

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

T-Peg, Inc. and Timberpeg East, Inc.)	
)	
Plaintiffs,)	
)	
v.)	No. C-03-462-M
)	
Vermont Timber Works, Inc.)	
and Douglas Friant,)	
)	
Defendants.)	

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION TO DETERMINE AND
ORDER PAYMENT OF ATTORNEYS' FEES**

NOW COME the plaintiffs, T-Peg, Inc. and Timberpeg East, Inc. ("Timberpeg"), by and through their attorneys, Devine, Millimet & Branch, Professional Association, and respond to the defendants' motion to determine and order payment of attorneys' fees, and state as follows:

1. The plaintiffs rely upon and respectfully refer this Court to their motion for reconsideration of this Court's November 19 Order, and plaintiffs' response to this Court's show cause order.

2. The plaintiffs add only that the defendants' motion comes upon the heels of an inquiry from this Court. Specifically, this Court inquired of the parties whether determination of these issues was necessary in light of the summary judgment order disposing of all of the claims in the case in the defendants' favor. The plaintiffs' view is that no action is necessary at present. The plaintiffs have filed a motion for

reconsideration of the summary judgment order. If this Court denies that motion, then the defendants have signaled that they will move for their attorneys' fees under the Copyright Act, which, presumably, will include the fees potentially at issue with respect to the November 19 Order. If this Court grants the plaintiffs' motion for reconsideration of the summary judgment order, then consideration of those issues will be necessary. The defendants disagreed with the plaintiffs' position and filed the instant motion.

3. As to the merits, the plaintiffs would only add that the defendants state that all of the services for which they seek reimbursement – for a total of over \$5000 – “were reasonable and necessary in connection with obtaining the discovery order and in responding to plaintiffs' motion to reconsider it.” Motion at p.1. As pointed out in the plaintiffs' show cause pleading, this is flatly not the case. The defendants, for example, seek reimbursement for their costs in drafting interrogatories and requests for production, among other, attenuated expenses. In short, the defendants' assertion that all of the expenses they seek relate to “obtaining the discovery order” is simply not true.

4. In addition, the defendants have yet to verify that the “standard rate” of \$200 per hour is what the defendants are actually paying.

5. Finally, the plaintiffs contend that, at most, the defendants prevailed with respect to only part of the discovery they sought in the motion that resulted in the November 19 Order. Under Rule 37(a)(4)(C) of the Federal Rules of Civil Procedure, when a party prevails in part on a motion to compel, the decision whether to award attorneys' fees and how to apportion them lies within the discretion of this Court. For all of the reasons set forth in the show cause pleading and herein, the plaintiffs' respectfully

contend that an appropriate apportionment in this case would be for each side to bear its own fees in connection with the November 19 Order.

Respectfully submitted,

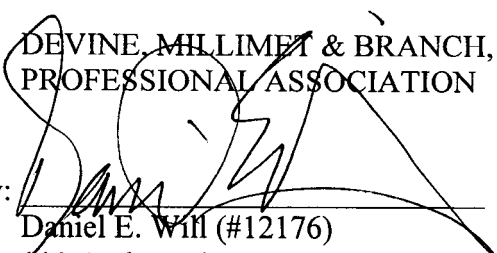
T-PEG, INC. AND TIMBERPEG
EAST, INC.

By their attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: March 25, 2005

By:


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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2005, a copy of the foregoing was forwarded to W.E. Whittington, Esquire.


Daniel E. Will (#12176)