

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

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

v.

Civil No. 03-462-SM

Vermont Timber Works, Inc. and Douglas Friant

O R D E R

In my order of November 19, 2004, plaintiff was ordered to show cause why it should not be required to pay defendant's costs in obtaining the ordered discovery.

Background

As detailed in my order (document no. 52) defendant sought to compel production of documents (document no. 32) in support of plaintiff's alleged damages. Plaintiff, after failing to produce the documents it should have provided, belatedly made most of them irrelevant. My order of November 19, 2004 denied defendant the irrelevant documents because, however belatedly, plaintiff made them irrelevant by limiting itself to statutory damages. Plaintiff did not win any part of the discovery motion because the documents were not discoverable when requested. Defendant's motion was denied in part solely because plaintiff later waived a damages claim. A show cause order issued.

Discussion

In its show cause response plaintiff's counsel indicates

that plaintiff did not intentionally fail to produce documents but rather that it failed to understand that they were being sought. I have no doubt that plaintiff's counsel may not have understood the breadth of the Rule 33 request. See Document no. 32, Exhibit 2. However, I also have no doubt that defense counsel fully expected to get what he asked for - all documents in support of the gross profit margin computation. It was clear to me that the accounting records from which that computation was allegedly derived were never produced. Just cause has not been shown and the motion for reconsideration is denied in a separate order.

Defendant is entitled to fees as set forth below.

The following time entries appear to be clearly related to obtaining the discovery order:

4/02	.5
6/14	2.0
6/18	2.0
6/19	.4
7/1	.1
8/5	1.2
8/12	1.0
8/13	.7
9/29	1.5
9/30	.5
10/8	1.0
11/2	1.8
11/3	<u>1.7</u>
	18.5

The balance of the submission is not sufficiently clearly related to obtaining the discovery order. \$200.00 per hour is a reasonable hourly rate.

Defendant is awarded \$3,700.00 as sanctions. The motion (document no. 95) is granted in part.

SO ORDERED.

James R. Muirhead
United States Magistrate Judge

Date: March 29, 2005

cc: W. E. Whittington, IV, Esq.
Daniel E. Will, Esq.