

XXX, Inc
Attention:

Acton, California 93510

Insured: YYY, Inc.

Policy Number: _____

Dear Mrs. Abel:

This firm has been retained by YYY, Inc. to prosecute legal action against Certain Underwriters at XXX, Inc. London (“XXX, Inc. ”) for damages with respect to your refusal to honor the above cited insurance policy.

On or about _____, 200__ Betty ZZZ (“ZZZ”) filed suit against YYY Inc. alleging negligence, products liability and breach of warranties. Pursuant to the requirements of the insurance policy issued to YYY Inc. by XXX, Inc. timely notice of the ZZZ claim and lawsuit were provided to XXX, Inc. . XXX, Inc. has refused to honor its contractual obligations to defend YYY Inc. in the ZZZ case.

Specifically, in a letter dated August 17, 2004 XXX, Inc. stated “*Based upon our review of the complaints filed in the Trew Lawsuit and the ZZZ Lawsuit, it does not appear that the policy issued by Certain Underwriters provides coverage for these suits.*” Nothing could be further from the truth.

The ZZZ lawsuit alleges three causes of action. XXX, Inc. appears to be taking the position that the “products exclusion” found in the policy absolves it of any responsibility. While this may or may not be true for the products liability cause of action, it is certainly not true for the negligence and breach of warranty causes of action. XXX, Inc. has a contractual obligation to provide a defense under the insurance policy with regard to the negligence and breach of warranty causes of action.

Neither the insurance policy issued by XXX, Inc. or the Laws of the State of Texas allow XXX, Inc. to deny coverage in situations in which a covered claim is accompanied by an uncovered claim. The simple fact that the ZZZ lawsuit alleges one cause of action the XXX, Inc. does not feel is covered does not absolve XXX, Inc. of its duty to provide a defense on the other causes of action.

“... the insurer is obligated to defend if there is potentially a case under the complaint within the coverage of the policy.” Fort Worth Lloyds v. Garza 527 S.W.2d 195.

ZZZ’s Third Cause of Action is for breach of express and implied warranties against all defendants. The exclusions to the policy state:

“...it is agreed that this insurance does not apply to “bodily injury”, “property damage”, “personal injury” or “advertising injury”: ... arising from products blended or manufactured by you ...”

Breach of express and implied warranties is not “bodily injury” “property damage” “personal injury” or “advertising injury” as defined by the policy. There are no exclusions

pertaining to warranties in the policy that apply to products blended or manufactured by YYY Inc. . Therefore the policy, as issued, requires that XXX, Inc. provide a defense as to the ZZZ case and the breach of warranty causes of action contained therein.

In its dealings with XXX, Inc. , YYY Inc. contracted with XXX, Inc. for goods and services. Accordingly, in this transaction YYY Inc. was clearly a “consumer” as such term is defined in Section 17.45, TEXAS BUSINESS & COMMERCE CODE.

YYY Inc. asserts that XXX, Inc. committed a number of false, misleading or deceptive acts and practices prohibited by Section 17.46 of the TEXAS BUSINESS & COMMERCE CODE (the Texas Consumer Protection – Deceptive Trade Practices Act) including, but not limited to, the following:

1. Representing that goods or services have characteristics, uses, or benefits which they do not have, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(5);
2. Representing that goods or services are of a particular standard, quality, or grade, if they are of another, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(7);
3. Advertising goods or services with intent not to sell them as advertised, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(9);
4. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(12);
5. Failing to disclose information concerning goods or services which was known at the time of the transaction thereby intending to induce YYY Inc. into entering into the referenced agreement, knowing that it would not have entered into such agreement had such information been disclosed, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(24).
6. Utilizing unfair claims practices in dealing with YYY Inc. , particularly in denying coverage where there is coverage in violation of TEXAS INSURANCE CODE §21.21.
7. The refusals described above to defend the suit on behalf of YYY Inc. constituted a violation of the Texas Deceptive Trade Practices and Consumer Protection Act, including but not limited to Texas Business & Commerce Code, §17.46(a), (b)(5), (b)(12), (b)(23), as well as §17.50(a)(1) through (4).

The foregoing violations were committed knowingly and intentionally, and YYY Inc. relied on XXX, Inc. representations, acts, and omissions to its damage and detriment.

Further, the representations, acts, and omissions made by XXX, Inc. in its dealings with YYY Inc. constituted an “unconscionable action or course of action” as such term is defined in Section 17.45(5), TEXAS BUSINESS & COMMERCE CODE.

In addition to constituting numerous violations of the Texas Consumer Protection – Deceptive Trade Practices Act, the above-described acts and omissions made by XXX, Inc. constituted, among other things: misrepresentation; negligence; negligent misrepresentation; constructive fraud; breach of contract; breach of express warranty; breach of implied warranty; fraud; and breach of duty of good faith and fair dealing.

As a direct result of XXX, Inc. wrongful acts and omissions, YYY Inc. has been compelled to retain the services of this firm to seek redress for the damages it has suffered. As of the date of this writing, the fee for the legal services and related costs incurred in this matter is \$5,000.00.

Therefore, the total damages thus far suffered by YYY Inc. as a direct consequence of XXX, Inc. wrongful refusal to defend is \$5,000.00, itemized as follows:

1. Attorney fees incurred to date in the amount of \$5,000.00 in connection with investigating and pursuing this claim.

Demand is hereby made upon XXX, Inc. to immediately pay the total amount of damages sustained, \$5,000.00, to YYY Inc. through this office immediately.

This letter constitutes notice that unless we receive a certified check, cashier's check, or money order for such full amount, \$5,000.00 on or before April 11, 2005, this firm has been instructed to take whatever steps are necessary to protect our client's interests.

In such event, YYY Inc. Products has authorized and instructed us to file and prosecute a lawsuit against XXX, Inc. to collect all damages caused by the above-described wrongful representations, acts, and omissions.

In connection with such litigation, we have been directed to pursue all proper legal remedies and to seek all available relief including, but not limited to, direct and consequential damages, penalties as provided by the Texas Consumer Protection – Deceptive Trade Practices Act, attorney fees, interest, court costs, and such additional punitive damages as may be legally appropriate.

Pursuant to Section 17.505, TEXAS BUSINESS & COMMERCE CODE, please be advised that if this claim has not been resolved within sixty (60) days from the date you receive this notice, the petition in the above-referenced lawsuit against you will be amended to request additional relief under the provisions of Section 17.50, TEXAS BUSINESS & COMMERCE CODE, including treble damages as authorized therein.

Please pay this claim now to avoid litigation and further expense. Your immediate response to this serious matter will be appreciated.

Sincerely,

Chris McHam

cc: YYY Inc. Products