

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

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T-Peg, Inc. and Timberpeg East, Inc.)	
)	
Plaintiff,)	
)	
v.)	No. C-03-462-M
)	
Stanley J. Isbitski and Vermont Timber Works, Inc.)	
)	
Defendants.)	
)	

PLAINTIFFS' EXPERT DISCLOSURE

NOW COME, the Plaintiffs, T-Peg, Inc. and Timberpeg East, Inc. ("Timberpeg"), by and through their attorneys, Devine, Millimet & Branch, Professional Association, and, pursuant to Federal Rule of Civil Procedure 26(a)(2), disclose that they may call at trial as expert witnesses one or more of the following persons listed below to offer opinion testimony.

I. INTRODUCTION AND RESERVATION OF RIGHT TO AMEND AND SUPPLEMENT

This expert disclosure is preliminary in nature and is made while discovery is ongoing and prior to the closure of discovery. Accordingly, Plaintiffs reserve the right to supplement and amend this expert disclosure prior to trial in light of information that may become available during the remainder of the discovery process and in response to any other testimony or opinions that may be rendered subsequent to this expert disclosure. In no way should this expert disclosure be considered final, and Plaintiffs specifically reserve the right to supplement and amend this expert disclosure prior to trial to add experts depending upon the information developed during discovery.

II. DISCLOSURE OF RETAINED EXPERTS

Jonathan Vincent

Defendants expect to call Jonathan Vincent, AIA, of Norwich, Vermont to offer opinion testimony. Mr. Vincent is Director of Design, Timberpeg Services Inc., a wholly owned subsidiary of T-Peg, Inc. His educational background and experience are set forth in his curriculum vitae, attached to this Disclosure as Exhibit A. Mr. Vincent has not authored any publications within the preceding ten (10) years nor has he testified as an expert at trial or by deposition within the preceding four (4) years.

Mr. Vincent bases his opinions on his education, his extensive specialized knowledge, training and experience in the area of architectural design, as well as his review of the materials relevant to this case, including but not limited to, architectural drawings, and frame shop drawings of the former Isbitski house and an examination of that residence in Salisbury, New Hampshire. The information is further set forth in Mr. Vincent's expert report, attached as Exhibit B.

Plaintiffs expect that Mr. Vincent will testify about architectural and timber frame design, and more specifically, the substantial similarity between Timberpeg's copyrighted architectural drawings, Vermont Timberworks' shop drawings and the completed residence. Mr. Vincent's opinions are further detailed in the accompanying report.

Jim Driesch

Defendants expect to call Jim Driesch of Hartland, Vermont to offer opinion testimony. Mr. Driesch is Chief Designer, Timberpeg Services Inc., a wholly owned subsidiary of T-Peg, Inc. His educational background and experience are set forth in his curriculum vitae, attached to this Disclosure as Exhibit C. Mr. Driesch has not authored any publications within the preceding

ten (10) years nor has he testified as an expert at trial or by deposition within the preceding four (4) years.

Mr. Driesch bases his opinions on his education, his extensive specialized knowledge, training and experience in the area of architectural design, as well as his review of the materials relevant to this case, including but not limited to, architectural drawings, and frame shop drawings of the former Isbitski house and an examination of that residence in Salisbury, New Hampshire. The information is further set forth in the expert report submitted by Jonathan Vincent, in which Mr. Driesch concurs.

Plaintiffs expect that Mr. Driesch will testify about architectural and timber frame design, and more specifically, the substantial similarity between Timberpeg's copyrighted architectural drawings, Vermont Timberworks' shop drawings and the completed residence. Mr. Driesch's opinions are further detailed in the accompanying report.

Mr. Vincent and Mr. Driesch are also expected to be available to respond to additional matters or issues which may result from further discovery, which is continuing, and to rebut, critique and comment on the testimony opinions of the Defendant, including its experts. Plaintiffs reserve the right to amend and to supplement this expert disclosure, as it becomes necessary upon further discovery.

III. DISCLOSURE OF NON-RETAINED EXPERTS

Mr. Vincent and Mr. Driesch were not specially retained, but have been disclosed as such with a report because their analysis is outside of their ordinary responsibility and duties. Defendants also reserve the right to call as witnesses and to elicit information and testimony from any current or former employees that have performed work in connection with the copyrighted architectural plans, such as Chad Rivet, Lynn Cole, and others who have knowledge and

expertise relating to the issues raised in this case and may have specific knowledge relating to the architectural plans and the issues raised in this suit. By soliciting such potential testimony, Plaintiffs do not necessarily adopt or accept such opinions. These witnesses have not been retained to provide expert testimony as described in Federal Rule of Civil Procedure 26(a)(2)(B). Accordingly, Plaintiffs are not submitting an expert report for these witnesses.

IV. DEFENDANTS' EXPERTS

Plaintiffs reserve the right to call as witnesses and elicit information and opinion testimony from each person identified in the Defendant's expert disclosure, subsequent disclosures, or any person upon whom the Defendant may rely upon as an expert witness. Plaintiffs reserve the right to elicit from such witnesses testimony on any of the issues in this case. By soliciting such potential testimony, Plaintiffs do not necessarily adopt or accept such opinions. This disclosure should not be interpreted as a waiver of Plaintiffs' right to object to any expert testimony offered by a witness for the Defendant, the content and basis of which was not previously disclosed in accordance with the Federal Rules of Civil Procedure and the Orders of this Court.

V. RESERVATION OF THE RIGHT TO REBUT AND COMMENT

Plaintiffs reserve the right to have its experts critique, comment on and rebut the testimony and opinions of the Defendant's experts. Plaintiffs reserve the right to elicit from such witness testimony on any of the issues in this case without specifically adopting the testimony and opinions of the Defendant or the Defendant's expert.

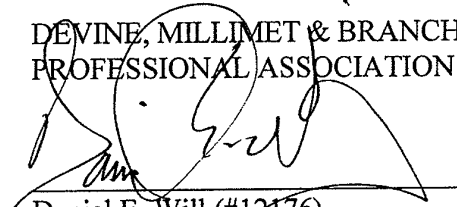
Respectfully submitted,

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

By their attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: July 27, 2004



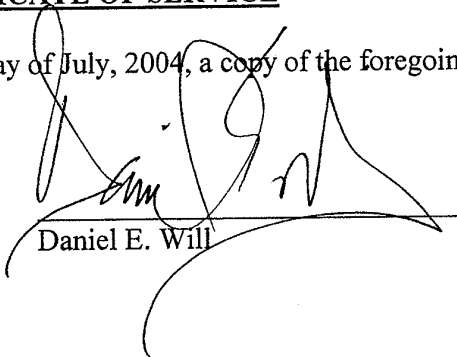
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(603) 669-1000

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

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July, 2004, a copy of the foregoing was forwarded to W.E. Whittington, Esquire.



Daniel E. Will

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EXHIBIT A

267 MAIN STREET • P.O. BOX 220 • NORWICH, VT 05055
PHONE 802-649-1807 • E-MAIL JONATHANVINCENT@ADELPHIANET
CELL 603-252-1971

JONATHAN S. VINCENT

PROFESSIONAL EXPERIENCE

1991-Present TIMBERPEG West Lebanon, NH
Director of Design
Managing Design Department for national timber frame manufacturer

1984-91 Still River Associates
Principal
Residential and light commercial architectural firm with historic renovation emphasis

1984 Schneider, Parker, Jakuc Boston, MA
Account Executive (Advertising Agency)
Managed advertising for nine clients, including Digital Equipment Corp.

1982-84 Leo Burnett Company Chicago, IL
Assistant Account Executive (Advertising Agency)
Worked on the United Airlines and Keebler Biscuit accounts

1978-82 Metz, Train, Olsen and Youngren, Inc. Chicago, IL
Designer, then Architect and Associate Partner
Project Manager on numerous commercial renovations and additions, including a computer facility and heliport; co-wrote and edited book on the new Ministry of Information facility in Saudi Arabia

1975-77 Shepley, Bulfinch, Richardson and Abbott, Inc. Boston, MA
Designer
Worked on schematic designs and working drawings of hospitals and a high school

PROFESSIONAL MEMBERSHIPS

Member, American Institute of Architects (AIANH Chapter)

Member, International Code Council

Member, Home Builders & Remodelers Association of NH

Member, American Forest & Paper Association

Member, Timber Framers Guild

ACCREDITATIONS

Registered Architect in CA, IL, IN, MA, ME, NC, NH, NJ, NY, VT

Certificate Holder, National Council of Architectural Registration Boards

PRESENTATIONS

Presented "Timber Framing – Past, Present and Future" at Wood Design Focus Seminars in Boston, MA (2001) and Charlotte, NC (2004)

EDUCATION

1980-82	University of Chicago <i>Master of Business Administration (190 Program)</i> Concentration in Finance and Marketing	Chicago, IL
1972-5	Princeton University <i>Master of Architecture (School of Architecture and Urban Planning)</i>	Princeton, NJ
1971	Radcliffe Publishing Procedures Course <i>Certificate</i>	Cambridge, MA
1967-71	Harvard College <i>Bachelor of Arts (Cum Laude)</i> Concentration in English History and Literature	Cambridge, MA

ADDITIONAL SEMINAR TRAINING

World Conference on Timber Bridges, Burlington, VT (2003)

World Conferences of Timber Engineering in Whistler, BC (2001) and Montreux, Switzerland (1999)

Golf Course Design, Harvard GSD, Cambridge, MA (1995)

Golf Club House Design and Siting, Harvard GSD, Cambridge, MA (1995)

Energy Crafted Homes, Concord, NH (1992)

Presentation Skills Workshop, Chicago, IL (1982)

Passive Solar Workshop, Hawkweed Group, Soldiers Grove, WI (1981)

LANGUAGE

French (out of practice)

COMMUNITY ACTIVITIES

Chair, Prudential Committee of the Norwich Fire District, Norwich, VT (1998 – Present, Member 1996-8)

Secretary, Hanover Country Club, Hanover, NH (1998 – Present)

Former Auditor, Town of Norwich, VT (2001-2003)

Former Member, Norwich Planning Commission (2002-2003)

INTERESTS AND ACTIVITIES

Golf, singing, flyfishing, blacksmithing, tinsmithing, photography, reading, writing

EXHIBIT B

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TIMBERPEG

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To: Dan Will, Esq.
From: Jonathan Vincent
Date: July 29, 2004
Subject: Isbitski Residence (Timberpeg Project #4834)

Dear Dan:

At your request I reviewed the Timberpeg architectural plans dated 4/20/01 and the Vermont Timberworks shop drawings dated 5/17/02 for the Isbitski Residence in Salisbury, NH. I then visited the house, which is currently under construction, on July 20, 2004. Jim Driesch, Timberpeg's Chief Designer, and I inspected the frame and enclosure of the portion of the house provided by Vermont Timberworks, took digital photographs of the house, and made measurements to examine its similarity with the design shown on the Timberpeg architectural plans dated 4/20/01. Prints of the digital photographs are attached to this report. Jim and I also spoke with the current owner and builder, Matt Dupee. The visit lasted about two hours.

As you know, architectural plans reflect the design concept of a building, including its shape, size, room locations and dimensions. Typically they consist of plans, elevations, section(s) and details. Once a plan has been approved, the designer expands the drawings by adding additional details, and, in the case of timber framing, shop drawings and construction details which are then used to cut and assemble the structural frames. Timberpeg's plans consisted of five drawings, a Cover Sheet and Drawings 2 through 5. These include $\frac{1}{4}"=1'-0"$ scale first and second floor plans, which are horizontal cuts through the building, looking down, typically taken at 3'-0" off the floor. Such plans indicate the size of the building, the location and size of doors, windows, and stairs, plus bathroom and kitchen fixtures. In addition, the location of posts is called out, and dotted lines indicating structural elements overhead, such as joists and girders, are included.

There are also two drawings with a total of four exterior elevations, which are representations of the building projected on a single vertical plane. These are drawn at $\frac{1}{4}"=1'-0"$ scale, not in perspective. By representing the walls, roof, windows, etc. at true scale, it is much easier both to draw and measure a given building. The exterior elevations show how the building will look from the outside, and give plate, door and window head heights, the location of windows, types of exterior surface materials, and the shape of roofs. Together, these drawings give an accurate image of the intended design.

Shop drawings are developed from initial architectural plans, and are used for the fabrication and erection of specific components of a building. They are typically drawn after architectural plans have been reviewed and approved, since they relate only to building components, and are not suitable for obtaining a building permit or a loan. In Vermont Timberworks' shop drawings there are seven sheets (FR 1-7), beginning with

isometric exterior and interior views of the frame, followed by plans of post and framing locations, some details, and then two sheets of elevations of various bents. Finally, there are two sheets of joinery details.

Timber framed buildings are unusual in that the structural component of the building, the timber frame, also defines the spaces within a building. The locations of posts and girders, and whether a room is cathedral or not complement and strengthen the architectural design. In fact, often the framing alone can define the size, shape and intended layout of a timberframed building.

Although there are no architectural drawings as such, the outline and design of the Isbitski house in the Vermont Timberworks drawings matches almost exactly the architectural design represented in Timberpeg's plans. The only differences are the Vermont Timberworks' kitchen bump out being two feet wider, and some of the post locations being modified to match this. In addition, there is an additional post near the stair, and the sizes are sometimes larger.

However, the overall dimensions are the same, the stair is the same design in the same location, and the area shown as a loft is the same size in the same location. The shop drawings do call out bents, so the roof framing is shown with purlins and a ridge beam rather than common rafters, but the plate heights and overall mass of the building is the same. Most telling of all, the interior isometric views on the Vermont Timberworks drawings show the room locations were intended to be the same as in Timberpeg's architectural drawings.

After reviewing and comparing the Vermont Timberworks shop drawings with Timberpeg's architectural plans, I visited the actual house. The Isbitski Residence, now owned by Mr. Dupee, is being built largely as shown on the Timberpeg architectural drawings, except that the structural frame is the one cut and erected by Vermont Timberworks. The outline and shape of the building, except for the size of the bump out, are the same. The post locations are the same as on the Timberpeg copyrighted set, save for some minor size variations, and the additional post already mentioned. The area shown on Timberpeg's drawings as "SCREEN PORCH BY OTHER" is being enclosed by the builder, over a full foundation. There is also a full foundation under the portion called "COVERED PORCH (B.O.)" on the Timberpeg plans.

Although the windows being installed are from the Marvin Integrity series, and differ from those shown by Timberpeg, they are installed in the same locations shown on the Timberpeg drawings. Further, the builder indicated that the original structural insulated panels installed by Vermont Timberworks remained in place, with only the interior drywall removed and replaced. This means that the frame and panels were designed to accommodate the same size windows as those shown by Timberpeg, even though there is no indication of windows as such on the Vermont Timberworks shop drawings.

The upstairs loft is in the same location and at the same height above the first floor (9'-1 1/2") as indicated on the Timberpeg drawings. It connects in the same place with the

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bedrooms, even though there are no indications of the wing on the Vermont Timberworks drawings except parts of two walls. The windows are by a different maker, but remarkably fit in the same locations as shown on the Timberpeg drawings.

I had not known that the foundation, as poured, did not match the outline of the Timberpeg design for the building. Instead, it was squared off into a large rectangle, with a full basement under both the "Screen Porch" and the "Covered Porch." Such a simple, rectangular foundation would have permitted the creation of a wide range of designs for the framing of the house. Remarkably, the Vermont Timberworks frame matches the outline of the Timberpeg design, with the exception of the bump out, rather than the foundation which was poured. Steel supporting beams and blocking have been added to support point loads from the frame. In some cases, the blocking is in very awkward locations, such as over a basement window.

It is my professional opinion that the Vermont Timberworks frame, as built, is based on the design shown in Timberpeg's copyrighted set of drawings for the house. In fact, save for some minor changes in the framing and the use of bents rather than common rafters, the overall design is virtually the same. Jim Driesch, who measured and inspected the building with me, concurs in this conclusion. Ultimately, I do not believe it would be possible to design such a close match without access to and the use of Timberpeg's architectural plans.

I have attached a copy of my curriculum vitae for your use.

Yours,



Jonathan S. Vincent, AIA



