

5-1983

## Correspondence: May 1983

Lewis Steel '63

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

Attorneys at Law

351 Broadway, New York, New York 10013

(212) 925-7400

Richard F. Bellman  
Lewis M. Steel

May 24, 1983

Lance Gotthoffer, Esq.  
Wender Murase & White  
400 Park Avenue  
New York, New York 10022

Re: Sumitomo

Dear Lance:

This letter is to confirm the outcome of the hearing before Magistrate Raby in the above matter on May 20, 1983.

After hearing extensive arguments on the merits of whether the defendants had the right to take a deposition of someone from this law firm, pursuant to your notice and subpoena, the Magistrate determined to quash the subpoena and vacate the notice. After taking this action, the Magistrate asked whether you wished him to prepare a formal report and order so that you could appeal and you indicated that your client would accept the Magistrate's ruling.

I trust that this letter is in accordance with your memory of what occurred.

Sincerely,

Lewis M. Steel

LMS:PC



RECEIVED MAY 24 1983

BURTON Z. ALTER  
GREYSON BRYAN  
DON T. CARMODY  
JONATHAN H. CHURCHILL  
PETER A. DANKIN  
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May 23, 1983

Hon. Harold J. Raby  
United States Magistrate  
United States Courthouse  
Foley Square  
New York, New York 10007

Re: Avagliano v. Sumitomo Shoji America, Inc.  
Incherchera v. Sumitomo Corporation of America

Dear Magistrate Raby:

This firm represents the defendants in the above-referenced actions.

At the conclusion of the conference held on Friday, May 20, 1983, Your Honor issued a Ruling quashing the subpoena duces tecum that had been served on plaintiff's counsel. In response to the Court's inquiry as to whether defendants would like the Court to issue a formal Opinion and Order for the purpose of taking an appeal, we indicated, by our silence, that we did not intend to take an appeal.

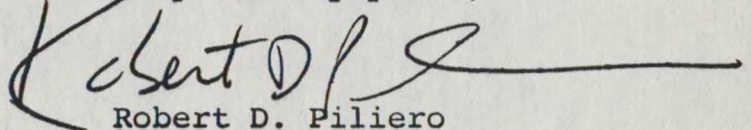
Upon further reflection after leaving the Court's chambers, we have concluded that it would be advisable for us to respectfully ask the Court to render a brief Memorandum Opinion. Our reason for this request is not because we have any present intention to appeal the Court's ruling, but rather because we believe it would be prudent to have some written record of what transpired at the conference.



Hon. Harold J. Raby  
May 23, 1983  
Page Two

The Court properly pointed out at the conference that if it develops at some later point in this litigation that plaintiffs have, in fact, turned over Sumitomo's "confidential" or "proprietary" documents to their counsel--contrary to the representations made by such counsel at the conference--the defendants would have an appropriate remedy at that time. It occurs to us that the absence of any transcript of plaintiffs' counsel's representations to the Court and the similar absence of any written memorialization of these representations may, in essence, operate to deprive defendants of any opportunity for an appropriate remedy if the need should ever arise. It is for this reason that we respectfully request the Court to issue some Memorandum Opinion, however brief, memorializing the Court's decision and the rationale underlying it.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "Robert D. Piliero", with a long horizontal flourish extending to the right.

Robert D. Piliero

RDP:lb

cc: Lewis M. Steel, Esq. ✓



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

Attorneys at Law

351 Broadway, New York, New York 10013

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Richard F. Bellman  
Lewis M. Steel

May 23, 1983

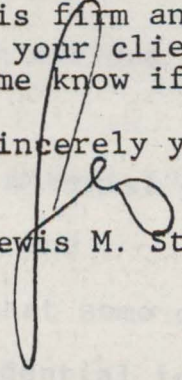
Lance Gotthoffer, Esq.  
Wender Murase & White  
400 Park Avenue  
New York, New York 10022

Re: Sumitomo

Dear Lance:

I enclose a copy of a confidentiality order, which I have drafted from a prior job discrimination confidentiality order, entered into between this firm and a large management firm. I believe it gives your client the full protection it needs. Please let me know if it is satisfactory.

Sincerely yours,

  
Lewis M. Steel

LMS:PC  
Enclosure



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
LISA M. AVAGLIANO, et al.,

Plaintiffs,

77 Civ. 5641 (CHT)

-against-

SUMITOMO SHOJI AMERICA, INC.,

Defendant.

-----x  
PALMA INCHERCHERA,

Plaintiff,

CONFIDENTIALITY  
ORDER

-against-

SUMITOMO CORP. OF AMERICA,

Defendant.

82 Civ. 5641 (CHT)

-----x

WHEREAS, the parties to these actions are about to engage in discovery; and

WHEREAS, documents and other material are about to be furnished to counsel for plaintiffs; and

WHEREAS, defendant contends that some of the data and documents being sought contain confidential information, the unauthorized disclosure of which would unfairly invade the privacy of its employees; and

WHEREAS, defendant contends that some of the data and documents being sought contain commercial information, the unauthorized disclosure of which would or might adversely affects its business dealings and competitive position; and



WHEREAS, defendant contends that some of the data and documents being sought contain information received by it pursuant to an understanding that the confidentiality thereof would be maintained.

IT IS HEREBY ORDERED that:

1. "Confidential data" means any type or classification of information, whether it be in a document or in a response to an interrogatory or in a response to a deposition question which defendant designates as "Confidential." In designating information "Confidential," defendant will make such designation only as to such materials that it in good faith believes contains either (i) information, the disclosure of which would unfairly invade the privacy of its employees, or (ii) commercial information, the disclosure of which would or might adversely affect its business dealings and competitive position, or (iii) information received by it pursuant to an understanding that the confidentiality thereof would be maintained. In the event that information disclosed during the course of a deposition is deemed confidential by defendant, the designation thereof as "Confidential data" shall be made during the course of the deposition.

2. "Qualified person" means plaintiffs, and members of, associates, legal assistants and other personnel employed by Steel & Bellman, P.C. who are engaged in the preparation of this action for trial.

3. Confidential data shall be made available only to qualified persons. Qualified persons, by signing a copy of this order, agree to maintain such data and all copies, extracts and



summaries thereof in confidence and not to use or reveal the same to anyone other than another qualified person in connection with this action, except that nothing shall prevent disclosure beyond the terms of this order if defendant consents in writing to such disclosure or if the Court, after notice to all parties and upon motion, orders such disclosure. In no event, however, may confidential data be utilized by qualified persons for any purpose other than that of prosecuting these lawsuits.

4. In the event counsel makes a good faith determination that in order to prepare these cases for trial they must disclose confidential data to an expert or a potential witness who is not a qualified person as defined in paragraph 2, above, counsel shall provide that expert or potential witness with a copy of this order and obtain the expert or potential witness' signed undertaking to maintain confidential data and all copies, extracts and summaries thereof in confidence before giving that expert or potential witness any such data. The expert or potential witness shall then be deemed a qualified person subject to the provisions of this order. Plaintiffs' counsel shall hold the signed undertakings in escrow until the conclusion of the proceedings herein and shall deliver those undertakings to defendant's counsel at the time all documents containing confidential data are returned to defendant pursuant to the provisions of paragraph 10, below. In the event an expert or a potential witness declines to sign the required undertaking, plaintiffs shall make no disclosure of confidential data to



that expert or potential witness; however, on notice to all parties, plaintiffs may move the Court for an order permitting such disclosure.

5. If counsel for plaintiffs believes material is improperly classified as confidential, counsel may, after attempting to resolve the matter informally, seek, on notice, an order from this Court declassifying the material in question. Unless and until the Court declassifies such material, however, counsel shall treat the material as classified. The requesting party will have the burden of proof on challenging the confidentiality designation.

6. Each qualified person, by signing his or her name to a copy of this order, agrees to be bound by all its terms and submits to the jurisdiction of the United States District Court for the Southern District of New York with respect to the issuance of all orders necessary for the implementation and enforcement of this order, including, without limitation, the provisions of paragraph 10, below.

7. Counsel may, in the course of a deposition of a person who is not a qualified person, show such witness confidential data and examine the witness concerning confidential data, provided the witness is informed that the data is confidential and is instructed that pursuant to court order, such confidentiality must be maintained. Only qualified persons, defendant or its counsel, or persons present at the request of defendant or its counsel, may be present at any such deposition during examination concerning confidential data.



8. All documents filed with the Court that refer to or contain confidential data shall be filed under seal.

9. Nothing in this order shall prejudice the rights of any party to obtain at trial any modification of this order which may be necessary and appropriate for use of confidential data at trial.

10. At the conclusion of the proceedings herein (including appeals, if any), all documents containing data designated as confidential and in the possession of counsel for plaintiffs, or any other person who has received such documents pursuant to the provisions of this order, together with any and all copies, extracts and summaries thereof (other than such extracts and summaries constituting work product and used in preparation for litigation and/or as exhibits at trial, which counsel will keep confidential or destroy), shall be returned to defendant and the information contained in said documents shall not be used in any other judicial or other proceeding or for any other purpose.

11. This order may be amended by agreement of counsel without leave of the Court in the form of a signed stipulation which shall be filed in these actions. In the event counsel are unable to reach agreement, either party may apply to the Court for modification of any provision of the order.

12. The undersigned counsel agree to be bound by the provisions of this order pending its approval by the Court.



We consent to the entry of this order.

Dated: New York, New York

STEEL & BELLMAN, P.C.

By \_\_\_\_\_  
Attorney for Plaintiffs  
351 Broadway  
New York, New York 10013

WENDER MURASE & WHITE

By \_\_\_\_\_  
Attorney for Defendant  
400 Park Avenue  
New York, New York 10022

SO ORDERED:

\_\_\_\_\_  
U.S.D.J.



RECEIVED MAY 18 1983

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GREYSON BRYAN  
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May 18, 1983

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Honorable Harold J. Raby  
United States Magistrate  
Southern District of New York  
United States Courthouse  
Foley Square  
New York, New York 10007

Re: Avagliano v. Sumitomo Shoji America, Inc.  
Incherchera v. Sumitomo Corporation of America

Dear Magistrate Raby:

This is in response to Mr. Steel's letter to you dated May 11, 1983 concerning Sumitomo's subpoena to Mr. Steel's law firm.

We served the subpoena because internal Sumitomo documents were apparently removed from the company's files and furnished to Mr. Steel without Sumitomo's knowledge or consent. The primary purpose of the subpoena is to find out what the documents are, since at this time we do not know whether we are dealing with the removal of trivial or innocuous documents, or whether commercially sensitive documents, privileged documents or other confidential materials are involved.

We do not know these things because, despite our repeated requests, Mr. Steel has refused to provide any information in this regard. As the enclosed correspondence shows, on a number of occasions we wrote Mr. Steel requesting that he provide us a list of the documents, and assured him that unless there was some serious misconduct involved we would be able to put the matter to rest without the need for court intervention. Mr. Steel's only response was that if we wanted any information, we should proceed by a formal discovery request.

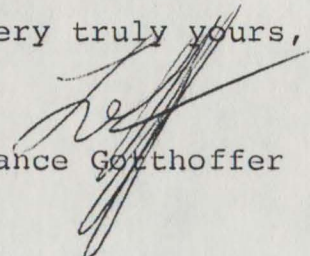


Magistrate Harold J. Raby  
Page Two  
May 18, 1983

While the clear inference is that Mr. Steel's clients, some of whom are still employed by Sumitomo, improperly removed the documents from Sumitomo, we do not know for a fact that they were responsible, and hence could not properly address interrogatories to them. However, no matter who was responsible for removing the documents, Mr. Steel's law firm admittedly now has possession thereof, and as such is the appropriate person for first round discovery.

Since we do not know the extent to which Sumitomo's interests are being jeopardized by theft of its documents, we believe this is a sufficiently urgent matter to require the immediate attention of the Court. We understand the Court has set a conference for 10 a.m. on Friday, May 20, 1983 and we will, of course, appear at that time to request that the application to quash the subpoena be denied in all respects.

Very truly yours,



Lance Gorthoffer

LG/mr  
enclosures  
cc: Lewis M. Steel, Esq.

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

May 11, 1983

Hon. Harold J. Raby  
United States Magistrate  
Southern District of New York  
United States Courthouse  
Foley Square  
New York, New York 10007

Re: Avagliano, et al. v. Sumitomo Shoji America, Inc.  
Incherchera v. Sumitomo Corp. of America

Dear Magistrate Raby:

I am writing this letter about a matter of some urgency with regard to the above cases. I have received a notice to take the deposition of someone from my law firm concerning the above matters. In effect, the notice seeks production of documents which have been prepared by or for Sumitomo and which have been obtained by means other than formal discovery. The notice also seeks testimony concerning how any such documents were obtained.

After receiving this notice, I telephoned Mr. Gotthoffer, one of Sumitomo's attorneys, and suggested to him that the subject matter of the notice does not relate to class action discovery. I therefore asked that the deposition, and all motions which may relate thereto, be adjourned until after class action discovery is completed. Mr. Gotthoffer finally agreed to adjourning the deposition, which in any event was set at an improperly short date from the date of the notice, on my assurance I would give him a new date by which I would either appear or move with regard to the notice.

As I believe that this deposition has nothing to do with the pending class action certification questions and will only further delay resolution of that issue, and is contrary to the approach that I understand Your Honor is taking, which is to dispose of the class action discovery issues first, I am requesting a conference on this issue so as to obtain the quickest possible resolution.

I will take the liberty of calling Your Honor's chambers shortly after your receipt of this letter to determine whether you believe a conference is appropriate. If so, I will make the appropriate



Hon. Harold J. Raby  
May 11, 1983  
Page Two

scheduling arrangements with your chambers and counsel for Sumitomo.

Very truly yours,

  
Lewis M. Steel

LMS:PC  
cc: Lance Gotthoffer, Esq.



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May 9, 1983

Lewis M. Steel, Esq.  
Steel & Bellman  
351 Broadway  
New York, New York 10013

Re: Avagliano v. Sumitomo Shoji America, Inc.  
Incherchera v. Sumitomo Corporation of America

Dear Lew:

As indicated, there is a good chance I will not be in the office tomorrow for the production of documents in the above-referenced matters. Although Mr. Weiner will therefore act as liaison, for your convenience I want to explain the format the production will take.

First, because we have not yet received your assent to a confidentiality order, at this time we cannot produce documents which are entitled to confidential treatment. Accordingly, only non-confidential documents will be produced tomorrow. When an appropriate confidentiality order has been entered, we will produce the remaining documents, and provide any formal supplementation to our discovery responses that might be required.

Subject to the foregoing, for your convenience we have informally endeavored to break out the documents being produced according to the interrogatories to which they are in whole or part referable. In addition, we have provided various documents which would appear to contain some information about Sumitomo's structure, personnel, operations



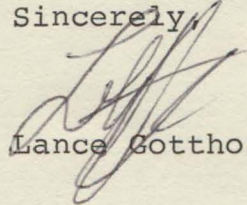
Lewis M. Steel, Esq.  
Page Two  
May 9, 1983

etc. even though they are not referrable to a specific interrogatory. These documents are being produced under the "miscellaneous" designation.

After you have reviewed the documents, please advise Mr. Weiner which ones you desire to have copied, and whether there is any particular copying service you would prefer that we use. We will then arrange for the copying which, of course, will be done at your expense.

Finally, I am still awaiting your proposal for an adjourned date for the deposition of your law firm pursuant to the subpoena we served Monday, May 2, 1983, which adjournment you requested last week. Since we are desirous of moving proceedings along, I would appreciate your suggesting a firm date at your earliest convenience.

Sincerely,



Lance Gotthoffer

LG/mr



BURTON Z. ALTER  
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May 6, 1983

Lewis M. Steel, Esq.  
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Re: Avagliano v. Sumitomo Shoji America, Inc.  
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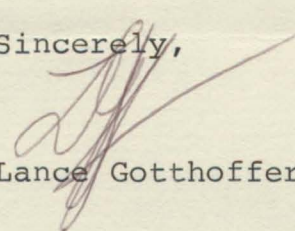
Dear Lew:

Further to my letter of April 28, 1983 concerning the document production in the above-captioned matters, the individual here whom you should contact on your arrival on May 10, 1983 is Glenn Weiner.

I would estimate the total number of pages to be produced by us for you to inspect and designate for copying will number in the thousands, inclusive of both confidential and non-confidential documents. Of course, if we are only in a position to produce non-confidential documents, the number will be substantially less.

Best regards.

Sincerely,

  
Lance Gotthoffer

LG/mr

BY HAND