

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

T-Peg, Inc. and Timberpeg East, Inc.)

Plaintiffs,)

v.)

Stanley J. Isbitski, Vermont Timber Works, Inc.)
and Douglas Friant,)

Defendants.)

No. C-03-462-M

**RESPONSE TO NOTIFICATION OF
MODIFICATION OF PROTECTIVE ORDER**

NOW COME, the Plaintiffs, T-Peg, Inc. and Timberpeg East, Inc. (“Timberpeg”), by and through their attorneys, Devine, Millimet & Branch, Professional Association, and respectfully respond to the defendant’s, Vermont Timber Works, Inc. (“VTW”), Notification of Modification of Motion for Protective Order, and state as follows:

1. As set forth in Timberpeg’s objection to the Motion for Protective Order, VTW has long waived any protection over the job cost master document at issue in that motion as a result of VTW’s disclosure of an inadequately redacted version of that document, followed by a failure to rectify the situation when brought to VTW’s attention. Despite that waiver, Timberpeg would be willing to receive the unredacted job cost master and VTW tax returns under standard protective order, pursuant to which Timberpeg would agree not to disseminate the document to anyone other than as necessary for purposes of the litigation.

2. In its latest pleading, VTW accuses Timberpeg of using a computer program to render the redacted information legible, an allegation which, if true, would subject Timberpeg's counsel to serious ramifications by this Court and the Professional Conduct Committee. VTW provides no basis for this allegation other than VTW's own uncorroborated suspicion. In fact, VTW produced the document by e-mail, and when viewed on a standard computer monitor and printed, the redacted information is legible.¹ See Objection, Ex. A. Notably, rather than pursue its allegation of high-tech document manipulation, VTW asks for a less stringent protective order, belying both VTW's claims of skepticism as to VTW's disclosure as well as VTW's allegation that Timberpeg altered the document VTW initially produced.

3. Moreover, VTW has recently produced a fully unredacted Job Cost Master. In a production of its experts' files, which VTW made after bates stamping them (i.e., after reviewing and processing them), VTW included an entirely unredacted version of the Job Cost Master. Correspondence in VTW's expert's file confirms that VTW provided the unredacted Job Cost Master to its expert. Timberpeg has alerted VTW to this second and more egregious disclosure. To date, VTW has not responded in any matter. See email dated December 9 from Attorney Will to Attorney Whittington, attached hereto as Exhibit 1.

4. All of this underscores that VTW can claim no entitlement to a protective order, even the less stringent one VTW now proposes, having twice produced legible versions of the disputed document, and having twice ignored Timberpeg's notices regarding the disclosure. VTW's "modified" protective order, moreover, effectively allows VTW an unfettered veto over to whom Timberpeg can provide the document.

¹ Timberpeg would be happy to confirm this with the Court by forwarding VTW's email.

Such a veto is unworkable and would intrude upon Timberpeg's work product protections. In short, VTW demonstrates no entitlement to a protective order over the Job Cost Master or the tax returns, though Timberpeg would agree, as a courtesy, to a standard protective order as described in Timberpeg's objection to the principal motion.

5. For these reasons, as well as those stated in the principal objection, Timberpeg requests that this Court deny VTW's motion.

Respectfully submitted,

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

By their attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: December 15, 2004

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2004, a copy of the foregoing was forwarded to W.E. Whittington, Esquire.


Daniel E. Will (#12176)