UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

John Wingo, Plaintiff, vs. 3M Company, Defendant.	File No. 22-cv-993 (WMW-JFD) St. Paul, Minnesota October 13, 2023 9:30 a.m.
Titus Kargbo, Plaintiff, vs. 3M Company, Defendant.	File No. 22-cv-996 (WMW-JFD) St. Paul, Minnesota October 13, 2023 9:30 a.m.
Nevely Randle, Plaintiff, vs. 3M Company, Defendant.	File No. 22-cv-1904 (WMW-JFD) St. Paul, Minnesota October 13, 2023 9:30 a.m.
Robert Rieger, Plaintiff, vs. 3M Company, Defendant.	File No. 22-cv-994 (WMW-JFD) St. Paul, Minnesota October 13, 2023 9:30 a.m.

Desiree Holler, Plaintiff, vs. 3M Company, Defendant.	)	File No. 22-cv-998 (WMW-JFD) St. Paul, Minnesota October 13, 2023 9:30 a.m.
Vaughn Wingo, Plaintiff, vs. 3M Company, Defendant.	)	File No. 22-cv-1890 (WMW-JFD) St. Paul, Minnesota October 13, 2023 9:30 a.m.

BEFORE THE HONORABLE JOHN F. DOCHERTY
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE
(MOTION HEARING)

APPEARANCES

For the Plaintiffs:	McCollum, Crowley, Moschet, Miller & Laak, Ltd. BRIAN J. KLUK, ESQ. JACOB M. TOMCZIK, ESQ. 7900 Xerxes Avenue South Suite 700 Bloomington, Minnesota 55431
For the Defendant:	Nilan Johnson Lewis PA COURTNEY BLANCHARD, ESQ. JOSEPH G. SCHMITT, ESQ. ALIA M. ABDI, ESQ. 250 Marquette Avenue South Suite 800 Minneapolis, Minnesota 55401
Court Reporter:	ERIN D. DROST, RMR-CRR Suite 146 316 North Robert Street St. Paul, Minnesota 55101

Proceedings recorded by mechanical stenography; transcript produced by computer.

P R O C E E D I N G S

IN OPEN COURT

THE COURT: All right. We are here this morning for a hearing in six related cases -- I won't recite all of the individual names -- on plaintiffs' counsel's motion to withdraw under Local Rule 83.7(c), which means it's a motion to withdraw without substitution of new counsel.

Let's begin by learning who is here, beginning with counsel for the plaintiff, please.

MR. KLUK: Good morning, Your Honor. Brian Kluk --

THE COURT: Would you stand, please, sir.

MR. KLUK: Good morning, Your Honor. Brian Kluk on behalf of the plaintiffs.

THE COURT: Good morning.

MR. TOMCZIK: Good morning, Your Honor. Jacob Tomczik on behalf of plaintiffs.

THE COURT: Good morning, Mr. Tomczik.

MR. SCHMITT: Good morning, Your Honor. Joe Schmitt on behalf of defendant 3M.

THE COURT: Good morning.

MS. BLANCHARD: Good morning, Your Honor. Courtney Blanchard on behalf of defendant 3M.

THE COURT: All right. Good morning to both of

you. The motion to withdraw, for reasons I understand, is couched in very vague language, as is the memo in support, as is the declaration of Mr. Kluk.

Mr. Kluk, is there more that you can say at this point?

MR. KLUK: Uh --

THE COURT: Mr. Kluk, it's customary in federal court to either rise or to come to the podium.

MR. KLUK: Pardon me, Your Honor. Not more without an order from the Court due to confidentiality concerns.

THE COURT: All right. Thank you.

Mr. Schmitt, is there anything -- or, Ms. Blanchard, is there anything either of you wish to say at this point over and above what's in the memo that you submitted?

MR. SCHMITT: Yes. I'll come near the microphone for the court reporter's sake.

THE COURT: I appreciate that.

MR. SCHMITT: Just a couple items. As we said in our motion papers, we don't have an updated stake position for or against. But I did want to highlight an issue that has been presented -- well, a couple issues, but one of which was presented by the additional filings under seal. As we said in our letter to the Court, we're not in a

position to evaluate whether those only contain privileged information. Local Rule 5.6 provides for redaction and filing entirely under seal only if redaction is impossible.

I can't assess whether redaction is possible in this case or not. I simply want to note that if there is anything in those materials that is not privileged or that relates to other matters, such as the pending motion to compel, it would be important for 3M to have access to that information so it could address it when it's dealing with those additional issues.

THE COURT: Have you -- you typically filing under seal means that counsel can see them. Have -- I'm -- I'm reading into what you are saying that you have not.

MR. SCHMITT: We have not seen --

THE COURT: Okay.

MR. SCHMITT: -- anything, Your Honor.

THE COURT: All right.

MR. SCHMITT: Right. So -- and -- and I am not saying -- I want to be clear, I'm not saying that's inappropriate.

THE COURT: No. I -- I understand.

MR. SCHMITT: I -- I have -- I don't -- have no idea. I'm just identifying the issue to make certain that as I understand Local Rule 5.6, the appropriate procedure in -- in almost all cases is to file a document that is

redacted and that gives access, but -- but not in this case, and -- and, again, that might be appropriate.

THE COURT: Okay. Let me just address that. These documents were submitted. It -- they were submitted by lay people. Their attorneys had moved to withdraw so it was done without the benefit of counsel. It seemed to me the most appropriate thing to say that they should be filed under temporary seal.

And as far as I'm concerned, this is an issue for later, not much later, but later. The important thing was to get the information in, and we can circle back and see what can be redacted and what can't be redacted and so forth perhaps next week or something like that.

MR. SCHMITT: That's entirely -- that's fine. I -- I simply wanted to highlight the issue for the Court.

And then the other issue I want to highlight, which is not in the nature of an opposition to the motion, it's almost -- I was mulling on the way over here, it's sort of like a Rule 16 conference almost in the sense that if the motion is granted, we're in an odd situation in which counsel and you and I spoke at the beginning of the case and negotiated an arrangement in which discovery can be used in all of the different cases and the documents are all in one cache with the --

THE COURT: Right.

MR. SCHMITT: -- plaintiffs' counsel, and so there are a host of complicated issues that will need to be resolved, particularly if there is, as -- as represented by counsel, now conflicts between the plaintiffs.

I don't actually have a solution to any of that, simply to highlight the issue, that it's something that we'll have to work out if Your Honor does grant the motion, and then it's just something we'll have to address.

THE COURT: Well, there's also the issue of the order at Docket Number 78 which says that if I grant the motion to withdraw, then within 21 days, the parties need to file a stipulated amended scheduling order, and that too is going to be a bit of a challenge, I should suspect.

MR. SCHMITT: I -- I agree, particularly in light of the motion to compel, which will need to be addressed. And I, as I stand before Your Honor, don't know that I could -- it would be very difficult to enter -- agree to a schedule without knowing what's going to happen on the motion to compel because it does create a host of discovery issues and it's -- I -- I don't know what discovery going forward looks like until the motion to compel issues have been resolved. So that --

THE COURT: Right.

MR. SCHMITT: -- creates a problem.

THE COURT: And I don't know what happens with the

motion to compel given that there is no opposition to the motion to compel. There is a motion to withdraw instead.

MR. SCHMITT: Yes. That's absolutely fair.

So, you know, I do want to highlight the fact that our client -- I understand their interest on the other side, but our client also has interests in terms of the impact of -- delaying this litigation has had on 3M. It has resulted in a significant delay; and as we highlighted in our motion papers, plaintiffs have taken the position with the media that it is 3M's fault that there has been a delay, which is compounding the prejudice suffered to 3M.

So we have to do what we have to do, but I want to highlight that for the Court's attention.

THE COURT: All right. Thank you.

MR. SCHMITT: Thank you, Your Honor.

THE COURT: All right. All right. Here's what happens next. I'm going to ask everyone except Mr. Kluk and Mr. Tomczik to step outside, and, gentlemen, we will have a discussion about the motion to withdraw. All right? Thank you.

MR. SCHMITT: Your Honor, is it okay if we leave stuff in the courtroom?

THE COURT: Yes. No one is coming in, so...

(Thereupon, sealed proceedings held between the Court and Mr. Kluk and Mr. Tomczik were omitted from the

transcript.)

THE COURT: All right. For the record, the courtroom has reopened. Defense counsel Mr. Schmitt, Ms. Blanchard, and I believe Ms. Abdi in the gallery have rejoined us. Let me sum up, to the extent that I am able to, what we've been talking about.

Plaintiffs' counsel have, under court order, disclosed information regarding their motion to withdraw. The -- excuse me -- the motion to withdraw is supported by substantial reasons, and it will be granted. However, it will be granted upon the filing of a written order. That is partly because I want to develop a record, but one that is within, of course, the bounds of the attorney-client privilege and respects that privilege.

And also, quite honestly, and I have no -- I'm neither apologetic nor defensive about putting this on the record, upon my grant of this motion, a 21-day clock starts by which the parties must stipulate to a new pretrial scheduling order. And I think it's completely unrealistic to expect that these plaintiffs will have obtained counsel, that counsel will have gotten up to speed, and that counsel will be in a position to enter into discussions with 3M's counsel about a scheduling order.

The motion to compel is, for the moment, in abeyance, and I do not have a response to it. I'm not sure

I'll ever get a response to it, quite honestly, but I'm not prepared to say that today, that there will never be a response, and so until we see how things develop over the coming weeks, the motion is simply held in abeyance.

Mr. Schmitt, I realize that this raises a lot of questions, and, unfortunately, I'm probably not able to answer them, but feel free to ask.

MR. SCHMITT: I'm going to try to confine myself to ones that are directly relevant to the schedule, which is, what if plaintiffs don't find new counsel?

THE COURT: I have thought of that, and I don't have an answer right here and now.

MR. SCHMITT: Okay.

THE COURT: There are options, and we'll see what develops.

MR. SCHMITT: Okay. The motion to compel is granted as to all six cases; correct? So all six plaintiffs are now without counsel?

THE COURT: The motion is granted as to all six cases because although the reasons set forth in the memorandum and the declaration, the professional reasons, the breakdown in relationship and so forth don't apply to all six plaintiffs, there is an adverse relationship between the plaintiffs at this point, which means that Mr. Kluk, Mr. Tomczik cannot represent this one and therefore be

taking a position adverse to a former client. So, unfortunately, the withdrawal motion is granted as to everybody.

MR. SCHMITT: Okay. And, therefore, I am inferring that if new counsel is obtained, there will have to be multiple --

THE COURT: Correct.

MR. SCHMITT: -- counsel for multiple plaintiffs?

THE COURT: Correct.

MR. SCHMITT: Do we have a sense as to this point -- we might not, but I'll ask -- as to whether there are six individual parties or whether there is a split? I'm trying to figure out how many different --

THE COURT: There is a split. There will not be six -- there need not be six individual lawyers, and I think I don't want to go further than that in terms of giving numbers.

MR. SCHMITT: Okay. And then the last question I had is: On the sealing question, did your discussion with counsel shed any light onto whether the materials that were filed under seal with the Court, whether those are able to be unsealed next week or merely redacted next week or --

THE COURT: I think that what we will do is we will broaden the scope of the people who are allowed to see those submissions to include you and other professionals

working with you, such as, Ms. Blanchard, Ms. Abdi, paralegals at Nilan Johnson, but those documents are under seal and are not to be further disclosed. I will also find on the record that for reasons stated when the courtroom was closed, I find that sharing those documents with you and your team does not violate the attorney-client privilege.

MR. SCHMITT: Okay. One slight clarification of that. Is it acceptable for us to share it with in-house counsel at 3M, so attorneys --

THE COURT: No.

MR. SCHMITT: No?

THE COURT: No.

MR. SCHMITT: Just -- just outside counsel? Okay.

THE COURT: Just outside counsel's eyes only.

MR. SCHMITT: Okay. That's -- that's all I have. I appreciate Your Honor's patience as we work through what --

THE COURT: No, it's -- it's a naughty problem, and it's not -- it's not finished yet.

MR. SCHMITT: Okay.

THE COURT: Okay.

MR. SCHMITT: Thank you, Your Honor.

THE COURT: All right.

Mr. Kluk or Mr. Tomczik, is there anything further for today?

MR. KLUK: Your Honor, only the matter of the -- well, some of the plaintiffs had requested to speak.

THE COURT: All right. Good morning to the four of you. You are in a situation where it is alleged that some things that you -- statements you have made, for example, texts on phones and things like that, contradict other statements that you have made, and that some of those statements were made under oath. I understand that there are things you wish to say, but I want you to listen to what I'm about to say before you make a speak or don't speak decision.

I believe that it is extraordinarily unwise for individuals who are alleged to have made false statements to make further statements. If you do, the things you say here this morning could be used as evidence in any further proceedings in this case. I advise you to remain silent, but I cannot force you to remain silent.

I will also tell you that there -- I have reviewed the submissions that were submitted. I do not believe, based on those submissions, based on what I have heard this morning, based on everything I have read that's in the public record, that there is anything you could say that would cause me not to allow your attorneys to withdraw from representing you.

It is, therefore -- I've now, I think, said what I

need to say. If anyone, despite what I have just said, wishes to speak and have their words taken down by the court reporter, they may do so.

MR. WINGO: Your Honor, I would like to --

THE COURT REPORTER: Can you say your name?

THE COURT: Come to the podium, please.

MR. WINGO: Up there?

THE COURT: Come to the podium. What -- what is your name, sir?

MR. WINGO: John Wingo, sir --

THE COURT: All right.

MR. WINGO: -- or, Your Honor.

May I start?

THE COURT: You have the floor.

MR. WINGO: Yes, Your Honor. Thank you. Plaintiffs, I kind of rallied us all from South Dakota when all this was happening to us. And our first representation, our first counsel that represented us didn't treat us right and we're into the correct orders of making that right. But we've been done wrong, and we're all still sticking together.

The plaintiffs are not feuding. Most of that came from the plaintiffs trying to contact the law firm, and the law firm wouldn't get back with the plaintiffs. I was the middleman. So I would call the law firm and then relay to

the plaintiffs. We had no counsel, so it was me rallying to get statements.

It was us -- even after having the first counsel, we went to McCollum, Crowley, because it was so bad. Working with them, Wesley Cornwell for the first eight months of our -- our contract with them, he wasn't even a licensed attorney. So it was -- so we went from a bad situation to thinking that we were in a good situation to working with an attorney who we thought we -- were an attorney who didn't even have a license for the first eight months.

January comes, Brian introduces himself to Nevely. We finally have a meeting. We fly out here to Minnesota, and then we tell them our stories. We tell them the evidence. We tell them how we were treated. We tell them why we were getting documents, why were we documenting things, why were we getting statements from people.

March we're in depositions, full blown. We never had a chance to get with our attorneys, turn things over. We've turned over everything. We have great cases, great testimony, all six plaintiffs.

We're -- we're trying hard. Just getting here today is an honor for us. And the attorney is putting it on us from the jump when none of them -- Jacob and Brian didn't talk to us until January, and then we were in full-blown

depositions in March.

They had Wesley, who they said was a -- and he signed my contract. He signed all of our contracts. They said he was an attorney. He was calling me daily, giving me advice, saying do this. If -- if Nevely couldn't get ahold of you, he would call me and then I would relay the message for the first eight months, and it turns out he's not even an attorney or licensed. We -- we came through a lot and we've been through a lot with the counsel and representation for them to put it on us like that.

We all have great testimony. We all have great evidence. We have not coerced anything. If we get our counsel to represent us and -- and talk about the depositions, we can clear that up, but nothing was coerced because we have backing and evidence to everything that we're talking about.

THE COURT: All right.

MR. WINGO: And if we get a chance, we can show that.

THE COURT: All right. Well, Mr. Wingo, thank you for those remarks.

MR. WINGO: Thank you, Your Honor.

THE COURT: Your efforts to, as you put it, straighten it out will have to be, though, with new counsel.

MR. WINGO: Yes, Your Honor.

THE COURT: Okay?

MR. WINGO: Yes, Your Honor.

THE COURT: Okay. Thank you.

MR. WINGO: Thank you.

THE COURT: All right. Thank you all very much. A written order will follow on the motion to withdraw. The other pieces of this situation will be picked at one at a time over the coming week, two weeks, three weeks, and we will get -- we will get this case back on track. All right? Thank you all very much. Court is adjourned.

MR. KLUK: Thank you, Your Honor.

MR. SCHMITT: Thank you, Your Honor.

(Court adjourned at 10:14 a.m.)

* * *

I, Erin D. Drost, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter to the best of my ability.

Certified by: *s/ Erin D. Drost*

Erin D. Drost, RMR-CRR