



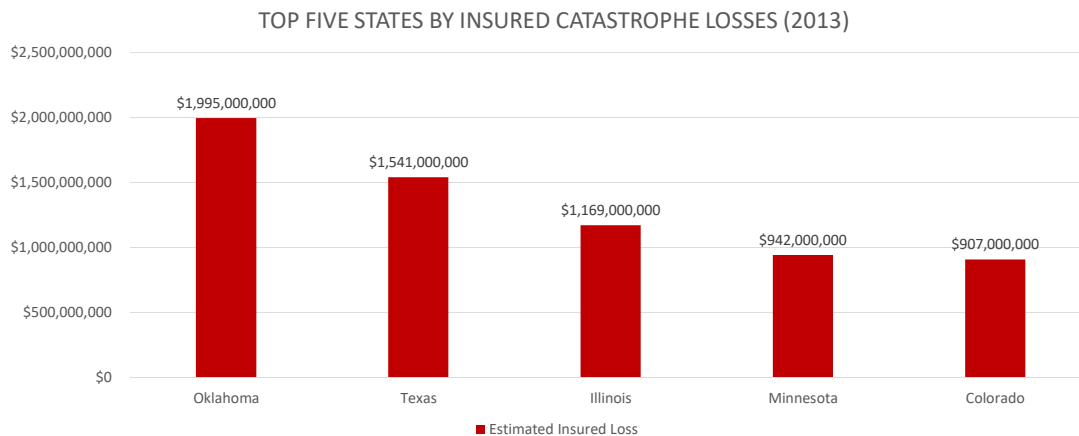
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*Integrity. Honesty. Tenacity.*

## A Storm is Brewing: Navigating the Choppy Waters of Property Insurance Claims

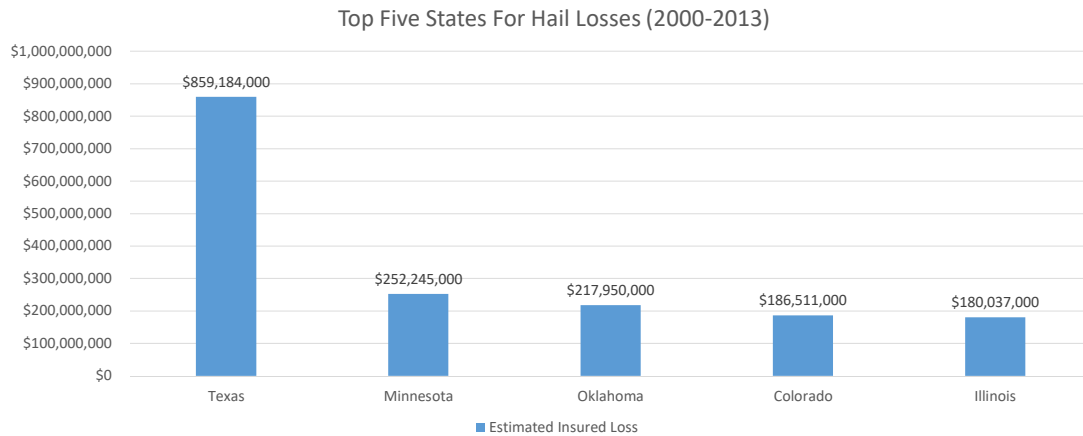
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### FACT: Mother Nature Dislikes Minnesota.



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## More Proof That Mother Nature Dislikes Minnesota.



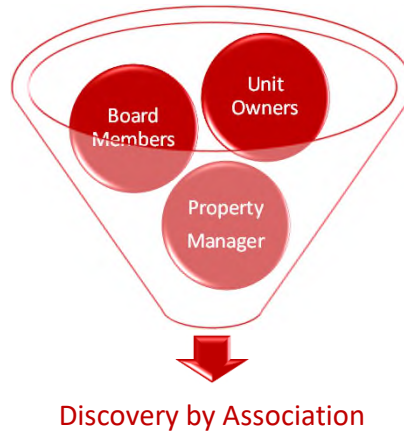
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## Three Phases of an Insurance Claim



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## Phase 1: Discovery of a Loss



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## Phase 1: Discovery of a Loss

### • Whose Claim Is It?

- Association's claim if the damaged property is insured under its master policy.
- Unit owner's claim if the damaged property is insured under his/her HO-6 policy.
- Sometimes the Association and the Unit Owner both have claims.



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## Phase 2: Making a Claim to the Insurance Carrier

- Minnesota law requires policyholders to give “**immediate written notice**” notice of a loss to their insurance companies. Minn. Stat. § 65A.01, subd. 3.
  - “Immediate” notice means “within a reasonable time after the loss.” *Nathe Bros., Inc. v. Am. Nat. Fire Ins. Co.*, 615 N.W.2d 341, 347 (Minn. 2000); *Farrell v. Nebraska Indem. Co.*, 183 Minn. 65, 68, 235 N.W. 612, 613 (1931).
- Many insurance carriers allow policyholders to report claims through their websites or by telephone.
  - **RECOMMENDATION: After reporting a claim through a web portal or claim hotline, follow up with a written letter.**



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## Phase 2: Making a Claim to the Insurance Carrier

- **What to include in a written notice of claim:**
  1. The name of the policyholder;
  2. The insurance policy number;
  3. The location or address of the loss; and
  4. A general description of the loss.
- **What NOT to include in a written notice of claim:**
  1. Opinions about how and when the loss occurred; and
  2. Opinions about the value of the loss.



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## Stage 3: Insurance Company Processes and Pays the Claim

- The Association reported the claim to the insurance company in writing. Its work is done, right?

**WRONG!**



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## Stage 3: Insurance Company Processes and Pays the Claim

- The policyholder has ongoing duties to the insurance carrier while the claim is pending.
  1. Protect the property from further damage
  2. Cooperate with the insurance carrier's claim investigation



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## Stage 3: Insurance Company Processes Claim

- Duty to cooperate includes:
  - Allowing the insurance carrier to inspect the property upon request;
  - Providing insurance company with information and documents upon request;
  - Providing a statement or submitting to an examination under oath upon request; and
  - Providing the insurance carrier with a sworn proof of loss statement upon request.
- A breach of the cooperation clause can void coverage if it is material and prejudices the insurance carrier. *Steen v. Those Underwriters at Lloyds, London Signatory to Policy No. E0100191*, 442 N.W.2d 158, 162 (Minn. Ct. App. 1989).



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## Stage 3: Insurance Company Processes and Pays the Claim

- **Don't Give the Insurance Company an Easy Out (Part I).**
  - Let the insurance company inspect the property.
  - If the insurance company requests information and documents, provide them. If the insurance company makes a request for information or documents that you think is unreasonable, contact an attorney before responding.
  - Statements given to an insurance company will affect the policy holder's legal rights. Contact an attorney if the insurance carrier requests a statement or an examination under oath from you or your clients.



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## Stage 3: Insurance Company Processes and Pays the Claim

- **The Proof of Loss.**

- A policyholder's formal statement of to an insurance company regarding the cause and amount of a loss.
- Insurance companies generally request a Proof of Loss in connection with their investigation of the loss.



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## Stage 3: Insurance Company Processes and Pays the Claim

- **Don't Give the Insurance Company an Easy Out (Part II).**

- The Proof of Loss must be completed within 60 days of the insurance company's request.
- If you need more time to complete the Proof of Loss, contact the insurance company and ask for additional time. Document the extension in writing.
- Make sure the representations in the Proof of Loss form are factually accurate.
- Consider working with an attorney to complete the Proof of Loss.



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## Disputed Insurance Claims

- Coverage disputes
  - Whether insurance policy covers the claim.
- Valuation disputes
  - Amount of damage
  - Scope of work to repair damage
  - Cost of repair.



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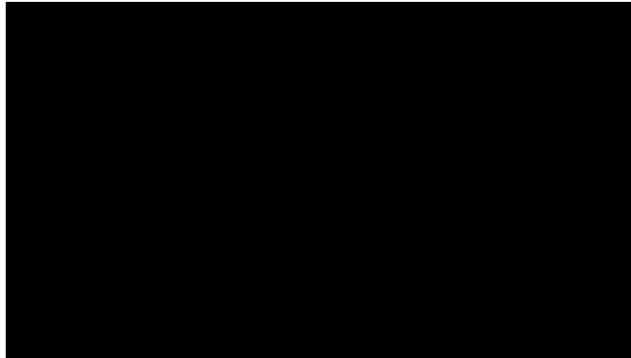
## Coverage Disputes

- Experts can help establish that damage was due to a covered cause of loss.
  - Engineers
  - Meteorologists
  - Contractors
- Experts are critical if the insurance carrier denies coverage.



## Coverage Disputes

- An example of an effective use of an expert to establish coverage:



## Coverage Disputes

- Courts resolve coverage disputes.
- Court reviews, interprets, and applies language of the insurance policy to the facts of the claim.
- Examples of coverage issues:
  - Whether the loss was caused by something the policy covers
  - Whether the insurance policy contains an exclusion that bars coverage
  - Whether the insured cooperated with the insurance carrier



## Valuation Disputes

- **The Appraisal Clause.**

- When the policyholder and insurance company fail to agree on the amount of a claim, either can invoke the “appraisal clause” in the insurance policy and demand that the loss be resolved by “appraisal.”
- “Appraisal clause” is an insurance policy provision that allows the policyholder to demand an independent determination of the value of an insurance claim.

## Valuation Disputes

- **The Appraisal Process in a Nutshell.**

1. The policyholder makes a written demand for appraisal and names its appraiser.
2. Within 20 days, the insurance company names its appraiser
3. The two appraisers select an umpire.
4. Appraisal hearing takes place.
5. The appraisal panel issues an award.



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## Valuation Disputes

- **Appraisal resolves fact disputes between the policyholder and the insurance carrier**

1. The amount of loss or damage;
2. The cost to repair the loss or damage;
3. The cause of the loss or damage;
4. The date the loss or damage occurred;



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## Valuation Disputes

- **Appraisal can resolve mixed questions of fact and law incidental to determining the value of the claim.**

1. **MATCHING** - Whether the lost or damaged property can be repaired or replaced with comparable materials;
2. **ORDINANCE AND LAW** – Whether additional repairs are needed to comply with applicable building codes or ordinances;
3. **OVERHEAD AND PROFIT** – Whether the cost to repair or replace the damaged property includes a contractor's overhead and profit.



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## Valuation Disputes

- **Appraisal CANNOT resolve coverage disputes.**

1. Whether the policy covers a particular cause of loss or type of damage;
2. Whether the insured satisfied its duty to cooperate.



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## Valuation Disputes

- **Advantages and Disadvantages of Appraisal Process.**

1. **Advantage:** Appraisal is faster and cheaper than litigation.
2. **Advantage:** Appraisal award is binding on policyholder and insurance company.
3. **Advantage:** Policyholder might be able to recover interest on appraisal award.
4. **Disadvantage:** Appraisal panel can resolve valuation disputes, but cannot resolve coverage disputes.
5. **Disadvantage:** Parties have no discovery rights in appraisal.



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## Resolving Disputed Insurance Claims

### • Considerations When Demanding Appraisal.

1. Are the members of the appraisal panel competent and disinterested?
2. Will the policyholder be presenting any “weird” issues to the appraisal panel?
  - Matching
  - Ordinance and Law
  - Overhead and Profit
3. What evidence does the policyholder have, and how will it be presented?



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## Valuation Disputes

### • The Appraisal Survival Kit: The Necessities For Any Appraisal.

1. A copy of the insurance policy;
2. A copy of the Proof of Loss, if any;
3. Photographs of the loss or damage;
4. A repair estimate from a reputable contractor;
5. Expert reports, if necessary;
6. Manufacturer information, if necessary.



## Hot Topics in Insurance Coverage: Matching

- **“Matching” Issues**

- Replacement cost insurance policies may require replacement of damaged property with materials of “like kind and quality” or with “comparable materials and quality.”
  - What constitutes “like kind and quality” or “comparable materials and quality” is generally a fact question.
- If comparable materials are not available, insurance company may have to make broader repairs.



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## Hot Topics in Insurance Coverage: Matching

- *QBE Insurance Corp. v. Twin Homes of French Ridge Homeowners Ass’n*, 778 N.W.2d 393 (Minn. Ct. App. 2010):
  - Insurance policy stated that value of loss determined by: (1) cost to repair or replace damaged shingles with comparable materials; or (2) Amount actually and necessarily spent to repair or replace the damage.
  - Existing shingles were no longer manufactured and were too worn to connect to new shingles.
  - Appraisal panel determined that value of the loss was the cost of total roof replacement, which represented amount association would actually and necessarily expend to repair the damage.
  - Minnesota Court of Appeals upheld decision.



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## Hot Topics in Insurance Coverage: Matching

- *Seamon v. Acuity*, No. A11-429, 2011 WL 6015355 (Minn. Ct. App. Dec. 5, 2011):
  - Insurance claim for wind damage to residential home.
  - Insurance carrier contended that wind damaged only 25% of the roof. The insurer contended that the entire roof had to be replaced because the existing shingles were discontinued and unavailable.
  - Insurance policy stated that value of loss determined by either: (1) The replacement cost at the time of loss for equivalent property, construction and use on the same premises; or (2) The amount actually and necessarily spent to repair or replace the property.
  - Appraisal panel failed to decide whether equivalent shingles were available for repairs to the roof as required by Policy.
  - Minnesota Court of Appeals held that appraisal panel should have made that decision.



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## Hot Topics in Insurance Coverage: Matching

- *Cedar Bluff Townhome Condominium Ass'n v. American Family Mut. Ins. Co.*, No. A13-0124, 2013 WL 6223454 (Minn. Ct. App. Dec. 2, 2013):
  - Insurance claim for hail damage for siding to 20-building condominium association.
  - Insurance policy stated that value of loss determined by either: (1) cost to repair damaged property with comparable materials and quality for the same use; or (2) the amount actually and necessarily spent to repair or replace the property.
  - Insurance carrier conceded that siding no longer manufactured in same color, and that replacement siding would be slightly lighter or darker than existing siding.
  - Appraisal panel determined that proposed replacement siding was not comparable, and awarded full siding replacement to Association.
  - Minnesota Court of Appeals upheld appraisal award.
  - I'm biting my nails, because it's still pending at the Minnesota Supreme Court.



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## Hot Topics in Insurance Coverage: Matching

- *Trout Brook South Condominium Ass'n v. Harleysville Worcester Ins. Co.*, --- F.Supp.2d --- (D. Minn. 2014):
  - Insurance claim for hail damage to shingles at condominium association.
  - Insurance policy stated that value of loss determined by either: (1) cost to repair damaged property with similar materials of like kind and quality; or (2) the amount actually and necessarily spent to repair or replace the property.
  - Court found that whether proposed replacement shingles were comparable was fact question.



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## Questions?

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