

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

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|--------------------------------------|---|----------------|
| _____ |) | |
| T-Peg, Inc. and Timberpeg East, Inc. |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | No. C-03-462-M |
| |) | |
| Vermont Timber Works, Inc. |) | |
| and Douglas Friant, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

**PLAINTIFFS' SUPPLEMENTAL PROPOSED
JURY INSTRUCTIONS**

NOW COME Plaintiffs, T-Peg, Inc. ("T-Peg") and Timberpeg East, Inc. ("TEI"), by and through its attorneys, Devine, Millimet & Branch, Professional Association, and respectfully submit the following supplemental proposed jury instructions, numbers 1.1 and 20.1.

1. Plaintiffs reserve the right to supplement these instructions and verdict form up to and through trial. See LR 16.2(b)(1).

Respectfully submitted,

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

By their attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: September 16, 2009

By: /s/ Jonathan M. Shirley
Daniel E. Will (#12176)
Jonathan M. Shirley (#16494)
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Of Counsel:

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was this day forwarded to W.E. Whittington, Esquire, by electronic transmission through the Court's Electronic Case Filing system.

Dated: September 16, 2009

/s/ Jonathan M. Shirley
Jonathan M. Shirley

JURY INSTRUCTION NO. 1.1:

Non-Parties - Stanley J. Isbitski

You have heard testimony concerning Stanley J. Isbitski. Mr. Isbitski is not a party to this lawsuit and Timberpeg's claims against the defendants do not require that Mr. Isbitski be a party to this lawsuit. Mr. Isbitski's absence from this case is irrelevant and you are not to speculate as to the reason for his absence or draw any inference from it.

Sources:

See In re PNP Holdings Corp., 141 F.3d 1178, 1178 (9th Cir. 1998) (upholding instruction that the jury "should not speculate as to why other individuals or corporations are not part of this lawsuit.") (unpublished disposition); cf. Achille Bayart & Cie v. Crowe, 238 F.3d 44, 48 (1st Cir. 2001) ("A jury should not be asked to decide an issue that relies solely on conjecture and speculation."); 3 K. O'Malley et al., Federal Jury Practice & Instructions § 105.11 (5th ed.) ("The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial.").

JURY INSTRUCTION NO. 20.1: [For use if statutory damages elected]

Copyright Infringement Damages - Statutory Damages

A plaintiff is entitled to an award of statutory damages for each act of copyright infringement. Timberpeg claims in this case that the defendants engaged in two acts of infringement. The first act was the defendants' preparation of the shop drawings. The second act was the defendants' construction of their timberframe on Mr. Isbitski's property.

Your award of statutory damages must account for each act of infringement you find. If you find that both the defendants' shop drawings and their constructed timberframe infringe Timberpeg's copyrighted architectural work, then your award of statutory damages must account for both acts of infringement.

Sources:

17 U.S.C. § 504(c); *Polygram Int'l Pub., Inc. v. Nevada/TIG, Inc.*, 855 F. Supp. 1314, 1335 (D. Mass. 1994); *Sailor Music v. Mai Kai of Concord, Inc.*, 640 F. Supp. 629 (D.N.H. 1986).