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Avagliano v. Sumitomo: On Remand to the  
District Court

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

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3-11-1983

## Stipulation re: Return Date of Motion to Consolidate

Lewis M. Steel '63

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.,

**WENDER, MURASE & WHITE**

Attorneys for

Office and Post Office Address

400 PARK AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10022

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 the day of 19  
M.

Dated,

Yours, etc.,

**WENDER, MURASE & WHITE**

Attorneys for

Office and Post Office Address

400 PARK AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10022

To

Attorney(s) for

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**LISA M. AVIGLIANO, et al.,**  
Plaintiffs,

-against-

**SUMITOMO SHOJI AMERICA, INC.,**  
Defendant.

**PALMA INCHERCHERA,**  
Plaintiff,

-against-

**SUMITOMO CORP. OF AMERICA,**  
Defendant.

STIPULATION

**WENDER, MURASE & WHITE**  
Defendant

Attorneys for

Office and Post Office Address, Telephone

400 PARK AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10022

(212) 832-3333

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LISA M. AVIGLIANO, et al., :  
 :  
 Plaintiffs, : 77 Civ. 5641 (CHT)  
 :  
 -against- :  
 :  
 SUMITOMO SHOJI AMERICA, INC., :  
 :  
 Defendant. :  
 :  
 -----X

PALMA INCHERCHERA, :  
 :  
 Plaintiff, : 82 Civ. 4930 (CHT)  
 :  
 -against- :  
 :  
 SUMITOMO CORP. OF AMERICA, : STIPULATION  
 :  
 Defendant. :  
 :  
 -----X

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, by  
and between the undersigned counsel for the respective parties  
that the return date of the Motion to Consolidate is hereby  
adjourned until March 7, 1983; and it is further

STIPULATED, CONSENTED TO AND AGREED, that answering  
papers, if any, will be served on plaintiffs' counsel no later  
than February 28, 1983.

Dated: New York, New York  
February 11, 1983

STEEL & BELLMAN, P.C.

By: \_\_\_\_\_

(A Member of the Firm)  
351 Broadway  
New York, New York 10013  
(212) 925-7400

Attorneys for Plaintiffs

Dated: New York, New York  
February 11, 1983

WENDER MURASE & WHITE

By: 

(A Member of the Firm)  
400 Park Avenue  
New York, New York 10022  
(212) 832-3333

Attorneys for Defendant.

SO ORDERED:

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U.S.D.J.

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

Attorneys at Law

351 Broadway, New York, New York 10013

(212) 925-7400

Richard F. Bellman  
Lewis M. Steel

February 7, 1983

Lance Gotthoffer, Esq.  
Wender Murase & White  
400 Park Avenue  
New York, New York

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

Dear Mr. Gotthoffer:

This letter is written with the objective that we can make some progress in resolving outstanding questions relating to your client's objections and supplemental objections to plaintiffs' interrogatories.

At the outset, I note that throughout your answers and objections, you have limited the time for which you are willing to supply information. Uniformly, I have requested information from April 1, 1969 to date. Frankly, I seek data back this far in order to shed light on how Sumitomo's practices developed and in order to get a statistical picture from which a clear pattern and practice can be developed. I understand from the history section of the personnel manual given to employees that Sumitomo was incorporated in 1969. This date, therefore, seems appropriate. Case law clearly establishes that a plaintiff in a Title VII case may be entitled to discovery prior to the date an employer would be liable for its actions.

In certain of your objections, you appear willing to give data to December 1, 1974 (e.g., objection 7). In other answers, you appear willing to give data only for 1976 and 1977 (e.g., supplementary answer 23). I do not understand the basis of this variation. Moreover, in all of your answers and objections, you appear to be unwilling to give data after 1977. As you know, the complaint is based on a theory of a continuing wrong. Especially in light of the Incherchera case, I believe that we are entitled to data through the present in answer to all questions.

If, however, supplying data from 1969 to the present creates particular hardship for your client with regard to certain questions, I would be glad to discuss these particular questions with you.

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There are many questions in the interrogatories seeking employee breakdowns, which set forth the number of employees in particular categories such as executive, managerial, professional, clerical, etc., and breakdowns by job title, and by sex and national origin, etc. For example, see questions 12, 20, 21, 22, 25, 26. You have objected to these questions on various grounds.

For example, in objection 12a, you take the position that you will give us no information other than number of female employees in each office, "prior to determination by this Court whether this action may be maintained as a class action." Obviously, class certification is being sought. Even in the absence of class certification, however, case law clearly establishes that a Title VII plaintiff is entitled to utilize broad based statistics.

I note that Sumitomo also objects to some of the questions which ask for the names of particular employees as well as other information concerning them based upon (a) undue burden, (b) confidentiality, and (c) consent by the affected employees.

We are willing to enter into a suitable confidentiality order with regard to the data we seek. We believe that such an order would obviate any questions concerning consent. With regard to undue burden, I would appreciate your expanding upon the nature of the problem you face given the relatively small size of your work force. On the issue of undue burden, I can assure you that we are willing to attempt to simplify the material we need in light of your previous answers.

Obviously, however, if you are going to contend that any or all of our plaintiffs were unqualified for higher positions, and if you are going to attempt to support this contention based upon comparing the qualifications of plaintiffs with persons holding higher level or sales jobs, we will need the basic information which we are requesting in our interrogatories to respond.

I note that you have also failed to supplement your answer to interrogatory 18, which requests EEO-1 reports for the entire corporation. As you know, we are seeking to certify a national class, and therefore need more than New York City figures. Moreover, we believe we are entitled to these reports from 1969 to date.

With regard to your answer to interrogatory 24, I fail to understand the basis by which you refuse to supply information concerning pay rates or benefits for employees other than plaintiffs.



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Moreover, with regard to this answer, you have overlooked the question which seeks information concerning whether or not you have documents relating to pay rates and benefits. In fact, this is not the only example of an interrogatory which asks Sumitomo to identify documents where such identification has not been given. For example, see interrogatory 23, which asks for the identification of any manuals or documents containing corporate personnel policies. This question has been answered by an indication that Sumitomo has no objection to providing its company policies handbook for employees for two years. This answer simply ignores the question. As you know, a handbook is merely one type of document which contains personnel policies. Sumitomo may have other documents which its personnel administrators utilize internally. For example, the corporation may have written procedures as to when an employee is eligible for promotion or pay raises or leaves of absence, etc. and how requests for these should be handled. The interrogatory requires you to list such documents so that plaintiffs and the court will know what is in existence if you refuse to make available copies. I believe we are entitled to compliance for identification of documents, wherever such request is made.

Your answer to interrogatory 34 suffers from the same form of incompleteness. That interrogatory requests job titles where evaluations are utilized. Your answer merely indicates that written evaluations are used for non-exempt positions that were filled by SCOA. I do not believe that answer is responsive. It simply does not tell us the job titles involved.

I would now like to turn to perhaps the most serious problem raised by your supplemental answers. Interrogatory 13 seeks selection criteria utilized by SCOA to determine, or aid in the determination of hiring and promotion decisions. That question is simply not answered. You merely state that with regard to those jobs that are filled by Japanese nationals, Sumitomo's Japanese parent corporation makes the determination. That answer avoids the question as to whether SCOA has any input into these determinations which would aid the parent and, if so, what criteria does it utilize. Moreover, the answer ignores the possibility that a Japanese national may be at work at SCOA and be promoted while there. If this occurs, does SCOA have any input which would aid in this decision and, if so, what criteria are utilized.

Moreover, if SCOA at trial intends to in any way utilize any criteria that its parent may have for jobs, I believe that we are entitled to these criteria at this time, job by job and position by position.

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position.

Additionally, with regard to interrogatory 13, you have almost completely failed to answer as to those positions which are admittedly filled by SCOA itself. I assume from your answer that there are no written criteria for any position, and ask that you correct me if I am wrong in this assumption. Interrogatory 13(b) asks for oral criteria, if any, job title by job title, specifying when the criteria have been in effect, whether they have changed and what the changes are. You have not attempted to answer this question and have only said that each position is filled based on the particular requirements of the position. I believe that under this interrogatory, you should list the individual positions which have been filled during the time periods in question and state for each the particular requirements of each position.

Interrogatory 13 is also important because you have keyed other of your answers into that answer. See, for example, supplemental answers to interrogatories 14, 27, 28, 29, 30, 31 and 32.

I trust that this letter will focus your attention on many of the key areas that I believe require resolution. I look forward to meeting with you in the immediate future.

Sincerely yours,

  
Lewis M. Steel

LMS:PC