

To Match or Not to Match, That Is the Question

Article By:

Larry P. Schiffer

After Hurricane Sandy, I found some shingles missing off my roof. My contractor said the entire roof should be replaced. My insurer would only pay for replacing the missing shingles. The type of shingle was readily available. But what happens if the damage to the roof, siding, facade, floor occurs to only parts of those surfaces and there is no replacement for the damaged coverings? **Does the insurance company have to match and replace the entire roof or siding on the building?** That was the question recently addressed by the Seventh Circuit Court of Appeals.

In [Windridge of Naperville Condominium Association v. Philadelphia Indemnity Insurance Co.](#), No. 18-2103 (7th Cir. Aug. 7, 2019), a hailstorm damaged the aluminium siding on two sides of the buildings. The insurance company was willing to replace the siding on the two damaged sides. The policyholder argued that replacement siding was needed on the undamaged sides of the buildings as well because the siding on the undamaged sides was no longer available. In other words, the policyholder wanted the entire buildings to match with the new siding.

The policy required the insurer to pay for direct physical loss to buildings. The policy was a replacement-cost policy, which the court noted provided for a “make-whole” remedy. The district court granted summary judgment to the policyholder and the circuit court affirmed.

In affirming, the circuit court found a potential ambiguity between the phrases “direct physical loss” and “covered property.” The circuit court agreed with the district court that the buildings as a whole were damaged and that all of the siding must be replaced to ensure matching as a sensible construction of the policy language under the facts. The court agreed that the insurer’s interpretation—to pay to replace only the specific panels of siding damaged by the hail, leading to two-tone buildings—was less reasonable. Because of this ambiguity (each panel of siding vs. each side of the buildings vs. the buildings as a whole), the court favored the interpretation that led to coverage under Illinois law.

The circuit court also discussed similar matching cases in other jurisdictions. The court held that while the insurer’s position that only the siding directly hit by the hail was covered “was not indefensible and had some support in the case law,” the language of the policy was not so clear and, in fact, favored an interpretation that the unit of damaged property was the buildings as a whole and not solely each side of the buildings or each piece of siding.

The court went on to describe a situation where damage, if replaced on a piece-by-piece basis, could

result in horizontal or vertical striped siding, which would not be reasonable. The better reasoning, held the court, based on the ambiguity in the policy language, was that each building as a whole suffered direct physical loss as a result of the storm. The court concluded that buildings with mismatched siding were not a post-storm outcome that the policyholder was required to accept under this replacement-cost policy. The court also noted that its approach left plenty of room for common sense in situations involving more limited damage. In affirming the grant of summary judgment for the policyholder, the court ruled that the insurer must pay to return the buildings to their pre-storm status, which in this case meant matching siding on all sides.

Unfortunately, that was not the case for my roof.

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