

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

**James River Insurance Company v. Rapid
Funding, LLC**

Case No: 07-CV-1146

Judge: Christine M. Arguello

Trial Dates: April 27 - May 4, 2009

Plaintiff's Attorneys: Brent Anderson and Kyle Seedorf
(Snell & Wilmer, LLC)

Defendant's Attorneys: Michael S. Burg, David K.
TeSelle and Thomas W. Henderson (Burg Simpson
Eldredge Hersh & Jardine, PC)

Type of Claim: Counterclaims for breach of insurance contract, bad faith breach of insurance contract, and violation of the Colorado Consumer Protection Act. Request for punitive damages. James River Insurance Company initiated this case by filing a declaratory judgment action against Rapid Funding, LLC. James River Insurance Company provided property damage insurance coverage for two large vacant apartment buildings and a clubhouse that Rapid Funding owned in Wyoming, Michigan. On January 24, 2007, a fire destroyed one of the apartment buildings (the North Building). Rapid Funding claimed that the actual cash value of the lost building exceeded the policy limits and that it was therefore entitled to the full policy limits of \$3,000,000. James River disagreed, and instead paid \$200,000 for debris removal and fire department service charges, but claimed that the North Building had no actual cash value before the fire and refused to make any additional payments to Rapid Funding for the loss of the building. James River then sued Rapid Funding for declaratory judgment that nothing was owed for the lost value of the burned building. Rapid Funding filed counterclaims for breach of insurance contract, bad faith breach of insurance contract and violation of the Colorado Consumer Protection Act. Rapid Funding alleged that James River Insurance

acted in bad faith and Rapid Funding contended that it was entitled to punitive damages. James River Insurance denied it owed Rapid Funding any additional payment on the insurance claim and denied that it acted in bad faith. Before trial, the court dismissed the CCPA claim on summary judgment. The court also denied Rapid Funding's motion for the court to apply the new Colorado bad faith statute to this claim that first arose before the effective date of the new statute.

Note: The court granted Rapid Funding's motion to proceed first and last at trial, based on Rapid Funding's burden of proof on the breach of contract and bad faith claims. The jury instructions referred only to the parties by name and did not make any reference to plaintiff or defendant.

Counterclaim Damages Alleged: \$3,000,000 (policy limits) plus punitive damages.

Final Demand and Offer Before Trial: \$2 million demand from Rapid Funding and a \$1 million offer from James River Insurance according to the attorneys for Rapid Funding.

Plaintiff's Expert Witnesses:

Peter Evans (regarding insurance bad faith), California
John Meyer (appraiser, regarding damages),
Grand Rapids, Michigan

Defendant's Expert Witnesses:

J. Kent Miller, Esquire (regarding bad faith)
Edward Reilly Jr. (bad faith and claims handling),
New York

Verdict: For Rapid Funding, LLC and against James River Insurance Company on the breach of insurance contract and bad faith breach of insurance contract counterclaims, award of \$3,000,000 in compensatory damages.

For Rapid Funding, LLC and against James River Insurance Company on the punitive damages claim, \$2,350,000.

Total for Rapid Funding, LLC: \$5,350,000 plus statutory interest.

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