

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 VERMONT TIMBER WORKS' MOTION FOR
LEAVE TO FILE REPLY TO PLAINTIFFS' SHOW-CAUSE RESPONSE [ASSENTED]

Defendant Vermont Timber Works, Inc. ("VTW") moves the Court for leave to file a 2-page reply (submitted herewith) to Plaintiffs' Response To November 19 Show Cause Order (Document 63).

VTW believes a short reply is in order as it has not yet had the opportunity to file any pleading on the issue, and it believes its short argument may be useful.

VTW has contacted counsel for the plaintiffs, and plaintiffs assent to the relief requested.

No memorandum of law is submitted because the issue is straightforward, and the extension is within the Court's discretion.

Date: December 22, 2004

VERMONT TIMBER WORKS, INC.
Defendant,

By: W. E. Whittington
Its Attorney

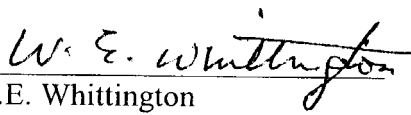
W. E. Whittington (Bar No. 6916)
Whittington Law Associates, PLLC
35 South Main Street
Hanover, NH 03755
(603) 643-2755

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2004, I served the foregoing pleading on the following counsel of record, by first class mail:

Daniel E. Will, Esq.
Devine, Millimet & Branch, P.A.
111 Amherst Street
Manchester, NH 03105

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Traditional Management Company
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W.E. Whittington

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DEFENDANT’S REPLY TO PLAINTIFFS’
RESPONSE TO NOVEMBER 19 SHOW CAUSE ORDER

Defendant, Vermont Timber Works, Inc. (“VTW”), submits this reply to plaintiffs’ show-cause response.

1. Plaintiffs steadfastly avoid discussion of their conduct which resulted in the November 19 ruling. The conduct was extreme, it continued over more than six months, and it continued despite defendant’s repeated, polite, patient explanations of what it wanted and why it was entitled to it. See Exhibits 1-17 to defendants’ Second Motion To Compel. As summarized by the Court in the Order, plaintiffs failed to comply with Rule 26(a)(1), failed to comply with Rule 33, and engaged in “six months of stonewalling.” November 19 Order at 3.

2. Plaintiffs do not provide any law providing that purposeful withholding of discovery over a six month period is “substantially justified,” and it simply was not.

3. It is wholly misleading to suggest that “neither party was an overall winner.” The only reason the motion to compel was denied in part was because the Court viewed some of the requested discovery moot in light of its taking damages and profits out of the case.¹

¹ Even as to that discovery, defendant has moved the Court to reconsider since plaintiffs’ damages – or, more precisely, lack thereof – are still relevant to the setting of statutory damages.

4. "Stonewalling" has consequences to the opponent, and here the stonewalling caused defendant to expend substantial legal time in repeatedly listing the deficiencies, explaining them, waiting for responses, formally making a record of them which could later be presented to the Court, conducting the meet-and-confer, and presenting the matters to the Court, all as shown by the 17 attachments to the Second Motion to Compel. This was effort and money which defendant should not have incurred, and would not have incurred had plaintiffs followed the rules and acted in good faith. Defendant is a fraction the size of plaintiff and is greatly burdened financially by this litigation. The sanction is relatively minor in light of the conduct.

WHEREFORE, defendant respectfully requests that the Court let the sanction stand.

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Defendant,

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