

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

INTERNATIONAL STRATEGIES GROUP, LTD.,)	
)	
Plaintiff,)	
)	
v.)	
)	
GREENBERG TRAURIG, LLP., A. JOHN PAPPALARDO, AND ECKERT, SEAMANS, CHERIN AND MELLOTT, LLC,)	CIVIL ACTION No.: 04-12000 RWZ
)	
Defendants)	
)	

MOTION TO STRIKE AFFIDAVIT OF PHILIP G. CLARK

Defendants Greenberg Traurig, LLP (“GT”) and A. John Pappalardo (“AJP”) hereby move to strike the affidavit by Phillip G. Clark submitted by International Strategies Group, Ltd (“ISG”) in opposition to their Motion to Dismiss, pursuant to Fed. R. Civ. P. 12(b)(6).¹

In considering a motion to dismiss, a court must look solely to the facts alleged in the complaint, and may not consider facts alleged by the plaintiff in its briefs or other sources. *See Glaros v. Perse*, 628 F.2d 679, 681 (1st Cir. 1980). In the affidavit submitted by ISG, Mr. Clark purports to make statements “[i]n addition to the allegations of the complaint.” Clark Aff. at ¶2. ISG explained in its Opposition that it submitted this affidavit “to explain in greater detail the harm occasioned by GT and AJP in connection with [ISG’s] claims against third parties.” Pl. Resp. to GT and AJP at 6. Because the putative facts to which Mr. Clark attests are not alleged in the complaint, his affidavit should be stricken.

¹ As GT and AJP were preparing to file this motion, they received an amended complaint from ISG, which they will analyze and reply to in due course.

For these reasons, also detailed in their accompanying Memorandum of Law, GT and AJP respectfully request that the Court strike the Affidavit of Philip G. Clark.

Respectfully submitted,

GREENBERG TRAURIG, LLP AND
A. JOHN PAPPALARDO,

By their attorneys,

/s/ Paul B. Galvani

Paul B. Galvani (BBO # 183800)
Matthew P. Garvey (BBO # 655419)
Ropes & Gray LLP
One International Place
Boston, MA 02110
Tel.: (617) 951-7000

Dated: January 11, 2005

Certification of Consultation

Pursuant to Local Rule 7.1, I, the undersigned counsel for defendants Greenberg Traurig, LLP. and A. John Pappalardo, certify that I have conferred with plaintiff's counsel regarding this motion in good faith to resolve or narrow the issues presented by this motion.

/s/ Matthew P. Garvey
Matthew P. Garvey

CERTIFICATE OF SERVICE

I, Matthew P. Garvey, a member of the Bar of this Court, hereby certify that on this day, January 11, 2005, the above motion to strike was served on the plaintiff by causing a copy of the same to be hand delivered to its counsel, Jessica Block, Esq., Block & Roos, LLP, 60 State Street, Suite 3800, Boston, MA 02109, and was served on defendant Eckert, Seamans, Cherin and Mellott, LLC by causing a copy of the same to be hand delivered to its counsel, Devorah Levine, Esq., Eckert, Seamans, Cherin and Mellott, LLC, One International Place, 18th Fl., Boston, MA 02110.

/s/ Matthew P. Garvey
Matthew P. Garvey