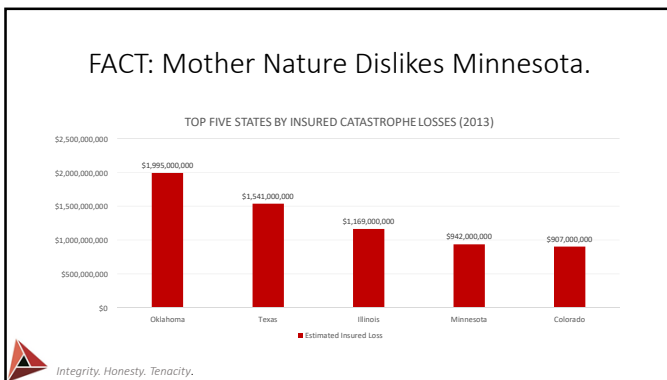
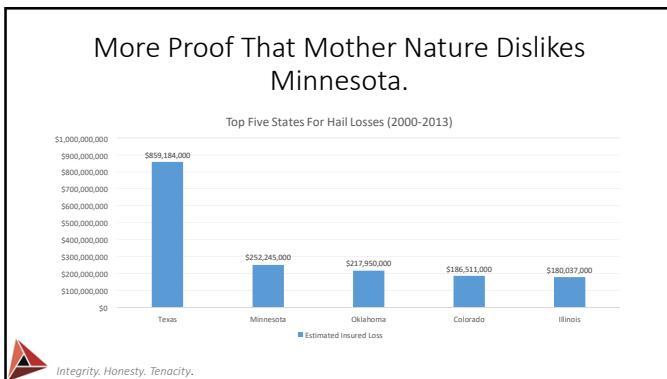


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Integrity. Honesty. Tenacity.

**The Cedar Bluff Decision
and
Its Impact on Contractors,
Policy Holders, and Insurance Companies**

Anthony T. Smith, Esq.
(952) 236-1971
asmith@rsjlawfirm.com
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The Big Picture

- There is a lot of storm repair work to be done in Minnesota.
- Contractors must follow Minnesota’s laws when working with policy holders and insurance companies.
- The recent Supreme Court decision in *Cedar Bluff v. American Family* opens the door for contractors to negotiate repairs with matching materials.
- *Cedar Bluff* probably doesn’t change the landscape otherwise.



Bulletin 2010-4 and the Role of the Contractor

- Minnesota Department of Commerce and Minnesota Department of Labor Bulletin published Bulletin 2010-4 in response to concerns that contractors were acting as public adjusters.
- Identified permissible and impermissible conduct by a contractor.
- Subsequently “clarified” by Bulletin 2010-4 FAQ.



What Can a Contractor Do?

- Enter into a “price agreeable” contract with policy holders.
 - Policy holder agrees to allow contractor to perform whatever repair work its insurance company agrees to cover, for the price that the insurance company agrees to pay for the repairs.
 - Most “price agreeable” contracts have a provision that calls for cancellation of the contract if the contractor and the insurance company cannot reach an agreement on the scope of work and the price.
- Negotiate scope of work with policy holder’s insurance company, including supplements.



What Can't a Contractor Do?

- Can't negotiate insurance coverage.
 - Can't review or interpret insurance policy for policy holder.
 - Can't negotiate with insurance company as to whether policy covers the damage.
- Can't demand appraisal on behalf of policy holder.
- Can't "represent" policy holder in negotiation of insurance claim.
- Can't offer to "adjust" the claim for the policy holder.



Matching Issues: What Are They?

- Replacement cost insurance policies may require replacement of damaged property with materials of "like kind and quality" or with "comparable materials and quality."
 - Cedar Bluff Townhome Condo. Ass'n, Inc. v. Am. Family Mut. Ins. Co., No. A13-0124, 2014 WL 7156914 (Minn. Dec. 17, 2014): "comparable materials and quality" means a reasonable match.
 - Whether something is a reasonable match is generally a fact question.
- If reasonably matching materials are not available, insurance company may have to make broader repairs.



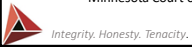
Minnesota Case Law Regarding Matching

- 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.



Minnesota Case Law Regarding 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 insurance company 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.



Minnesota Case Law Regarding Matching

- *Cedar Bluff Townhome Condo. Ass'n, Inc. v. Am. Family Mut. Ins. Co.*, No. A13-0124, 2014 WL 7156914 (Minn. Dec. 17, 2014)
 - Minnesota Supreme Court held that phrase "comparable material and quality" in insurance policy means "a reasonable color match between new and existing siding when replacing damaged siding."
 - Minnesota Supreme Court upheld appraisal panel's award to replace all siding when there was no reasonable color match for damaged siding.
 - Although case dealt with siding, it probably applies to other exterior building components (roofing shingles, soffits, fascia).



What Can Contractors Do After Cedar Bluff?

- They can still enter into a "price agreeable" contract with policy holder.
- They can still negotiate the necessary scope of work with policy holders' insurance companies.
- They can probably negotiate scope of work that includes repairs with reasonably matching materials, or for more extensive repairs when reasonably matching materials are not available.



...BUT

- Policy holders' right to repairs with reasonably matching materials (or for more extensive repairs when reasonably matching materials are not available) depends on the specific insurance policy language.
- Contractors still cannot review or interpret insurance policies.
- Contractors cannot advise policy holders whether their insurance policies entitle them to repairs with reasonably matching materials. Policy holders should review this issue with an attorney.
- Contractor cannot negotiate coverage for reasonably matching materials with insurance carrier. Instead, policy holders should get an attorney involved.



What Can a Contractor Do If An Insurance Carrier Won't Pay for Repairs With Reasonably Matching Materials?

- Generally, only remedy available to contractor when it cannot reach agreement with insurance carrier on scope of work and price is to walk away from contract.
- Contractor cannot sue insurance carrier – no contract between insurance carrier and contractor.
- Contractor cannot demand appraisal on behalf of policy holder.



...BUT

- Policy holders have rights when they disagree with their insurance carrier regarding the scope of work and the cost to repair.
- Policy holders can demand an appraisal.
 - 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.
 - Contractor can't pay the policy holder's costs for an appraisal to induce the policy holder to sign a contract.
 - If contractor already has a contract with the policy holder, then it can probably pay for the appraisal.



“Reasonably Matching Materials”

- *Cedar Bluff* makes it clear that color should be considered when determining whether a proposed repair material is a “reasonable match.”
- Other potential considerations include: installation, thickness, reveal, shading, texture, and other aesthetic issues.



Documenting Matching Issues

- Use a third-party vendor (ITEL) to determine whether reasonably matching materials exist.
- Work with vendors and suppliers to document availability (or lack thereof) of building materials.
- Manufacturers’ repair recommendations may also be helpful to document matching issues.





Questions?

Anthony T. Smith, Esq.
 (952) 236-1971
asmith@rsjawfirm.com
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