

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

JAYNEIL CORPORATION dba	§	
DAYS INN & SUITES	§	
<i>Plaintiff</i>	§	
	§	
v.	§	Civil Action No. 3:18-cv-221
	§	
UNDERWRITERS AT LLOYD’S,	§	
LONDON	§	
<i>Defendant</i>	§	

**PLAINTIFF’S ORIGINAL COMPLAINT & JURY DEMAND**

Plaintiff JAYNEIL CORPORATION dba DAYS INN & SUITES (“Jayneil” or “Plaintiff”) files this Original Complaint & Jury Demand against Defendant UNDERWRITERS AT LLOYD’S, LONDON (“Lloyd’s” or “Defendant”) and would respectfully show the following:

**Parties**

1. Jayneil Corporation dba Days Inn & Suites is a domestic for-profit corporation located and operating in the State of Texas.
2. Upon information and belief, Lloyd’s is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. Lloyd’s regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Lloyd’s may be served with process by serving its registered agent certified mail, return receipt requested, to **MENDES & MOUNT, 750 Seventh Avenue, New York, NY 10019-6829.**

**Venue & Jurisdiction**

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Plaintiff and Defendant and the amount in controversy

exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interests and costs.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because this action concerns real property and a business located and operating in Matagorda County, Texas, and all or a substantial part of the events giving rise to the claim described herein occurred in Matagorda County, Texas. In particular, the insurance policy at issue and of which Plaintiff is a beneficiary was to be performed in Matagorda County, Texas and the losses under the policy (including payments to be made to Plaintiff under the policy) were required to be made in Matagorda County, Texas. Further, investigation, including communications to and from Defendant and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) occurred in Matagorda County, Texas.

### **Factual Background**

#### ***The Property***

5. Jayneil owns and operates the commercial property located at 407 East 7<sup>th</sup> Street, Bay City, Texas 77414 in Matagorda County, Texas (the “Property”).



The Property is a one-story building situated on 195,802 square feet of land with 69,552 square feet of interior space. The motel includes 2 two-story structures and 1 single-story structure. The structures house guest rooms, a lobby/reception area, a restaurant, a ballroom, office space, and storage space.

***The Policy***

6. Prior to August 25, 2017, Jayneil paid annual premiums, assessments, fees, surcharges, and taxes to Lloyd's to acquire comprehensive commercial insurance coverage for the Property and the business under Lloyd's Policy No. B0507XEQ1913616 (the "Policy"). The Policy provides coverage for Jayneil's business and the Property, for covered damages that occur during the Policy Period, from December 27, 2016 through December 27, 2017. In exchange for Jayneil's premium payment, the Policy includes the following limits and coverages, in relevant part:

SPLIT OF VALUES:	USD 5,265,000 (100%)-
BUILDINGS:	USD 4,725,000
BUSINESS PERSONAL PROPERTY:	USD 190,000
OUTDOOR PROPERTY:	USD 25,000
BUSINESS INCOME & EXTRA EXPENSE:	USD 300,000
SIGN:	USD 25,000
SUM INSURED:	USD 5,265,000 any one occurrence

7. As evidenced by the Declarations Page, the Policy provides coverage to the Property's physical structure on an actual cost value basis for damages up to \$4,725,000. *See* Ex. A, Policy, at Declarations Pages

8. The Policy also contains a Deductible provision that confirms coverage for damages to the interior of the Property that result from a Named Storm. *See id.*, Policy.

DEDUCTIBLES:	USD 5,000 any one occurrence in respect of All Perils except: 2% of Total Insured Value in respect of Named Storm USD 25,000 any one occurrence in respect of All Other Wind and Hail
--------------	---

***Hurricane Harvey***

9. On or about August 25, 2017, Hurricane Harvey, recognized as one of the most devastating natural disasters in United States history, made landfall on the Texas coast as a

Category 4 hurricane with wind speeds of up to 150 miles per hour. Hurricane Harvey's wind and rain continued to travel through the southeast part of Texas, inflicting billions of dollars in damages to private and public property in Fort Bend County and Matagorda County alone. The Texas Division of Emergency Management incurred more than \$439 million in costs associated with debris removal, public property damage, and police/EMS response immediately after Harvey. Texas Governor Greg Abbott has estimated that Hurricane Harvey's damages will total an historic \$180 billion.

***Jayneil makes an insurance claim for Harvey related damage***

10. As a result of Harvey's extreme winds and rain when it hit Matagorda County and specifically the Property, on or about August 25, 2017, the Property was substantially damaged. Sizeable portions of the Property's roof were compromised by wind. As a result, there was also interior damage to ceilings, walls, and flooring. The following photographs taken after Harvey depict some of the damage:



11. There was also significant damage to the roof:



12. The Property—specifically the roof, ceilings, walls, and flooring—were substantially damaged by Harvey. Yet as devastating as the physical damage was, Jayneil felt fortunate to be protected by over \$5,000,000 in insurance coverage it had procured to insure the Property from precisely this type of catastrophe. Immediately after the storm, Jayneil promptly filed a claim with Lloyd’s, alerting them to the extensive damages. This sense of security, borne of a pricey contractual relationship, would prove illusory as Lloyd’s began their investigation and handling of the claim.

***Lloyd’s retains adjusters and consultants to begin adjusting the claim***

13. Because Lloyd’s does not have one single employee in Texas, they assigned Engle Martin Claims Administrative Services (“Engle Martin”) to handle the claim. Engle Martin is one of several adjusting firms, often referred to as a third-party administrator, that have sprouted to service the foreign, absentee insurance market led by Lloyd’s. Although Texas law provides that an insurer has a “non-delegable duty” to responsibly handle claims, delegate is precisely what foreign insurance entities like Lloyd’s do on a regular basis. Claims decisions are

delegated to third-party administrators like Engle Martin with limited oversight by Lloyd's. Claim settlement authorities are granted to these entities, but they are done on a restrictive, one-size-fits all limited basis that bears no relationship to the claim at hand. Oftentimes, claims are not even reported to the actual insurance company until a third-party administrator such as Engle Martin decides it rises to a level that merits the insurer's attention. In this type of absentee insurer environment, claims standards and guidelines become arbitrary and are routinely outsourced. Adjuster training is deferred, or simply never happens. Financial incentives are turned on their head, as the third-party administrators and adjusters, and the managers who oversee them, are compensated with bonuses and incentives tied to profitability manufactured by claim denials. The absentee structure of Lloyd's is such that it is virtually impossible to comply with Texas law concerning claims handling guidelines and the prohibition on delegating these guidelines. But for foreign insurance entities shielded by oceans and a vacuum of regulatory oversight, delegation to third party administrators has become the new normal.

***Jayneil works hard to document its damages for Lloyd's but received a denial.***

14. Lloyd's utilized its preferred vendor, Engle Martin, to handle adjustment of the claim on its behalf. Engle Martin's adjustment was disorganized, rife with delays, and left many of the insured's questions unanswered. Jayneil hired its own representative to assist with the claims process, but Engle Martin's adjusters continuously ignored Jayneil's representative in an effort to intentionally mislead the insured about the claims process and ultimately deny the claim.

15. Engle Martin received the claim on or around September 8, 2017, just days after the storm while the Property was in disrepair, Engle Martin retained a VeriClaim to inspect the Property on September 16, 2017. VeriClaim's adjuster assigned to the claim was Nicholas Warren. Mr. Warren then engaged the services of a building consultant with Envista Forensics.

Months after these initial inspections, Lloyd's unreasonably blamed the loss on "damages found to the property do not exceed your policy deductible" in an effort to avoid contractual responsibilities and to save Lloyd's significant sums of money. This denial was issued on March 13, 2018 and it omitted important facts, physical evidence, and meteorological data supporting Jayneil's claim. Jayneil cooperated throughout the claim process.

16. To this day, Lloyd's has refused to pay for any covered damages under the Policy.

***Lloyd's ignores Jayneil's demand letter***

17. On June 1, 2017, Governor Abbott signed House Bill 1774 into law as Section 542A of the Texas Insurance Code. This new law was sponsored by approximately sixty state representatives and senators and contains important consumer protections against a variety of unscrupulous practices. Particularly, Section 542A.003 requires detailed, comprehensive pre-suit notice that is intended to make the claims and litigation processes more transparent and potentially even avoid unnecessary lawsuits. Upon receiving notice, an insurer has a right to conduct an inspection, and even make an offer to avoid litigation. When utilized properly, Section 542A should assist business consumers like Jayneil to avoid protracted litigation over a clear claim.

18. In compliance with Section 542A.003, Jayneil gave its pre-suit notice to Lloyd's on May 31, 2018. The pre-suit notice provided a comprehensive outline of Jayneil's claim and damages, quantified its loss, and even offered to waive a formal claim for attorneys' fees if the contractual amounts were paid promptly.

19. Lloyd's did not respond to the pre-suit notice.

**Count 1 – Violations of Texas Insurance Code, Section 541**

20. Jayneil re-alleges and incorporates each allegation contained in Paragraphs 1-19 of this Complaint as if fully set forth herein.

21. Lloyd's 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).

22. Lloyd's failed to adopt and implement reasonable standards for prompt investigation of the claim arising under its policy.

23. Lloyd's 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).

24. Lloyd's refused to pay the claim without conducting a reasonable investigation with respect to the claim, in violation of Texas Insurance Code Section 541.060 (a)(7).

25. Lloyd's misrepresented the insurance policy under which it affords property coverage to Jayneil, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1). Lloyd's misrepresented the insurance policy to Jayneil, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

26. Lloyd's misrepresented the insurance policy under which it affords property coverage to Jayneil 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). Defendant misrepresented the insurance policy to Jayneil 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).

27. Lloyd's misrepresented the insurance policy under which it affords property coverage to Jayneil 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). Defendant misrepresented the insurance policy to Jayneil 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).

28. Lloyd's 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).

**Count 2 – Violations of the Texas Insurance Code, Section 542**

29. Jayneil re-alleges and incorporates each allegation contained in Paragraphs 1-28 of this Complaint as if fully set forth herein.

30. Lloyd's failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

31. Lloyd's failed to timely commence investigation of the claim or to request from Jayneil any additional items, statements or forms that Lloyd's reasonably believed to be required from Jayneil in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

32. Lloyd's failed to notify Jayneil in writing of the acceptance or rejection of the claim not later than the 15<sup>th</sup> business day after receipt of all items, statements and forms required by Defendants in violation of Texas Insurance Code Section 542.056(a).

33. Lloyd's delayed payment of Jayneil's claim in violation of Texas Insurance Code Section 542.058(a).

34. 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 Jayneil's damages.

**Count 3 – Statutory Interest**

35. Jayneil re-alleges and incorporates each allegation contained in Paragraphs 1-34 of the Complaint as if fully set forth herein.

36. Jayneil makes a claim for statutory interest penalties along with reasonable attorneys' fees for violation of Texas Insurance Code Subchapter B pursuant to Texas Insurance Code Section 542.060.

**Count 4 – Breach of Contract**

37. Jayneil re-alleges and incorporates each allegation contained in Paragraphs 1-36 of the Complaint as if fully set forth herein.

38. As outlined above, Lloyd's breached its contract with Jayneil by refusing to pay for covered damages under the Policy. As a result of Lloyd's breach, Jayneil suffered legal damages.

**Count 5 – Breach of duty of good faith & fair dealing**

39. Jayneil re-alleges and incorporates each allegation contained in Paragraphs 1-38 of the Complaint as if fully set forth herein.

40. Lloyd's, as the property coverage insurer, had a non-delegable duty to deal fairly and in good faith with Jayneil in the processing of the claim. Lloyd's breached this duty by refusing to properly investigate and effectively denying insurance benefits. Lloyd's knew or should have

known that there was no reasonable basis for denying or delaying the required benefits. As a result of Lloyd's breach of these legal duties, Jayneil suffered legal damages.

**Count 6 – Punitive Damages for Bad Faith**

41. Jayneil re-alleges and incorporates each allegation contained in Paragraphs 1-40 of this Complaint as if fully set for herein.

42. Defendant acted fraudulently and with malice (as that term is legally defined) in denying and delaying Jayneil's claim for benefits. Further, Defendant had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Jayneil.

**Count 7 – Violations of Texas Deceptive Trade Practices Act**

43. Jayneil re-alleges and incorporates each allegation contained in Paragraphs 1-42 of this Complaint as if fully set forth herein.

44. The Texas Deceptive Trade Practices Act (DTPA) provides additional protections to consumers who are victims of deceptive, improper, or illegal practices. Defendant's violations of the Texas Insurance Code create a cause of action under the DTPA. Defendant's violations of the Texas Insurance Code, as set forth herein, specifically violate the DTPA as well. Defendant has also acted unconscionably, as that term is defined under the DTPA.

45. Each of the actions described herein were done "knowingly" as that term is used in the DTPA and were a producing cause of Jayneil's damages.

**Resulting Legal Damages**

46. Jayneil is entitled to the actual damages resulting from the Defendant's violations of the law. These damages include the consequential damages to its economic welfare from the

wrongful denial and delay of benefits including loss of the property and business; and the other actual damages permitted by law. In addition, Jayneil is entitled to exemplary damages.

47. As a result of Defendant's acts and/or omissions, Jayneil has sustained damages in excess of the minimum jurisdictional limits of this Court.

48. Jayneil is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

49. Defendant's knowing violations of the Texas Insurance Code and DTPA entitle Jayneil to the attorneys' fees, treble damages, and other penalties provided by law.

50. Jayneil is entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

51. As a result of Defendant's acts and/or omissions, Jayneil has sustained damages in excess of the jurisdictional limits of this Court.

52. Jayneil is entitled under law to the recovery of prejudgment interest at the maximum legal rate.

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

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully request that Plaintiff have a judgment against Defendant 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,

**RAIZNER SLANIA, LLP**



---

JEFFREY L. RAIZNER  
State Bar No. 00784806  
Southern District Bar No. 15277  
ANDREW P. SLANIA  
State Bar No. 24056338  
Southern District Bar No. 1057153  
AMY B. HARGIS  
State Bar No. 24078630  
Southern District Bar No. 1671572  
BEN WICKERT  
State Bar No. 24066290  
Southern District Bar No. 973044  
[efile@raiznerlaw.com](mailto:efile@raiznerlaw.com)  
2402 Dunlavy Street  
Houston, Texas 77006  
Phone: 713.554.9099  
Fax: 713.554-9098  
**ATTORNEYS FOR PLAINTIFF**

**JURY DEMAND**

*Jayneil Corporation 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.*



---

**ANDREW P. SLANIA**