

# EXHIBIT A

# PHIL PHILLIPS

Timber Frame Joinery

P.O. Box 484 Norwich, Vt. 05055 802-649-2834

October 29, 2004

W. E. Whittington  
Whittington Law Associates PLLC  
35 South Main Street  
Hanover, New Hampshire 03755

**Re: T-Peg, Inc. et al. v. Vermont Timber Works, Inc. No. 03-cv-462-M**

Dear Sir or Madam:

I have been retained by Whittington Law Associates, PLLC to provide expert testimony in the above referenced case. This document will constitute my expert report.

At the request of Mr. Whittington I have examined Timber Peg's documents identified as TIM 396-403 and TIM 454-458. I have also examined a set of documents from Vermont Timber Works dated 5/17/02 and other documents listed later in this report. Based on the examination of these three documents (sets of drawings) I am of the following opinions. The basis and reasons for these opinions are stated below.

1. I see nothing either creative or original in the dimensions shown in either set of drawings from Timber Peg.

The earlier dated set of drawings from Timber Peg, TIM 396-403, are quite different from the later set, TIM 454-458. The former is different in dimension and shape, not to mention layout. The dimensions of both of these sets of drawing are standard. It is customary in the building industry to design buildings in increments of 2 feet, and more often in increments of 4 feet. In fact Timber Peg's own literature states, "Our framing system is based on standard sizes and a four foot module." So, for instance, to design a building which is 28' X 44', as is the case in the more recent set of drawings, would be quite usual and ordinary. I see nothing in any of these drawings, which I would characterize as employing anything other than standard features.

2. I see nothing either creative or original in the drawings simply because the location of proposed posts is indicated.

W. E. Whittington  
Whittington Law Associates PLLC  
October 29, 2004  
Page 2

Adding post locations to such a drawing in and of itself certainly does not add any sort of originality or creativity to the drawings. Indicating that the posts will be made of 8"X8" timbers is clearly not original or creative, as this is the most common post size used in this type of framing.

3. I see nothing creative or original in designing framing for ceilings, which are 8, 9 or 10 feet high.

These are heights of ceilings which are most common, not only in timber framing but in other methods of construction. They are, simply put, standard features.

4. I see nothing either creative or original in a "salt box" design with or without a shed attachment.

Such a design has been around since, people designed houses in New England. They were very popular at various times in our history and such designs can be found in all manner of books and publications.

5. I see nothing either creative or original in the design of a 12/12 pitch.

Over the years there have been roofs designed from flat to very steep. Perhaps the most common, at least in this part of the country, is the 12/12. Again, simply put, I would consider it a standard feature.

6. I see nothing creative or original in placing the posts of a timber frame over basement footings.

In order to transfer the weight of a building down to the ground, especially a properly designed timber frame, concentrates the entire load of the building onto a relatively few points. When these points are inside the perimeter of the building, as opposed to along the outer walls of the foundation, they generally need more support than a normal cement slab will provide. Therefore, it is customary to pour a thickened slab of cement under places which will have posts above and therefore carry large weight loads. If one were presented with a foundation which was already completed before the frame design was done, such a foundation would suggest where interior posts of the frame might be placed.

W. E. Whittington  
Whittington Law Associates PLLC  
October 29, 2004  
Page 3

7. I see nothing in either set of Timber Peg drawings, which defines the necessary components of a timber frame so as to allow for the construction of a completed timber frame. There can be no meaningful comparison between a floor plan and a complete timber frame.

Timber framing is an art, which has been in the Western world for the better part of 2000 years. The construction methodology requires that one take into account many variables when designing a timber frame. Such variables would, for instance, include the species of wood to be used, the weight loads to be experienced by the finished structure, the type of joinery used, the dimensions of all of the various members of the frame, the interior design of the structure and basic design features of the timber frame itself. With respect to basic design features, for instance, there are two major methods for framing a roof, each requiring different structural considerations. In the "preliminary drawings" drawn by Timber Peg, many of these multiple variables, or other relevant considerations mentioned above are not adequately addressed or, in many instances, are not addressed at all. The simple display of post locations would not, in any sense, be sufficient even to define a timber frame, either in mathematical or structural terms.

Therefore, the question of whether or not the timber frame design done by Vermont Timber Works is substantially similar to the timber frame which, was apparently intended to be designed by Timber Peg at a later date, is a moot one, as I see in neither of the drawings from Timber Peg, any frame design at all.

8. The preliminary drawings by Timber Peg labeled TIM 454-458, are not substantially similar to Vermont Timber Works frame design.

Comparing these two designs, I note that the roofing systems are completely different, one from another. The Timber Peg design uses a plate and common rafters design, while the Vermont Timber Works frame employs a major rafter and purlin design. In addition, there are differences in most of the twenty-seven posts between the two designs. There are also other differences such as knee brace locations. In addition the Timber Peg design has no indication as to the particular joinery to be used, while the Vermont Timber Works plans show this in complete detail.

9. The Timber Peg product is post and beam technology but may not be timber framing in the traditional sense.

I think that I am correct in saying that Timber Peg Inc. represents the Company as a post and beam frame manufacturer. To me, post and beam and timber framing can be two different and distinct technologies. The use of major posts and large beam timbers constitutes post and beam

W. E. Whittington  
Whittington Law Associates PLLC  
October 29, 2004  
Page 4

construction, regardless of how the timbers are held together, for instance if by metal fasteners. The term timber framing implies that the frame is held together entirely by wooden pegs which connect frame members through the use of mortises and tenons.

Timber Peg's literature indicates that they do use "hidden steel connectors." While the finished frame will come out looking like a true timber frame, and can, in fact, be quite beautiful, I would argue that there are detrimental factors which one might consider. First there is a long-term structural consideration. The fact is that timber framing is so strong and long lasting precisely because of the wooden pegs and mortise and tenon construction. I think that the use of metal connectors diminishes this long term structural advantage and can, in theory, negate it entirely.

10. The use of metal fasteners, as stated above, also lends more credence to the idea that the two company's frames, do not meet the criteria of being substantially similar.

It seems that people choose to have a post and beam or timber framed structure mainly for aesthetic reasons. Simply put, they are both beautiful and make a visual statement of structural significance. However, there are also many who understand the structural superiority of true timber framing over more commonly used technologies. Anyone who has heard the stories of trying to pull down an old timber frame with a truck or tractor and ending up with a broken vehicle and defiant frame will be able to relate to this.

Also, with regard to these considerations, the drawings, apparently provided by Timber Peg to their prospective customer, lacked either an aesthetic or structurally represented aspect. In short, no one could create, or perhaps even visualize, any particular timber frame from the two first Timber Pegs documents without first creating a series of design and construction drawing.

11. I do not think that viewing a footprint of a proposed building would save a significant amount of time in designing a timber frame.

I have been asked the following question. Assuming that VTW did see the documents referred to as TIM 454-458, would the time required for VTW to create a timber frame design be reduced from the time required if VTW did not see TIM 454-458? Designing a timber frame can be a fairly lengthy process. Looking at a footprint plan that had proposed post locations, would, in my opinion, not likely be of any significant help in the overall process of designing a frame. It might well cause the designer to spend more time than he or she would by starting from scratch. Trying to digest a preexisting preliminary drawing, for me, would distract me from my normal method

W. E. Whittington  
Whittington Law Associates PLLC  
October 29, 2004  
Page 5

of beginning to design an entire project. I would therefore say that more likely than not VTW would save no time even if they did have access to the Timber Peg drawings.

This concludes my opinions of the above-discussed matter.

I have designed and constructed 25 to 30 timber frames since 1986, when I opened my own company. I am the sole employee and have done all of the design and joiner for these frames myself. In addition I have read standard books on timber framing.

I have not testified as an expert witness in any other court cases in the last four years

I am being compensated for my opinions with the agreement that from the time of my engagement that I will be compensated regardless of what my opinions are, at a rate of \$100.00 per hour, plus reimbursement of expenses.

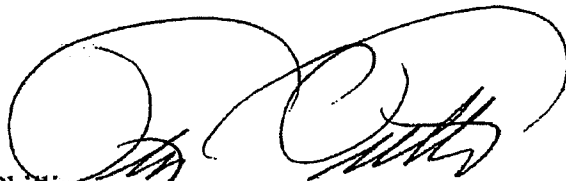
My opinions are based upon my years of experience and study in the timber framing business, and I have reviewed the following:

1. Complaint; T-Peg Inc. and Timberpeg East Inc. v. Stanley J. Isbitski and Vermont Timber Works Inc.
2. Defendant's Motion for Summary Judgment
3. Plaintiff's Objection to Defendant's Motion for Summary Judgment
4. Defendant's Reply Memo Supporting its Motion for Summary Judgment
5. Documents identified as: TIM 396-403, TIM 454-458, TIM 412-420, TIM 197, TIM 198, TIM 083, TIM 087, TIM 084-085, TIM 421-430
6. Complete plans from Vermont Timber Works
7. Expert report done by Jonathan S. Vincent
8. Excerpts from depositions of Jonathan S. Vincent and Lynn Cole
9. Web site material from Timber Peg

W. E. Whittington  
Whittington Law Associates PLLC  
October 29, 2004  
Page 6

10. Excerpts from copyright law
11. Excerpts from Federal rules of evidence
12. Letter from Whittington Law Associates PLLC, confirming our expert witness agreement
13. Memo from Jonathan Vincent to Dan Will dated 8/9/04
14. Format for Expert Report

Sincerely,

A handwritten signature in black ink, appearing to read 'Philip G. Phillips', written over a large, loopy scribble.

Philip G. Phillips  
DBA, Phil Phillips  
Timber Frame Joinery