

UNITED STATES DISTRICT COURT DISTRICT  
OF NEW HAMPSHIRE

Plaintiff(s) T-Peg, Inc. and Timberpeg East, Inc.

v.

Civil No. C-03-462-M

Defendant(s) Stanley J. Isbitski and Vermont Timber Works, Inc.

**DISCOVERY PLAN**  
**Fed. R. Civ. P. 26(f)**

**DATE/PLACE OF CONFERENCE:** 2/ 11 /2004  
Hanover, N.H. via telephone conference

**COUNSEL PRESENT/REPRESENTING:** Daniel Will (#12176) and/or Stephen Woods (#8240) representing T-Peg, Inc. and Timberpeg East, Inc. ("Timberpeg"); W.E. Whittington (#6916) representing Vermont Timber Works, Inc. ("VTW")

**CASE SUMMARY**

**THEORY OF LIABILITY:** Copyright infringement, unjust enrichment, unfair competition, N.H. Consumer Protection Act; Counterclaim: abuse of process

**THEORY OF DEFENSE:** General denial, lack of use/copying, lack of substantial similarity, abuse of process

**DAMAGES:** Timberpeg's damage claim is in excess of \$75,000. VTW's claimed counterclaim damages are not yet determined but in excess of \$30,000.

**DEMAND:** July 1, 2004

**OFFER:** July 12, 2004

**JURISDICTIONAL QUESTIONS:** None

**QUESTIONS OF LAW:** Without limitation, applicability of architectural copyright infringement to the design, manufacture, and assembly of a timber frame structure; whether plaintiff's drawings are copyrightable, whether there was copyright infringement, whether a party can assert a copyright registered in another's name, whether plaintiff gave proper notice of its alleged copyright, whether the state law claims are preempted, whether the defendant received legal benefit, whether the alleged or actual conduct constitutes unfair competition, whether the alleged or actual conduct is actionable under the New Hampshire Consumer Protection Act, and whether the New Hampshire Consumer Protection Act applies to defendant's activities in Vermont

**TYPE OF TRIAL:** Jury Trial

**DISCOVERY**

**TRACK ASSIGNMENT:** Standard

**DISCOVERY NEEDED:** Without limitation, written discovery (including document production) and depositions regarding the content of parties' files; design process of subject plans/structure; financial records of VTW regarding gross profit

**MANDATORY DISCLOSURES (Fed. R. Civ. P. 26(a)(1))**

Parties have stipulated to mandatory Rule 26(a)(i) disclosures on or before March 2, 2004.

**COMPLETION OF DISCOVERY:**

(1) *Date all discovery complete:* January 14, 2005

(2) *If there are issues for early discovery, date for completion of discovery on those issues*

**INTERROGATORIES:**

A maximum of 25 interrogatories and 25 requests for production of documents by each party to any other party. Responses due 30 days after service unless otherwise agreed to pursuant to Fed. R. Civ. P. 29.

**REQUESTS FOR ADMISSION:**

A maximum of 25 requests for admission by each party to any other party. Responses due 30 days after service unless otherwise agreed to pursuant to Fed. R. Civ. P. 29,

**DEPOSITIONS:**

A maximum of 10 depositions by plaintiff(s) and 10 by defendant(s).

Each deposition limited to a maximum of 7

hours unless extended by agreement of the parties.

**DATES OF DISCLOSURE OF EXPERTS AND EXPERTS' WRITTEN REPORTS AND SUPPLEMENTATIONS:**

Plaintiff: August 2, 2004      Defendant: September 20, 2004

Supplementations under Rule 26(e) due within 30 days thereafter

**CHALLENGES TO EXPERT TESTIMONY:** November 20, 2004

[no later than 45 days prior to trial]

**OTHER ITEMS**

**JOINDER OF ADDITIONAL PARTIES:**

Plaintiff: August 2, 2004

Defendant: August 2, 2004

**THIRD-PARTY ACTIONS:** August 2, 2004

**AMENDMENT OF PLEADINGS:**

Plaintiff: July 1, 2004

Defendant: July 1, 2004

**DISPOSITIVE MOTIONS:**

To Dismiss:

May 7, 2004

For Summary Judgment:

November 1, 2004

**SETTLEMENT POSSIBILITIES:**

- (1) is likely
- (2) is unlikely
- (3) cannot be evaluated prior to (date)
- (4) may be enhanced by ADR:

- (a) Request to the court
- (b) Outside source

**JOINT STATEMENT RE MEDIATION:** January 31, 2005

**WITNESSES AND EXHIBITS:**

[NO DATES NECESSARY; DUE DATES--10 DAYS BEFORE FINAL PRETRIAL CONFERENCE BUT NOT LESS THAN 30 DAYS BEFORE TRIAL FOR LISTS (INCLUDED IN FINAL PRETRIAL STATEMENTS) AND 14 DAYS AFTER SERVICE OF FINAL PRETRIAL STATEMENT FOR OBJECTIONS--SET BY CLERK'S NOTICE OF TRIAL ASSIGNMENT. ]

**TRIAL ESTIMATE:** 4-5 days

**TRIAL DATE:** Two-week trial period beginning 03/01/05

**PRELIMINARY PRETRIAL CONFERENCE:** The parties do not request a preliminary pretrial conference with the court before entry of the scheduling order. [NOTE: THE PARTIES SHOULD PLAN TO ATTEND THE PRELIMINARY PRETRIAL CONFERENCE AS SCHEDULED UNLESS OTHERWISE NOTIFIED BY THE COURT. ]

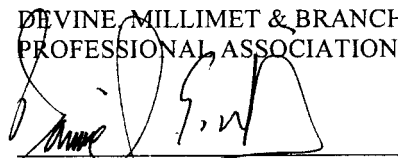
**OTHER MATTERS:** None.

Respectfully submitted,

T-PEG, INC. AND TIMBERPEG EAST, INC.

By their attorneys,

DEVINE MILLIMET & BRANCH,  
PROFESSIONAL ASSOCIATION



Daniel E. Will (#12176)  
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(603) 669-1000

Dated: February 13, 2004

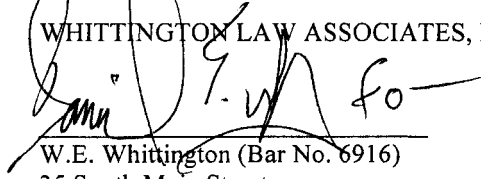
Of Counsel:

Stephen S. Woods, Esquire (#8240)  
General Counsel for Plaintiffs  
Timberpeg East, Inc.  
c/o 68 Lyme Road  
Hanover, NH 03755  
(603) 643-6200

VERMONT TIMBER WORKS, INC.  
Defendant,

By its attorneys,

WHITTINGTON LAW ASSOCIATES, PLLC

A handwritten signature in black ink, appearing to read 'W.E. Whittington', is written over a horizontal line. The signature is stylized and includes a large 'W' and 'E'.

W.E. Whittington (Bar No. 6916)  
35 South Main Street  
Hanover, NH 03755  
(603) 643-2755

Dated: February 13, 2004

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