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CAUSE NO. 2016-70515

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UNIPIXEL, INC., REED KILLION and JEFFREY TOMZ

IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

Chris Daniel
District Clerk
AUG 2 3 2018

XL SPECIALTY INSURANCE CO.

55TH JUDICIAL DISTRICT

ORDER ON PENDING SUMMARY JUDGMENT MOTIONS

Upon consideration of Defendant XL Specialty Insurance Company's No-Evidence Motion for Summary Judgment ("Defendant's No-Evidence Motion", filed 4/13/2018), Plaintiffs Uni-Pixel, Reed Killion, and Jeffrey Tomz's Traditional Motion for Partial Summary Judgment ("Plaintiffs' Motion, filed 7/30/2018 and as supplemented on 814/2018), and Defendant XL Specialty Insurance Company's Supplement to Motion for Summary Judgment ("Defendant's Traditional Motion", filed 7/30/2018), along with the various responses, replies, summary judgment evidence and arguments made, the Court rules as follows:

The parties have extensively and expertly briefed the issues so there is no need for the Court to set out anything beyond a very general basis for this opinion. Clearly a "Wells Notice" is a claim if standing alone, but here it stands in the context of a long and ongoing legal struggle. Like the homeowner whose house is already on fire when he buys fire insurance, the fact that the fire spreads to a new part of the house after the purchase of insurance does not mean there is a new fire; it is the same fire that existed before insurance was purchased. The policy in question clearly and broadly defines "Interrelated Wrongful Acts." The Wells Notices fall under that definition, particularly as they concern acts which arose "as a consequence of" the ongoing

litigation and investigation. The coverage which Plaintiffs seek is for actions which pre-date the year of this "claims made" policy. The "Prior Notice Exclusion" also bars coverage.

Plaintiffs correctly point out that since there is a policy exclusion at play the Defendant's No-Evidence Motion is not entirely appropriate since Defendant has the burden of proof. Plaintiffs conceded that there is no evidence of a bad faith denial of claim of DTPA violation, so to that extent Defendant's No-Evidence Motion is GRANTED IN PART. Since there is no material issue of fact and the date the Claim was made may be determined as a matter of law even under Plaintiffs' facts, and that date pre-dates the policy, the Defendant's Traditional Motion is GRANTED.

By this Order the Court does not intend to imply the Defendant's Traditional Motion was granted only on these grounds. This Order is intended only to highlight arguments. The Court adopts all of the reasoning presented by Defendant.

Plaintiff's Motion is DENIED.

The Defendant is requested to prepare an appropriate Final Judgment if there is nothing further to rule on.

SO ORDERED.

SIGNED on the

day of \mathcal{L}

, 2018,

JUDGE JEFF SHADWICH