

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.,)	
Defendant.)	

DEFENDANT'S CLARIFICATION AND CORRECTION
OF SECOND MOTION TO COMPEL

Defendant, Vermont Timber Works, Inc. ("VTW"), submits this clarification and correction to its Second Motion To Compel (Document 32).

Exhibit 5 to that pleading is not the memo forwarded to plaintiffs' counsel, but a later version containing numerous responsive comments from someone other than counsel. It was pulled in error, and its date of June 19 was erroneously taken as the date of the meet and confer.

In actuality, the "meet and confer" occurred on June 18, not June 19, and the correct attachment is the one attached as Exhibit A to plaintiffs' Objection, only with the June 18 date.¹

Since the additional responses did not come from counsel at all, plaintiffs' suggestion that counsel admits seeking discovery which was not relevant is absurd. The facts are that (1) VTW sought profits information on 2002 jobs to legitimately test plaintiffs' claim that they had a 50.78% gross profit margin; (2) plaintiffs claimed that the request encompassed 200 jobs and was burdensome, and counsel voluntarily pared the list to 20 jobs to which plaintiffs agreed; (3)

¹ Plaintiffs picked up a single difference in the versions and accuse counsel of purposely "altering" it. This is ridiculous. A comparison of the documents shows that there are numerous differences, with the June 19 document adding responses to many of the categories. Counsel sent a copy of the e-mail to a someone else altogether, who responded with comments on many of the items. The third-party response version was erroneously attached to the pleading rather than the initial one going to plaintiffs' counsel. Thus, these responsive comments did not come from counsel at all.

the information on 20 jobs was still relevant to test the claimed 50.78% profit margin; and (4) the person later commenting memo – not counsel – thought that making plaintiffs work wouldn't be a bad thing. There was no “gamesmanship” by counsel, and the documents sought were relevant and highly appropriate.

The mistake does not alter the issues of the motion at all:

- The “meet and confer” did take place, not on June 19 but on June 18.
- VTW's counsel did e-mail the “File Memo” summary of the conference – without the subsequent comments from someone else – to plaintiffs' counsel later on June 18.
- Plaintiffs did not respond over the next month.

Date: November 3, 2004

VERMONT TIMBER WORKS, INC.
Defendant,

By: W. E. Whittington
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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2004, I served the foregoing pleading on the following counsel of record, by first class mail:

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