

STATE OF MINNESOTA
COUNTY OF RAMSEY

EMPLOYMENT
DISTRICT COURT
SECOND JUDICIAL DISTRICT

Clifford L. Whitaker, et al., on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

3M Company,

Defendant.

Court File No. 62-C4-04-012239
[G. Johnson]

**FINAL DOCUMENT
PRESERVATION ORDER**

[Class Action]

1. **Preservation.** During the pendency of this litigation, including any period for an appeal that may follow the conclusion of the litigation or for which the Court may retain jurisdiction to supervise or monitor relief, each of the parties herein and its or their officers, agents, employees, and attorneys, contractors or other nonparties who possess materials reasonably anticipated to be subject to discovery in this action are enjoined to preserve evidence that may be relevant to this action, including any “documents, data or tangible things” that are identified in paragraph 3 below (“materials subject to preservation”) in the possession, custody, or control of such person, wherever such document is physically located. Such persons are also enjoined from altering, interlining, destroying, permitting the destruction of, or in any other fashion irrevocably changing the form of the files in which the document is located except to facilitate compilation, review, production, or archiving (as by filing in a document depository, so long as the documents remain available for production in discovery). All costs associated with the preservation of records by 3M contractors and third parties shall be borne by Plaintiffs.

2. **Definitions and Scope.**

(a) "Documents, data and tangible things" is to be interpreted broadly to include writings; records; files; correspondence; reports; memoranda; calendars; diaries; minutes; E-mail; telephone message records or logs; hard drives; CDs, DVDs, backup data; removable computer storage media such as tapes, disks, and cards; printouts; document image files; Web pages; databases; spreadsheets; software; books; ledgers; journals; statements; worksheets; summaries; compilations; computations; charts; diagrams; graphic presentations; drawings; films; 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. Based on representations by 3M, the Court has denied Plaintiffs' document preservation request regarding 3M's voice-mail system. The Court will reconsider this decision if Plaintiffs present information establishing that the voice-mail communications have been preserved and can be made available.

(b) The term "preservation" or "preserve" 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 in this action. Preservation includes taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, theft, or mutation of such material, as well as negligent or intentional handling that would make material incomplete or inaccessible.

(c) This Order shall not apply to attorneys' notes, memoranda, and drafts of pleadings, motions, briefs, and correspondence.

(d) If the business practices of any party involve the routine destruction, recycling, or mutation of documents, data and tangible things, the party must, for the pendency of this Order, either

(1) halt such business processes;

(2) sequester or remove materials subject to preservation from the business process; or

(3) arrange for the preservation of complete and accurate duplicates or copies of materials subject to preservation, suitable for discovery if requested.

(e) Counsel shall continue to confer, if and as necessary, to resolve questions as to what documents, data and tangible things are outside the scope of this Order or otherwise need not be preserved and as to an earlier date for permissible destruction of particular categories of documents, data and tangible things as discovery proceeds.

(f) Should any party subject to this Order determine that compliance herewith would cause undue burden, then counsel are directed to meet and confer on such issues or objections. If counsel are unable to resolve such issues or objections, any party may apply to the Court for clarification of this Order upon reasonable notice.

3. **Documents, Data and Tangible Things To Be Preserved.**

(a) 3M shall preserve all documents, data and tangible things that contain information that has been or is accessible to Human Resources personnel or managers in the course of planning, analyzing or making decisions, or that memorializes decisions,

relating to performance appraisals, training, assessment, or leadership development programs, promotions, compensation and terminations of salaried employees in Minnesota, or which may relate to the formulation, implementation, application and effects of 3M's policies and practices relating to performance appraisals, selection for training, assessment, and leadership development programs, promotions, compensation and termination of salaried employees employed in Minnesota.

(b) Plaintiffs shall preserve all documents, data and tangible things that reasonably relate or refer to claims made in this litigation, including documents relating to their employment, for example, drafts and the final versions of performance appraisal forms (such as the C&DS form), documents referred to as the underlying basis for performance appraisals, responses to job postings, and communications with supervisors or with or concerning other salaried employees at 3M; their alleged damages, including, for example, tax returns; any policies and practices of 3M relating to performance appraisals, selection for training, assessment, and leadership development programs, promotions, compensation and termination of salaried employees employed in Minnesota; communications among putative class members; and postings to websites regarding 3M or this matter. With respect to Plaintiffs' obligation to preserve materials that currently reside on 3M computers, systems, networks, databases, other storage devices, or physical files in Plaintiffs' control, including, but not limited to, a work computer issued to a Named Plaintiff by 3M, in a 3M Lotus Notes account assigned by 3M to a Named Plaintiff, in a network folder assigned by 3M to a Named Plaintiff, on an external storage device issued by 3M to a Named Plaintiff, or in office files maintained by a Named Plaintiff at 3M, Plaintiffs shall not intentionally or negligently cause the

deletion, destruction, or removal of such material from the 3M computer, system, network, database, other storage device, or physical file. Without waiving any claim of privilege between Plaintiffs and their counsel, Plaintiffs understand and agree that 3M has access to all documents stored on 3M computers, systems, networks, databases, other storage devices, or physical files. 3M shall not intentionally or negligently cause the deletion, destruction, or removal of such material from the 3M computer, system, network, database, other storage device, or physical file.

4. **Time Frame.** Unless otherwise noted, a party's obligation to preserve documents, data or tangible things, as described in Section 3(a) and (b) of this Order, shall extend only to documents, data or tangible things created on or after January 1, 2001, to the extent they exist. Notwithstanding the foregoing, any information in the databases identified in 5(a), below, or their predecessor databases shall be preserved by 3M at least back to January 1, 1998, to the extent it exists. If not otherwise encompassed in the foregoing and to the extent they exist, 3M also shall preserve relevant past and current versions of HR policy and practice material and databases back to January 1, 1998. To the extent that 3M initially preserved other documents, data or tangible things for any part of the period January 1, 1998, to December 31, 2000, 3M shall not affirmatively undertake to destroy, delete, remove, or alter such documents, data or tangible things. To the extent they exist and are within Plaintiffs' possession, custody, or control, Plaintiffs shall preserve documents, data and tangible things regarding their own employment at 3M and relevant to the claims and defenses in this case back to at least January 1, 1998.

5. **Preservation Methods and Other Information.**

(a) 3M shall preserve, in a manner that will preserve the native format and any metadata, the content of: the Print and File servers and Lotus Notes servers that serve accounts of the employees identified in (d), below; the WorkSite server that contains materials subject to preservation; the EWCD Content Server and the content of the version control feature of 3M's web server that contain materials subject to preservation (including the US-MilesDavis, EWCDAuthoring 70, and EWCDAuthoring 71 servers); and the servers which house the Lotus Notes databases with past and current versions of HR policies. 3M also shall preserve, in a manner that will preserve the native format and any metadata, the databases relevant to performance appraisals, training, leadership development programs, promotions, compensation and terminations of salaried employees in Minnesota, including but not limited to PeopleSoft, eMTR, and C&DS databases for performance appraisals, PeopleSoft and Global Learning Network databases for training, PeopleSoft and Global Workforce Network, Job Information System, SkillSet and eRecruit databases for promotions, People Soft databases for compensation, and PeopleSoft and Job Elimination databases for terminations.

(b) Plaintiffs shall preserve, in a manner that will preserve the native format and any metadata, any of the documents described in Section 3(b), above, that may exist in: any current or previous work and personal e-mail accounts, computers, hard drives, PDAs, or other storage devices. With respect to Plaintiffs' obligation to preserve the native format and any metadata of materials that currently reside on 3M computers, systems, networks, databases, or other storage devices in Plaintiffs' control, including, but not limited to, a work computer issued to a Named Plaintiff by 3M, in a 3M Lotus Notes account assigned by 3M to a Named Plaintiff, in a network folder assigned by 3M

to a Named Plaintiff, or on other storage devices issued to a Named Plaintiff by 3M, Plaintiffs shall not intentionally or negligently cause the deletion, destruction, or alteration of the native format and any metadata of such material from the 3M computer, system, network, database, or other storage device. Without waiving any claim of privilege between Plaintiffs and their counsel, Plaintiffs understand and agree that 3M has access to all documents stored on 3M computers, systems, networks, databases, other storage devices, or physical files. 3M shall not intentionally or negligently cause the deletion, destruction, or alteration of the native format and any metadata of such material from the 3M computer, system, network, database, or other storage device.

(c) In order to preserve the electronic documents of those employees identified in (e), below, who are outside of Minnesota or whose electronic documents otherwise are not preserved through the retention of the contents of servers located in St. Paul, MN, and to preserve the electronic documents that any of the employees in (e) have identified or preserved on the hard drives of laptops, personal computers, PDAs, or other devices that are not preserved through the retention of the contents of servers located in St. Paul, MN, 3M shall direct those employees to identify and copy to folders on 3M network servers, in a manner that will preserve the original format, content and embedded metadata, such as by using the Microsoft Windows "Copy" and "Paste" approach described to Plaintiffs in prior correspondence between the parties, those electronic documents, including Lotus Notes, subject to preservation, and 3M shall make an electronic copy of those files and preserve them on back-up tape or other storage device from which they can be restored and accessed, if necessary.

(d) To date, 3M has preserved the information in (a), above, only to the extent it was extant on the identified servers on December 24, 2004. 3M shall undertake a thorough investigation and search of other servers and sources of electronic documents, routine and non-routine back up tapes and other storage devices to identify and preserve information in (a) and (c), above, existing during the period identified in 4, above, prior to December 24, 2004. 3M shall take steps promptly to preserve any such information identified and promptly notify plaintiffs of the information identified and preserved. Within sixty (60) days of entry of this Order, April Wyland or her successor, see 6(a) below, shall serve upon Plaintiffs a sworn statement identifying all efforts undertaken and the results of this investigation, including a list identifying all additional back-up tapes and other storage devices containing information in (a) and (c) above for any period between January 1, 2001, and December 24, 2004, and if the investigation is not then complete, 3M shall provide supplemental statements every thirty days thereafter until the investigation is complete. It is expected that such investigation will be completed within one hundred twenty (120) days.

(e) 3M has instructed and shall continue to take necessary and appropriate steps to ensure that the following employees have acted and continue to act to identify and preserve all documents, data and tangible things defined in 3(a), above: employees having at least one Minnesota-based salaried employee reporting to them; all Human Resource Directors; all non-supervisory Human Resource personnel based in Minnesota and with more than administrative or clerical responsibility; and managers with responsibility for salaried Minnesota-based employees. 3M shall take reasonable steps to ensure that these employees identify and preserve documents, data and tangible things

defined in 3(a), above, located on 3M's networks and systems and on PC hard drives, PDA's, laptops, computers maintained in homes or outside of 3M's facility, and any other electronic devices and storage media. Plaintiffs have been instructed by their counsel of the duty to preserve documents, data and tangible things in 3(b), above, and steps reasonably necessary to ensure that documents, data and tangible things are preserved, and specifically have reviewed and discussed the documents, data and tangible things to be preserved in connection with responding to discovery requests served by 3M or reasonably anticipated to be subject to discovery in this action.

(f) 3M shall provide notice of the duty to identify and preserve documents, data and tangible things, including the identification and collection of electronic documents, to the personnel identified in (e), above, at approximately six-month intervals and more frequently as may be necessary, prudent or useful in the identification, preservation and collection of documents. Plaintiffs shall review their preservation obligations with their counsel, at least at approximately six-month intervals and more frequently as may be necessary, prudent or useful in the identification, preservation and collection of documents.

(g) Because the Court cannot determine if the Defendant's instant messaging system contains information of any material value, the parties are directed to meet and confer to find mutually acceptable terms for a key word search to be used in determining if the instant message records contain relevant information.

3M represents that it does not back-up or preserve the content of instant messages in the ordinary course of business, as its Sametime instant messaging system neither has the capability to log the content of instant messages on a system or server level, nor does

Sametime generate a log of instant message content on the individual computers of employees transmitting and receiving instant messages. 3M further represents that employees who do use the Sametime instant messaging system avoid using it for substantive employment decision- or policy-making communications that would be subject to the preservation obligations of this Order. 3M has confirmed these usage practices by, since June 2006, explicitly instructing the personnel identified in (e) above, not to use Sametime instant messages to convey any information that would fall within the scope of 3M's preservation obligations in this case. These personnel also have been instructed and reminded since the commencement of this action of their individual obligation to preserve (e.g. on the local hard drive of their work computer or by printing out in hard copy, if necessary) "electronic records" and "computerized records" authored or received by them that contain information within the scope of 3M's preservation obligation, and 3M will continue to provide these instructions on a periodic basis throughout the time period covered by this Order.

3M will interview 25 current employees, selected by Plaintiffs from the 140 individual production sources of e-mail and other electronic documents, regarding their Sametime instant messaging usage practices and further have them provide any Sametime instant messaging content they have preserved (if any and in whatever format)> 3M will advise Plaintiffs of the findings of these interviews and provide them with any relevant, non-privileged Sametime instant message content obtained from these employees, based on Plaintiffs' representation that this information is to be used for the purpose of furthering discussions between the parties regarding prospective changes to 3M's current Sametime instant messaging instructions and protocol only, and that

Plaintiffs will neither request nor demand that 3M add back-up or content logging capabilities at the system or server level to its Sametime instant messaging system. This provision of the order is subject to further review by the court after the Plaintiffs have had an opportunity to review and consider the findings of 3M's employee interviews.

6. Implementation.

(a) The individual who shall primarily be responsible for ensuring compliance with the requirements of this Order is April Wyland, IT Legal Affairs, IT Manager at 3M, with assistance from undersigned counsel for 3M. Other employees with certain subject matter expertise in the IT area at 3M have been asked and may be asked to work on preservation matters from time to time at Ms. Wyland's or counsel's direction. 3M reserves the right to reassign this responsibility at its discretion, and, in the event that 3M assigns another employee primary compliance responsibility, 3M will promptly provide Plaintiffs with the name of that individual.

(b) Within thirty (30) days of entry of this Order, 3M shall conduct an audit of its document preservation efforts.

(i) The audit shall include a review of compliance with 5(a), (c), and (f) above, and 3M shall conduct an audit annually during the pendency of this litigation.

(ii) The first audit also shall include a survey by 3M of documents, data and tangible things identified as potentially relevant and retained in "Whitaker" File and Print or Lotus Notes folders from 20 current employees, selected by 3M at random from among the personnel described in 5(e). 3M shall compare the content of the initial and most recent back-up tape(s) containing the File and Print and Lotus notes folders of these 20 employees. Any e-mail or electronic documents appearing on the initial back-up but