

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

FEB 10 2003

T-Peg, Inc. and Timberpeg East, Inc.)
)
 Plaintiffs,)
)
 v.)
)
 Vermont Timber Works, Inc.)
 and Douglas Friant,)
)
 Defendants.)

FEB 10 2003

No. C-03-462-M

**RESPONSE TO DEFENDANTS' MOTION TO CONTINUE TRIAL
AND RELATED PRETRIAL DATES AND FILINGS**

NOW COME the plaintiffs, T-Peg, Inc. and Timberpeg East, Inc. ("Timberpeg"), by and through its attorneys, Devine, Millimet & Branch, Professional Association, and respectfully submit this response to the defendants' motion to continue trial and related pretrial dates and pleadings, and state as follows:

1. This action is currently scheduled for a trial on March 1, a final pretrial conference on February 18, and objections to pretrial materials on February 14. In addition, the defendants have filed two motions to compel which are currently pending. Counsel for the plaintiffs was out of the office the entire day of February 4 and was not able to respond to the defendants' request for assent to their motion to continue trial. Unfortunately, Timberpeg received some unexpected news on February 4 that independently necessitates a motion to continue the trial and the pretrial dates. While Timberpeg agrees with the defendants' counsel that these dates need to be continued,

Timberpeg requests a continuance of a slightly different nature than the defendants, for the reasons and as set forth below.

2. On February 4, Brian Pattison, one of Timberpeg's two owners, suffered an unexpected heart attack. Mr. Pattison passed away in the evening of February 4. As owner, Mr. Pattison was one of the central decision makers for Timberpeg with respect to this action and corporate operations generally. Timberpeg expected to call Mr. Pattison as a witness at trial, and the defendants also listed him on their witness list.

3. The loss of Mr. Pattison has caused significant personal grief and professional upheaval within Timberpeg and has given rise to a multitude of internal issues which require immediate attention and personnel resources, in particular of Timberpeg's General Counsel who has also been intimately involved in the prosecution of this action. All of this makes preparation for trial, for the immediate future, difficult if not impossible.

4. Meanwhile, counsel for the defendants states that he has been advised that he will need at least four weeks from February 15 to recover from treatment for cancer, followed by a period of time of a reduced schedule prior to being able to try this action.

5. In light of the uncertainties on both sides as to ability to focus on and prepare for and undergo the trial of this action, Timberpeg respectfully requests that this Court continue, but not immediately reschedule, the trial and all pretrial dates including objections to pretrial materials and any pending motions. Timberpeg further requests that this Court schedule a status conference with the parties in mid to late March (after the four week recovery period for the defendants' counsel's return to a reduced schedule) for purposes of determining the remaining schedule for the pretrial and trial of this action.

6. Timberpeg believes that two good reasons justify Timberpeg's proposal. First, Timberpeg's proposal will allow the scheduling of the remainder of this action to be based on an actual, rather than forecasted, recovery of the defendants' counsel. Rather than schedule the remainder of this action now and run the risk that the defendants' counsel's treatment requires a longer recovery period necessitating further rescheduling, the more efficient course would be to allow the forecasted recovery period to occur and then to determine counsel's ability to move forward with this action. Second, the period of time between now and a status conference in mid to late March would allow Timberpeg to attend to the myriad of issues that have arisen due to Mr. Pattison's passing and allow Timberpeg a period of time to recover from that untimely and difficult occurrence. By the date of the status conference, Timberpeg would be in a more informed position to arrive at a realistic schedule for the remainder of this action.

7. Counsel for the defendant has been contacted and does not assent to the relief requested herein. In light of that, Timberpeg requests that, should this Court not agree with Timberpeg's proposal, that Timberpeg be allowed ten days from the date of this Court's Order to respond to the defendants' pending motions to compel.

8. Due to the discretionary nature of the relief requested herein, no accompanying memorandum of law is necessary.

WHEREFORE, Timberpeg respectfully requests that this Court:

A. Continue the trial and all pretrial dates, including objections to pretrial materials and other pending motions;

B. Schedule a status conference in mid to late March for purposes of scheduling the remainder of this action;

C. Alternatively, if this Court does not adopt Timberpeg's proposal, grant Timberpeg ten days from the date of the Court's Order to file responses to the defendants' two pending motions to compel; and

D. Grant such other and further relief as this Court deems just, equitable and proper.

Respectfully submitted,

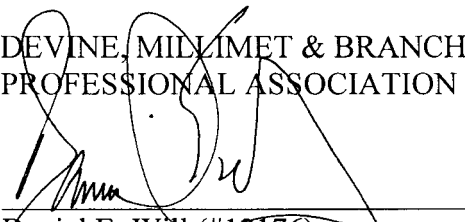
T-PEG, INC. AND TIMBERPEG
EAST, INC.

By their attorneys, ^

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: February 7, 2005

By:


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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February, 2005, a copy of the foregoing was forwarded to W.E. Whittington, Esquire.


Daniel E. Will