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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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11-7-1984

## Magistrate Raby Confidentiality Order

Harold J. Raby

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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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 un-  
authorized disclosure of which would or might adversely affect 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 one or more of the following categories of information: (1) information, the disclosure of which would unfairly invade the privacy of its employees, (2) commercial information, the disclosure of which would or might adversely affect its business dealings and competitive position, or (3) information received by it pursuant to an understanding that the confidentiality thereof would be maintained. In designating any information "Confidential," defendant will make such designation known to plaintiffs' counsel in writing, setting forth which of the above three categories is the basis for such designation. In the event that information disclosed during the course of a deposition is deemed confidential by defendant, the designation thereof as "Confidential data" and the category of information upon which that designation is based 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 document in the form appended hereto as Exhibit A, 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(a). 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, such data may be disclosed only on ten days' prior written notice from plaintiffs' counsel to defendant's counsel, providing the identifying number of the category of information (1, 2 or 3 of paragraph 1) which was assigned by defendant's counsel to the confidential data sought to be disclosed and the identity, function, title, profession or other capacity, of the individual designated to receive such data. Defendant's counsel may refuse to consent to such disclosure by

advising plaintiffs' counsel in writing within ten days of the date of plaintiffs counsel's written notice. If defendant's counsel does not object in writing within this ten day period, such confidential data may be disclosed, after compliance with paragraph 4(b), below. If counsel cannot resolve any differences with regard to such issues, defendant may seek a protective order from the Court denying such disclosure. Defendant must file such a motion for a protective order within ten days of the date defendant's counsel has advised plaintiffs' counsel that it objects to the disclosure. If a motion is not filed within this ten day period, or if the ten day period has not been extended by consent or order, plaintiffs' counsel may make disclosure upon compliance with paragraph 4(b), below.

4(b). Upon consent or absence of objection by the defendant's counsel, or upon the failure of defendant's counsel to timely seek a protective order consistent with paragraph 4(a), above, or if the Court does not issue a protective order pursuant to paragraph 4(a), above, plaintiffs' counsel, before giving a potential witness or expert confidential data, shall provide each such potential witness or expert whom plaintiffs seek to designate as a qualified person under this paragraph with a copy of this order and obtain the expert's or potential witness' signed undertaking, in the form annexed hereto as Exhibit A, to maintain confidential data and all copies, extracts and summaries thereof in confidence. The expert or potential witness shall then be deemed a qualified person subject to the provisions of this order. Plaintiffs' counsel shall provide defendant's counsel with a copy of



such undertakings. In the event a potential witness or person declines to sign the required undertaking, there shall be no disclosure of confidential data made to that person; however, on notice to defendant, 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.

6. Each qualified person, by signing a document in the form appended hereto as Exhibit A, 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. Plaintiffs' 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 procedures set forth in paragraph 4(a) are followed or waived by counsel for both parties and the witness is informed that the data is confidential and is instructed that pursuant to court order such confidentiality must be maintained. Such deponent shall also be shown a copy of this confidentiality order and shall sign the undertaking in the form appended hereto as

Exhibit A before being shown confidential data. In the event such person declines to sign the required undertaking, plaintiffs shall make no disclosure of confidential data to that person; however, on notice to defendant, plaintiffs may move the Court for an order permitting such disclosure. 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: NOV 7 1984

Harold J. Raby

U.S.D.J.

HAROLD J. RABY  
United States Magistrate  
Southern District of New York



UNITED STATE 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,

82 Civ. 4930 (CHT)

-against-

SUMITOMO CORP. OF AMERICA,

Defendant.

-----x

The undersigned hereby acknowledges that (he) (she) (it) has received a copy of, and read, the Confidentiality Order heretofore entered in the above-captioned actions pending in the District Court for the Southern District of New York, understands the provisions thereof, agrees to be bound thereby, and consents to the

personal jurisdiction of the Court for the enforcement thereof.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
\_\_\_\_\_



STATE OF NEW YORK, COUNTY OF

ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

Certification By Attorney certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

Attorney's Affirmation shows: deponent is

Check Applicable Box

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.:

Individual Verification the foregoing being duly sworn, deposes and says: deponent is in the within action; deponent has read 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 as to those matters deponent believes it to be true.

Corporate Verification the of in the within action; deponent has read the foregoing and knows the contents thereof; and the same 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.:

being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at

Affidavit of Service By Mail On 19 deponent served the within attorney(s) for in this action, at

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.

Affidavit of Personal Service On 19 at upon deponent served the within

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.,

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

Attorneys for

Office and Post Office Address

**351 Broadway  
NEW YORK, N. Y. 10013**

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 at M. 19

Dated,

Yours, etc.,

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

Attorneys for

Office and Post Office Address

**351 Broadway  
NEW YORK, N. Y. 10013**

To

Attorney(s) for

Index No. 77 Civ. 5641 (CHT) Year 19  
82 Civ. 5641 (CHT)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LISA M. AVAGLIANO, et al.,  
Plaintiffs,

-against-  
SUMITOMO SHOJI AMERICA, INC.,  
Defendant.

-----  
PALMA INCHERCHERA,  
Plaintiff,

-against-  
SUMITOMO CORP. OF AMERICA,  
Defendant.

CONFIDENTIALITY ORDER

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

Attorneys for

Office and Post Office Address, Telephone

**351 Broadway  
NEW YORK, N. Y. 10013  
(212) 925-7400**

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

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NOV 7

1984

RECEIVED NOV 13 1984

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