MATTHIESEN, WICKERT & LEHRER, S.C.
Hartford ❖ New Orleans ❖ Los Angeles ❖ Austin
Phone: (800) 637-9176
gwickert@mwl-law.com
www.mwl-law.com

"MATCHING REGULATIONS" AND LAWS AFFECTING HOMEOWNERS' PROPERTY CLAIMS IN ALL 50 STATES

It remains one of the most difficult issues to deal with in the world of property insurance. Homeowners' insurance policies usually contain a provision obligating the carrier to repair or replace an insured's damaged property with "material of like kind and quality" or with "similar material." They cover property damage resulting from "sudden and accidental" losses. When damage caused by fire, smoke, water, hail, or other causes results in a small portion of a home or building being damaged (*e.g.,* shingles, siding, carpet, cabinets, etc.), whether and when a carrier must replace non-damaged portions of a building in order for there to be a perfect match remains a point of contention. It is a matter of great importance to insurance companies because "matching" problems with a slightly damaged section of roof or flooring can lead to a domino effect of tear out and replacement costs of many items which are not damaged. The problem of partial replacement is especially troubling where the damaged siding or shingles have been discontinued, making it virtually impossible to properly match. To replace only the damaged portion would result in an obvious aesthetic deficit due to a clear difference in the appearance of the replaced portion of the building from the portion that remains undamaged.

Would the entire structure need to be re-sided or the entire roof re-shingled? Or is it sufficient to replace just one wall of siding or just a few shingles? Whether or not the insurance company must pay to replace entire sections of the structure in order to bring the property back to its previous uniformity and aesthetics can bring various state insurance laws and regulations into play. On the one hand, many pundits claim that the terms of the insurance policy require the carrier to pay the cost to "*repair or replace with similar construction for the same use on the premises*." They argue that "similar" doesn't mean matching exactly. Others argue that coverage for "matching" and "uniformity" under a homeowner's policy doesn't exist without a specific endorsement. The truth lies somewhere in between and can vary greatly from state to state.

Replacement Cost Value (RCV) vs. Actual Cash Value (ACV) Policy

There are two primary valuation methods for establishing the value of insured property for purposes of determining the amount the insurer will pay in the event of loss under a homeowner's policy:

1. *Replacement Cost Value (RCV)*: This method is usually defined in the policy as the cost to replace the damaged property with materials of like kind and quality, without any deduction for depreciation. It pays an insured for the value of replacing the damaged property without deduction for deterioration, obsolescence, or similar depreciation of the property's value. The carrier assumes the cost of paying the full cost of repairing or replacing the damaged property.
2. *Actual Cash Value (ACV):* This method pays an insured for a similar item less depreciation. ACV is ordinarily determined in one of three ways: (1) the cost to repair or replace the damaged property, minus depreciation; (2) the damaged property's "fair market value" ("FMV"); or (3) using the "broad evidence rule," which calls for considering all relevant evidence of the value of the damaged property. The insured bears the difference between the depreciated value of the damaged property prior to loss and the higher cost of repairing or replacing it.

The issue of "matching" or "uniformity" in first-party homeowners insurance claims is one that lends itself to RCV policies. If property is only partially damaged, the carrier takes the position that it is only required to pay for repair or replacement of the limited portion of the property that is damaged. The insured argues that replacing only the damaged property restores the functionality of the roof but does not fully replace the damaged property because the replaced property does not match the existing property. For example, a roof had a uniform appearance, and uniformity has a significant effect on value. Therefore, the proper measure of RCV is the cost to replace the *entire roof* to restore the uniform appearance. This is known as the issue of "matching" or "uniformity." The issue is whether the carrier has to "match" the damaged property to the undamaged property in order to return it to its previous "uniform" appearance and restore the entire home to its condition prior to loss.

Whether the policy is an RCV or ACV policy can make a big difference. ACV coverage pays an insured for a similar item less depreciation. RCV coverage compensates an insured for the value of replacing the damaged property without deduction for deterioration, obsolescence, or similar depreciation of the property's value. An insurer with an ACV policy may be able to exercise the option to repair, restore, or replace the damaged property itself rather than having to pay for the cost to repair the property with property of *like kind and quality*. Moreover, some "matching" regulations only apply to RCV policies.

A good illustration of the matching/uniformity problem is found in a 2014 Minnesota federal district court case in which a manufacturer discontinued the shingles used on the insured's roof, thus leading to a mismatch problem. The issue was whether the carrier was obligated to replace the damaged shingles with substantially similar shingles or to pay for new shingles for the entire roof. *Trout Brook S. Condo. Ass'n v. Harleysville Worcester Ins. Co.*, 995 F. Supp.2d 1035 (D. Minn. 2014). The Harleysville RCV policy provided coverage which obligated it to pay for the property's "replacement cost," defined as:

(1) "the cost of repair or replacement with similar materials for the same use and purpose, on the same site" or
(2) "the cost to repair, replace, or rebuild the property with material of like kind and quality to the extent practicable."

Harleysville claimed only partial damage to the roof and allocated $21,000 for roof repairs, but the insured's construction expert believed the roof had to be entirely replaced at a cost of more than $800,000. In addition, the shingles were no longer being manufactured. The insured sued, arguing that the unavailability of matching shingles entitled it to full roof replacement. The court noted that the "covered property" under the policy was defined as the buildings (rather than the individual items on the property) and held there was a jury question as to whether the building suffered a loss on account of the unavailability of matching roof shingles. Whether Harleysville was able to replace shingles with shingles of a "like kind and quality" hinged on whether the unmatched shingles would provide an acceptable aesthetic result, and that had to be determined by a jury. The idea is that property that has not been physically damaged may become "damaged" where replacement of physically damaged property does not lead to an aesthetic result acceptable to the insured. It suggests that the carrier has an obligation beyond repairing the functionality of the damaged property, by paying to repair the aesthetics of the building.

Similarly, in a 2015 D.C. federal court decision that dealt with damaged limestone panels, the policy gave the carrier the option to either pay the value of damaged property, pay the cost of repairing or replacing the damaged property, take all or part of the property at an agreed or appraised value, or repair, rebuild, or replace the property with other property of "like kind and quality" subject to the condition that the carrier pay to replace damaged property with other property of "comparable material and quality" and used "for the same purpose." *Nat'l Presbyterian Church, Inc. v. GuideOne Mut. Ins. Co.*, 82 F. Supp.3d 55, 57 (D. D.C. 2015). The court found a distinction between the repair options relating to "the property" and those relating to "lost or damaged property," specifically noting that "the property" was broadly defined by the policy to include the "building," inclusive of fixtures, floor coverings, and appliances. It also held that the phrases "comparable material" and "other property of like quality and kind" can be read to mean property that looks the same.

Notwithstanding any insurance regulations that control the issue, a carrier's obligation to pay for matching depends on the policy language and hinges on whether the loss payment and valuation terms of the policy can be read to obligate the carrier to match the replacement materials. The industry's response is that allowing coverage for matching provides a windfall to the insured. To allow for full replacement of matching roofing and siding can be unduly burdensome on a carrier whose policy agrees only to repair damaged portions of the building.

Terms of Insurance Policy

The terms of insurance policies vary greatly and are very important to determining the carrier's obligations in a claim which involves a "matching" concern. The current ISO HO-3 and HO-5 and company-specific policies contain "Loss Settlement" provisions such as:

> *Covered property losses are settled as follows:*
>
> *...*
>
> *2. Buildings covered under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:*
>
> *a. If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, after application of any deductible and without deduction for depreciation, but not more than the least of the following amounts: ...*
>
> *(2) The replacement cost of that part of the building damaged with material of like kind and quality and for like use; or*
>
> *(3) The necessary amount actually spent to repair or replace the damaged building.*
>
> *b. If, at the time of loss, the amount of insurance in this policy on the damaged building is less than 80% of the full replacement cost of the building immediately before the loss, we will pay the greater of the following amounts, but not more than the limit of liability under this policy that applies to the building:*
>
> *...*
>
> *(2) That proportion of the cost to repair or replace, after application of any deductible and without deduction for depreciation, that part of the building damaged, which the total amount of insurance in this policy on the damaged building bears to 80% of the replacement cost of the building.*

Individual insurance companies may have a variety of other standard terms included in their policies. Some policies may have other terms, conditions, and/or definitions which attempt to address the "matching" or "uniformity" issue and limit exposure in such situations. Some policies even contain "Roof Surfacing Loss Percentage Tables" which address the percentage of a roof the carrier will be obligated to replace as a function of the roof's age and type of roofing surface material. Overshadowing all of the above are a patchwork of insurance statutes and regulations which attempt to govern claims which have a "matching" or "uniformity" component to them.

In response to a proliferation of "matching" claim issues, many insurers have begun inserting language in their policies that expressly precludes the coverage requirement of matching based upon color, a change in product specifications, or other factors, in an attempt to circumvent this clear precedent. Many states have statutes, insurance bulletins, or case law that directly address matching issues, but many do not.

Insurance Statutes, Regulations, and Case Decisions Governing Matching Claims

In an effort to provide uniformity and predictability in this area, many states have passed insurance statutes, rules, and regulations that govern the handling of matching claims. An Ohio regulation states that when "an interior or exterior loss requires replacement of an item and the replaced item does not match the quality, color, or size of the item suffering the loss, the insurer shall replace as much of the item as to result in a reasonably comparable appearance." O.A.C. § 3901-1-54(I). In Kentucky, a regulation says that if "a loss requires replacement of items and the replaced items do not reasonably match in quality, color, or size, the insurer shall replace all items in the area so as to conform to a reasonably uniform appearance," although the courts have not applied the regulation in private litigation. 906 Ky. Admin. Regs. § 12:095 § 9(b). Whether the statute or regulation applies, and whether the insured can bring a private right of action under the applicable statute or regulation, are also significant issues.

The National Association of Insurance Commissioners (NAIC) has drafted a model law called the "Unfair Claims Settlement Practices Act." It is a consumer-protection law that prevents insureds from predatory and unfair claims settlement behavior on the part of insurance companies. Most states have enacted their own version of this model law, and the specifics of each such law vary from state to state. The NAIC Unfair Property/Casualty Claims Settlement Practices Model Regulation (MDL-902, 1997) has a section which reads as follows:

Section 9. Standards for Prompt, Fair and Equitable Settlements Applicable to Fire and Extended Coverage Type Policies with Replacement Cost Coverage.

A. When the policy provides for the adjustment and settlement of first party losses based on replacement cost, the following shall apply:

(1) When a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making such repair or replacement not otherwise excluded by the policy shall be included in the loss. The insured shall not have to pay for betterment nor any other cost except for the applicable deductible.

(2) When a covered loss for real property requires the replacement of items and the replacement items do not match in quality, color or size, the insurer shall replace items in the area so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The insured shall not bear any cost over the applicable deductible, if any.

On the other hand, subsection (B) governs ACV policies and reads as follows:

B. *Actual Cash Value:*

(1) When the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine actual cash value as follows: replacement cost of property at time of loss less depreciation, if any. Upon the insured's request, the insurer shall provide a copy of the claim file worksheets detailing any and all deductions for depreciation.

(2) In cases in which the insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value as set forth above is not required. In such cases, the insurer shall provide, upon the insured's request, a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

While Section A of the above regulation establishes a guideline for the insurance company to follow with regard to the payment of claims involving "matching" or "uniformity" issues, it doesn't necessarily mean that a carrier in any individual state must adhere to those guidelines or that the regulation works to the advantage of a property owner who has been wronged by a carrier who simply ignores the regulation.

Private Right of Action

Most states have case decisions which state that an individual homeowner/insured does not have a private right of action under a state's statute or regulations governing unfair claims settlement practices and the handling of a "matching" or "uniformity" issue. As an example, in **California**, the case of *Rattan v. United Services Automobile Association*, 101 Cal.Rptr.2d 6 (Cal. App. 2000) involved a home damage by fire. United Services Automobile Association ("USAA") allegedly breached the terms of policy in adjusting the loss, and the insureds claimed that it violated requirements imposed on carriers under regulations established by the Department of Insurance. The Court of Appeals disagreed, stating:

Even in first party insurance cases, neither the Insurance Code nor regulations adopted under its authority provide a private right of action. (Zephyr Park v. Superior Court (1989) 213 Cal.App.3d 833, 839 [262 Cal.Rptr. 106].) Thus, any particular violation of the regulations does not require a finding of unreasonable conduct. (See California Service Station, etc. Assn. v. American Home Assurance Co. (1998) 62 Cal.App.4th 1166, 1175-1176 [73 Cal.Rptr.2d 182].) Rather, as the trial court stated, at most the regulations, which were in evidence, may be used by a jury to infer a lack of reasonableness on USAA's part. Because given as instructions the regulations

would have suggested to the jury that any violation of the regulations was per se a breach of contract or an act bad faith, rather than only evidence of a breach or bad faith, the trial court was fully warranted in rejecting them.

Simply because a state requires carriers to follow a regulation such as the one above doesn't mean that an individual homeowner (private citizen) has a "private right of action" under the statute or regulation.

Defenses to First-Party Matching Claims

The arguments most effectively used by carriers in combatting matching claims include the following:

- The property lacked uniformity prior to the covered loss, it would be impossible to "conform" any replacement items to an existing "reasonably uniform appearance" and, therefore, the obligation to match the replacement items under the regulation was not triggered;
- The lack of a reasonably uniform appearance prior to the covered loss was the result of causes that were excluded under the policy so there was no obligation to replace all the existing items because it would represent an unjust windfall to the insured;
- Even if a matching regulation or obligation applies to the insured's loss, the evidence establishes that the repair can be performed such that a reasonably uniform appearance can be maintained;
- The replacement items can be matched to conform to a reasonably uniform appearance because "reasonably uniform appearance" is analogous to "like kind and quality." The area that must be replaced to conform to a reasonably uniform appearance is less than the entire property (immediate area, slope section, line of sight); and
- The regulation is not enforceable because it does not create a private right of action.

Much will depend on the court's and the parties' understanding of terms such as "like construction and use" or "reasonably uniform appearance." The "fine print" terms, conditions, and/or definitions of the policy will factor into the "matching" or "uniformity" issue and could limit exposure in such claims. An insured may take the position that states have enacted specific statutes or regulations imposing certain appearance or cosmetic requirements on replacement cost policies for the purpose of going *beyond* ordinary policy provisions. Moreover, a court might be loath to interpret its state regulation as redundant to standard insurance language. Accordingly, the cases interpreting standard insurance language pertaining to replacement cost policies may be distinguishable. A counterargument might be the regulation merely intended to standardize and mandate the "like kind and quality" provision of many insurance contracts. Thus, by adopting the Model Regulation, the state merely intended to require all insurers offering policies to include the "like kind and quality" provision when offering replacement cost policies.

Cosmetic Damage

While the "matching" issue involves repairing truly "damaged" or "destroyed" property and the ensuing problems which result when the repaired section of a roof, siding, or cabinetry, for example, does not "match" the remainder of the roof, siding, or cabinetry in appearance. "Cosmetic" damage, on the other hand, is a related subject, but differs in that it involves dents, scratches, or other minor imperfections to property which result from a loss, which do not rise to the level of being truly "damaged." In other words, it is a qualitative difference. The damage is so minor that it is only "cosmetic" and affects only the appearance of the property in a very minor way. Such cosmetic damage does not cause any punctures, leaks, or loss of functionality of a particular piece of property. An example would be dents in a metal roof resulting from a hailstorm.

Insurance policies vary, and some include exclusions for "cosmetic damage" or "appearance damage" to property. While not every home or business policy currently includes these kinds of exclusions, a growing number of major insurers have started including them in their policies. One policy might cover cosmetic damage while another will exclude it, while technically covering *direct physical loss* from hail, even if the homeowner's insurance policy doesn't distinguish between cosmetic and other types of damage and such damages are usually covered. However, some homeowner's insurance companies are introducing endorsements which may exclude cosmetic damages. The two organizations that standardize forms and policies for property/casualty insurers, the American Association of Insurance Services (AAIS) and

the Insurance Services Office (ISO), have both filed cosmetic damage endorsements. The endorsement also enables the insurer to exclude one component – such as the roof – separately. These are becoming common with homes that have metal roofs. For example, the ISO HO 04 93 05 94 (2008) exclusion reads as follows:

The following exclusion is added:

Cosmetic Damage.
Cosmetic damage means:
1. Marring;
2. Pitting; or
3. Other superficial damage;
that alters the appearance of the "roof surfacing" on buildings covered under Coverage A or B caused by the peril of windstorm or hail, but such damage does not prevent the "roof surfacing" from continuing to function as a barrier to entrance of the elements to the same extent as it did before the cosmetic damage occurred.

In practice, what the insurance company considers cosmetic damage as opposed to functional damage is rarely straightforward. In the example of the dented metal roof, what happens if the dents have subtly affected drainage, runoff, or seals? For example, it is not easy to differentiate cosmetic from functional damage on traditional and architectural shingles. Insurers will argue that a few dings to the surface do not compromise the shingle structure, but the storm-chasing roof sales industry will argue that any localized loss of mineral will expedite the demise of the shingle. Profitability in homeowners' coverage has become a multi-faceted, politicized, and elusive objective in many states. Regulators, politicians, and consumer advocacy groups with little understanding of how insurance works can present significant obstacles to obtaining appropriate rates for such policies and risks.

Recovery of RCV Matching Claim Payments in Subrogation / Third-Party Actions

Subrogation claims traditionally involve an insurance company stepping into the shoes of an insured and proceeding against the third-party tortfeasor who caused the loss in the first place to recover those claim payments. The subrogated insurance company (subrogee) assumes the same rights against the tortfeasor as the insured possessed - no greater, no less. The tortfeasor can usually employ any defenses against the subrogee that it could have employed against the insured. As a result, the measure of recovery (*i.e.,* damages) for the subrogee is the same measure of damages as for the insured. This creates some unique and troubling issues when the law dictating third-party damages recoverable in tort are different from the measure of a first-party claim payment under a policy and/or applicable law or regulations. An insurance company that has paid additional damages in order to address "matching" problems in a first-party claim may or may not be able to recover those damages in its subrogation tort action against the tortfeasor/defendant. The law varies from state to state.

If a carrier pays for full replacement cost of a house or a portion of a structure, it might nonetheless be limited to recovering the "market value" or difference in market value before and after a loss, in a subsequent subrogation tort action. Whether a tort defendant is liable to a subrogated carrier for the additional claim payments necessary for the damaged property to match and be uniform after repair depends on the state. Reimbursement under an RCV policy is likely to lead to an economic betterment of the insured because it means that payment will be made to replace old, depreciated property with new property. Therefore, subrogated carriers cannot always count on recovering all of the claim dollars they have paid out. Liability carriers will argue they are only responsible for ACV or repair costs. Some states allow for recovery of the full cost of repairs without a reduction for depreciation or betterment, where the repairs do not materially increase the value of the property over its market value prior to the loss.

The following chart is a summary of regulations or laws in all 50 states regarding the matching issue in the payment of first-party insurance claims. Many states have statutes, insurance bulletins, or case law that directly address matching issues, but many do not. The chart focuses on homeowners' claims and only tangentially discusses commercial property policies/claims, although if law regarding a commercial policy is all that is available, it is included. It does not address whether damage alleged to

be purely "cosmetic", such as dents to a metal roof caused by hail, is covered "direct physical injury" or the issue of upgrades required by changes in modern zoning or building codes. The chart also does not address whether or not an individual private homeowner has a "private right of action" under the law of each state to mandate compliance with these regulations by an insurance company in a first-party RCV property damage claim or whether or not a subrogated insurance carrier can recover the full RCV matching claim payments it has made in a civil subrogation tort action filed against a responsible tortfeasor. For questions relating to insurance claims and/or subrogation of property damage claims please contact Gary Wickert at gwickert@mwl-law.com.

STATE	STATUTE/REGULATION	CASELAW	COMMENTS
ALABAMA	None	A replacement cost policy only requires the insurer to pay for the pieces of property that were actually damaged. *Graffeo v. State Farm Fire & Cas., Inc.,* 628 So.2d 790 (Ala. Civ. App. 1993); see also *Padgett v. State Farm Fire & Cas. Co.,* 714 So.2d 302 (Ala. Civ. App. 1997).	
ALASKA	If replacement parts do not match, insurer must replace all such property required to create a uniform appearance. Insured is not responsible for any costs besides applicable deductible. Alaska Admin. Code, tit. 3, § 26.090(l).	None	
ARIZONA	None	Although the "non-matching" term in the policy was unambiguous, there remains a question as to whether the policy's terms are a violation of the "reasonable expectations doctrine". *Trudel v. Am. Family Mut. Ins. Co.,* No. CV-12-1208-PHX-SMM, 2014 WL 4053405 (D. Ariz. Aug. 15, 2014).	
ARKANSAS	None	None	
CALIFORNIA	If the replacement items do not match, the insurer must replace all in the damaged area to conform to a reasonably uniform appearance. Cal. Code Regs. tit. 10, § 2695.9.	The "reasonably uniform appearance" clause of § 9 of the "Unfair Property/Casualty Claims Settlement Practices Model Regulation", was interpreted; and the court held that a bad faith claim could not lie where there was a genuine dispute as to whether certain items could be matched or whether a larger area needed to be replaced. In so holding, the court noted that "[a] perfect match was not required" under the reasonably uniform appearance regulation. *Lyons v. Wawanesa Gen. Ins. Co*., 2009 WL 1077294 (Cal. App. 2009).	The California Insurance Code cannot be the basis of a private cause of action. *Rattan v. United Services Auto. Ass'n*, 84 Cal.App.4th 715, 101 Cal.Rptr.2d 6 (Cal. App. 2000).

STATE	STATUTE/REGULATION	CASELAW	COMMENTS
COLORADO	None	After a windstorm damaged stucco outside a condominium, the insurer agreed to pay for patching the stucco but refused to pay for skim coating the stucco. The insured maintained that skim coating was necessary to create a uniform appearance. In April 2017, a District Court in Larimer County held for the insured finding that insurer must pay for the cost of skim coating to create a reasonably uniform appearance. *Hamlet Condominium Ass'n v. American Mutual Family Ins. Co.,* 2016 CV 30594 (Co. Dist. Ct., April 12, 2017).	
CONNECTICUT	If replacement parts do not match adjacent items, then insurer is required to replace all such items to create a reasonably uniform appearance. "When a covered loss for real property requires the replacement of an item or items and the replacement item or items do not match adjacent items in quality, color or size, the insurer shall replace *all such items* with material of like kind and quality so as to conform to a reasonably uniform appearance. This provision shall apply to interior and exterior covered losses." C.G.S.A. § 38a-316e.	Insured under Replacement Cost policy sued carrier for failure to replace matching siding on garage. Court said the phrase "all such items" in matching statute refers only to those items previously identified in the sentence, specifically the replacement items and the adjacent items involved in the comparison. The court held that replacing all the siding was not required, because it would involve replacing siding which is not "adjacent" to the damaged area. *Kamansky v. Liberty Mutual Ins. Co.*, 2019 WL 2374343 (Conn. Super. 2019).	
DELAWARE	None	None	
DISTRICT OF COLUMBIA	None	Where a policy was ambiguous, the policy should be read in favor of the insured, thereby requiring matching. *National Presbyterian Church, Inc. v. GuideOne Mutual Ins. Co.*, 82 F. Supp.3d 55 (D.C. Cir. 2015).	

STATE	STATUTE/REGULATION	CASELAW	COMMENTS
FLORIDA	Insurers are required to make reasonable repairs or replacement of items in adjoining area if they do not match. F.S.A. § 626.9744. Florida allows insurer to weigh factors besides appearance in determining the amount of effort taken to match. F.S.A. § 626.9744.	None	In 1990, the National Association of Insurance Commissioners adopted a new section to its model regulations relating to unfair property claims: *A. When the policy provides for the adjustment and settlement of first-party losses based on replacement cost, the following shall apply:* *(2) When a loss requires replacement of items and the replaced items do not match in quality, color or size, the insurer shall replace all such items in the area so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The insured shall not bear any cost over the applicable deductible, if any.* Unfair Property/Casualty Claims Settlement Practices Model Reg. § 9(A) (Nat'l Association of Ins. Comm'rs 1997), available at: http://www.naic.org/store/free/MDL-902.pdf.
GEORGIA	None	In case where insurer conceded that four shingles needed to be replaced but insured wanted entire roof replaced in order to match, the homeowner was not entitled to invoke the policy's appraisal provision because there was a question of coverage, rather than the amount owed. *Lam v. Allstate Indem. Co*., 755 S.E.2d 544 (Ga. App. 2014).	
HAWAII	None	None	
IDAHO	None	None	

STATE	STATUTE/REGULATION	CASELAW	COMMENTS
ILLINOIS	None	Where an insurer and insured disagreed about whether it was appropriate to spot repair a roof that had been damaged by hail, the Court ruled in favor of the insurer based on the particularized facts of the case, rather than an overarching principal of law. *Mohr v. American Auto. Ins. Co.,* 2004 WL 533475 (N.D. Ill., March 5, 2004). If the insurer is unable to locate any siding that matches the undamaged siding, they must pay to replace all the siding. *Windridge of Naperville Condominium v. Philadelphia Indem. Ins. Co.,* 2018 WL 1784140 (N.D. Ill. 2018) (Appeal Pending).	The appraisal clause in a typical residential and commercial property insurance policy provides for an appraisal if the parties disagree as to "the amount of loss." ISO Form HO 00 03 05 11, and ISO Form CP 00 10 10 12. While most courts have concluded that ascertaining the amount of loss does not include interpreting the policy or making coverage determinations, little guidance has been provided as to what coverage means and whether an appraisal can still proceed even if coverage issues exist. *Runaway Bay Condominium Ass'n v. Philadelphia Indem. Ins. Co.,* 2017 WL 1478114 (N.D. Ill. 2017).
INDIANA	None	Insurer was required to match shingles on a roof where insured had an RCV policy and experts testified that mismatched shingles and siding lowered a property's value. *Erie Ins. Exch. v. Sams,* 20 N.E.3d 182, 190 (Ind. Ct. App. 2014), *transfer denied*, 29 N.E.3d 124 (Ind. 2015).	
IOWA	Insurer must replace as much as possible to create a reasonably uniform appearance within same line of sight. Exceptions may be made on case-by-case basis. I.C.A. § 15.44(1)(b).	None	
KANSA	None	None	

STATE	STATUTE/REGULATION	CASELAW	COMMENTS
KENTUCKY	If a loss requires replacement of items and replaced items do not reasonably match in quality, color, or size, insurer must "replace all items in the area so as to conform to a reasonably uniform appearance," though Kentucky courts have refused to apply the regulation in private litigation. 906 Ky. Admin. Regs. § 12:095 § 9(b).	The obligation to pay for matching is an inquiry that hinges on whether the loss payment and valuation conditions in the policy can be read to extend matching. The obvious counter-argument is that allowing coverage for matching would result in a windfall to the insured. Court agreed that allowing for full replacement of roof and siding would be unduly burdensome on an insurer that only agreed to repair damaged portions of the property. *Woods Apts., LLC v. United States Fire Ins. Co*., 2013 U.S. Dist. LEXIS 105582 (W.D. Ky. 2013).	Insurance Regulations do not create a private cause of action. *Woods Apartments, LLC v. U.S. Fire Ins. Co.,* No. 3:11-CV-00041-H, 2013 WL 3929706 (W.D. Ky. July 29, 2013.).
LOUISIANA	Requires insurer to pay to restore property damaged in a fire to its original condition. La. R.S. § 22:695(B).	After a carpet suffered water damage, insured and insurer disagreed over whether insurer was required to pay to replace the entire carpet or if replacement of only the damaged carpet was required. Citing to La. R.S. § 22:695(B), the court ruled that an insurer that issued a RCV policy was required to replace the entire carpet. *Holloway v. Liberty Mutual Fire Ins. Co.,* 290 So.2d 791 (La. App. 1st Cir. 1974)	Although La. R.S. § 22:695(B) specifically describes fire insurance, it has been used by Louisiana courts to define the meaning of an RCV policy. See *Holloway v. Liberty Mutual Fire Ins. Co.,* 290 So.2d 791 (La. App. 1st Cir. 1974)
MAINE	None	None	
MARYLAND	None	None	A bulletin from the Maryland Insurance Administration ("MIA") notes that although the MIA does not always require a complete match of replaced siding under an RCV policy, "insurers whose settlement practices fail to take into account major differences in color shades, textures, or siding dimensions as provided above may be subject to action." MIA Bulletin No. 97-1.
MASSACHUSETTS	None	None	

STATE	STATUTE/REGULATION	CASELAW	COMMENTS
MICHIGAN	None	Insured's antique teak floors and plaster ceiling was damaged after a pipe burst and insured sought to be reimbursed for the full cost of replacing the antique floor and ceiling. Insurer had a "Common Construction" provision that insurer argued only required insurer to pay the significantly lower cost associated with replacing the damaged teak flooring and plaster ceiling with their modern equivalent. The court ruled for the insurer and found that the insurer did not have to match the plaster and teak. *Bernert v. State Farm Fire & Cas. Co.*, No. 10- 12359, 2012 WL 1060089, at *2 (E.D. Mich. Mar. 29, 2012).	
MINNESOTA	None	A color mismatch resulted from the inability to replace hail-damaged siding panels with siding of "comparable material and quality." The policy term "comparable material and quality" means "a reasonable color match between new and existing siding" and "comparable material and quality requires something less than an identical color match, but a reasonable color match nonetheless." "Color mismatch" constitutes "direct physical loss of or damage to Covered Property". meaning siding panels that reasonably matched. *Cedar Bluff Townhome Condo. Ass'n, Inc. v. Am. Fam. Mut. Ins. Co.*, 857 N.W.2d 290 (Minn. 2014). Policy provided coverage for the lesser of the following: the cost to repair or replace the property with similar materials, or the cost to repair or replace the property with material of like kind and quality. "Covered property" in policy constituted insured's buildings as a whole, rather than each individual roof shingle. Whether shingles were replaced with shingles of a "like kind and quality," depended on whether repairs using unmatched shingles would provide an acceptable aesthetic result, a fact question for a jury. *Trout Brook S. Condo. Ass'n v. Harleysville Worcester Ins. Co.*, 995 F. Supp.2d 1035 (D. Minn. 2014).	Where shingles discontinued, policy did not contain consequential coverage or replacement coverage provisions. Policy did not cover the full replacement cost. *Seamon v. Acuity*, 2011 WL 6015355 (Minn. App. 2011).
MISSISSIPPI	None	None	

STATE	STATUTE/REGULATION	CASELAW	COMMENTS
MISSOURI	None	Where an insurance policy is ambiguous as to definitions such as "like kind and quality" or "comparable kind and quality," the meaning of the language should be interpreted to require matching. *Alessi v. Mid-Century Ins. Co., Inc.,* 464 S.W.3d 529, 530 (Mo. Ct. App. 2015).	Given that a customer with a replacement cost policy pays a higher premium and, therefore, should expect a higher level of protection, enforcing matching makes sense logically. *Alessi v. Mid-Century Ins. Co., Inc.,* 464 S.W.3d 529, 530 (Mo. Ct. App. 2015).
MONTANA	It is the position of the insurance commissioner that when a loss requires replacement of building materials that the materials must be replaced with similar quality, kind, texture, and colored materials such that there is a reasonable match with any existing materials. In the event that materials which meet these criteria are not available, the existing materials must be replaced to achieve a match. This applies to interior and exterior losses. July 6, 2009 "Advisory Memorandum" issued by Commissioner of Securities and Insurance, Monica J. Lindeen.	None	The Montana Commissioner of Insurance has issued two separate memorandums stating that it is the Commission's opinion that damaged materials must be replaced with materials of like kind and quality and that, if no such materials are available, the existing materials must be replaced to make a match. See MT Memorandum 8-20-2003 (MT INS BUL), 2003 WL 25759819 (MT INS BUL) MT Memorandum August 20, 2003.
NEBRASKA	When replacement items do not reasonably match in quality, color or size, carrier must replace all items in the area so as to conform to a reasonably uniform appearance. This applies to both interior and exterior losses. Neb. Admin. R. & Regs. tit. 210, Ch. 60, § 010.	Policy provision for "replacement cost of that part of the building damaged for like construction and use on the same premises" did not require replacement of entire roof damaged by hailstorm, where only portions of roof had been damaged and needed repair. *Eledge v. Farmers Mut. Home Ins. Co. of Hooper, Nebraska*, 571 N.W.2d 105 (Neb. App. 1997).	In an unpublished opinion, the Nebraska Court of Appeals held that when hail damaged one side of the insured's house and the replacement siding could not be matched to the siding on the other sides, only the damaged side should be replaced, and that the policy was clear on that language. *Weiler v. Union Ins. Co*., 2006 WL 2403935 (Neb. App. 2006).
NEVADA	None	None	
NEW HAMPSHIRE	None	None	
NEW JERSEY	None	None	

STATE	STATUTE/REGULATION	CASELAW	COMMENTS
NEW MEXICO	None	None	
NEW YORK	None	None	
NORTH CAROLINA	None	None	
NORTH DAKOTA	None	None	
OHIO	When interior or exterior loss requires replacement of item and replaced item does not match the quality, color, or size of the item suffering the loss, insurer must "replace as much of the item as to result in a reasonably comparable appearance." O.A.C. Ann. § 3901-1-54(I).	Ohio Admin. Code 3901-1-54 did not require the insurer to replace entire wind-damaged roof with wood shake roof tiles because insured failed to present evidence that the proposed roof repair would not result in a reasonably comparable appearance. The insureds presented an affidavit from their expert (a roofer) that the roof required total replacement because the new wood shake tiles would not match the existing tiles. The said, "although unweathered shakes would not exactly match the color of the weathered shakes, * * * unweathered replacement shakes * * * [would] result in a reasonably comparable appearance" and "satisfy the requirements of the Administrative Code." The court found summary judgment was appropriate because the insureds presented no evidence, beyond their opinion, of special circumstances that would require total replacement. *Wright v. State Farm Fire & Cas. Co*., 555 F. Appx. 575 (6th Cir. 2014).	Insured must put forth evidence, beyond his mere opinion, that the proposed replacement materials wouldn't result in a reasonably comparable appearance. *Zinser v. Auto-Owners Ins. Co*., 2017 WL 2838393 (Ohio App. 2017).
OKLAHOMA	None	None	
OREGON	None	None	

STATE	STATUTE/REGULATION	CASELAW	COMMENTS
PENNSYLVANIA	None	Where an insurance policy mandates that the insurer replace the damaged portion of property, the insurer is not required to replace undamaged portions of the property. *Enwereji v. State Farm Fire & Cas. Co.,* No. 10-CV4967, 2011 WL 3240866 (E.D. Pa., July 28, 2011); see also *Greene v. United Services Auto. Ass'n,* 936 A.2d 1178 (Pa. Super. 2007). "Like kind and quality" does not require identical replacement. *Collins v. Allstate Ins. Co*., 2010 WL 2510376 (E.D. Pa. 2010) (noting that policy terms such as "like kind and quality" and "equivalent construction" were similar to the "like construction" term of the policy in *Greene*, which was interpreted to require "repair of the damaged slope … with shingles similar to the damaged shingles" rather than "replacement with the identical item damaged").	An insured's demand for "matching" could be "unreasonable" without sufficient proof to support it. *St. Paul Fire & Marine Ins. Co. v. Darlak Motor Inns, Inc*., 3:97-CV-1559-TIV, 1999 U.S. Dist. LEXIS 23283 (M.D. Pa. Mar. 9, 1999).
RHODE ISLAND	If replacement of items is required and the replaced items do not reasonably match in quality, color, or size, then the insurer shall replace all such items to conform with a reasonably uniform appearance. R.I. Admin. Code 11-5-73:9.	None	Rhode Island did not intend for this regulation to allow carriers to invoke ordinance or law restrictions and leave insured's facing potentially extra expenses. The loss should be covered in full.
SOUTH CAROLINA	None	None	
SOUTH DAKOTA	None	None	
TENNESSEE	Tenn. Comp. R. & Regs. 0780-01-05-.10(1)(b). Standards for Prompt, Fair, and Equitable Settlements Applicable to Fire and Extended Coverage Type Policies with Replacement Cost Coverage.	Where the insured had a replacement cost policy, it was appropriate for the insurer to bear the costs associated with replacing undamaged shingles for aesthetic reasons. *Hutcherson v. Tennessee Farmers Mut. Ins. of Columbia*, 1986 WL 9608 (Tenn. App. Ct., Sept. 3, 1986).	Chapter 0780-01-05-.10(1)(b) provides that in a Replacement Cost policy, "when replaced items do not match in quality, color or size, the insurer shall replace items so as to conform to a reasonably uniform appearance."

STATE	STATUTE/REGULATION	CASELAW	COMMENTS
TEXAS	None	Where a hail storm damaged a roof, the damaged tiles could not be "spot" repaired without breaking other undamaged tiles. The insured wanted the insurance company to replace the entire roof, but the court declined to treat the roof as a single, integrated unit and said the church was not entitled to recover the cost of replacement of the non-hail damaged tiles. *All Saints Catholic Church v. United Nat. Ins. Co.,* 257 S.W.3d 800 (Tex. App. 2008) (commercial insurance). In residential loss, court held that "Physical loss" cannot be fairly construed to mean physical loss in the absence of physical damage. Under ordinary definitions of the terms, physical loss requires a distinct, demonstrable, physical alteration of the property. The insurer was only obligated to pay for the cost of repairing the damaged roof tiles and not the remaining undamaged portion of the roof. The court suggested that it might have considered whether matching was required to make the policyholder whole if the policyholder had been claiming replacement costs and had undertaken repairs. *Ross v. Hartford Lloyd Ins. Co.,* 2019 WL 2929761 (N.D. Tex. 2019).	
UTAH	If replaced items do not match in color, texture, or size, the insurer shall repair or replace items so as to conform to a reasonably uniform appearance. The insured is only responsible for the applicable deductible. Utah Admin. Code r. R590-190.	None	
VERMONT	If replaced items do not match adjacent items in quality, color, or size, the insurer shall replace such items to create a reasonably uniform appearance within the line of sight. Vermont Department of Financial Regulation Reg. I-1979-2 (Fair Claims Practices).	None	
VIRGINIA	None	None	
WASHINGTON	None	None	

STATE	STATUTE/REGULATION	CASELAW	COMMENTS
WEST VIRGINIA	West Virginia does not have a specific statute addressing matching or a state insurance regulation or bulletins.	Since there is not a clear-cut rule in West Virginia, the policy terms and endorsements become paramount. In West Virginia, insurance contract interpretation rules will be applicable. When reasonable people can differ about the meaning of an insurance contract, the contract is ambiguous, and all ambiguities will be construed in favor of the insured. *D'Annunzio v. Security-Connecticut Life Ins. Co*., 410 S.E.2d 275 (W. Va. 1991).	
WISCONSIN	None	None	According to Office of the Commissioner of Insurance document PI-232, if a homeowner's siding is damaged, the insurer is only required to pay for the siding that was actually damaged.
WYOMING	None	None	