

8-7-1987

Affidavit in Support of Plaintiff's Motion to Approve Attorneys' Fees, Costs, and Disbursements

Lewis Steel '63

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LISA M. AVAGLIANO, et al.,

77 Civ. 5641 (CHT)

SUMITOMO SHOJI AMERICA, INC.,

-----X
PALMA INCHERCHERA,

82 Civ. 4930 (CHT)

SUMITOMO CORPORATION OF AMERICA,

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

**AFFIDAVIT IN SUPPORT OF
PLAINTIFFS' MOTION TO
APPROVE ATTORNEYS' FEES,
COSTS AND DISBURSEMENTS**

LEWIS M. STEEL, being duly sworn, deposes and says:

1. I am a member of the firm of Steel Bellman & Levine, P.C., class counsel in the above entitled actions. I submit this affidavit in support of plaintiffs' motion for approval of attorneys' fees, costs and disbursements for counsel in an amount agreed to by the parties. Settlement of the fee issues was achieved through arm's length negotiations between class counsel and counsel for Sumitomo Corp. of America and its predecessor corporation, Sumitomo Shoji America, both hereafter collectively referred to as "SCOA." This settlement also disposes of counsel's claim for fees and expenses in Bellini and Incherchera v. Sumitomo Corp. of America, 86 Civ. 2975 (CHT).

2. The history of these class actions is set forth in detail in the memorandum and order of this Court, per the Hon. Michael Dolinger, United States Magistrate, dated March 30, 1987 approving the settlement of these cases. A copy of that memorandum and order is attached hereto as Exhibit A. All appeal times having run as of June 1, 1987, this order is now final and SCOA has begun implementation of the settlement decree.

3. At the outset of these proceedings, in September 1976, your affiant assumed the responsibility as lead counsel for the original Avagliano plaintiffs and I have continued, with Richard F. Bellman, in that role to date. My law firms have served as class counsel throughout this litigation.

4. From the outset of our representation, it was agreed between class counsel and the named plaintiffs that the case against SCOA would be pursued with the purpose of obtaining class relief. It was further agreed that in representing the plaintiffs and class members, class counsel would not charge the plaintiffs, but would look instead to court awarded fees in the event plaintiffs prevailed. Moreover, class counsel agreed to advance the costs that would be incurred in the litigation. As a result, from 1976 until the resolution of this action, class counsel have handled this matter without fee and have advanced all costs and disbursements.

5. The primary representation of the plaintiffs and the classes represented has always been provided by my law partner, Richard F. Bellman and me. During the beginning of our representation, Mr. Bellman and I were partners in the firm of Eisner,

Levy, Steel & Bellman, P.C. As of April 1, 1981, class counsel's firm became Steel & Bellman, P.C., and as of September 1, 1986, Steel Bellman & Levine, P.C. These firms have always been located at 351 Broadway, New York, New York. (For purposes of this affidavit, these firms collectively will be referred to as "class counsel").

6. The qualifications of lead counsel Lewis M. Steel and Richard F. Bellman have been briefly set forth in my affidavit in support of the proposed consent decree sworn to on February 19, 1987 at pp. 34-38. In summary, both attorneys have spent a large portion of their professional careers engaged in difficult and complex civil rights litigation.

7. The complexity of the present litigation has also been summarized in the aforementioned affidavit in support of the consent decree. This Court, in fact, noted the complexity of these cases in its March 30, 1987 opinion.

8. The SCOA cases, over their more than 10 year history, have placed an extraordinary burden on class counsel's law firms. Over the years, attorneys in my office have spent almost 8,000 hours working on the SCOA cases and the resources of the firms have at times been largely dedicated to this effort. As a result, my firms have been compelled to decline various new matters in order to concentrate on prosecuting the SCOA cases to successful conclusion.

9. From September 1976 through May 31, 1987, class counsel maintained contemporaneous time records which show that the following hours were expended on this matter: Lewis M. Steel 3,887

hours; Richard F. Bellman 1,995 hours; Jonathan Moore 1,484 hours; Gina Novendstern 560 hours. William Waterman also conducted a short (9.9 hours) legal investigation in Japan in 1986 at the request of class counsel relating to SCOA's parent corporation. Messrs. Moore and Waterman are private attorneys who worked under class counsel's direction. Both are experienced attorneys and their resumes are attached as Exhibit B and C, respectively. Ms. Novendstern was an associate in class counsel's firm and specialized in civil rights litigation. Ms. Novendstern worked on a variety of matters in this case during 1982-85, including the difficult class certification motion. Mr. Moore was largely engaged in evidentiary analysis after class certification (1985-86), and participated in lead counsel's discussion and decision making sessions with regard to what discovery would be required to settle or try these matters. He also participated in the preparation required to take the depositions of SCOA officials and worked with lead counsel during the taking of these depositions. His experience in complex litigation was therefore of great benefit in his work on this case. To class counsel's knowledge, no attorney other than those listed in this paragraph worked on these matters, or is entitled to compensation in connection herewith.

10. Class counsel also utilized paralegals and law students to aid them in both document analysis and fact cross-referencing, as well as basic legal research. Class counsel sought payment for the work of these persons at the rates of \$25 to \$35 an hour. Paralegal work totaled approximately 1,140 hours, for which class counsel sought payment of \$36,538.75. Attached hereto as

Exhibit D is a summary of the work performed by paralegals and law students.

11. Class counsel also had expenses through May 31, 1987 in the amount of \$65,511.12. These expenses include costs for depositions, the printing of briefs, the use of experts and translators, travel, photocopying, and other related expenses. A schedule of plaintiffs' expenses by category is attached hereto as Exhibit E. Counsel for SCOA has advised me that it is the defendant's view that these expenses appear to be reasonable in light of the complexity of this action and the work performed.

12. Fee negotiations began on these matters only after the terms of the settlement were agreed upon and the proposed decree had been submitted to this Court for approval. In negotiating with SCOA's representatives on the issue of appropriate lodestar rates and ultimate fees, class counsel asserted its two lead attorneys were entitled to a variety of rates, both historic and current, as well as a multiplier to compensate for the risks involved in handling this matter, the delay in receiving payment due to the length of the case and SCOA's vigorous defense, the complexity of the issues, and the extraordinary nature of the case.

13. In order to determine the lodestar amount initially sought, class counsel valued the time of the two lead attorneys (Lewis M. Steel and Richard F. Bellman) at rates ranging from \$125 to \$225 per hour, based on class counsel's historic billing rates. Class counsel also sought \$200 an hour for Mr. Moore's time, \$150 an hour for Ms. Novendstern's time and \$225 an hour for Mr. Waterman's time. Based on these rates and a total of 7,869 hours

class counsel had worked as of March 26, 1987 (the first fee negotiating session), the lodestar claim totaled \$1,572,010 before any multiplier. To this was added \$36,538.75 for paralegals and law students and \$65,511.12 in expenses. Thus, class counsel's initial claim before a multiplier amounted to \$1,674,059.80. Class counsel at the initial negotiating session with defendant's counsel asked for a multiplier two times the lodestar legal fees and then reduced the demand to a total package of \$2,900,000.

14. In our negotiations with SCOA's attorneys, class counsel maintained that imposition of a multiplier was reasonable and proper. In this regard, class counsel had not received any fees for its work since the outset of the litigation. The delay in payment factor was especially significant, and had in fact, presented hardships, even affecting our firm's ability to expand its practice. Class counsel further contended that this was high risk litigation which involved an appeal to the United States Supreme Court for a ruling to validate plaintiffs' basic Title VII legal theory; an extraordinarily complex and hotly contested motion to certify the matter as a national class action in which SCOA contended that plaintiffs, due to their alleged lack of experience, did not have the background to seek management and sales jobs and therefore lacked standing; complex and difficult discovery issues and problems (including the fact that thousands of documents were written in Japanese); and the need for class counsel to develop an understanding of the defendant and its ties to its Japanese parent. Further, the settlement negotiations entailed drafting a first of its kind decree designed to balance the rights of class members

while ensuring that SCOA would be able to continue to function within the framework of its international network. Finally, this Court's memorandum and order of March 30, 1987 itself noted that class counsel had achieved substantial benefits for the class through the settlement.

15. At a subsequent negotiating session, SCOA's counsel objected to any multiplier but gave a counter-offer of \$1,030,880 in attorney fees. This offer was based on reduced hourly rates and a reduction of all hours by 5%. In addition to the legal fees, defendant was prepared to pay the claimed legal costs and disbursements, as well as paralegal and law clerk fees.

16. As negotiations progressed, counsel for SCOA offered to pay for all hours claimed. Defendant's counsel also offered to compensate Messrs Steel and Bellman at their historic rates of \$125-\$225 an hour, Mr. Moore at \$175 an hour, Ms. Novendstern at \$125 an hour, and Mr. Waterman at \$225 an hour. Defendant's counsel also offered to pay the expenses and clerk fees. SCOA's counsel said defendant would pay this amount, which approximated \$1,500,000 in attorney fees and the approximately \$100,000 in the expenses and clerk fees, if class counsel dropped their demand for a multiplier.

17. After negotiation on the multiplier issue and, taking into consideration especially the delay factor, the parties agreed to apply a uniform hourly rate for all hours expended by lead counsel in these litigations and to settle the entire claim for fees and costs on all of the Sumitomo cases from their inception through June 1, 1987 for a total amount of \$1,850,000, including

costs, disbursements and paralegal clerk fees. Pursuant to this agreement, Messrs Steel and Bellman are being compensated for their work on this matter at a uniform rate of about \$240 an hour, Mr. Moore at \$175 an hour, Ms. Novendstern at \$125 an hour, and Mr. Waterman at \$225 an hour. The expenses, disbursements and clerk fees remain the same.

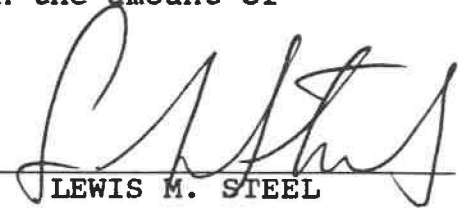
18. The parties agreed to this uniform hourly rate for lead counsel in order to provide class counsel with reasonable compensation somewhat in excess of lead counsel's hourly rates charged to other of their clients in recognition of the expense and ordeal of carrying this difficult and complex litigation for so many years under trying circumstances.

19. Class counsel further notes that it has recently been reported that senior partners at many New York law firms now charge \$350 per hour. See ABA Journal, June 1, 1987, p. 31. According to the Journal's recent informal survey, fees charged at large New York law firms "range from \$200 an hour for junior partners to \$350 an hour for senior partners." Given lead counsel's many years of experience and expertise, the composite rate agreed upon to compensate them for their services is reasonable under the circumstances of this case.

20. The parties have also agreed that this agreement to forego litigation over the fees issue, including class counsel's claim for a multiplier is contingent upon court approval of the consent order submitted herewith.


WHEREFORE, plaintiffs respectfully request that this Court approve the settlement of the outstanding attorneys' fees and costs

issues under the settlement decree and approve payment by SCOA to the firm of Steel Bellman & Levine, P.C. in the amount of \$1,850,000.


LEWIS M. STEEL

Sworn to before me this

7th day of August, 1987.


NOTARY PUBLIC
SUSAN RITZ
Notary Public, State of New York
No. 24-481872B
Qualified in Kings County
Commission Expires Nov 30, 1988