

Cause No. _____

JAYNEIL CORPORATION d/b/a	§	IN THE DISTRICT COUT OF
DAYS INN & SUITES	§	
<i>Plaintiff</i>	§	
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
ARCH SPECIALTY INSURANCE	§	
COMPANY and TIMOTHY ELTON	§	
BENNETT	§	
<i>Defendants</i>	§	___ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION & JURY DEMAND

Plaintiff JAYNEIL CORPORATION d/b/a DAYS INN & SUITES ("Jayneil" or "Plaintiff") by and through its attorneys, files this Original Petition & Jury Demand against Defendants ARCH SPECIALTY INSURANCE COMPANY ("Arch") and Timothy Elton Bennett ("Bennett") (collectively "Defendants") and would respectfully show the following:

Discovery Control Plan

1.1 Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

Parties

2.1 Jayneil is a domestic corporation in good standing with a principal place of business in the state of Texas.

2.2 Upon information and belief, Defendant Arch is a foreign surplus lines insurance company regularly engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. Arch regularly and

systematically issues insurance policies in the State of Texas and may be served by mailing certified mail, return receipt requested to General Counsel, Arch Insurance Group, Inc., 300 Plaza Three, Jersey City, NJ 07311-1107.

2.3 Upon information and belief, Timothy Elton Bennett is an individual living and residing in the State of Texas and working in Houston, Harris County, Texas. Bennett may be served with process at Timothy Elton Bennett, 16718 Summer Cypress Court, Cypress, Texas 77429-6762.

Venue & Jurisdiction

3.1 Venue is proper in Harris County under Tex. Civ. Prac. & Rem. Code Section 15.002(a)(1), as all or a substantial part of the events or omissions giving rise to this claim occurred in Harris County, Texas. In particular, the adjustment of the claim by Defendants for losses under the Arch policy (including payments to be made to Jayneil under the policy) were conducted in Harris County, Texas. Further, investigation, including communications to and from Defendants and Jayneil (including telephone calls, mailings, and other communications to Jayneil) and communications between Defendants regarding the claim occurred in Harris County, Texas. Additionally, adjustment of the claim by Defendant Bennett under the Arch policy was conducted in Harris County, Texas.

3.2 Venue is proper in Harris County under Tex. Civ. Prac. & Rem. Code section 15.002(a)(3), as Defendant Bennett's principal office is located in Harris County, Texas.

3.3 Jayneil seeks damages within the jurisdictional limits of this Court. Jayneil trusts the jury to evaluate the evidence, but at this time, Jayneil seeks monetary relief in an amount over \$1,000,000. Jayneil reserves the right to modify the amount and type of relief sought in the future.

General Allegations

4.1 On or before April 17, 2015, Arch marketed and sold a commercial insurance policy bearing Policy No. ESP 0053003-02 to Jayneil whereby Arch would provide property insurance for the hotel located at 407 7th Street, Bay City, Texas 77414 (the "Property") in exchange for the timely payment of premiums (the "Policy"). The Policy was sold by Arch to Plaintiff as the insured under the Policy and provides coverage for the Property resulting from hail storms.

4.2 On or about April 17, 2015, Plaintiff's property was substantially damaged by the severe hail storm that struck the area. As a result, the roof, exteriors, and interiors of the Property were substantially damaged. Immediately after the storm, Plaintiff filed an insurance claim under the Policy with Arch for damages to the Property caused by the hail. Plaintiff asked that the cost of repairs be covered pursuant to the Policy.

4.3 Arch is the insurer on the Property. In response to the claim, Arch assigned representatives, adjusters, consultants, and agents to Plaintiff's file that were inadequate and improperly trained. Specifically, Arch assigned Plaintiff's claim to Timothy Bennett with McLarens Global Claims Services out of Houston as the local adjuster charged with assessing damages under the Policy. Mr. Bennett handled the

claim from McLaren's Houston office. Mr. Bennett was improperly trained and not equipped to handle this type of claim.

4.4 Mr. Bennett failed to perform a thorough investigation of the claim. On June 11, 2015, Mr. Bennett inspected the Property but failed to complete an adequate inspection and refused to acknowledge all the damages to the Property. Mr. Bennett did not prepare any estimates or scopes of damages to the Property or failed to provide those to the insured. Because of Mr. Bennett's failure to estimate or scope any damages, Plaintiff was forced to prepare its own estimate of damages and point them out to Bennett. However, Bennett ignored them. Moreover, Mr. Bennett refused to retain appropriate consultants to evaluate the claim. Specifically, Mr. Bennett retained consultants from a preferred vendor list who are not registered with the Texas Department of Insurance. Mr. Bennett then utilized the preferred vendor's report to make recommendations to Arch on what portions of the claim to deny under the Policy.

4.5 Throughout the claims process, Mr. Bennett was the only point of contact on Arch's behalf yet he continually delayed the claims process and refused to provide answers to the insured and its representative. Further, Bennett represented to the insured that although hail damage existed at the property, the damage did not occur during Arch's policy period and therefore was not covered. Arch relied exclusively on Mr. Bennett's substandard investigation in determining what amounts, if any, to pay on Plaintiff's claim and failed to perform its own investigation. As a result of Mr. Bennett's haphazard inspection, misrepresentations, and inadequate investigation,

on September 4, 2015, Arch denied Plaintiff's claim for hail damages. Arch and Mr. Bennett performed an inadequate, incomplete and unreasonable investigation of Plaintiff's claim, which is evidenced by the failed inspections, the lack of estimates, and the preferred vendor's report which fails to account for damages and necessary repairs for the Property.

4.6 Arch and Mr. Bennett wrongfully denied Plaintiff's claim for property repairs. Furthermore, Arch and Mr. Bennett underestimated what damages they did accept during the investigation. Arch and Mr. Bennett represented to Plaintiff that certain damages were not covered under the Policy when in fact they were. Mr. Bennett refused to provide answers to Plaintiff during the claims process, further delaying resolution of Plaintiff's claim in violation of his duties under Texas law. Arch and Mr. Bennett have chosen to continue to deny timely payment of the damages. As a result, Plaintiff has not been fully paid under the Policy provided by Arch since the hail storm. To this day, Arch refuses to pay for the necessary repairs to the Property as required under the Policy.

4.7 As a result of Defendants' acts and/or omissions, Plaintiff was required to retain an attorney to prosecute its claim for insurance benefits.

4.8 Unfortunately, Defendants have delayed payment for Plaintiff's necessary and covered property repairs under the insurance policy that Arch wrote. Given the repeated delays of payment, Plaintiff has been subjected to significant economic impact, worry, distress, and continuing economic and physical damage. Because of Defendants' delays, denials, and underpayment, Plaintiff has been unable to make

necessary repairs to the Property which has resulted in further damages to the Property, including additional interior damage, among others. In addition, Plaintiff has suffered financial harm and damage as a result of Defendants' denials and repeated delays. The significant effect of Defendants' wrongful and unjustified delays, however, is still uncompensated.

FIRST CAUSE OF ACTION--Violations of Texas Insurance Code

5.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-4.7 of this Petition as if fully set forth herein.

5.2 Arch and Mr. Bennett failed to attempt to effectuate a prompt, fair, and equitable settlement of a claim with respect to which liability has become reasonably clear, in violation of Texas Insurance Code Section 541.060 (a)(2)(A).

5.3 Arch and Mr. Bennett failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 Arch and Mr. Bennett failed to provide promptly a reasonable explanation, in relation to the facts or applicable law, for the denial of a claim, in violation of Texas Insurance Code Section 541.060 (a)(3).

5.5 Arch and Mr. Bennett refused to pay a claim without conducting a reasonable investigation with respect to the claim, in violation of Texas Insurance Code Section 541.060 (a)(7).

5.6 Arch and Mr. Bennett misrepresented the insurance policy under which it affords Property coverage to Plaintiff, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). Arch and Mr. Bennett

misrepresented the insurance policy to Plaintiff, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

5.7 Arch and Mr. Bennett misrepresented the insurance policy under which it affords Property coverage to Plaintiff, by failing to state a material fact that is necessary to make other statements made not misleading, in violation of Texas Insurance Code Section 541.061 (2). Arch and Mr. Bennett misrepresented the insurance policy to Plaintiff by failing to state a material fact that is necessary to make other statements made not misleading, in violation of Texas Insurance Code Section 541.061 (2).

5.8 Arch and Mr. Bennett misrepresented the insurance policy under which it affords Property coverage to Plaintiff, by making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of material fact, and failing to disclose a matter required by law to be disclosed, in violation of Texas Insurance Code Section 541.061 (3) and Texas Insurance Code Section 541.002 (1). Arch and Mr. Bennett misrepresented the insurance policy to Plaintiff by making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of material fact, and failing to disclose a matter required by law to be disclosed, in violation of Texas Insurance Code Section 541.061 (3) and Texas Insurance Code Section 541.002 (1).

5.9 Arch and Mr. Bennett knowingly committed the foregoing acts, with actual knowledge of the falsity, unfairness, or deception of the foregoing acts and practices, in violation of Texas Insurance Code Section 541.002 (1).

SECOND CAUSE OF ACTION---Prompt Payment of Claim

6.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-5.9 of this Petition as if fully set forth herein.

6.2 Arch and Mr. Bennett failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

6.3 Arch and Mr. Bennett failed to timely commence investigation of the claim or to request from Plaintiff any additional items, statements or forms that Arch and Mr. Bennett reasonably believe to be required from Plaintiff in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

6.4 Arch and Mr. Bennett failed to notify Plaintiff in writing of the acceptance or rejection of the claim not later than the 15th business day after receipt of all items, statements and forms required by Arch and Mr. Bennett in violation of Texas Insurance Code Section 542.056(a).

6.5 Arch and Mr. Bennett delayed payment of Plaintiff's claim in violation of Texas Insurance Code Section 542.058(a).

THIRD CAUSE OF ACTION---Statutory Interest

7.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-6.5 of the Petition as if fully set forth herein.

7.2 Plaintiff makes a claim for penalties of 18% statutory interest on the amount of the claims along with reasonable attorneys' fees for violation of Texas Insurance Code Subchapter B pursuant to Texas Insurance Code Section 542.060.

FOURTH CAUSE OF ACTION--Breach of Contract

8.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-7.2 of the Petition as if fully set forth herein.

8.2 Arch breached its contracts with Plaintiff. As a result of Arch's breaches, Plaintiff suffered legal damages.

FIFTH CAUSE OF ACTION--Breach of duty of good faith & fair dealing

9.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-8.2 of the Petition as if fully set forth herein.

9.2 Arch, as the property coverage insurer, had a duty to deal fairly and in good faith with Plaintiff in the processing of the claim. Arch breached this duty by refusing to properly investigate and effectively denying insurance benefits. Arch knew or should have known that there was no reasonable basis for denying or delaying the required benefits. As a result of Arch's breach of these legal duties, Plaintiff suffered legal damages.

SIXTH CAUSE OF ACTION--Punitive Damages for Bad Faith

10.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-9.2 of this Petition as if fully set for herein.

10.2 Arch and Mr. Bennett fraudulently and with malice (as that term is legally defined) denied Plaintiff's claim for benefits. Further, Arch and Mr. Bennett had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff.

SEVENTH CAUSE OF ACTION---Violations of Texas DTPA

11.1 Plaintiff re-alleges and incorporates each allegation contained in Paragraphs 1-10.2 of this Complaint as if fully set forth herein.

11.2 The Deceptive Trade Practices-Consumer Protection Act (DTPA) provides additional protections to consumers who are victims of deceptive, improper, or illegal practices. Defendants' violations of the Texas Insurance Code create a cause of action under the DTPA. Defendants' violations of the Texas Insurance Code, as set forth herein, specifically violate the DTPA as well.

KNOWLEDGE

13.1 Each of the actions described herein were done "knowingly" as that term is used in the Texas Insurance Code and were a producing cause of Plaintiff's damages.

RESULTING LEGAL DAMAGES

14.1 Plaintiff is entitled to the actual damages resulting from the Defendants' violations of the law. These damages include the consequential damages to its economic welfare from the wrongful denial and delay of benefits; the mental anguish and physical suffering resulting from this wrongful denial of benefits, and continued impact on Plaintiff; lost credit reputation; and the other actual damages permitted by law. In addition, Plaintiff is entitled to exemplary damages.

14.2 As a result of Defendants' acts and/or omissions, Plaintiff has sustained damages in excess of the minimum jurisdictional limits of this Court.

14.3 Plaintiff is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

14.4 Defendants' knowing violations of the Texas Insurance Code and DTPA entitle Plaintiff to the attorneys' fees, treble damages, and other penalties provided by law.

14.5 Plaintiff is entitled to statutory interest on the amount of its claim at the rate of 18% per year as damages under the Texas Insurance Code §542.060(a).

14.6 Plaintiff is entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, the Texas Insurance Code §542.060(a)-(b), the Tex. Bus & Commerce Code §17.50 and Tex. Civ. Prac. & Rem. Code §37.009.

Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that Plaintiff have judgment against Defendants for actual damages in excess of the minimum jurisdictional limits of this Court, pre- and post-judgment interest as allowed by law, costs of suit, and all other relief, at law or in equity, to which Plaintiff may be entitled.

Respectfully submitted,

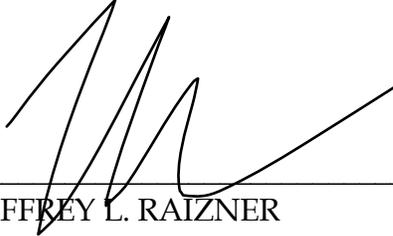
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JURY DEMAND

Plaintiff hereby demands a trial by jury, a right enshrined in the Constitution of the United States of America and the State of Texas and preserved by the sacrifices of many. The necessary jury fee has been paid.



JEFFREY L. RAIZNER