

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., | )                 |
| And DOUGLAS FRIANT,         | )                 |
| Defendants.                 | )                 |

DEFENDANTS' MOTION TO EXTEND DATE  
TO FILE MOTION FOR ATTORNEYS FEES  
[ASSENTED]

Defendants, Vermont Timber Works, Inc. ("VTW") and Douglas Friant ("Friant"), move to extend the date to file their motion for attorneys' fees until March 31, 2005, based on the medical requirements of their counsel.

In support of this motion, defendants state:

1. As previously advised in a motion to continue trial, the undersigned counsel is scheduled for surgery on February 15 (February 11 will be counsel's last day of work because of pre-surgery requirement and required travel). Counsel is informed that after surgery he will likely need to take approximately four weeks off of work, and thereafter he will likely be able to work on a reduced schedule (i.e., to handle routine motion practice).

2. Judgment in this case issued on February 10, 2005, and under FRCP 54, the motion for attorneys fees must be filed and served no later than 14 days after entry of judgment "unless otherwise provided by statute or order of the court."

3. In copyright infringement cases such as this, repayment of fees is available to the prevailing party, although the subject is somewhat complex. See 17 U.S.C. §505; Fogarty v.

Fantasy, 510 U.S. 517 (1994); Lotus Development Corp. v. Borland International, Inc., 140 F. 3d 70, 73 (1<sup>st</sup> Cir. 1998); Matthews v. Freedman, 157 F. 3d 25, 29 (1<sup>st</sup> Cir. 1998); Edwards v. Red Farm Studio Co., 109 F. 3d 80, 81-82 (1<sup>st</sup> Cir. 1997); and Ferraris Medical, Inc. v. Azimuth Corp., No. 2002 DNH 140 (2002).

4. Counsel needs a reasonable amount of time to prepare the appropriate motion, and because of the timing of the judgment immediately before his surgery, has no time available in the 14 days normally allowed. Counsel believes he will be able to prepare the motion by March 31 and, if he is able, will do so sooner.

5. No legal memorandum is submitted with this motion as the issues are non-legal and the relief is in the discretion of the Court.

6. The undersigned conferred with plaintiffs' counsel and plaintiffs assent.

Date: February 10, 2005

VERMONT TIMBER WORKS, INC.  
and DOUGLAS FRIANT,  
Defendants,

By: W. E. Whittington  
Their Attorney

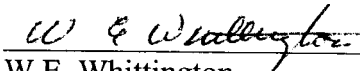
W. E. Whittington (Bar No. 6916)  
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Hanover, NH 03755  
(603) 643-2755

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2005, I served the foregoing pleading on the following counsel of record, by first class mail:

Daniel E. Will, Esq.  
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W.E. Whittington