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Incherchera v. Sumitomo

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

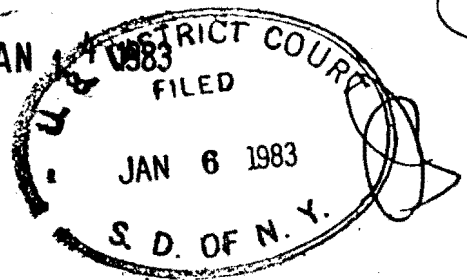
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2-6-1983

## Court Notice of Reassignment to Judge Tenney

Lewis M. Steel '63

RECEIVED JAN 4 1983



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
Palma Incherchera

v

Sumitomo Corp of America  
-----X

82 Civ 4930 CHT

-----  
Docket number

NOTICE OF  
REASSIGNMENT

Pursuant to the memorandum of the Case Processing Asst.  
the above entitled action is reassigned to the calendar of

JUDGE \_ \_ \_ Charles H. Tenney \_ \_ \_

All future documents submitted in this action are to be  
presented in the Clerk's Office for filing and shall bear the  
assigned judge's initials after the docket number.

Dated: 1/6/83

Raymond F. Burghardt, Clerk

By: J. Beale  
Deputy Clerk

cc: Attorneys of Record

Steel & Bellman  
Wender Murase & White

MEMORANDUM

TO : Incherchera v. Sumitomo File  
FROM: LMS  
DATE: 12/10/82  
RE : Conference Before Judge Sweet on 12/7/82

Don Carmody attended for Sumitomo; RFB and LMS for Incherchera.

1. Consolidation. Judge Sweet indicated that he saw no reason why the case should not be consolidated. He asked for counsel's views, and both sides agreed the case should be consolidated. Judge Sweet said he would try to work it out with Judge Tenney and if Tenney did not want the Incherchera case, he would review the matter with the Judges' Committee re assignments.

2. Discovery. I attempted to see if the judge would help us move along discovery, pointing out that my client had submitted to four days of depositions and the defendant had not yet answered interrogatories and had failed to give us certain basic information regarding the national class action issue. Carmody attempted to contend that there were no issues for the judge to consider because we were still negotiating discovery questions. I pointed out that as to the national class issue, Carmody's position had been firm and we were entitled to some direction that we should get national data. The judge responded by saying he assumed we would be entitled to this but did not want to get into a posture of involving himself in this case given the consolidation posture.

LMS:PC

BURTON Z. ALTER  
GREYSON BRYAN  
DON T. CARMODY  
JONATHAN H. CHURCHILL  
PETER A. DANKIN  
DOUGLAS J. DANZIG  
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JOHN B. WADE III  
PHILIP WERNER  
JOHN TOWER WHITE  
IRA T. WENDER  
COUNSEL  
\*(NOT ADMITTED IN NEW YORK)

WENDER MURASE & WHITE  
ATTORNEYS AT LAW  
400 PARK AVENUE  
NEW YORK, NEW YORK 10022  
(212) 832-3333  
CABLE WEMULAW  
DOMESTIC TELEX 125476  
INTERNATIONAL TELEX 220478 or 236562  
TELECOPIER (212) 752-5378

PARTNERS RESIDENT IN  
LOS ANGELES  
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PARIS  
ROME  
STOCKHOLM  
TOKYO  
TORONTO

December 3, 1982

Lewis M. Steel, Esq.  
STEEL & BELLMAN, P.C.  
351 Broadway  
New York, New York 10013

RE: Palma Incherchera v.  
Sumitomo Corp. of America

Dear Lew:

In furtherance of our recent telephone conversations of November 24 and 29, and December 2, this is to confirm our meeting scheduled for next Monday, at 4:00 p.m., in your office, and to affirm certain information which I provided you during those conversations in response to "Plaintiff's First Interrogatories and Request for Production of Documents". Also, this is further to submit the enclosed additional information, and to provide you in writing with a written affirmation of the defendant's position on certain discovery matters, as I stated our position to you during our telephone conversations.

As you know, after being advised by you on Monday, November 22, that Judge Sweet had scheduled a conference for Tuesday, November 30, I suggested that, in light of the fact that the defendant would need additional time within which to fully reply to the Interrogatories, and in view of the fact that several disagreements surfaced during the plaintiff's deposition as to the permissible scope of discovery, we raise these points before the Judge during the conference and attempt to define a time-table for these discovery matters.

Lewis M. Steel, Esq.

-2-

December 3, 1982

We agreed to proceed as suggested, although you requested that I provide you, in advance of the Judge's conference, with information sought by the Interrogatories pertaining to the change in the corporate name of the defendant, and provide you with copies of the EEO-1 reports sought by the Interrogatories.

During our conversation on November 29, I advised you that the change in the corporate name of the defendant occurred in 1978 - the exact date was June 1, 1978 - and constituted a change in the corporate name only, such that the employment of employees by the defendant was unaffected in the manner inquired about.

As concerns your request for EEO-1 reports, enclosed as promised, are copies of these reports for the years 1981 and 1982.

As I explained, the defendant objects to furnishing EEO-1 reports for the years prior to 1981, and to furnishing such information or documents for its branch offices. The defendant objects to furnishing such information for the period prior to 1981 because even if the defendant were adjudged liable to the plaintiff for any of the acts or conduct alleged in the complaint, back pay, if any, would by applicable law be limited to a period of two years prior to commencement of this action. Prior to determination by the Court whether this action may be maintained as a class action, the information requested, insofar as it encompasses branch offices, does not appear to be reasonably calculated to lead to admissible evidence.

As you also are aware, I informed you that it is the defendant's position that some of the information sought by the Interrogatories relates to the issue of "class certification", as opposed to the merits of the litigation. Consequently, given the various problems with which the defendant is confronted in responding to your request for such information - for example, that the information cannot be retrieved without undue burden to the defendant, that the information is not verifiable by the defendant, that the information does not appear reasonably calculated to lead to the discovery of admissible evidence, and that the information is confidential - the defendant is unwilling, in the absence of a direction by the Court, to provide, at this time, this information.

Lewis M. Steel, Esq.

-3-

December 3, 1982

Of course, the extent to which we disagree concerning what information would be appropriate to provide at this time is the subject about which we are scheduled to meet in your office next Monday, in the hope that we can narrow our points of disagreement prior to attending the conference presently scheduled before Judge Sweet for the following day.

Lastly, with regard to your request that I ascertain, in order to allow you to conduct a deposition to support your Motion, the name(s) of the official(s) who could testify with regard to the personnel policies of the defendant throughout the United States, as I suggested during our conversation of December 2, it would seem advisable for you to issue a Notice of Deposition under F. R. Civ. P. 30(b)(6), in order that, in designating the appropriate person or persons, we can avoid any unnecessary misunderstanding.

I look forward to meeting with you next Monday.

Very truly yours,

WENDER MURASE & WHITE

  
Don T. Carmody

DTC:amr  
Enclosure

# EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER INFORMATION REPORT EEO-1

Joint Reporting  
Committee

FSN=14887000

2 OF 6

MSN=90118696

U=6102315

CO=6102315

E.I.=1356121636

S=3

SIC=509

36

061

MC=00000

- Equal Employment Opportunity Commission
- Office of Federal Contract Compliance Programs

RETURN COMPLETED REPORT

BY MAY 31, 1981 TO:

THE JOINT REPORTING COMMITTEE

P.O. BOX 1480

ARLINGTON, VA

22210

PHONE: (703) 841-9620

SUMITOMO SHOJI AMERICA INC  
345 PARK AVE  
NEW YORK

NY 10154  
~~XXXXX~~

1981 USE THIS FORM FOR YOUR HEADQUARTERS REPORT.

## Section A—TYPE OF REPORT

Refer to instructions for number and types of reports to be filed.

1. Indicate by marking in the appropriate box the type of reporting unit for which this copy of the form is submitted (MARK ONLY ONE BOX).

(1) ☐ Single-establishment Employer Report

Multi-establishment Employer:

(2) ☐ Consolidated Report

(3) ☒ Headquarters Unit Report

(4) ☐ Individual Establishment Report (submit one for each establishment with 25 or more employees)

(5) ☐ Special Report

2. Total number of reports being filed by this Company (Answer on Consolidated Report only)

## Section B—COMPANY IDENTIFICATION (To be answered by all employers)

OFFICE  
USE  
ONLY

### 1. Parent Company

a. Name of parent company (owns or controls establishment in item 2) omit if same as label

a.

Name of receiving office

Address (Number and street)

b.

City or town

County

State

ZIP code

b. Employer Identification No.

2. Establishment for which this report is filed. (Omit if same as label)

a. Name of establishment

c.

Address (Number and street)

City or town

County

State

ZIP code

d.

b. Employer Identification No.

(If same as label, skip.)

### 3. Parent company affiliation

(Multi-establishment Employers:  
Answer on Consolidated Report only)

a. Name of parent—affiliated company

b. Employer Identification No.

Address (Number and street)

City or town

County

State

ZIP code

## Section C—EMPLOYERS WHO ARE REQUIRED TO FILE (To be answered by all employers)

- ☐ Yes ☐ No 1. Does the entire company have at least 100 employees in the payroll period for which you are reporting?
- ☐ Yes ☐ No 2. Is your company affiliated through common ownership and/or centralized management with other entities in an enterprise with a total employment of 100 or more?
- ☐ Yes ☐ No 3. Does the company or any of its establishments (a) have 50 or more employees AND (b) is not exempt as provided by 41 CFR 60-1.5, AND either (1) is a prime government contractor or first-tier subcontractor, and has a contract, subcontract, or purchase order amounting to \$50,000 or more, or (2) serves as a depository of Government funds in any amount or is a financial institution which is an issuing and paying agent for U.S. Savings Bonds and Savings Notes?

NOTE: If the answer is yes to ANY of these questions, complete the entire form; otherwise skip to Section G.

## Section D—EMPLOYMENT DATA

Employment at this establishment--Report all permanent, temporary, or part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zeros.

6102315 CO-6102315

SUMITOMO SHOJI AMERICA INC

2 OF 6

JOB CATEGORIES	NUMBER OF EMPLOYEES										
	OVERALL TOTALS (SUM OF COL B THRU K)	MALE					FEMALE				
		WHITE (NOT OF HISPANIC ORIGIN)	BLACK (NOT OF HISPANIC ORIGIN)	HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	WHITE (NOT OF HISPANIC ORIGIN)	BLACK (NOT OF HISPANIC ORIGIN)	HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE
Officials and Managers	31	13			7		8		1	2	
Professionals											
Technicians	2	1		1							
Sales Workers	2	2									
Office and Clerical	78	7			1		52	3	7	8	
Craft Workers (Skilled)											
Operatives (Semi-Skilled)	2	2									
Laborers (Unskilled)											
Service Workers											
<b>TOTAL</b>	<b>115</b>	<b>25</b>		<b>1</b>	<b>8</b>		<b>60</b>	<b>3</b>	<b>8</b>	<b>10</b>	
Total employment reported in previous EEO-1 report	135	27		6	8		67	4	12	11	

(The trainees below should also be included in the figures for the appropriate occupational categories above)

Formal On-the-job trainees	White collar										
	Production										

1. NOTE: On consolidated report, skip questions 2-5 and Section E.

2. How was information as to race or ethnic group in Section D obtained?

1 ☐ Visual Survey

3 ☐ Other—Specify .....

2 ☐ Employment Record

3. Dates of payroll period used--

4. Pay period of last report submitted for this establishment

5. Does this establishment employ apprentices?

This year? 1 ☐ Yes 2 ☐ No

Last year? 1 ☐ Yes 2 ☐ No

## Section E—ESTABLISHMENT INFORMATION

1. Is the location of the establishment the same as that reported last year? 1 <input type="checkbox"/> Yes 2 <input type="checkbox"/> No 3 <input type="checkbox"/> Did not report last year 4. <input type="checkbox"/> Reported on combined basis	2. Is the major business activity at this establishment the same as that reported last year? 1 <input type="checkbox"/> Yes 2 <input type="checkbox"/> No 3 <input type="checkbox"/> No report last year 4. <input type="checkbox"/> Reported on combined basis	OFFICE USE ONLY
3. What is the major activity of this establishment? (Be specific, i.e., manufacturing steel castings, retail grocer, wholesale plumbing supplies, title insurance, etc. Include the specific type of product or type of service provided, as well as the principal business or industrial activity.)		e.

## Section F—REMARKS

Use this item to give any identification data appearing on last report which differs from that given above, explain major changes in composition or reporting units, and other pertinent information.

## Section G—CERTIFICATION (See instructions G)

- Check one
1. ☐ All reports are accurate and were prepared in accordance with the instructions (check on consolidated only)
2. ☐ This report is accurate and was prepared in accordance with the instructions.

Name of Certifying Official	Title	Signature	Date
Name of person to contact regarding this report (Type or print)	Address (Number and street)		
Title	City and State	ZIP code	Telephone Area Code Number Extension



# EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER INFORMATION REPORT EEO-1

Joint Reporting  
Committee

\*\*\*\*\*  
FSN=17127500  
U=6102315  
S=3 SIC=509

2 OF 6  
CO=6102315 E.I.=1356121630  
36 001

MSN=90148629  
MC=000000

- Equal Employment Opportunity Commission
- Office of Federal Contract Compliance Programs

RETURN COMPLETED REPORT

SUMITOMO SHOJI AMERICA INC  
345 PARK AVE  
NEW YORK

NY 10154

THE JOINT REPORTING COMMITTEE  
P.O. BOX 1430  
ARLINGTON, VA 22210  
PHONE: (703) 841-9620

1982 USE THIS FORM FOR YOUR HEADQUARTERS REPORT.

## Section A - TYPE OF REPORT

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(3) ☒ Headquarters Unit Report

(4) ☐ Individual Establishment Report (submit one for each establishment with 25 or more employees)

(5) ☐ Special Report

2. Total number of reports being filed by this Company (Answer on Consolidated Report only)

## Section B - COMPANY IDENTIFICATION (To be answered by all employers)

OFFICE  
USE  
ONLY

1. Parent Company

a. Name of parent company (owns or controls establishment in item 2) omit if same as label

Name of receiving office

Address (Number and street)

City or town

County

State

ZIP code

b. Employer Identification No.

2. Establishment for which this report is filed. (Omit if same as label)

a. Name of establishment

Address (Number and street)

City or town

County

State

ZIP code

b. Employer Identification No.

(If same as label, skip)

3. Parent company affiliation

( Multi-establishment Employers  
Answer on Consolidated Report only )

a. Name of parent-affiliated company

b. Employer Identification No.

Address (Number and street)

City or town

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## Section C - EMPLOYERS WHO ARE REQUIRED TO FILE (To be answered by all employers)

☐ Yes ☐ No 1. Does the entire company have at least 100 employees in the payroll period for which you are reporting?

☐ Yes ☐ No 2. Is your company affiliated through common ownership and/or centralized management with other entities in an enterprise with a total employment of 100 or more?

☐ Yes ☐ No 3. Does the company or any of its establishments (a) have 50 or more employees AND (b) is not exempt as provided by 41 CFR 60-1.5, AND either (1) is a prime government contractor or first-tier subcontractor, and has a contract, subcontract, or purchase order for \$50,000 or more, or (2) serves as a depository of Government funds in any amount or is a financial institution which is an issuing and paying agent for U.S. Savings Bonds and Savings Notes?

NOTE: If the answer is yes to ANY of these questions, complete the entire form, otherwise skip to Section G.

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00-102315 CO=6102315

SUMITOMO SHoji AMERICA INC

JOB CATEGORIES	NUMBER OF EMPLOYEES										
	OVERALL TOTALS (SUM OF COL B THRU K)	MALE					FEMALE				
		WHITE (NOT OF HISPANIC ORIGIN)	BLACK (NOT OF HISPANIC ORIGIN)	HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	WHITE (NOT OF HISPANIC ORIGIN)	BLACK (NOT OF HISPANIC ORIGIN)	HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE
Officials and Managers											
Professionals	28	11			7		8			2	
Technicians	3	2			1						
Sales Workers	2	1		1							
Office and Clerical	3	3									
Craft Workers (Skilled)	84	6		1	3		54	4	9	7	
Operatives (Semi-Skilled)											
Laborers (Unskilled)	2	2									
Service Workers											
<b>TOTAL</b>											
	122	25		2	11		62	4	9	9	
Total employment reported in previous EEO-1 report	115	25		1	8		60	3	8	10	

(The trainees below should also be included in the figures for the appropriate occupational categories above)

Formal On-the-job trainees	White collar										
	Production										

1. NOTE: On consolidated report, skip questions 2-5 and Section E  
2. How was information as to race or ethnic group in Section D obtained?

- 1 ☐ Visual Survey  
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- 3 ☐ Other—Specify .....

3. Dates of payroll period used -

4. Pay period of last report submitted for this establishment?

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This year? 1 ☐ Yes 2 ☐ No

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1. Is the location of the establishment the same as that reported last year? 1 <input type="checkbox"/> Yes 2 <input type="checkbox"/> No 3. <input type="checkbox"/> Did not report last year. 4. <input type="checkbox"/> Reported on combined basis.	2. Is the major business activity at this establishment the same as that reported last year? 1 <input type="checkbox"/> Yes 2 <input type="checkbox"/> No 3. <input type="checkbox"/> No report last year 4. <input type="checkbox"/> Reported on combined basis.	OFFICE USE ONLY
3. What is the major activity of this establishment? (Be specific, i.e., manufacturing steel castings, retail grocer, wholesale plumbing supplies, title insurance, etc. Include the specific type of product or type of service provided, as well as the principal business or industrial activity.		e.

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- Check one 1 ☐ All reports are accurate and were prepared in accordance with the instructions (check on consolidated only)  
2 ☐ This report is accurate and was prepared in accordance with the instructions.

Name of Certifying Official	Title	Signature	Date
Name of person to contact regarding this report (Type or print)	Address (Number and street)		
Title	City and State	ZIP code	Telephone Area Code Number Extension

All reports and information obtained from individual reports will be kept confidential as required by Section 709 (e) of Title VII.  
WILLFULLY FALSE STATEMENTS ON THIS REPORT ARE PUNISHABLE BY LAW, U.S. CODE, TITLE 18, SECTION 1001

MEMORANDUM

TO : Incherchera File

FROM: LMS

DATE: 12/2/82

RE : Answers to Our Interrogatories

Don Carmody called today to tell me he had a brief due in federal court in Washington by Monday and therefore did not have time to deal with questions raised by our interrogatories. He did say he would send down to me today two years' worth of EEO-1 forms for the New York office. I asked him for EEO-1 forms from offices nationally and he declined to give them to me, saying that Sumitomo would take the position that we were not entitled. I told Carmody I would appreciate this in a letter.

Carmody also indicated to me that I would get something in writing from Sumitomo indicating that merely a name change was involved with regard to the two corporate names.

The earliest date Carmody could give me to discuss further answers to interrogatories was Monday in the late afternoon. We therefore scheduled a meeting for 4 p.m. in my office.

LMS:PC

RECEIVED DEC 03 1982

BURTON Z. ALTER  
GREYSON BRYAN  
DON T. CARMODY  
JONATHAN H. CHURCHILL  
PETER A. DANKIN  
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IRA T. WENDER  
COUNSEL  
\*NOT ADMITTED IN NEW YORK

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TOKYO  
TORONTO

December 1, 1982

Lewis M. Steel, Esq.  
STEEL & BELLMAN, P.C.  
351 Broadway  
New York, New York 10013

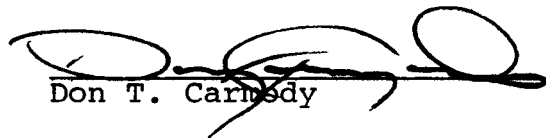
RE: Incherchera v. Sumitomo  
Corp. of America

Dear Lew:

Enclosed are copies of the Transcript of the third and fourth days of Deposition of the Plaintiff in the above-captioned matter, conducted on November 9 and 10, 1982.

Very truly yours,

WENDER MURASE & WHITE

  
Don T. Carmody

DTC:amr  
Enclosure

MEMORANDUM

TO : Incherchera File

FROM: LMS

DATE: 11/24/82

RE :

Don Carmody called to speak to me with regard to two separate concerns.

Interrogatories. DC said that his firm would not be able to answer or object to all interrogatories timely but could supply me with certain answers containing basic information along the lines of the Avigliano answers by Monday. I told DC that I did want full answers. He suggested we attempt to get a schedule from the Judge at the Tuesday conference. I said that that was satisfactory as long as he did provide me with certain answers by Monday. I stressed that I needed national statistics, which I assume he could provide through the use of EEO-1's, as we were seeking to designate a national class. DC, who was out of the office, said that he would get back to me on Monday on this.

Consolidation. DC said that more than likely he would tell the Judge on Tuesday that if we wished to seek consolidation, defendant thought we should do so by an appropriate motion rather than by letter. He said we might receive a letter to this effect on Monday.

LMS:PC

BURTON Z. ALTER  
 GREYSON BRYAN  
 DON T. CARMODY  
 JONATHAN H. CHURCHILL  
 PETER A. DANKIN  
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 IRA T. WENDER  
 COUNSEL  
 \*NOT ADMITTED IN NEW YORK

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PARTNERS RESIDENT IN  
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 MILAN  
 MONTREAL  
 PARIS  
 ROME  
 STOCKHOLM  
 TOKYO  
 TORONTO

November 24, 1982

Lewis M. Steel, Esq.  
 STEEL & BELLMAN, P.C.  
 351 Broadway  
 New York, New York 10013

Re: Incherchera v. Sumitomo  
 Corp. of America

Dear Lew:

Enclosed is a copy of the Transcript of the second day of deposition of the Plaintiff in the above-captioned matter, conducted on November 5, 1982.

Very truly yours,

WENDER MURASE & WHITE

*Carmen M. Di Rienzo*  
 Carmen DiRienzo

CD:rw  
 Enclosure

BURTON Z. ALTER  
GREYSON BRYAN  
DON T. CARMODY  
JONATHAN H. CHURCHILL  
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JOHN C. ROSENGREN  
ROGER L. SELFE  
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November 22, 1982

Lewis M. Steel, Esq.  
STEEL & BELLMAN, P.C.  
351 Broadway  
New York, New York 10013


RE: Incherchera v. Sumitomo  
Corp. of America

Dear Lew:

Enclosed is a copy of the Transcript of the first  
day of deposition of the Plaintiff in the above-captioned  
matter, conducted on November 4, 1982.

Very truly yours,

WENDER MURASE & WHITE

  
Don T. Carmody

DTC:amr  
Enclosure

BY HAND

**STEEL & BELLMAN, P.C.**

Attorneys at Law

351 Broadway, New York, New York 10013

(212) 925-7400

Richard F. Bellman  
Lewis M. Steel

BY HAND

November 19, 1982

Hon. Robert W. Sweet  
United States District Court  
United States Courthouse  
Foley Square  
New York, New York 10007

Re: Incherchera v. Sumitomo Corp. of America  
Civ. No. 82-4930 (RWS) and  
Avigliano v. Sumitomo Shoji America, Inc.  
77 Civ. 5641 (CHT)

Dear Judge Sweet:

I have been informed that Your Honor has scheduled the Incherchera matter for conference on November 30 at 4:45 p.m. in Room 302. After receiving this communication, I was in touch with your law clerk, Mr. Bourque, to inform him that I believe that this matter should be consolidated with the Avigliano case referred to above. Mr. Bourque indicated that it would be appropriate for me to make this request by letter and to outline the reasons why it is being made.

The Avigliano case, which is presently pending before Judge Tenney, the mandate of the Second Circuit having issued on or about November 18, 1982, was filed in 1977. Twelve women, all clerical employees, filed that matter as a class action against Sumitomo. The allegations in that complaint are similar to the allegations contained in the case before you. I enclose a copy of the Avigliano complaint for your records. The only substantive change in this case is that under the Second Cause of Action it is alleged that the discrimination which the defendant is engaging in is based on national origin and race, whereas the Second Cause of Action in the Avigliano case was brought on the basis of "nationality."\*/The Incherchera complaint was modified because we believe that the brief for the United States as amicus curiae to the United States Supreme Court in the Avigliano matter correctly stated what plaintiffs may be able to prove in order to prevail. The Solicitor General in the United States brief stated:

Among other things, respondents might be able to

\*/ "Nationality" and "national origin" are used interchangeably.  
See Griggs v. Duke Power Co., 401 U.S. 424, 436 (1971)



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show that Sumitomo waived its citizenship requirement for American citizens of Japanese national origin and that the citizenship requirement therefore is being used as a pretext for national origin discrimination. Espinoza [v. Farah Mfg. Co.], 414 U.S. 86 at 92. Even without such evidence, respondents might be able to show that a Japanese citizenship requirement has the effect of selecting employees on the basis of national origin. Such a requirement would then violate Title VII unless Sumitomo could show as a factual matter that it is job-related (id. at 92-93; Griggs v. Duke Power Co., 401 U.S. 424 (1971)) or unless Title VIII(1) of the Treaty is construed to constitute a legislative-type validation of the job-relatedness of the citizenship requirement for the particular positions involved. . . . In addition, although respondents did not so allege in their complaint, because the population of Japan is racially homogeneous, it may be that a Japanese citizenship requirement would have the purpose or effect of discriminating on the basis of race by favoring Orientals over others.  
United States Brief at 7, fn. 4.

There are additional reasons why the two above cases should be consolidated which emerged at the deposition of the plaintiff, which has been taken by defendant since the class action certification motion was filed before Your Honor. Ms. Incherchera testified at that deposition that she has been employed by Sumitomo since 1972, that the name change from Sumitomo Shoji America, Inc. to Sumitomo Corp. of America took place while she was an employee and that as far as she knows nothing else was involved but a change of name, and that she regards herself as a member of the Avigliano class. She also stated that she regards the Avigliano plaintiffs as members of the class she seeks to represent.

It should be noted that a class has not been certified to date in the Avigliano matter, as the defendant filed its motion to dismiss in that case prior to the filing of a class certification motion. Counsel, of course, intends to seek class certification in that case, and there can be no claim that such a motion would now be untimely.

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I further note, as I pointed out to Your Honor in answer to a question which you asked on October 15 when the class certification motion was pending before you, intervention was not sought when the Incherchera case was filed, as the Avigliano case was not in this Court at the time. Therefore, a new action had to be commenced.

I am taking the liberty of sending a copy of this letter to Judge Tenney. I am, of course, also sending a copy of this letter to Wender Murase & White, which is attorney for the defendant in both cases.

Respectfully yours,

STEEL & BELLMAN, P.C.

by

  
LEWIS M. STEEL

Attorneys for Plaintiffs in both  
the Avigliano and Incherchera cases

LMS:PC

Enclosure

cc: Hon. Charles H. Tenney  
Don Carmody, Esq.  
Wender Murase & White