

## **Guest Blog: Federal judge voids matching exclusion - Good news for homeowners denied coverage under exclusion**

A Minnesota federal judge recently issued an order that has big potential implications for Minnesota homeowners who had part of their claim denied by a “matching” exclusion in their insurance policy. American Family customers in particular should be aware of this order, especially those covered by a Gold Star Policy.

The Order was issued in the case of Noonan v. American Family. American Family’s policy includes a form called the Minnesota Endorsement, which says the insurance company will not pay to replace undamaged material that is a color mismatch when next to new, replacement material. The idea behind this form is that the insurance company will pay to replace material directly hit and damaged by wind, hail, etc., but not material nearby that is not directly hit and damaged.

The outcome of Noonan is complex and is only summarized here – but you can [read more](#) in a press release on the judge’s order. The Gold Star policy, like so many insurance policies, is comprised of multiple forms. The Minnesota Endorsement with the matching exclusion appears as the third relevant form in the policy. The first two are the Gold Star Form, which is the original form, and then the Gold Star Endorsement. This flow is shown in the following graph:

The valuation section in the original Gold Star Form is “deleted and replaced” by the Gold Star Endorsement. The Minnesota Endorsement with its matching exclusion says it amends the valuation section in the Gold Star Form. That statement is represented by the dashed line. Yet the matching exclusion is silent on amending the Gold Star Endorsement. The solid line represents what the policy

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should have said for the sake of clarity.

Is this all confusing? Absolutely, and when Minnesota law is applied to that confusion the outcome is a victory for the property owner. A federal judge held this flow is confusing, and that ambiguity must be resolved in favor of the property owner. It is an important application of Minnesota insurance law – ambiguity in policy is resolved in favor of the property owner.

The full amount of the loss – i.e. the money necessary to compensate the Noonans – had been previously determined by an appraisal panel. The judge entered a judgment in favor of the Noonans for the full amount of the appraisal panel’s award. He also ordered American Family to pay the Noonans’ attorney fees and interest on the appraisal award.

This is an awesome result for the property owners in Minnesota. It is also important for any property owner with a similar American Family policy who experienced any loss or damage dating back two years. This includes the 2016 and 2017 storm season, so long as a claim is made within the two-year statute of limitations. Minnesota property owners now have an excellent argument to recover the diminution in the value of their property due to mismatching materials.

The victory for the Noonans in this case is a victory for Minnesota property owners everywhere. Not all matching exclusions are enforceable. Minnesota property owners should look at any exclusion cited by an insurance company and consider whether it is truly enforceable.

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