

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

FILE NO. C4-04-012239

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

Plaintiffs,

v.

3M Company,

Defendant.

**ORDER GRANTING PLAINTIFFS'  
MOTION TO STAY 3M'S MOTIONS  
FOR SUMMARY JUDGMENT  
AGAINST THE NAMED PLAINTIFFS**

The above matter came duly before the Honorable Gregg E. Johnson for hearing on November 7, 2007, in Ramsey County District Court at St. Paul, Minnesota, upon Plaintiffs' Motion to Strike or Stay 3M's Motions for Summary Judgment Against the Named Plaintiffs.

Thomas Henderson, Michael Lieder, and Susan Coler, from the law firm of Sprenger & Lang, appeared as counsel on behalf of Plaintiffs in support of the motion. Thomas Tinkham and Paul Klaas, from the law firm of Dorsey & Whitney, appeared as counsel on behalf of Defendant in opposition to said motion.

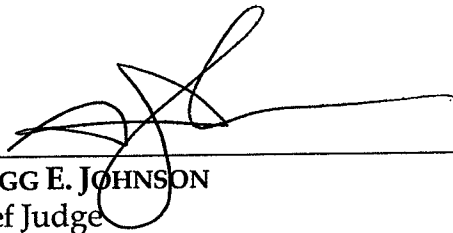
Based upon the all of the files, records and proceedings, and upon the oral arguments of counsel,

**IT IS HEREBY ORDERED** that Plaintiffs' motion to stay is GRANTED with respect to the following motions filed October 10, 2007:

1. 3M's motion for summary judgment on the claims of Clifford L. Whitaker
2. 3M's motion for summary judgment on the claims of Michael v. Mucci;
3. 3M's motion for summary judgment on the claims of Thomas R. Bulen;
4. 3M's motion for summary judgment on the claims of Robert W. Coats;
5. 3M's motion for summary judgment on the claims of Mark D. Swanson.

BY THE COURT:

DATED: December 10, 2007



---

GREGG E. JOHNSON  
Chief Judge

#### MEMORANDUM

In its motion for summary judgment against five named plaintiffs, Defendant argues that merely pleading pattern or practice does not insulate meritless individual claims for dismissal. *Arnold v. Cargill*, 2004 WL 1234116 (D. Minn. May 28, 2004). Defendant asserts that there is an unmistakable trend in Minnesota and other jurisdictions for courts to dispose of deficient individual claims before deciding class certification. Defendant further argues that summary judgment motions in putative class actions involving pattern or practice allegations saves judicial time and resources.

The court disagrees. A pattern or practice claim requires that a case be analyzed under the legal framework set out in *Int'l. Bhd. of Teamsters v. United States*, 431 U.S. 324, 335 (1977). The plaintiff has the burden of presenting evidence sufficient to create an

inference that an employer engaged in a company-wide pattern or practice of intentional discrimination based on age.

In *Theissen v. GE Capital Corp.*, 267 F.3d 1095, 1108-1109 (10th Cir. 2001), the Tenth Circuit held that during their first stage of a pattern or practice case, a summary judgment motion must focus solely on whether there is sufficient evidence demonstrating that defendants had in place a pattern or practice of discrimination. Plaintiffs' claims should not at this stage be treated as non-class claims of individual discrimination or analyzed under the McDonnell Douglas standard.

In *Craik v. Minnesota State Univ. Bd.*, 731 F.2d 465, 471 (8th Cir. 1984), the Eighth Circuit reversed a grant of summary judgment and held it error for the magistrate judge to first consider the plaintiffs' individual claims under the McDonnell Douglas framework.

For these reasons, this court grants plaintiffs' motion to stay defendant's motion for summary judgment on the claims of the five individual plaintiffs.

GEJ