

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

CASE TYPE: Employment

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

Court File No. C4-04-12239
(The Honorable Gregg E. Johnson)

Plaintiffs,

vs.

3M Company,

Defendant.

**ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT AND
PROVISIONAL CLASS
CERTIFICATION**

On March 31, 2011, this Court reviewed the parties' joint motion for preliminary approval of class action settlement and provisional class certification under Minnesota Rule of Civil Procedure 23.05. This Court also reviewed the Settlement Agreement and Release ("Agreement") and plaintiffs' memorandum in support of the motion. Based on this review and findings below, the Court finds good cause to grant the motion.

FINDINGS

For purposes of the Settlement Agreement only, the Court finds:

1. The Agreement is fair, reasonable, and adequate;
2. The Notice, Class Member Declaration and Claim Sheet (attached to the Agreement) comply with due process because they are reasonably calculated to adequately apprise Class Members of: (i) the pending lawsuit; (ii) the proposed settlement; and (iii) their rights, including the right to participate in the settlement, exclude themselves from the settlement, or object to the settlement;
3. For settlement purposes only, the Class is so numerous that joinder of all Class Members is impracticable;

4. For settlement purposes only, Plaintiffs' claims are typical of individual Class Members' claims;

5. For settlement purposes only, there are issues common to the Class that predominate over any questions affecting only individual Class Members;

6. For settlement purposes only, the Plaintiffs and their Counsel fairly and adequately represent the Class's interests; and

7. For settlement purposes only, class certification is superior for purposes of implementing the Settlement Agreement to other available methods for the fair and efficient adjudication of the controversy.

IT IS ORDERED THAT:

1. **Settlement Approval.** The Agreement, including the Notice, Class Member Declaration and Claim Sheet, attached to the Agreement, are preliminarily approved. Plaintiffs and Defendant, 3M Company ("3M") (collectively "the Parties"), are ordered to comply with the terms of the Agreement.

2. **Provisional Certification.** For settlement purposes only, the Class is provisionally certified as:

All persons who were 46 or older when employed by 3M in Minnesota in a salaried exempt position below job grade 18 at any time on or after May 10, 2003 through December 31, 2010, 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.

3. **Provision of Class Notice.** On the ninetieth (90th) calendar day after entry of this Order, or the following business day if the 90th day is a Sunday or holiday, the Parties, through the appointed Claims Administrator, will mail Notice and a Class Member Declaration to each Class Member as specified in the Agreement.

4. **Request to Opt-Out.** Class Members who wish to be excluded from the Settlement shall submit a written request to opt-out to the Claims Administrator within one

hundred (100) calendar days of the initial mailing of the Notice and Class Member Declaration. No particular format shall be required for a Class Member to opt-out, provided that the Class Member's written request reasonably identifies the Class Member and the *Whitaker v. 3M Company* litigation and expresses an intent to opt-out of the Settlement. Requests to opt out shall be deemed timely if they are postmarked on or before the 100th day after the initial mailing of the Notice and Class Member Declaration. The time to opt-out will not be enlarged for any returned mailings. Individuals who validly opt-out of the Settlement are no longer deemed to be Class Members. As such, those individuals cannot object to the Settlement.

5. Objection to Settlement. Class Members who do not opt out and who wish to object to the Agreement shall file a written objection with the Court and serve copies on Class Counsel and 3M's Counsel no later than one hundred (100) calendar days from the initial mailing date of the Notice and Class Member Declaration. Written objections shall be deemed timely if they are postmarked on or before the 100th day after the initial mailing of the Notice and Class Member Declaration. The Objection shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection"; (c) in clear and concise terms, the legal and factual arguments supporting the objection; and (d) a list identifying the witness(es) the objector may call to testify at the Fairness Hearing and true and correct copies of any exhibit(s) the objector intends to offer. The objection will not be valid if it objects only to the lawsuit's appropriateness or merits.

6. Failure to Object to Settlement. Class Members who fail to object to the Agreement in the manner specified above will: (1) be deemed to have waived their right to object to the Agreement; (2) be foreclosed from objecting (whether by a subsequent objection, intervention, appeal, or otherwise) to the Agreement; and (3) not be entitled to speak at the Fairness Hearing.

7. Participation in Settlement Fund. Class Members who wish to participate in the Settlement under the Agreement shall complete, execute and return their Class Member Declaration within seventy-five (75) calendar days of the initial mailing of the Notice and Class

Member Declaration. Class Member Declarations shall be deemed timely if they are postmarked on or before the 75th day after the initial mailing of the Notice and Class Member Declaration. Class Members who fail to timely execute and return their Class Member Declaration, but who do not opt out, shall not be entitled to any Settlement Award but shall otherwise be bound by the Settlement Agreement, including the Judicial Release. Class Members who timely execute and return a Class Member Declaration which indicates a claim for age discrimination shall also complete, execute and return their Claim Sheet within forty-five (45) days after the mailing of their Claim Sheet by the Claims Administrator. Claim Sheets shall be deemed timely if they are postmarked on or before the 45th day after the mailing of the Claim Sheets by the Claims Administrator. Class Members who fail to timely execute and return their Claim Sheet shall not be entitled to any Settlement Award but shall otherwise be bound by the Settlement Agreement, including the Judicial Release.

8. Appointment of Class Representative and Class Counsel. For settlement purposes only, Plaintiffs are conditionally appointed as the Class Representative to implement the Parties' settlement in accordance with the Agreement. The law firm of Sprenger + Lang, PLLC and the AARP Foundation Litigation are appointed as Class Counsel. Plaintiffs and Class Counsel shall continue to fairly and adequately represent and protect the Class's interests.

9. Termination of Agreement. If the Agreement terminates for any reason, the following will occur: (a) this Preliminary Approval Order, and all of its provisions, including conditional certification of the settlement class, will be automatically vacated; (b) this Action will revert to the status that existed at the execution date of the Agreement, subject to the Parties' request for additional time to complete discovery; (c) no party shall be deemed to have waived, and will not be prejudiced in its right to pursue or oppose, any claims, objections, rights or defenses, or legal arguments or positions, including, but not limited to, claims or objections to class certification, and claims and defenses on the merits; (d) no term or draft of the Agreement, or any aspect of the Parties' settlement discussions, including related documentation, will have any effect or be admissible into evidence for any purpose in this Action; and (e) 3M shall have

no obligation to pay any of the Gross Settlement Sum. This Order will not waive or otherwise impact the Parties' rights or arguments.

10. No Admissions. Nothing in this Order is or may be construed as an admission or concession on any point of fact or law by or against any Party.

11. Qualified Settlement Fund. The Court approves and orders the creation of a 3M Whitaker Qualified Settlement Fund ("Qualified Settlement Fund") in accordance with the terms of the parties' Settlement Agreement. 3M has agreed to pay to the Qualified Settlement Fund the Gross Settlement Sum, as set forth in the Settlement Agreement, which payment will be in full settlement and discharge of all of the claims of Settlement Class Members against 3M that are the subject of this lawsuit and in exchange for a full release and discharge by the Named Plaintiffs, Class Representatives, and all Settlement Class Members who do not exclude themselves from the settlement.

Establishment of the Qualified Settlement Fund is intended to satisfy the requirements of Treasury Regulation Section 1.468B-1(c), 26 C.F.R. § 1.468B-1, by (a) being established pursuant to the approval and order of this Court, (b) resolving and satisfying claims for discrimination and violations of statutory and common law against 3M, and (c) constituting a segregated account, all as required by those regulations.

The Qualified Settlement Fund will be administered by the Claims Administrator Rust Consulting, (hereafter, the "administrator"). The Qualified Settlement Fund will receive the Gross Settlement Sum as set forth in the Settlement Agreement in accordance with its terms, and subject to further approvals of this Court, as required. The Qualified Settlement Fund and its administrator will remain subject to the continuing jurisdiction of this Court until the Qualified Settlement Fund terminates by its terms.

12. Fairness Hearing. On December 21, 2011, at 9:30 a.m., this Court will hold a Fairness Hearing to determine whether the Agreement should be finally approved as fair, reasonable, and adequate. All supporting papers, including the class counsels' request for attorneys' fees and reimbursement of costs, shall be filed no later than 5 days before the Fairness

Hearing. This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, the Parties will not be required to provide additional notice to class members.

DATED: _____

4/6/11

HONORABLE GREGG E. JOHNSON
DISTRICT COURT JUDGE