
Incherchera v. Sumitomo

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

10-1982

First Interrogatories

Lewis M. Steel '63

NOTICE OF ENTRY

Sir:-Please take notice that the within is a (certified)
true copy of a
duly entered in the office of the clerk of the within
named court on 19

Dated,

Yours, etc.,

STEEL & BELLMAN, P.C.

Attorneys for

Office and Post Office Address

**351 Broadway
NEW YORK, N. Y. 10013**

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:-Please take notice that an order

of which the within is a true copy will be presented
for settlement to the Hon.

one of the judges of the within named Court, at

on

19

M.

Dated,

Yours, etc.,

STEEL & BELLMAN, P.C.

Attorneys for

Office and Post Office Address

**351 Broadway
NEW YORK, N. Y. 10013**

To

Attorney(s) for

Civ.

~~Index~~ No. 82-4930 (RWS)

Year 19

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**PALMA INCHERCHERA, on behalf
of herself and all others
similarly situated,**

Plaintiff,

-against-

SUMITOMO CORP. OF AMERICA,

Defendant.

**PLAINTIFF'S FIRST INTERROGATORIES
AND REQUEST FOR PRODUCTION OF
DOCUMENTS**

STEEL & BELLMAN, P.C.

Attorneys for

Plaintiff

Office and Post Office Address, Telephone

**351 Broadway
NEW YORK, N. Y. 10013
(212) 925-7400**

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

Served by mail
10/20/52

STATE OF NEW YORK, COUNTY OF

ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box

- ☐ Certification By Attorney
☐ Attorney's Affirmation

certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

shows: deponent is

the attorney(s) of record for in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

Check Applicable Box

- ☐ Individual Verification
☐ Corporate Verification

the being duly sworn, deposes and says: deponent is in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

the of in the within action; deponent has read the foregoing and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on

19

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF New York

ss.:

Nancy Maloy

being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 351 Broadway New York NY

Check Applicable Box

- ☒ Affidavit of Service By Mail
☐ Affidavit of Personal Service

On October 20 19 82 deponent served the within Interrogatories & Request for Production of Documents upon Wender Murase & White attorney(s) for defendant in this action, at 400 Park Ave., N.Y., N.Y.

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in ~~xxx post office~~ official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

On 19 at upon deponent served the within

herein, by delivering a true copy thereof to h personally Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on

October 20 1982

PATRICIA M. COOPER
Notary Public, State of New York
No. 31-4628957
Qualified in New York County
Commission Expires March 30, 1984

The name signed must be printed beneath

Nancy Maloy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

PALMA INCHERCHERA, on behalf of her- :
self and all others similarly situated, :

Plaintiff, :
-against- :

Civ. No. 82-4930 (RWS)

SUMITOMO CORP. OF AMERICA, :

Defendant.

- - - - - X

PLAINTIFFS' FIRST INTERROGATORIES
AND REQUEST FOR PRODUCTION
OF DOCUMENTS

To:

Wender, Murase and White
400 Park Avenue
New York, New York 10022

Attorneys for Defendant

Plaintiffs request that the defendant Sumitomo Corp. of America, by a member or agent thereof, respond, under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, to the following interrogatories, and produce copies of documents hereinafter requested, in accordance with Rules 33 and 34 of the F.R.C.P. These interrogatories shall be deemed to be continuing so as to require defendant seasonably to supplement or amend its answers thereto in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

PLEASE TAKE NOTICE that copies of defendant's answers must be served upon the undersigned within 30 days after the service of these interrogatories. It is requested that defendant's answers restate each of these interrogatories in full before responding to it, that copies of all documents identified be attached to the answers and that said copies of the above-described documents and answers be delivered to plaintiffs' counsel for inspection and copying at plaintiffs counsels'

offices at 351 Broadway, New York, New York 10013.

DEFINITIONS

Unless a contrary meaning appears in the context of a particular interrogatory, the following definitions shall apply:

(a) "Corporation" refers to defendant (as corrected in Answer 1 below) its officers, agents, and employees, and any company to which it is the corporate successor.

(b) "Job" refers to positions of employment, whether now or previously in existence at the Corporation, and held either on a temporary or permanent basis.

(c) "Employee" refers to a person employed by the Corporation.

(d) "Applicant" refers to a person who seeks, or has sought employment with the Corporation.

(e) "Supervisory position" refers to any position within the Corporation in which an employee has the authority to direct the work of other employees.

(f) "Test" refers to any written or oral performance, or other examination administered at any time by the Corporation for the purpose of selecting applicants for employment or for the purpose of promotion or transfer to any job.

(g) "Document" refers to any written, printed, typed or other graphic matter of any kind or nature, including drafts and copies bearing notations or marks not found on the original; including but not limited to all memoranda, reports, financial reports, notes, letters, envelopes, telegrams, messages (including reports, notes and memoranda of telephone conversations and conferences), studies, analyses, books, articles, magazines, newspapers, booklets, circulars, bulletins, notices, instructions, minutes of all other communications of any type, including inter- and intra-office communications, purchase orders, questionnaires and surveys, charts, graphs, tape or other recordings, punch cards, magnetic tapes, discs, data cells, drums, print-outs and other data compilations from which information can be obtained (translated, if necessary, by the defendant into usable form).

(h) "Career paths and/or progression ladders" refer to a system of job progression, from which an employee may expect to advance from one job title or description to a more advanced job title or description in the normal course of employment, assuming satisfactory performance.

(i) "Salary" refers to all money, property and services received from the firm, including compensation, benefits of any nature, and bonuses.

(j) "School years completed" refers to the number of years of formal education an employee has completed. For example, an employee who has graduated from high school in the United States has completed 12 years.

INTERROGATORIES

1. What is the correct corporate name of the defendant, and when and in what state was it incorporated?

2. State fully what relationship, if any, the defendant has or had at any time to Sumitomo Shoji America, Inc. (for example, is it a successor corporation, was Sumitomo Shoji America's name changed to defendant's), and give all dates relevant to said relationship.

3. If the defendant has or had any relationship to Sumitomo Shoji America, please state whether any employees of the defendant were employees of Sumitomo Shoji America, and if so, state whether employees of Sumitomo Shoji America became employees of defendant without undergoing a rehiring process and whether employees of defendant who formerly were employees of Sumitomo Shoji America retain or retained any seniority, benefits, rights, job assignments, titles or status which they accumulated as employees of Sumitomo Shoji America.

4. State whether the defendant has any affiliates or subsidiaries.

5. If the answer to interrogatory 4 is in the affirmative, please list each affiliate or subsidiary, and as to each supply

the following information:

- (a) Its state of incorporation;
- (b) The address of its principal place of business;
- (c) Whether the defendant, or any of its employees, participate in the day to day management and/or control of the subsidiary or affiliate, and if so the names, titles and business addresses of the employees of the defendant who engage in this function.

6. State whether the corporation is a subsidiary of any other corporation. If so, state the name of the parent and state the location of the parent's principal office.

7. If defendant is a subsidiary of another corporation, please state whether any employees of the parent corporation engage in the day to day management and/or control of defendant, and if so, please give the following:

- (a) The names and business addresses of all such employees;
- (b) Their position of employment;
- (c) Their function(s);
- (d) If any of said persons are not physically located at an office of defendant, with whom and how they maintain contact with defendant.

8. State where the defendant maintains offices, indicate which office is the principal place of business, and give the full address of each office.

9. State the total number of employees employed by the corporation.

10. State the total number of employees employed by the corporation at each of its offices.

11. Does the corporation use job titles? If the answer is yes, list all job titles which have been utilized by the corporation since April 1, 1969, and state as to each job title when it came into being, and until what date the job title was utilized.

12. Does the corporation use job descriptions? If the

answer is yes, identify all job descriptions which have been in use since April 1, 1969, and annex copies of all documents containing job descriptions which have been utilized at any time by the Corporation since April 1, 1969 to date, specifying the periods when said descriptions have been utilized.

13. If the Corporation has utilized job descriptions which have not been reduced to writing, please list each job by title, stating next to each job what the description of the job is, and state when the Corporation has employed persons to fill such job from April 1, 1969 until the present.

14. Does the Corporation classify employees into categories such as executive, managerial, professional, technical, clerical, etc? If the answer is in the affirmative, identify all documents which describe how the classification is accomplished, and attach copies to these answers. Also list all job titles which fall within each category.

15. If the Corporation orally classifies employees, and/or refers to employees as executive, managerial, professional, technical, clerical, etc., please list all such categories utilized and list all job titles which fall within each category.

16. As of the last day of the pay period prior to July 28, 1982, give:

(a) the number of female employees^{and male employees (listed separately)} at each of the Corporation's offices, further broken down to give:

1. the number of female employees^{and male employees (listed separately)} at each office by category, such as executive, managerial, professional, clerical, etc.;
2. the number of female employees^{and male employees (listed separately)} at each office, by job title.

(b) the number of employees whose country of national origin^{*/} is not Japan at each of the Corporation's offices, further broken down to give:

1. the numbers of employees whose country of

national origin is not Japan at each office

*/ If defendant claims it does not know country of national origin, it should so state and then substitute "citizenship" in this question and answer it as amended.

by category, such as executive,, managerial, professional, clerical, etc.;

2. the number of employees whose country of national origin is not Japan at each office by job title.

17. Does the Corporation utilize any selection criteria by which it determines, or which aids in the determination of, whom it will hire for jobs, or promote? If the answer to this question is in the affirmative, please answer the following additional questions:

(a) Has the criteria which is or has been utilized in writing? If so, identify all documents containing such criteria from April 1, 1969 to date, and attach copies of all such documents to the responses to these interrogatories.

(b) If the criteria utilized has not been reduced to writing, list what the criteria is for each job title and/or classification utilized by the Corporation since April 1, 1969 to date in descending order of importance, specifying for what periods the criteria has been in effect and state whether the criteria has changed from time to time, and, if so, list the appropriate changes for the relevant time periods.

18. Does the Corporation utilize career paths and/or progression ladders as methods of determining eligibility for promotion? If the answer to this interrogatory is yes, please answer the following questions:

(a) Does the Corporation have any documents which identify career paths or progression ladders? If so, identify all such documents from April 1, 1969 to date, and attach copies to the answers to these interrogatories.

(b) If the Corporation utilizes career paths and/or progression ladders which are oral, please set forth any such career path or progression ladders which have been utilized from April 1, 1969 to date, specifying the period in which each career path and/or progression ladder was utilized.

19. Does the Corporation have a table of organization,

or other chart or document(s) which sets forth the Corporation's supervisory chain of command? If such a document or documents exist, identify all such documents from April 1, 1969 to date, and attach copies to the answers to these interrogatories. If a table of organization exists which has not been reduced to writing, please set it forth in this answer.

20. Has the Corporation since April 1, 1969 to date, utilized an employee's country of national origin, or an employees' country of citizenship, as a criterion, qualification, factor or aid in determining eligibility to hold certain jobs with the Corporation? If the answer to this interrogatory is yes, please answer the following questions:

(a) If the criterion, qualification, factor or aid is "national origin" or "citizenship", is utilized, state which it is or whether it is both, and state the name of the country involved.

(b) For which jobs has this criterion, qualification, factor or aid been utilized and state the time period of utilization from April 1, 1969 to date.

(c) For any of the jobs listed in answer to subsection (b) above, is the criterion, qualification, factor or aid mandatory? If so, state for which jobs the criterion, qualification, factor or aid is mandatory and over what time periods from April 1, 1969 to date.

21. Has the Corporation utilized sex as a criterion, qualification, factor or aid for eligibility for any job with the Corporation from April 1, 1969 to date? If the answer to this question is yes, please answer the following questions:

(a) For which jobs has this criterion, qualification, factor or aid been utilized and state the time period of utilization from April 1, 1969 to date.

(b) For any of the jobs listed in answer to subsection (a) above, is the criterion, qualification, factor or aid mandatory. If so, state for which jobs the criterion, qualification,

factor or aid is mandatory and over what time periods from April 1, 1969 to date.

(c) For which jobs listed above are males required or preferred and for which jobs are females required or preferred?

22. Has the Corporation filed with the Equal Employment Opportunity Commission Standard Form 100, known as the Employer Information Report EEO-1? If the answer is yes, please list the office and/or work places for which the form has been filed and please state for what years since 1969 this form has been filed, and attach a copy of the form filed for each year through the present year. (This form is requested for any and all of defendant's offices and for work places for which it has been filed).

23. Does the Corporation maintain any documents reflecting the composition of its employees, containing breakdowns of numbers of employees by sex, race and/or country of national origin? If the answer to this question is yes, specify for what years since April 1, 1969 such documents have been kept, identify each document, and annex a copy of each document to the answers to these interrogatories.

24. List the name, age, address, sex, country of national origin ^{*/} and school years completed by each employee who is presently employed by the Corporation, and with respect to each such employee state:

- (a) the office in which each employee is employed;
- (b) all job titles held since date of initial employment, including present job title;
- (c) the date of each job title change;
- (d) salary received during the 12 month period from July 1, 1981 to June 30, 1982.

25. List the name, age, address, school years completed of each woman hired by the Corporation who has left the employ of the Corporation since January 5, 1979, and with respect to each such former employee state:

*/ If defendant claims it does not know country of national origin, it should so state and then substitute "citizenship" in this question and answer it as amended.

- (a) the date of initial employment;
- (b) all job titles held since date of initial employment;
- (c) date of each job title change;
- (d) the date the employee left the employ of the Corporation.

26. List the name, age, address, school years completed of each person whose country of national origin is not Japan hired by the Corporation who has left the employ of the Corporation since January 5, 1979, and with respect to each such former employee state (if the Corporation claims it does not know the national origin of its past or present employees, it should provide this information for persons whose citizenship is not Japanese, providing it so indicates it is doing this in its answer):

- (a) the date of initial employment;
- (b) all job titles held since date of initial employment;
- (c) date of each job title change;
- (d) the date the employee left the employ of the Corporation.

27. State whether the Corporation has maintained a personnel manual or any document containing personnel policies since April 1, 1969 to date. If the answer is yes, identify the manual or manuals, and/or documents stating dates in which each has been in use by the Corporation and attach copies to the answers to these interrogatories.

28. State whether the corporation has any documents setting forth employee pay rates and/or benefits, or which set forth opportunities for employee advancement, or materials which in any way explain career opportunities with the Corporation. If the answer is yes, identify all such documents from April 1., 1969 to date, and attach copies to the answers to these interrogatories.

29. List the name, address, sex, country of national ori-

gin, title and office where employed of all employees from April 1, 1969 to date who have held, or continue to hold, executive, managerial and/or supervisory positions. (If the defendant claims it does not know the country of national origin of its past or present employees, please substitute "citizenship" for "national origin", and indicate it is doing this in its

answer). With respect to each such employee, state:

- (a) Date of initial employment.
- (b) All job titles held since date of initial employment, including present job title.
- (c) If not presently employed by the Corporation, the date the employee left the corporation.
- (d) Date of each job title change.
- (e) Describe the unit, department, section, or other component of the Corporation which the employee supervises, or supervised prior to leaving the Corporation.
- (f) The number of employees under the supervision of the supervisor at present, or when the supervisor left the employment of the Corporation.

30. List the name, age, address, sex, country of national origin and school years completed by each present employee of the Corporation, or former employee of the Corporation who worked with the Corporation during the period April 1, 1969, who functions or functioned in a sales or selling capacity. (If the defendant claims it does not know the country of national origin of its past or present employees, it should provide information for country of citizenship, providing it so indicates it is doing this in its answer). With respect to each such employee state:

- (a) date of initial employment;
- (b) all job titles held since date of initial employment, including present job title;
- (c) date of each job title change;
- (d) salary, including all commission payments, etc.

31. Does the Corporation have any written criteria it utilizes to determine eligibility for hire, transfer or promotion to sales or selling jobs? If the answer is yes, identify each document which contains such criteria and attach copies to the answers to these interrogatories.

32. If the Corporation does not have written criteria with regard to eligibility for sales or selling jobs, does the Corporation have oral criteria? If the answer is yes, list all criteria utilized in order of importance, stating which, if any, of the criteria utilized are mandatory.

33. State whether the Corporation has any standard procedure by which an employee may seek a promotion or by which the Corporation grants promotions on its own initiative. If the answer to this interrogatory is in the affirmative, please answer the following questions:

(a) Is the procedure in writing? If the answer to this question is in the affirmative, please answer the following:

- (i) identify the document or documents and attach copies to the answers to these interrogatories;
- (ii) ^{when and} /by whom were the procedures promulgated?
- (iii) how were they communicated to the employees?
- (iv) to employees in which job titles were the procedures communicated, and when were they communicated?

34. Does the Corporation have oral, rather than written standard procedures for promotion? If the answer is yes, answer the following additional questions:

- (a) ^{When and} /By whom were the oral procedures promulgated?
- (b) How are they communicated?
- (c) To which employees, and when?
- (d) State in detail what the procedures are.

35. Does the Corporation have oral, rather than written

procedures by which employees may become salespersons? If the answer is yes, answer the following questions:

- When and
- (a) /By whom were the oral procedures promulgated?
 - (b) How are they communicated?
 - (c) To what employees and when?
 - (d) State in detail what the procedures are.

36. Has the Corporation utilized any tests from April 1, 1969 to date for the purpose of selecting applicants for employment in, or promotion or transfer to, any job? If the answer to this question is yes, answer the following questions:

(a) Identify all such tests and attach copies to the answers to these interrogatories, and state when each test was used.

(b) As to each test, unless the test is attached to the answers, describe in detail the nature of the test and the questions asked.

(c) As to each test, describe the criteria which the Corporation applied, including the passing grade, etc.

(d) As to each test, state who judged or judges the test results and/or made or makes determinations as a result thereof.

37. State whether the Corporation has had, or presently has, a training or educational program which employees may utilize to seek promotions or transfers. If so, describe in detail, including the dates of initiation and termination, what employees are eligible for inclusion, how the existence of the program was communicated to employees, and the numbers of employees who enrolled, year by year, from April 1, 1969 to date, indicating sex and country of national origin during each program. (If the Corporation claims it does not know the national origin of its past or present employees, it should indicate this in the answer, and substitute "citizenship", and provide this information).

Also state as to each such pro-

gram whether the Corporation actually ran the program, and if not, who did. Also list the address where each program was conducted.

38. State whether the Corporation utilizes any system of written evaluations or efficiency reports regarding the quality and quantity of work performed by employees. If so, answer the following:

(a) Identify all such documents, stating during what period of time from April 1, 1969 to date each report was utilized, and attach blank copies of each form utilized.

(b) For each evaluation utilized, state which categories of employees by job title were, or are, evaluated.

(c) For each category of employee by job title evaluated, state how often they are evaluated, listing the date of the last evaluation.

39. Does the Corporation maintain personnel files for individual employees? If the answer is in the affirmative, answer the following:

(a) Are the files maintained on all employees? If not, list the job titles for which such files are maintained.

(b) Identify all standard documents contained in such employee's personnel file, stating during what period of time from April 1, 1969 to date, each document was utilized and attach blank copies of each form utilized. If different types of files are maintained for different categories of employees, or for employees with different job titles, answer this question category by category and/or job title by job title.

40. Has the Corporation ever been charged with discrimination on the basis of sex and/or national origin in any other court, or before any public agency, federal, state or local, in any jurisdiction of the United States? If the answer is in the affirmative, list each case name individually, setting forth the forum, the case identification number, and the status of each case.

41. With regard to each question above which requires the Corporation to set forth information which is not based on documents, please give the source of the information, stating the name and address of the informant(s).

42. Identify separately and with particularity sufficient for use as a description in a subpoena each document (not already identified in the answers to the foregoing interrogatories or produced in response to the requests contained herein) which contains any of the information given in answer to each of the foregoing interrogatories.

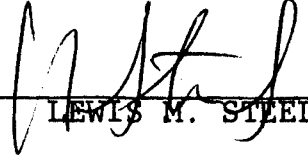
43. State whether the Corporation asserts that either sex and/or country of national origin is a bona fide occupational qualification (hereinafter "b.f.o.q.") for holding of any job with the Corporation. If the answer is in the affirmative, list all job titles and/or categories in which the Corporation asserts a b.f.o.q. defense, listing for each job title or job category what defense is asserted, and stating in detail the basis for the assertion of the defense.

Dated: New York, New York
October 1982

Yours, etc.,

STEEL & BELLMAN, P.C.
Attorneys for Plaintiff
351 Broadway
New York, New York 10013
(212) 925-7400

by


LEWIS M. STEEL