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Avagliano v. Sumitomo: District Court  
Proceedings

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

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3-31-1978

## Raby's Memo and Order re: March 29, 1978 Pretrial Conference

Lewis M. Steel '63

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FOR THE

SOUTHERN DISTRICT OF NEW YORK

*Avigliano*

vs.

*Sumitomo Shoji Amer. Inc.*

Civil Action No. *77-5641*  
*CHT*

There was entered on the docket

*4/3*, 19 *78*

*memo &*  
an order (judgment)

*Mag. Pabey*

ALL INQUIRIES TO BE MADE IN PERSON, ROOM .....  
RAYMOND F. BURGHARDT,

, CLERK

MAR 31 1978

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

LISA M. AVIGLIANO, et al.,

Plaintiffs,

77 Civ. 5641 (CHT)

-v-

MEMORANDUM  
AND ORDER

SUMITOMO SHOJI AMERICA, INC.,

Defendant.

-----x

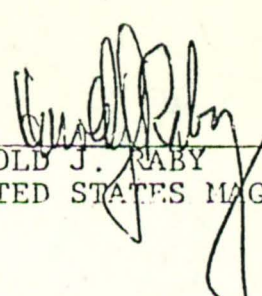
RABY, UNITED STATES MAGISTRATE:

A special pretrial conference was held before me (pursuant to prior reference by Judge Tenney) on March 29, 1978 for the stated purpose of dealing with objections by the defendant to certain interrogatories propounded on behalf of plaintiffs relating to possible qualification of this action as a class action under F.R.C.P. Rule 23.

It appearing, however, at the conference, that counsel for the plaintiffs intend, within 30 days from the date of said conference, to move to strike certain defenses of the defendants, and it further appearing that defendant in turn intends, within said period, to move for dismissal of the complaint on substantive grounds, I directed that, contingent upon the making of such motions, there shall be a hiatus of all discovery herein pending the hearing and determination of said motions, with the understanding, of course, that if the aforementioned motions are not in fact filed within the period above mentioned my order shall be deemed null and void. I further directed at said conference, with the consent of counsel, that under the circumstances just described, plaintiffs be relieved from compliance with the provisions of Rule 11A of the Civil Rules of this Court requiring the filing of a motion for class action status within 60 days after the filing of the complaint.

IT IS SO ORDERED.

Dated: New York, N.Y.  
March 31, 1978.

  
HAROLD J. RABY  
UNITED STATES MAGISTRATE

cc: EISNER, LEVY, STEEL & BELLMAN, P.C.  
351 Broadway  
New York, New York, 10013  
Att: Lewis M. Steel, Esq.

WENDER, MURASE & WHITE, ESQS.  
400 Park Avenue  
New York, New York, 10022  
Att: J. Portis Hicks, Esq.

THE HON. CHARLES H. TENNEY  
United States District Judge  
United States District Court  
Foley Square  
New York, New York, 10007



NYLJ

3/30/78

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Avigliano v Sumitomo Shoji America Inc  
order signed

Judge Tenney



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

Attorneys at Law

351 Broadway, New York, New York 10013  
(212) 966-9620

Eugene G. Eisner      Lewis M. Steel  
Richard A. Levy      Richard F. Bellman  
Arthur N. Read

Mary M. Kaufman  
Counsel

March 30, 1978

J. Portis Hicks, Esq.  
Wender, Murase & White  
400 Park Avenue  
New York, New York 10022

Re: Avigliano, et al. v. Sumitomo Shoji America, Inc.

Dear Portis:

Enclosed is the original and two copies of the stipulation extending plaintiffs' time to answer or move. Please execute and return the original and one copy to me. As we discussed on the phone, I will file the original with the court and will send a letter to Judge Tenney informing him that the reason for this stipulation is to give the parties time to file motions within the framework of the scheduling order which Magistrate Raby intends to file.

Sincerely,

Lewis M. Steel

LMS:amn  
Enc. 2

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MEMORANDUM TO FILES

DATE: 3/29/78

RE: Avigliano, et al. v. Sumitomo Shoji America, Inc.

SUBJ: Magistrate Raby conference

BY: L. Steel

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At a conference before Magistrate Raby today, the following was determined:

1. The defendant will file whatever motions it wishes directed to the pleadings within 30 days, including a motion to dismiss based upon the 3rd affirmative defense.
2. Plaintiffs will file whatever motions they wish directed to the pleadings and specifically the counterclaim on the same date.
3. All discovery to be stayed pending resolution of these motions.
4. The Magistrate will enter an order setting forth the above and also stating that plaintiffs need not comply with the class certification local rule pending resolution of the motions, as well as discovery pertaining to class certification.
5. Magistrate Raby indicated that if defendant's attack on the pleadings is not successful, plaintiff is entitled to the information requested in my letter to the Magistrate dated March 21, 1978. (I do not expect the latter point to be in the Magistrate's order. Therefore, if the motion is decided favorably, a letter may be necessary on this point.)

/cpm



March 23, 1978

Clerk  
Civil Division  
U.S. District Court  
Foley Square  
New York, New York 10007

Re: Avigliano, et al. v. Sumitomo Shoji America, Inc.  
76 Civ. 5641 (C.H.T.)

Dear Sir or Madam:

I enclose a stipulation with regard to the above matter, extending the date by which plaintiffs may answer and move in response to an answer and counterclaim of the defendant. I would be most appreciative if you would present this stipulation to Judge Tenney for his approval.

Very truly yours,

EISNER, LEVY, STEEL & BELLMAN, P.C.

by \_\_\_\_\_  
LEWIS M. STEEL

LMS/pc  
Enclosure