

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

WATERS EDGE LIVING, LLC,
a Florida Limited Liability Company;
and WATERS EDGE JW, LLC,
a Florida Limited Liability Company,

Plaintiffs,

vs.

CASE NO.: 4:08cv69-SPM/WCS

WESTCHESTER SURPLUS LINES
INSURANCE COMPANY, a Georgia
Corporation,

Defendant.

_____ /

ORDER GRANTING MOTION FOR RECONSIDERATION

This cause comes before the Court on Plaintiff's Rule 59(e) Motion for Reconsideration (doc. 93) and the briefings submitted by the parties. After the filing of the motion, the United States Court of Appeals issued an opinion in a related but separate case, Waters Edge Living, LLC. v RSUI Indemnity, Co., 335 Fed. Appx. 318 (11th Cir. 2009). Under almost identical facts, the Court of Appeals ruled that a reasonable factfinder could conclude that Waters Edge entered into a settlement agreement with the insurers, which created an enforceable contractual agreement independent of the policy and not limited by Prime's rights under the policy. Id. at 323, 326. Because the facts in this case

are not materially different, Waters Edge should be allowed to proceed on its claim for wrongful payout under the settlement agreement.

With regard to Waters Edge's bad faith claim, the Court stands by its previous ruling, which is unaffected by the Court of Appeals' opinion. Based on the foregoing, it is

ORDERED AND ADJUDGED:

1. Plaintiffs' Rule 59(e) Motion for Reconsideration (doc. 93) is granted.
2. Plaintiffs' Motion to Strike (doc. 102) is denied.
3. The Clerk shall vacate the judgment (doc. 93).
4. On reconsideration of the Order on Cross Motions for Summary Judgment (doc. 91), summary judgment is denied as to Count One (wrongful payout of settlement) and granted as to Counts Two and Three (bad faith).
5. Trial is set for 8:30 a.m. on October 18, 2010, at the United States Courthouse in Tallahassee, Florida. A separate order setting a pretrial conference and deadlines for submissions will be issued at a date closer to trial.

DONE AND ORDERED this 23rd day of June, 2010.

s/ Stephan P. Mickle

Stephan P. Mickle
Chief United States District Judge