

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

T-PEG, INC and)
TIMBERPEG EAST, INC.,)
Plaintiffs,)
)
vs.) No. 03-CV-462-M
)
VERMONT TIMBER WORKS, INC.,)
And DOUGLAS FRIANT,)
Defendants.)

DEFENDANTS' MOTION IN LIMINE
TO BIFURCATE LIABILITY AND DAMAGES PHASES OF TRIAL

Defendants, Vermont Timber Works, Inc. ("VTW") and Douglas Friant ("Friant"), move in limine to bifurcate the liability and damages phases of trial.

In support of this motion, defendants state:

Based on plaintiffs' repeated failure to produce damages discovery, the Court sanctioned plaintiffs resulted in their forced election of statutory damages under 17 U.S.C. Section 504 in lieu of their damages or defendants supposed profits. See November 19, 2004 order (Doc. 52).

Since Section 504(c) provides that statutory damages are in a sum from \$750 to \$30,000 "as the court considers just," and based on the forced election, damages are an issue for the Court not the jury.

Therefore defendants request that the Court bifurcate the liability and damages portions of trial, which would be more efficient because (1) it would leave damages testimony out of the jury case; (2) if there is a liability verdict for defendants it would obviate the testimony altogether; (3) if there is a damages phase it could be scheduled at

the Court's convenience without regard to jury availability; and (4) it would either obviate the financial experts' testimony or enable it to be postponed until a firm, scheduled date.

WHEREFORE, defendants respectfully request that the Court bifurcate the liability and damages phases of trial.

Date: August 14, 2009

VERMONT TIMBER WORKS, INC.
and DOUGLAS FRIANT,
Defendants,

/s/ W. E. Whittington
W. E. Whittington

W. E. Whittington (Bar No. 6916)
Whittington Law Associates, PLLC
35 South Main Street
Hanover, NH 03755
(603) 643-2755
ned@whittington-law.com

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2009, I served the foregoing pleading on the following counsel of record, by causing it to be filed electronically via the CM/ECF filing system.

Daniel E. Will, Esq.
Jonathan Shirley, Esq.
Devine, Millimet & Branch, P.A.
111 Amherst Street
Manchester, NH 03105
dwill@deviinemillimet.com
jshirley@devinemillimet.com

/s/ W. E. Whittington
W. E. Whittington