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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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2-24-1981

## Order and Defendant's Reply to Plaintiffs' Verified Bill of Costs

United States Court of Appeals for the Second Circuit



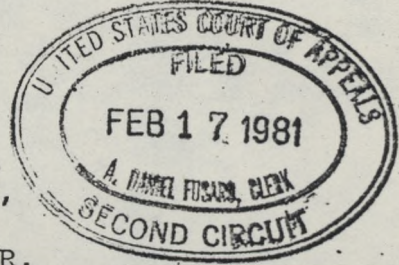
United States Court of Appeals

SECOND CIRCUIT

RECEIVED FEB 24 1981

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the seventeenth day of February, one thousand nine hundred and eighty-one.

LISA M. AVIGLIANO, DIANNE CHENICEK, ROSEMARY T. CROSTOFARI, CATHERINE CUMMINS, RAELEN MANDELBAUM, MARIA MANNINA, SHARON MEISELS, FRANCES PACHECO, JOANNE SCHNEIDER, JANICE SILBERSTEIN, REIKO TURNER, ELIZABETH WONG,



Plaintiffs-Appellees

80-7418

vs.

SUMITOMO SHOJI AMERICA, INC.,  
Defendant-Appellant.

80-7418

Treating the objection of counsel for the appellant as a motion to disallow appellees' itemized and verified bill of costs,

Upon consideration thereof, it is

Ordered that the motion to disallow appellees' itemized and verified bill of costs be and it hereby is granted ~~denied~~

*to the extent that each side shall bear its own costs*

*Walter R. Mansfield*

U.S.C.J.  
Walter R. Mansfield



FEB 6 1981

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 foregoing the being duly sworn, deposes and says: deponent is  
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. in the within action; deponent has read  
and knows the contents thereof; the same is true to

the of in the within action; deponent has read the  
a corporation, and knows the contents thereof; and the same  
foregoing 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

ss.:

is over 18 years of age and resides at

being duly sworn, deposes and says: deponent is not a party to the action,

Check Applicable Box

☐ Affidavit  
of Service  
By Mail

On 19 deponent served the within  
upon  
attorney(s) for in this action, at

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 — a post office — official  
depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Check Applicable Box

☐ Affidavit  
of Personal  
Service

On 19 at upon  
deponent served the within

the  
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

19

.....  
The name signed must be printed beneath



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.,

WENDER, MURASE & WHITE

Attorneys for

Office and Post Office Address

400 PARK AVENUE  
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

19

at M.

Dated,

Yours, etc.,

WENDER, MURASE & WHITE

Attorneys for

Office and Post Office Address

400 PARK AVENUE  
NEW YORK, N. Y. 10022

To

Attorney(s) for

Index No. 80-7418 Year 19

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

LISA M. AVIGLIANO, et al.,

Plaintiffs-Appellees,

-against-

SUMITOMO SHOJI AMERICA, INC.,

Defendant-Appellant.

REPLY

WENDER, MURASE & WHITE

Attorneys for Defendant-Appellant

Office and Post Office Address, Telephone

400 PARK AVENUE  
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 COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----x

LISA M. AVIGLIANO, DIANNE CHENICEK, :  
ROSEMARY T. CRISTOFARI, CATHERINE :  
CUMMINS, RAELEN MANDELBAUM, MARIA :  
MANNINA, SHARON MEISELS, FRANCES :  
PACHECO, JOANNE SCHNEIDER, JANICE :  
SILBERSTEIN, REIKO TURNER and :  
ELIZABETH WONG, :  
Plaintiffs-Appellees, : Docket No. 80-7418

-against- : REPLY

SUMITOMO SHOJI AMERICA, INC., :  
Defendant-Appellant. :

-----x

Defendant-Appellant Sumitomo Shoji America, Inc.  
("Sumitomo"), by its attorneys Wender, Murase & White, hereby  
replies to the February 2, 1981 statement of Plaintiffs-Appellees  
submitted in support of their Verified Bill of Costs which they  
ask the Court to include in its mandate relating to its opinion  
and order of January 9, 1981.

In their February 2 statement, Plaintiffs-Appellees  
do not deny that this Court affirmed the District Court's judg-  
ment for reasons different than those given by the District  
Court, nor do they deny that this Court did not order any costs.  
They argue, instead, that this Court affirmed the District  
Court's order by "adopting a broader theory". However, this  
Court's opinion and order of January 9, 1981 nowhere mentions



adoption of a "broader theory". On the contrary, this Court plainly stated (Slip Opinion at 998) that it was affirming "on grounds other than that relied on by the district court". This Court effectively reversed the District Court insofar as it had denied Sumitomo standing to assert the rights Sumitomo asserted are provided to it by the 1953 Treaty of Friendship, Commerce and Navigation between the United States and Japan.

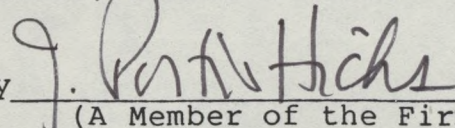
Plaintiffs-Appellees' ad hominem argument to the effect that costs should be taxed against Sumitomo because this is an action "pitting clerical workers against a large corporation with endless financial resources" is sheer nonsense. The record supports no such accusations about financial resources. Even if it did, comparative wealth is no basis on which to tax costs, nor do Plaintiffs-Appellees offer any authority for such a proposition.

For the foregoing reasons, Plaintiffs-Appellees' efforts to tax its printing costs against Defendant-Appellant contravenes Rule 39(a) of the Federal Rules of Civil Procedure and should not be permitted.

Dated: New York, New York  
February 5, 1981

WENDER, MURASE & WHITE

By



(A Member of the Firm)

Attorneys for Defendant-Appellant  
Sumitomo Shoji America, Inc.  
400 Park Avenue  
New York, New York 10022  
(212) 832-3333



TO: Clerk of the Court  
United States Court of Appeals  
for the Second Circuit  
United States Courthouse  
Foley Square  
New York, New York 10007

Lewis M. Steel, Esq.  
Eisner, Levy Steel & Bellman, P.C.  
Attorneys for Plaintiffs-Appellees  
351 Broadway  
New York, New York 10013