

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Senior District Judge Richard P. Matsch

Civil Action No. 09-cv-02051-RPM

GEA POWER COOLING SYSTEMS, LLC,  
a Delaware limited liability company, as successor  
in interest to GEA POWER COOLING SYSTEMS, INC.,  
a Delaware corporation,

Plaintiff,

v.

BECHTEL POWER CORPORATION,

Defendant.

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ORDER FOR FILING SECOND AMENDED COMPLAINT AND DENYING  
DEFENDANT'S MOTION TO DISMISS THIRD CLAIM FOR RELIEF

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On February 25, 2010, the plaintiff filed a Motion for Leave to File Second Amended Complaint and tendered that pleading. The defendant filed an opposition to that motion in its response on March 1, 2010, repeating its earlier motion to dismiss the claim for relief for a violation of Colorado's Civil Theft Statute by conversion of funds by drawing on a letter of credit. The defendant's position is that the third claim for relief is inconsistent with the first claim for relief, a breach of contract claim, and is barred by the economic loss rule in Colorado. The plaintiff's reply rightly asserts its right to file alternative and inconsistent claims under Fed.R.Civ.P. 8. While an election may be required at some time before trial, a ruling on the applicability of the economic loss rule at this pleading stage would be premature. It is therefore

ORDERED that the Motion for Leave to File Second Amended Complaint is granted and the Second Amended Complaint is filed and it is

FURTHER ORDERED that the defendant's motion to dismiss the third claim for relief, addressing the First Amended Complaint, is deemed filed as to the Second Amended Complaint and is denied. The second claim for relief in the Second Amended Complaint is stricken.

DATED: March 18<sup>th</sup>, 2009

BY THE COURT:

s/Richard P. Matsch

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Richard P. Matsch, Senior Judge