
Court of Appeals

Sumitomo Shoji America, Inc. v. Avagliano, 457
US 176 - Supreme Court 1982

6-2-1980

Civil Appeal Pre-Argument Statement

Lewis M. Steel '63

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REC'D JUN - 2 1980

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REC'D JUN - 2 1980

May 29, 1980

Lewis M. Steel, Esq.
Eisner, Levy, Steel & Bellman
351 Broadway
New York, New York 10013

Re: Avigliano v. Sumitomo

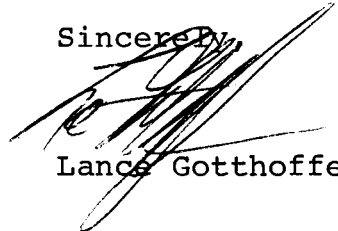
Dear Lew:

Enclosed as requested are copies of the papers we filed with the Court of Appeals in connection with Sumitomo's appeal in the above-captioned matter.

If there is anything else I can provide, please contact me.

Best regards.

Sincerely,



Lance Gotthoffer

LG/mr
enclosure

United States Court of Appeals

SECOND CIRCUIT

CIVIL APPEAL PRE-ARGUMENT STATEMENT

SEE NOTICE ON REVERSE. PLEASE TYPE OR PRINT. ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL:

LISA M. AVIGLIANO, DIANNE CHENICEK, ROSEMARY T. CRISTOFARI, CATHERINE CUMMINS RAELLEN MANDELBAUM, MARIA MANNINA, SHARON MEISELS, FRANCES PACHECO, JOANNE SCHNEIDER JANICE SILBERSTEIN, REIKO TURNER, ELIZABETH WONG,

Plaintiffs,

-against-

SUMITOMO SHOJI AMERICA, INC.,

Defendant.

DISTRICT S.D.N.Y. JUDGE TENNEY

DATE FILED IN DISTRICT COURT 11/21 / 77 DISTRICT COURT DOCKET NUMBER 77 Civ. 5641(C)

APPROX. NUMBER OF PAGES IN TRANSCRIPT - NUMBER OF EXHIBITS - HAS TRANSCRIPT BEEN MADE? YES NO

DATE NOTICE OF APPEAL FILED none / IS THIS A CROSS APPEAL? YES NO

HAS THIS MATTER BEEN BEFORE THIS COURT PREVIOUSLY? YES NO IF YES, STATE:

CASE NAME: CITATION: DOCKET NUMBER:

Table with columns: ATTORNEY(S) FOR: APPELLANT, APPELLEE; NAME; ADDRESS; TELEPHONE. Includes names like WENDER, MURASE & WHITE and LEWIS M. STEEL, ESQ.

Table with columns: A. JURISDICTION, B. DISTRICT COURT DISPOSITION, C. NATURE OF SUIT. Includes sub-sections like I. FEDERAL, 2. APPELLATE, 1. STAGE OF PROCEEDINGS, 2. TYPE OF JUDGMENT/CROSS APPEALED, 3. RELIEF.

Table with columns: 1. FEDERAL STATUTES, 2. TORTS, 3. CONTRACTS, 4. PRISONER PETITIONS, 5. OTHER. Includes categories like ANTITRUST, BANKRUPTCY, CIVIL RIGHTS, COMMERCIAL, EMPLOYMENT, INSURANCE, NEGOTIABLE INSTRUMENTS.

6. GENERAL: () ARBITRATION (X) CLASS ACTION () SHAREHOLDER DERIVATIVE () ATTY. DISQUALIFICATION () COUNSEL FEES () TRANSFER 7. WILL APPEAL RAISE A CONSTITUTIONAL ISSUE () YES (X) NO WILL APPEAL RAISE A MATTER OF FIRST IMPRESSION? (X) YES () NO

BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW: APPENDIX A

ISSUES PROPOSED TO BE RAISED ON APPEAL: (1) Does the Treaty authorize Sumitomo, which is a New York corporation wholly-owned by a Japanese corporate entity, to hire Japanese nationals for executive managerial and specialist positions? (2) Does the hiring of Japanese nationals for such key positions pursuant to the Treaty violate Title VII?

TO YOUR KNOWLEDGE, IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT OR ANY OTHER COURT OR ADMINISTRATIVE AGENCY WHICH: (A) ARISES FROM SUBSTANTIALLY THE SAME CASE OR CONTROVERSY AS THIS APPEAL? YES NO (B) INVOLVES AN ISSUE THAT IS SUBSTANTIALLY THE SAME, SIMILAR, OR RELATED TO AN ISSUE IN THIS APPEAL? YES NO

IF YES, STATE WHETHER "A" OR "B" OR BOTH, AND PROVIDE: CASE NAME: SEE APPENDIX B CITATION: DOCKET NUMBER: COURT OR AGENCY:

FOR APPELLANT: Print Sumitomo Shoji America, Inc. Wender, Murase & White (212) 832-3333 NAME OF APPELLANT NAME OF COUNSEL OF RECORD TELEPHONE

APPENDIX A

BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW

Plaintiffs are present and former employees of defendant Sumitomo Shoji America, Inc. ("Sumitomo"). Plaintiffs are all female, and except for one resident alien, are all United States citizens. They bring this putative nationwide class action for monetary damages and injunctive relief alleging that Sumitomo hires male Japanese nationals for executive, managerial and sales positions and that such practice violates Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e et seq.) and 42 U.S.C. §1981. Sumitomo denies these allegations and asserts affirmative defenses including that the hiring of Japanese nationals to fill key positions is authorized pursuant to the 1953 Treaty of Friendship Commerce and Navigation between the United States and Japan, 4 U.S.T. 2063, T.I.A.S. 2863 (the Treaty) and complementary provisions of the Immigration and Nationality Act, 8 U.S.C. §1101 et seq.

Sumitomo moved the District Court for an order dismissing the complaint pursuant to Rule 12(b)(6) Fed. R. Civ. P. on the bases that such hiring practice is protected by the Treaty and that the complaint otherwise fails to state a claim. Opposition papers were filed by plaintiffs and by the United States Equal Employment Opportunity Commission as amicus curiae.

By opinion and order dated June 5, 1979, the District Court, Tenney, J., granted Sumitomo's motion insofar as it sought dismissal of plaintiffs' 42 U.S.C. §1981 claims, and denied Sumitomo's motion insofar as it sought dismissal of

plaintiffs' Title VII claims. By opinion and order dated August 9, 1979 the District Court acting pursuant to 28 U.S.C. §1292(b) certified for appeal the question of the relationship of the treaty to Title VII. By opinion and order dated November 29, 1979 the District Court reconsidered Sumitomo's motion on the basis of new evidence obtained from the United States Department of State and again denied Sumitomo's motion insofar as it sought dismissal of plaintiffs' Title VII claims, and at the same time, amended its August 9, 1979 opinion and order granting certification for appeal.

APPENDIX B

PENDING CASES WHICH INVOLVE AN ISSUE THAT IS SUBSTANTIALLY
THE SAME, SIMILAR OR RELATED TO AN ISSUE IN THIS APPEAL

<u>CAPTION</u>	<u>CITATION</u>	<u>DOCKET NO.</u>	<u>COURT</u>
<u>Speiss v. C. Itoh & Co. (America) Inc.,</u>	469 F. Supp. 1	79-2382	5th Cir.
<u>Linskey v. Heidelberg Eastern, Inc.,</u>	470 F. Supp. 1181	77 C 833	E.D.N.Y
<u>Rossi v. Brown,</u>	467 F. Supp. 960	79-1485	D.C. Cir.

United States Court of Appeals

SECOND CIRCUIT

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SEE NOTICE ON REVERSE. PLEASE TYPE OR PRINT. ATTACH ADDITIONAL PAGES IF NECESSARY.

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ATTORNEY(S) FOR:	NAME	ADDRESS	TELEPHONE
APPELLANT: <input type="checkbox"/> PLAINTIFF <input checked="" type="checkbox"/> DEFENDANT <input type="checkbox"/> OTHER (SPECIFY):	WENDER, MURASE & WHITE	400 Park Avenue New York, New York 10022	(212) 832-3333
APPELLEE: <input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT <input type="checkbox"/> OTHER (SPECIFY):	LEWIS M. STEEL, ESQ. EISNER, LEVY, STEEL & BELLMAN, P.C.	351 Broadway New York, New York 10013	(212) 966-9620

A. JURISDICTION		B. DISTRICT COURT DISPOSITION Check as many as apply.		
1. FEDERAL	2. APPELLATE	1. STAGE OF PROCEEDINGS	2. TYPE OF JUDGMENT/ORDER APPEALED	3. RELIEF
<input type="checkbox"/> U.S. A PARTY <input checked="" type="checkbox"/> FEDERAL QUESTION (U.S. NOT A PARTY) <input type="checkbox"/> DIVERSITY <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> FINAL DECISION OF DISTRICT COURT <input type="checkbox"/> INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT <input checked="" type="checkbox"/> INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY): TENNEY <input type="checkbox"/> OTHER (SPECIFY):	<input checked="" type="checkbox"/> PRE-TRIAL <input type="checkbox"/> DURING TRIAL <input type="checkbox"/> AFTER TRIAL	<input type="checkbox"/> DEFAULT JUDGMENT <input type="checkbox"/> DISMISSAL/JURISDICTION <input type="checkbox"/> DISMISSAL/MERITS <input type="checkbox"/> SUMMARY JUDGMENT <input type="checkbox"/> DECLARATORY JUDGMENT <input checked="" type="checkbox"/> OTHER (SPECIFY): DENIAL OF MOTION TO DISMISS FOR FAILURE TO	<input type="checkbox"/> JUDGMENT/COURT DECISION <input type="checkbox"/> JUDGMENT/JURY VERDICT <input type="checkbox"/> JUDGMENT NOV <input type="checkbox"/> DIRECTED VERDICT <input type="checkbox"/> DAMAGES: AMOUNT SOUGHT: \$ _____ AMOUNT () GRANTED: () DENIED: \$ _____ <input type="checkbox"/> INJUNCTIONS: <input type="checkbox"/> PRELIMINARY OR () PERMANENT () GRANTED OR () DENIED

C. NATURE OF SUIT STATE A CLAIM Check as many as apply.					
1. FEDERAL STATUTES	2. TORTS	3. CONTRACTS	4. PRISONER PETITIONS	5. OTHER	
<input type="checkbox"/> ANTITRUST <input type="checkbox"/> BANKRUPTCY <input type="checkbox"/> BANKS AND BANKING <input checked="" type="checkbox"/> CIVIL RIGHTS <input type="checkbox"/> COMMERCE, ROUTES, AND TARIFFS <input type="checkbox"/> COMMODITIES <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> COMMUNICATIONS <input type="checkbox"/> CONSUMER PROTECTION <input type="checkbox"/> COPYRIGHT () PATENT OR () TRADEMARK <input type="checkbox"/> ELECTION <input type="checkbox"/> ENERGY <input type="checkbox"/> ENVIRONMENTAL <input type="checkbox"/> FREEDOM OF INFORMATION <input checked="" type="checkbox"/> IMMIGRATION <input type="checkbox"/> LABOR <input type="checkbox"/> OSHA <input type="checkbox"/> SECURITIES <input type="checkbox"/> SOC. SECURITY <input type="checkbox"/> TAX	<input type="checkbox"/> ADMIRALTY/MARITIME <input type="checkbox"/> ASSAULT/DEFAMATION <input type="checkbox"/> F.E.L.A. <input type="checkbox"/> PRODUCT LIABILITY/WARRANTY <input type="checkbox"/> OTHER	<input type="checkbox"/> ADMIRALTY/MARITIME <input type="checkbox"/> ARBITRATION <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> EMPLOYMENT <input type="checkbox"/> INSURANCE <input type="checkbox"/> NEGOTIABLE INSTRUMENTS <input type="checkbox"/> OTHER	<input type="checkbox"/> CIVIL RIGHTS <input type="checkbox"/> HABEAS CORPUS (2254) <input type="checkbox"/> MANDAMUS AND OTHER <input type="checkbox"/> PAROLE <input type="checkbox"/> VACATE SENTENCE (2255)	<input type="checkbox"/> FORFEITURE/PENALTY <input type="checkbox"/> REAL PROPERTY <input checked="" type="checkbox"/> TREATY (SPECIFY): U.S.T. 2063 <input type="checkbox"/> OTHER (SPECIFY):

6. GENERAL: <input type="checkbox"/> ARBITRATION <input checked="" type="checkbox"/> CLASS ACTION <input type="checkbox"/> SHAREHOLDER DERIVATIVE <input type="checkbox"/> ATTY. DISQUALIFICATION <input type="checkbox"/> COUNSEL FEES <input type="checkbox"/> TRANSFER	7. WILL APPEAL RAISE A CONSTITUTIONAL ISSUE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO WILL APPEAL RAISE A MATTER OF FIRST IMPRESSION? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
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FOR APPELLANT:

Print Sumitomo Shoji America, Inc. NAME OF APPELLANT	Wender, Murase & White NAME OF COUNSEL OF RECORD	(212) 832-3333 TELEPHONE
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May 28, 1980

J. Pratis Huls (rec'd)

APPENDIX A

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