

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02446-WYD-KLM

A.W. INTERIORS, INC.,

Plaintiff,

v.

THE TRAVELERS INDEMNITY COMPANY,

Defendant.

MINUTE ORDER

ORDER ENTERED BY SENIOR JUDGE WILEY Y. DANIEL

THIS MATTER is before the Court on defendant, The Travelers Indemnity Company's ("Travelers"), Motion To Strike Portions Of Plaintiff's Reply In Support Of Motion For Summary Judgment On Breach Of Duty To Defend And Motion To Submit Sur-Reply [ECF No. 33]. After careful consideration, it is

ORDERED that Travelers's motion [ECF No. 33] is **GRANTED IN PART** and **DENIED IN PART**. The motion is **GRANTED** to the extent that Travelers seeks to submit a sur-reply regarding the issue of whether the contract between Layton Construction Company, Inc. ("Layton") and Black Diamond Resorts – Vail Resorts LLC is properly before this Court pursuant to the "Complaint Rule." The motion is **DENIED** to the extent that Travelers moves this Court to strike or disregard the portion of plaintiff, A.W. Interiors, Inc.'s ("AWI"), Reply In Support Of Motion For Summary Judgment On Breach Of Duty To Defend [ECF No. 31] discussing whether AWI's indemnification obligation to Layton arose out of AWI's "operation performed" on the project. Accordingly, it is

FURTHER ORDERED that Travelers **shall file a sur-reply on or before Wednesday, November 13, 2013, for the sole and limited purpose of responding to AWI's argument regarding whether AWI's indemnification obligation to Layton arose out of AWI's "operation performed" on the project.**

Dated: November 4, 2013.