

Second, this Court has previously determined that it would be inappropriate to parse and strike pleadings in this case, when it denied Fish & Richardson's request to strike the unconscionable assertions, made in briefs by the Niro firm, that the law firm of Fish & Richardson was connected to death threats on Mr. Niro which allegedly appeared on a third party blog. (*See* Scott Harris's and ICR's Mot. to Proceed with Disc. at 2-3, Dkt. No. 103; Fish & Richardson's Resp. to Mr. Harris's and ICR's Mot. to Proceed with Disc. at 2-3, Dkt. No. 110.) If the Court grants this motion, it should also strike the numerous pejorative and factually unfounded assertions in the Niro firm's briefs and pleadings. These include outrageous allegations of death threats linked to Fish & Richardson and witness intimidation linked to Jenner & Block, which they know, from discovery and otherwise, have *no* factual basis and are truly scandalous and inflammatory.

Third, the term "shell entity" is both accurate and appropriate in this case. Most of the referenced entities have demonstrated that they are mere "shells" by producing virtually no corporate documentation; most appear to have no business other than to serve as a transparent basis for Mr. Harris to contend that he is not suing firm clients directly. Virtually all of the economic value of the "Harris patents" allegedly held by these entities belongs to Mr. Harris and the Niro firm and not to the entity itself. Additionally, the Motion to Strike asserts that the term "shell entity" is synonymous, in this context, with the term "patent troll." (Mot. to Strike at 2, Dkt. No. 180.) Significantly, Mr. Harris, even while at Fish & Richardson, sponsored a website, impatenttroll.com, in which he proudly and openly referred to himself as a "patent troll." Truth is an absolute defense.

This motion to strike, served without benefit of a meet and confer, promotes neither civility nor professionalism. Due regard for truth and dialogue would promote those goals.

This motion to strike should be denied.

Dated: June 2, 2008

Respectfully submitted,

FISH & RICHARDSON P.C.

By: s/ David J. Bradford
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed with the Court by means of the Court's CM/ECF system, which will send notification of such filing to the following counsel at their email address on file with the Court:

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June 2, 2008.

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EXHIBIT A

ICR v. F&R

Niro, Raymond P [rniro@nshn.com]

Sent: Friday, May 30, 2008 1:54 PM

To: Bradford, David J

Cc: Truax, Terrence J; Vickrey, Paul K [vickrey@nshn.com]; Megley, Richard B Jr [megleyjr@nshn.com]; Kenneally, Laura [lkenneally@nshn.com]

David:

The continual reference to our clients as "shell entities" is offensive and we want it stopped immediately. Further, we believe it inappropriate to permit filings containing such references to stand. Are you prepared to withdraw all references to shell entities and to refer to these companies either by their actual names or third-party defendants? If not, we intend to file a motion on the subject. Please get back to me by 4:00 today.

Raymond P. Niro
(Transmitted by Donna L. Wartman)
Dictated but not reviewed