receiving a higher than average number of the stock options available for each job grade within each division or group, while lower contribution and leadership scores result in a lower than average number of stock options.

67. 3M's denial of appropriate salary increases and stock option awards to employees over 45, and disproportionately higher awards of salary increases and stock options to younger

employees, is the product of intentional and willful age discrimination in 3M's management and systems, including 3M's discrimination against salaried employees over the age of 45 in their performance appraisals.

68. Alternatively, the subjective methodology for assigning salary increases and stock options, including as it is affected by the quotas for, and subjective and centralized method of assigning, EC&DP ratings, has an unjustified disparate impact on employees over 45.

69. The plaintiffs are victims of 3M's pattern or practice of discrimination against employees over the age of 45 in compensation, and are among those who have suffered the adverse impact of these policies or practices.

70. As a result of 3M's discriminatory performance evaluation system and the system of determining increases in compensation in recent years, the plaintiffs have been denied substantial salary increases and, in some instances, stock options. The plaintiffs also have been denied corresponding increases in related benefits, such as future pension benefits.

#### **V. Discrimination in Termination.**

71. During the period 2001-2004, 3M has reduced its workforce by approximately 10,000 employees world-wide. Several thousand salaried employees in Minnesota have been terminated in this process. 3M reduced its workforce by terminating employees assigned low ratings by its MTRs and whose positions it purported to eliminate. Those employees selected for termination are disproportionately over the age of 45, including those disproportionately assigned low performance appraisal ratings pursuant to the forced distribution rating quotas, described above.

72. 3M has company-wide policies and systems for terminating employees assigned low contribution ratings on their EC&DP forms, referred to as "Performance Management Severance Plans," and employees whose jobs it has purported to eliminate, referred to as "Job Elimination

Plans.” Each of these plans provides for employees to terminate their employment with 3M in return for an offer of severance pay and other benefits, conditioned upon employees executing a General Release of All Claims against 3M.

73. 3M places employees assigned low contribution ratings on their EC&DP forms on either “Formal” or “Informal Corrective Action Plans” or “Individual Development Plans.” Under these plans, employees may be terminated, or given a lower rating leading to termination, unless their supervisors judge their performance to improve within a short time. Certain employees 3M puts in this situation are offered termination with severance pay and other benefits, including “retirement” and “transitional retirement,” through a Performance Management Severance Plan if they forego the period for corrective action and execute a release of all claims against 3M.

74. 3M offers some employees below the Director level whose jobs it has purported to eliminate, who have not been assigned the lowest contribution rating, and for whom department placement opportunities have been exhausted, termination with severance pay and often other benefits, including “retirement” and “transitional retirement,” through a Job Elimination Plan if they execute a release of all claims against 3M.

75. Because 3M discriminates against salaried employees over the age of 45 in their performance appraisals, as discussed above, those employees disproportionately have opted for “retirement,” “transitional retirement” or “resignation” through Performance Management Severance Plans, rather than risk termination as a result of a subjectively perceived failure to improve alleged poor performance.

76. 3M has a policy or has engaged in a pattern or practice of disproportionately terminating employees over the age of 45 through Performance Management Severance Plans

and Job Elimination Plans, and otherwise has targeted for termination and disproportionately terminated employees over the age of 45.

77. 3M's systematic and disproportionate termination of employees over 45 is the product of intentional and willful age discrimination by 3M's management, including 3M's discrimination against salaried employees over the age of 45 in their performance appraisals.

78. Alternatively, the subjective methodology for determining those employees to be terminated, including the quotas for, and subjective and centralized method of assigning, EC&DP ratings, and the determination of those employees whose jobs will be eliminated and who will not be offered another job, has an unjustified disparate impact on employees over 45.

79. Mucci is a victim of 3M's pattern or practice of discrimination against employees over the age of 45 in terminations, and is among those who have suffered the adverse impact of these policies or practices.

80. When Mucci was assigned a contribution rating of "1" or "Unsatisfactory" for 2002, 3M placed him on a "Formal Performance Correction Plan," by which his employment could be terminated at any time. 3M then proposed that he leave 3M under its Performance Management Severance Pay Plan, conditioned upon his executing a General Release of All Claims against 3M. After Mucci declined to release 3M and leave its employment under that plan, 3M informed him that his position would be eliminated effective March 2004. 3M again proposed that Mucci leave 3M, this time under its Job Elimination Plan, still conditioned upon his executing a General Release of All Claims against 3M. Mucci also declined to release 3M and leave its employment under that plan. After being advised that his position would be eliminated, Mucci applied to fill vacant positions with 3M, for which he was well qualified. He was denied those positions, which typically were filled by employees 45 years of age or younger. His position was extended

until September 30, 2004. With his job eliminated, and unable to fill a vacant position, Mucci attempted to separate from 3M, which is accomplished through an electronic Human Resources system. That system required that he execute a release of 3M to complete the separation process. Mucci again refused to release 3M and, after his protests and demands and proceedings before the Minnesota Department of Employment and Economic Development, Mucci believes that he now is terminated.

81. In addition to outright terminations, 3M uses the policies and procedures at issue in this case to threaten employees over 45, including Sterrett and Swanson, with termination and deprive them of opportunities, responsibilities and rewards in an effort to secure their termination, resignation or retirement.

#### **CLASS ACTION ALLEGATIONS**

82. Plaintiffs seek to represent a class pursuant to Minn. Rule 23.02(b) and/or (c) with respect to each of the claims below, consisting of:

All persons who were 46 or older when employed by 3M in Minnesota in a salaried position below the level of director, or salary grade 18, at any time during the liability period as determined by the Court and who did not sign a document on or about their last day of employment purporting to release claims arising out of their employment with 3M.

The proposed class may include subclasses defined by business unit, salary grade, job position or other appropriate basis. In the event that discovery shows, or the Court determines, that the proposed class cannot satisfy Minn. Rule 23, plaintiffs may propose to modify or narrow the definition of the class or any subclasses.

83. *Numerosity.* The number of persons in the class is estimated to exceed 7,000. It would be impracticable to bring all, or even a substantial percentage of, such persons before the Court as individual plaintiffs through joinder.

84. *Commonality.* There are questions of law and fact common to the class. The two overarching questions of law and fact common to all members of the class are whether, through the acts and omissions of its executive management and others, 3M has adopted a policy or engaged in a pattern or practice of intentional and willful age discrimination in employment that is generally applicable to the class members, or has adopted facially neutral practices that have an unjustified disparate impact on employees aged 46 or older. These broad issues encompass numerous issues of law and fact that are also common to all class members, including:

- Has 3M engaged in a pattern or practice of intentional and willful age discrimination in ratings as to performance, contribution and potential?
- Have the forced distribution rating quotas, subjective standards for and process of assigning employees contribution ratings, and the opportunity for stereotyped decision-making by MTRs had an unjustified disparate impact on class members?
- Has 3M engaged in a pattern or practice of intentional and willful age discrimination in selections for Six Sigma “Black Belt” and “Master Black Belt,” ALDP and other training?
- Has the subjective selection process for Six Sigma “Black Belt” and “Master Black Belt,” ALDP and other training had a disparate impact on class members?
- Has 3M engaged in a pattern or practice of intentional and willful age discrimination in its promotion, pay and termination policies and decisions?
- Has the subjective decision-making regarding promotion, pay and termination, including that involved in employee performance appraisals and contribution ratings, had an unjustified disparate impact on class members?
- Have 3M’s pattern or practice of intentional and willful age discrimination and the disparate impact of its personnel practices on class members constituted continuing violations permitting class members to obtain relief for actions and omissions occurring more than one year prior to the filing of plaintiffs’ MHRA charges?
- Has 3M engaged in a pattern or practice of intentional and willful age discrimination that shows deliberate disregard of the rights of plaintiffs and the class warranting the imposition of punitive damages?

85. *Typicality.* The claims of each of the plaintiffs are typical of the claims of all class members because 3M has subjected plaintiffs and the class to the same company-wide policies and practices of age discrimination.

86. *Adequacy of Representation.* Plaintiffs are adequate representatives of the class, because: (a) they are willing and able to represent the proposed class and have every incentive to pursue this action to a successful conclusion; (b) their interests are not in any way antagonistic to those of the other class members; and (c) they are represented by counsel experienced in litigating major class actions in the field of employment discrimination.

87. *Propriety of Maintenance of Class Action Under Minn. Rule 23.02(b).* Class action status is appropriate under Minn. Rule 23.02(b) because 3M has acted and refused to act on grounds generally applicable to the class, thereby making declaratory and final injunctive relief appropriate with respect to the class as a whole.

88. *Propriety of Maintenance of Class Action Under Minn. Rule 23.02(c).* Class action status is also appropriate under Minn. Rule 23.02(c). The common questions of law and fact identified above predominate over questions affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. All members of the class are or were subjected to the same company-wide policies or practices of intentional and willful age discrimination and the same practices resulting in an unjustified disparate impact on class members. Requiring each class member to pursue his or her claim individually would entail needless duplication and would waste the resources of both the parties and the Court. The financial burden of proving that 3M engaged in such a pattern or practice of discrimination also would make the prosecution of individual actions virtually impossible for most, if not all, members of the class.

**COUNT**

**DISPARATE TREATMENT AND DISPARATE IMPACT WITH RESPECT TO  
PERFORMANCE EVALUATIONS, TRAINING, PROMOTIONS, PAY AND  
TERMINATIONS**

89. Plaintiffs restate and reallege the allegations contained in Paragraphs 1 through 88 as though set forth here in full.

90. Plaintiffs and class members are or were employees of 3M within the meaning of the MHRA, Minn. Stat. §363A.03.

91. The discriminatory policies or practices of 3M as to performance evaluation, training, promotions, pay and terminations, as set forth more fully above, represent a pattern or practice of intentional and willful denial to plaintiffs and class members of their right to equal employment opportunity in violation of section 363A.08, subd. 2 of the MHRA.

92. 3M's discriminatory and unlawful employment practices have been intentional, willful and oppressive, and have been conducted in deliberate disregard for the rights of plaintiffs and class members.

93. The policies or practices of 3M as to performance evaluation, training, promotions, pay and terminations, as set forth more fully above, have had a disparate impact on plaintiffs and class members, within the meaning of section 363A.28, subd. 10 of the MHRA, in violation of section 363A.08, subd. 2 of the MHRA.

94. 3M's management has independently adopted, ratified, condoned and approved the discriminatory policies or practices identified herein.

95. 3M's management has been aware of the practices of discrimination alleged herein and has failed to take adequate measures to prevent such discrimination from occurring.

96. 3M has acted with deliberate disregard to the rights of employees over the age of 45 in its failure adequately and effectively to monitor, identify and remedy the impact of 3M's discriminatory processes for performance evaluation, selection for training, promotions, pay and terminations.

97. As a result of 3M's violations of the MHRA, plaintiffs and the class have been injured and, therefore, are entitled to an award of equitable relief, monetary relief, punitive damages, and attorneys' fees and costs, as well as any other relief provided under the MHRA and applicable law. Plaintiffs and class members are threatened with further injury and loss which are irreparable in nature and for which they have no adequate remedy at law.

#### **PRAYER FOR RELIEF**

**WHEREFORE, plaintiffs respectively pray:**

A. That this case be maintained as a class action on behalf of the proposed class and any appropriate subclasses; that plaintiffs be designated as representatives of the class and any subclasses, and that their counsel of record be designated as Class Counsel;

B. That 3M's policies and practices complained of herein be determined and adjudged to be in violation of the rights of the plaintiffs and the class members under the MHRA;

C. That a permanent prohibitory injunction be issued ordering 3M and its officers, agents, employees and successors to cease and desist from the unfair discriminatory employment policies and practices complained of herein;

D. That a permanent mandatory injunction be issued requiring 3M to take such affirmative action as will effectuate the purposes of the MHRA, including adopting employment practices in accord with the MHRA's requirements;

E. That judgment be entered in favor of plaintiffs and the class set forth herein, and against 3M for reasonable monetary damages in excess of \$50,000, including back pay (plus interest or an appropriate inflation factor and an enhancement to offset any adverse tax consequences associated with lump sum receipt of back pay), front pay, benefits and all other damages owed to plaintiffs and the class members, in an amount proven at trial; and that plaintiffs and class members be awarded compensatory damages in an amount up to triple their actual damages;

F. That each of the plaintiffs and class members be awarded the maximum statutory amount of punitive damages available under the MHRA;

G. That the plaintiffs and class members be awarded such other and further legal and equitable relief as may be found appropriate and as the Court may deem just or equitable;

H. That the plaintiffs and class members be awarded costs including, but not limited to, attorneys' fees, experts' fees, and other costs and expenses of this litigation; and,

I. That the Court retain jurisdiction over this action until such time as it is satisfied that 3M has remedied the practices complained of and is determined to be in full compliance with the law.

Dated: January 3, 2006

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#### ACKNOWLEDGMENT

Plaintiffs, by their attorneys, acknowledge that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties pursuant to Minnesota Statutes § 549.211.

Dated: January 3, 2006

  
Susan M. Coler