

**STATE OF MINNESOTA  
IN THE COURT OF APPEALS  
A08-816**

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

Respondent,

v.

3M Company,

Appellant.

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**REQUEST OF EMPLOYER GROUP  
TO PARTICIPATE AS AMICI  
CURIAE AND TO FILE JOINT BRIEF**

The court has granted discretionary review of a district court's order granting class certification under Minn. R. Civ. App. P. 23 of the respondent's age-discrimination claims. This Court's review will raise questions of law that are significant to many Minnesota employers, some of whom join together here and respectfully seek leave to appear as amici curiae in this case pursuant to Minn. R. Civ. App. P. 129. Specifically, the following employers request leave to appear and file a single brief: Alliant Tech Systems, Inc.; Cargill, Inc.; C.H. Robinson Worldwide, Inc.; Medtronic, Inc.; Nash Finch Company; Supervalu, Inc.; Target Corporation; and The Mosaic Company (hereafter referred to as "Employer Group").

This Court granted discretionary review of the district court's class certification order on June 26, 2008. The Employer Group generally supports the appellant's position. In order to avoid repetitious argument, the Employer Group seeks permission to file a joint brief.

## **I. INTEREST OF THESE EMPLOYERS**

The interest of these employers is private in nature. The term “Employer Group” has been adopted solely for briefing purposes and these employers seek leave in their corporate capacities as employers of many Minnesota residents. Alliant Tech Systems, Inc., Cargill, Inc.; C.H. Robinson Worldwide, Inc.; Medtronic, Inc.; Nash Finch Company; Supervalu, Inc.; Target Corporation; and The Mosaic Company are all employers well known to Minnesota residents and this Court.

## **II. STATEMENT WHY PARTICIPATION OF AMICI CURIAE IS DESIRABLE**

The brief filed by these amici would assist the Court by providing insight and legal analysis on the questions of law that will be addressed in reviewing the district court’s order. One purpose of an amicus curiae brief is to inform the court about practical and legal consequences of a decision beyond what is apparent from the party-specific issues raised in a case. Because these amici are not parties to this litigation, but are employers of many Minnesota residents, they will offer an important additional perspective on the legal issues before the Court.

Appellate review in this case involves important legal questions about the certification of a class in age discrimination cases. First, it is important to establish what is the burden of proof and the standard of proof necessary for class certification in order to define how to approach this issue under Minn. R. Civ. P. 23. Second, it is important to determine what type of evidence can be relied on in such cases to establish common evidence of discrimination for class certification purposes. Age cases are different from

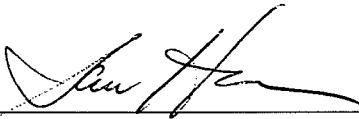
other discrimination cases, particularly with respect to the relevance of statistical evidence to the existence of commonality for the proposed class. Age is not an immutable characteristic, like race or gender. *Smith v. City of Jackson*, 544 U.S. 228, 240-41 (2005).

In short, the legal issues presented are important ones on which the Minnesota appellate courts have not ruled. This Court's ruling will significantly affect not only 3M, but Minnesota employers generally, both large and small. A brief filed by these amici will assist the Court by including an analysis of the law, public policy, and the practical ramifications of the court's decision on what are commonly regarded as best business and employment practices. The amici curiae's joint brief would not be duplicative or cumulative of the briefs filed by the parties because it would not focus on the party-specific issues but instead would focus on the overall effect the legal issue will have on employers in Minnesota.

In conclusion, Alliant Tech Systems, Inc.; Cargill, Inc.; C.H. Robinson Worldwide, Inc.; Medtronic, Inc.; Nash Finch Company; Supervalu, Inc.; Target Corporation; and The Mosaic Company, respectfully ask for leave to file a joint brief as amici curiae.

Dated: July 11, 2008

**BRIGGS AND MORGAN, P.A.**

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CORPORATION; AND THE MOSAIC  
COMPANY**

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