

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 ALLOWING PLAINTIFF TO PROCEED ON
WRONGFUL PAYOUT CLAIM ON THEORIES OF
BREACH OF CONTRACT AND BREACH OF SETTLEMENT AGREEMENT**

This cause comes before the Court on the parties' briefings regarding the issues that remain for trial. Docs. 129 and 130. Plaintiffs' wrongful payout claim in Count One proceeded on two theories: one based on breach of the insurance policy and one based on breach of an independent settlement agreement. The breach of the insurance policy was overlooked by the Court in the order on summary judgment. Doc. 108. When the Court vacated the summary judgment of Count One based on the RSUI opinion, it only addressed the independent settlement issue. However, as Count One also proceeded on a theory of

wrongful payout under the insurance policy, Plaintiffs should be allowed to pursue that theory at trial. Accordingly, it is

ORDERED AND ADJUDGED:

1. Plaintiffs may proceed on its wrongful payout claim based on breach of the insurance policy and breach of an independent settlement agreement.

2. Plaintiffs' motion to strike (doc. 131) is denied.

DONE AND ORDERED this 3rd day of January, 2011.

s/ Stephan P. Mickle

Stephan P. Mickle
Chief United States District Judge