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## 8th Circuit Enforces Matching Exclusion—Will Minnesota's appellate courts follow suit?

In *Noonan v. Am. Family Mut. Ins. Co.*, 924 F.3d 1026 (2019), the Eighth Circuit recently applied a "matching exclusion" in a homeowners policy to preclude coverage for damages solely "attributable to matching difficulties." The exclusion, which was no doubt created to address the issues raised by the Minnesota Supreme Court's decision in *Cedar Bluff Townhome Condo. Ass'n, Inc. v. Am. Family Mut. Ins. Co.*, 857 N.W.2d 290, 293 (Minn. 2014) (finding coverage for undamaged, mismatched property under a policy that did not contain an exclusion), provided that American Family would "not pay to repair or replace undamaged property due to mismatch between undamaged material and new material used to repair or replace damaged material."

After hail and wind damaged part of the Noonans' roof, they asked their insurer American Family to pay for the replacement of the entire roof on grounds that replacing only the damaged shingles would result in a roof with shingles that do not match. Citing the "matching exclusion" in the Noonans' policy, American Family agreed to cover only the damaged shingles, and the Noonans demanded an appraisal. The appraisal panel and district court (in a subsequent lawsuit to confirm the appraisal award) sided with the homeowners, but the Eighth Circuit reversed. Applying "the explicit and unambiguous exclusion," the Eighth Circuit held that American Family was not obligated to pay for damages attributable to matching difficulties.

In so holding, the Eighth Circuit rejected the district court's conclusion that the exclusion did not apply to the Noonans' policy because it was contained in an endorsement that modified the policy's main coverage form rather than another endorsement that also modified the main coverage form. Because the two endorsements modified different provisions of the main coverage form, the Eighth Circuit determined that the district court erred in reading the matching exclusion out of the Noonans' policy.

The Eighth Circuit also rejected the Noonans' argument that their policy should be reformed to cover matching pursuant to the Minnesota Standard Fire Insurance Policy, Minn. Stat. § 65A.01, reasoning that even if the standard fire insurance policy requires matching coverage, the Noonans' policy was not subject to reformation because their home was damaged by a thunderstorm, not fire. See Minn. Stat. § 65A.01, subd. 1 (providing that policies insuring against fire and other perils "shall, with respect to the peril of fire, afford the insured all the rights and benefits of the Minnesota standard fire insurance policy."); *Henning Nelson Constr. Co. v. Fireman's Fund Am. Life Ins. Co.*, 383 N.W.2d 645, 651 n. 8 (Minn. 1986) (reading section 65A.01, subd. 1 to mean that the minimum requirements of the standard fire insurance policy "apply only to fire losses, and not nonfire losses, under an all-risk insurance

policy” like the Noonans).

Following Noonan , it will be interesting to see if Minnesota’s appellate courts follow suit and enforce “matching exclusions” such as the one in the Noonans’ policy to limit coverage in mismatch cases to the amount of actual damages caused by the covered peril. Fortunately, we will not have to wait long as a case involving a similar exclusion is currently pending before the Minnesota Court of Appeals following an Anoka County District Court Judge’s application of the exclusion to limit coverage. See *Pleasure Creek Townhomes Homeowners’ Association v. Am. Family Ins. Co.*, 02-CV-17-6025, A19-0662 . It will also be interesting to see if Minnesota’s appellate courts revisit whether the Minnesota Standard Fire Insurance Policy should apply beyond fire losses.

If you have questions regarding the Noonan decision, the Pleasure Creek case pending before the Minnesota Court of Appeals, or the coverage issues presented in matching cases in general following Cedar Bluff , please contact Dale O. Thornsjo , Lance D. Meyer , or one of the other members of our Firm's Insurance Coverage Practice Group at (952) 831-6544.