

**ROEDER SMITH JADIN**  
P.L.L.C.  
*Integrity. Honesty. Tenacity.*

**Cedar Bluff v. American Family:**  
What Public Insurance Adjusters Need to Know About Matching.

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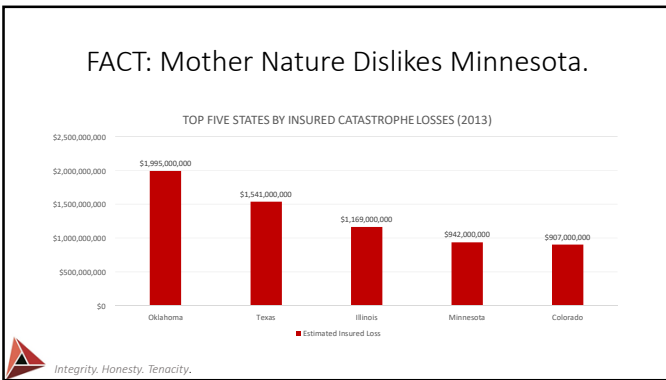
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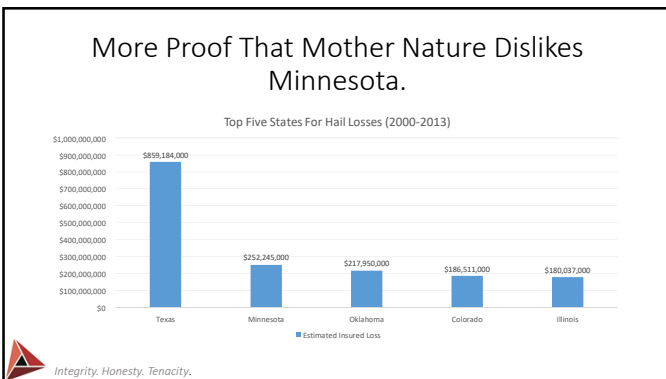
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### The Big Picture

- There is a lot of storm repair work to be done in Minnesota.
- Public insurance adjusters 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 public insurance adjusters to negotiate and resolve claims based on the availability of matching materials.




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### Matching Issues.

- One area of dispute in property insurance claims involving hail or storm damage is how much needs to be replaced.
- When part of a building's roof or siding is damaged as a result of a storm, sometimes the replacement material is no longer available.
- The issue becomes does the entire roof or siding have to be replaced in order to achieve a reasonable match.




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### Matching Issues: The Insurance Policy Language is Key.

- A replacement cost insurance policy may require insurance carrier to pay to replace damaged property with materials of "like kind and quality" or with "comparable materials and quality."
- If reasonably matching materials are not available, then the insurance carrier may have to make broader repairs.




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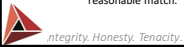
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### The Cedar Bluff Decision and Matching.

- Cedar Bluff Townhome Condo. Ass'n, Inc. v. Am. Family Mut. Ins. Co., No. A13-0124, 2014 WL 7156914 (Minn. Dec. 17, 2014)
  - Insurance policy required American Family to pay to replace damaged property with "comparable material and quality." Insurance policy language also stated that if "comparable materials" were not available, then American Family would pay the amount necessary to repair the damage.
  - Storm caused minor wind and hail damage to siding on 20 buildings throughout residential townhome association.
  - American Family acknowledged that proposed replacement siding would be slightly lighter or slightly darker than existing siding, and would be noticeable to the naked eye.
  - BUT American Family took the position that it was only required to replace the individual damaged siding boards regardless of the color difference, and was not obligated to match the color. American Family's offer to the Association was approximately \$7,000.
  - Association took the position that American Family was obligated to replace all the siding so that there was a reasonable match.




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### The Cedar Bluff Decision and Matching.

- Cedar Bluff Townhome Condo. Ass'n, Inc. v. Am. Family Mut. Ins. Co., No. A13-0124, 2014 WL 7156914 (Minn. Dec. 17, 2014)
  - Appraisal panel found that the proposed replacement siding was not a reasonable match because of the color difference, and awarded the Association \$361,000 to re-side all 20 buildings.
  - The parties ended up appealing the appraisal panel's award up to the Minnesota Supreme Court.
  - Minnesota Supreme Court decided that the policy language requiring replacement with "comparable materials and quality" means "a reasonable color match between new and existing siding when replacing damaged siding."
  - Minnesota Supreme Court upheld the appraisal panel's award.
  - Although case dealt with siding, it probably applies to other exterior building components (roofing shingles, soffits, fascia).




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### Earlier 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 language required insurance carrier to pay to replace damaged property with "comparable material" or the amount necessary to repair the damage if "comparable materials" were not available.
  - Existing shingles were no longer manufactured and were too worn to connect to new shingles.
  - Insurance appraisal panel decided that shingles could not be repaired with "comparable material" and issued an award for total roof replacement.
  - Minnesota Court of Appeals upheld decision.




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### Earlier Minnesota Case Law Regarding Matching

- *Seamon v. Acuity*, No. A11-429, 2011 WL 6015355 (Minn. Ct. App. Dec. 5, 2011):
  - Insurance carrier contended that wind damaged only 25% of the roofing shingles on a single family home. The homeowner contended that the entire roof had to be replaced because the existing shingles were discontinued and unavailable.
  - Insurance policy required insurance carrier to replace damaged property with "equivalent property" or pay the "amount actually and necessarily spent to repair or replace the property" if "equivalent property" is not available.
  - 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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### The Takeaway from *Cedar Bluff* and other Minnesota Matching Cases.

- Depending on the insurance policy language, an insurance carrier may be required to make broader repairs when there are no comparable replacement materials.
- Insurance appraisal panels have the authority to decide matching issues (i.e., whether there is a reasonable match for the existing building materials).



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### 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.



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Questions?

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