



# Mutual LINK

## Matching Revisited, Part One

By John J. Neal, Attorney

Willenbring, Dahl, Wocken & Zimmermann, PLLC

A week before Christmas, the Minnesota Supreme Court gave us its decision in *Cedar Bluff Townhome Condominium Ass., Inc. v. Am. Fam. Mut. Ins. Co.* The decision and outcome of that case are much larger than what can be said in this short article. Therefore, this will be a two-part series.

The main issue in the case was whether an insurer has an obligation to provide matching siding to an entire building when only one side was damaged. As general background, the policy language at issue allowed for replacement of “damaged property with other property... [o]f comparable material and quality.” The insured argued that this language requires replacement of all siding, even that which was not damaged, in order to have a color match. The insurance carrier claimed that an exact match was not required per this language.

Here, the siding on the townhomes were approximately 11 years old and the color had faded. The siding manufacturer still made replacement panels within the same specifications, however, they no longer carried the same color.

Because the insured and carrier disagreed on color match, the matter was submitted to an appraisal panel. The appraisal panel concluded that “siding of comparable material and quality required a reasonable color match between the damaged and undamaged siding.”

The appraisal panel reviewed the matter and determined that a color match did not exist and therefore “there was not a reasonable match available for the existing siding materials.” The panel then issued an award for total replacement of the siding (all four sides) in the amount of \$361,108.00.

Interestingly, the panel went even further. The panel noted that the insurance carrier’s position would be correct, namely replacement of only the damaged siding, “if the subject policy did not require such a color match” and that non-matching siding was “not a repair or replacement with comparable materials of like kind and quality.”

American Family refused to pay the appraisal award on the position that the appraisal panel exceeded its authority by making coverage determinations. The townhome association proceeded to file the matter in district court, seeking confirmation of the appraisal award. The trial court disagreed and sided with American Family. The trial court determined that nowhere in the policy was a color match required.

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Matching Revisited, Part One - by John Neal - *Continued from front page*

The townhome association appealed to the Minnesota Court of Appeals. The Court of Appeals reversed the trial court, and determined that the appraisal panel did have authority to determine policy language when assessing the amount of loss. The Court of Appeals upheld the factual findings of the appraisal panel.

American Family petitioned the Supreme Court for further review, which the Court accepted. The Court ultimately concluded “that on the spectrum of resemblance ‘comparable material and quality’ requires something less than an identical color match, but a reasonable color match nonetheless.” Thus a “reasonable color match” is required if the insurance policy states that replacement will be provided with “comparable material and quality.”

Second, the Supreme Court determined that the appraisal panel applied the correct legal meaning to its determination.

Finally, the Court took up a final issue. American Family argued that regardless of the color match, it was not obligated to pay for the undamaged siding because its policy only required payment for “direct physical loss of or damage to covered property.” In other words, because the undamaged siding did not sustain a direct physical loss (*i.e.*, storm damage), it was not required to pay for it. The Court disagreed. The Court determined that, because a color match was not available for the undamaged siding, the insured did sustain a direct physical loss to that siding.

In closing out the opinion, the Court noted the “strong public policy in Minnesota favoring appraisals.” Thus, while the issue of matching was the main focal point, this opinion could also be interpreted as widening the scope of appraisals by allowing coverage determinations.

In the next article, we will address how this opinion affects our farm and home policies moving forward.



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## ~ Member Profile of Sweet Township Mutual



Jeff Mandersheid,  
Manager

The year was 1874, Daniel E. Sweet, a native of Pennsylvania, had traveled from Rock Rapids, Iowa, northward 50 miles into Minnesota to see the quarry from which native Americans were cutting the stone they used for their peace pipes. Daniel decided that was where he wanted to stake a homestead claim. He, his wife and a second settler, were the only residents of the entire county.

Little did Mr. Sweet realize then his family name would be immortalized in Pipestone County annals and it would be remembered more than one hundred years later. First, the County Commissioners decided the first organized township in the country should be named Sweet Township in his honor. Then, when a group of farmers met at the County Auditor's office on March 20, 1888, to organize a township mutual fire insurance company, they too, chose to honor the country's first settler. They called their new company the Sweet Township Mutual Fire Insurance Company.

Sweet Township Mutual writes fire and packages wind and liability with our packaging partners; North Star Mutual and RAM Mutual. We have four employees, including manager, Jeff Mandersheid and our mutual is represented by ten different agencies.

Our mission at Sweet Township Mutual Fire Insurance Company is to work daily to provide sales and service of insurance policies to our policyholders at a fair and competitive rate. Our company goal is to provide continued stability and loss protection for the policyholders, as well as growing as a company each year. Our company's biggest challenge is keeping pace with the ever changing market place, while providing loss protection and stability to our policyholders.

Sweet Township Mutual Fire Insurance Company is a member of the Pipestone Chamber Ag Committee. In addition, our nine member Board of Directors and our office staff take part in various church and civic activities on an individual basis.

One word that describes our company would be **RELIABLE!**

### Sweet Township Mutual Building



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Send address changes to  
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## December 2014 Board Meeting Synopsis *Greg Parent, Secretary-Treasurer*

The MAFMIC Board of Directors held their final quarterly meeting of the year on December 19 at the MAFMIC office in St. Joseph. Numerous items were on the agenda for this busy year-end meeting. In addition to the financial and management reports, district updates and board liaison committee reports, the board took action on several items requiring approval.

CEO/Director of Government Affairs Aaron Cocking informed the board of the recent decision in the Cedar Bluff Town Homes vs. American Family case involving the matching of siding and the appraisal process. The Minnesota Supreme Court ruling was not favorable for the insurance industry.

Current District 5 & 6 Directors updated the board on the recent elections in their districts, as those two positions were up for election in 2015. Immediate Past-Chairman Jeff Mauland provided an update on the officer elections for the Vice-Chairman and Secretary-Treasurer positions for 2015, he also announced the selection for the Robert C. Seipp Service Award.

The board approved five changes involving the Convention, Short Course and Fall Regional Meetings. Beginning in 2018, the Convention will move to the second Sunday in February. Also beginning in 2017, the Short Course will move to November. In 2017, the Short Course will be held at the Marriott Northwest Minneapolis (formerly Northland Inn). If reviews are favorable, this location will be added to the Short Course site rotation schedule. Starting in 2015, MAFMIC will discontinue the Fall Regional Meetings. The board also approved that Past MAFMIC Chairmen (and guest) who are no longer affiliated with a MAFMIC Member Company will have their convention registration fee waived.

The board established a policy that during the annual review each year at the December meeting of the MAFMIC Membership Dues, the board will also review member equity and operating results in order to determine if any dues refund should be approved. No refund was approved for this year. The 2015 MAFMIC Budget was presented by Secretary-Treasurer Greg Parent. The board approved the budget.

The Strategic Plan Committee had met in October to review and update the current plan. The board approved the updated Strategic Plan. Aaron Cocking reviewed several recent changes and updates to the MAFMIC Employee Policy Handbook. The board approved the revisions. The board also held an Executive Session for employee performance reviews.

The next scheduled board meeting is the annual financial review meeting held at the Convention on February 1, 2015. The first quarter 2015 board meeting will be held at the Short Course in Rochester on March 17. Please contact your district director or an association officer if you have any items of concern that you would like to discuss.



# PRIORITY DATA

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Contact John Dunn to see how our software solutions can fit your mutual's needs at [jdunn@prioritydata.com](mailto:jdunn@prioritydata.com) or 402.590.2506.

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Aaron Cocking, MAFMIC CEO / Director of Government Affairs



## 2015 Legislative Session

The 2015 legislature will convene on January 6 with a divided government returning to St. Paul. Democrats continue to retain the Senate and governor's office, while the GOP gained control of the House. The big focus of this year's legislative session will be the budget; however, a projected surplus of approximately \$1 billion should make budget decisions easier than in past years. The upcoming session will likely include a new look at insurance fraud. With a friendly House and Senate, we are hopeful to see some movement on this issue.

The 2014 election brought a group of brand new legislators to office in St. Paul. Many of the new members are from greater Minnesota and represent the areas in which our member companies write. Because of the number of freshman legislators, we need to visit with them and let them know who MAFMIC is and what our companies do. You will have that opportunity if you join us at the 2015 MAFMIC Convention. On February 2, 2015 we will travel from the convention to the state capitol to visit with our legislators. The capitol is in the midst of a giant renovation, but it is still important to cultivate relationships with new members and maintain the relationships we have developed with more seasoned legislators. It is my hope that you will sign up to attend this important function.

As we move into this legislative session, please let me know if you hear of any issues that are developing in your area that you think I should know about. I will once again be sending a weekly update this year to keep you up to date on the happenings at the legislature. If you have not received this update in past years and would like to, please send an email to [aaron@mafmic.org](mailto:aaron@mafmic.org) and ask to be added. As always, if you have any other questions please feel free to contact me!

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Chairman's theme this year is  
"Down Home ~ The Experience is Real"

Please join our MAFMIC Chairman *Paul Larson* and his wife, *Ardis* for the 2015 Chairman's Receptions. We invite you to dress in your favorite "Down Home Country" attire. You are encouraged to wear blue jeans or whatever is comfortable for you, while you enjoy your evening. The Super Bowl will be on the projection screens.

In lieu of the money for the additional items of decoration on the tables, a donation will be made for Paul's friend, Carson's Team for the "Ride to Cure Juvenile Diabetes" bicycle event. There WILL be a cure for juvenile type I diabetes in our lifetime!!



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# 2015 MAFMIC Short Course

March 18 ~ 19, 2015

Mayo Convention Center

30 Civic Center Drive SE, Rochester, MN

This educational seminar is for mutual officers, directors, managers, office staff, agents, adjusters and inspectors. Registration fee includes attendance at eight sessions, a continental breakfast and hot breakfast buffet, two lunches, breaks, all classroom material and a social hour. An application has been made for 8 hours of non-company continuing education credits. We do not give partial credit for any portion of this seminar. **(APPROVAL IS PENDING)**

## Cost and Registration

**Early Bird Registration fee (before Wednesday, March 4): \$210 per member & \$267 per non-member. Late Registration fee (after Wednesday, March 4): \$242 per member & \$299 per non-member. One Day Registration Fee: Please call MAFMIC office for details. Please mark the box if you plan to obtain FMDC credit.** Spouses wishing to attend sessions must be registered and paid as a delegate. Those spouses wishing to attend only the breakfasts, lunches or adjustment hours must purchase tickets by prices listed below.

## Cancellation Policy

Cancellation notices received on or before March 6, 2015 are 75 percent refundable. • Cancellation notices received March 7 - March 13, 2015 are 50 percent refundable. • No refunds are available after March 13. • A company may substitute a participant at no additional charge. All registration cancellations and substitutions must be made in writing and sent to [info@mafmic.org](mailto:info@mafmic.org) or faxed to (320) 271-0912.

## Hotel Reservations

A block of rooms at each hotel listed below are being held until February 24th. When making your reservations please make sure you mention MAFMIC in order to get the group rate listed under each hotel below.

**DoubleTree Hotel**  
150 S Broadway  
Rochester, MN 55904  
(507) 285-1234  
\$139/room/night

**Hilton Garden Hotel**  
225 S Broadway  
Rochester, MN 55904  
(507) 285-1234  
\$119/room/night

**Kahler Grand Hotel**  
20- 2nd Ave SW  
Rochester, MN 55902  
(507) 280-6200  
\$99/room/night

**Marriott Hotel**  
101 1st Ave SW  
Rochester, MN 55902  
(507) 280-6000  
\$139/room/night

## 2015 SHORT COURSE REGISTRATION

Company Name: _____		Phone: _____		Opt'l Meal Tickets		
FMDC	NAME (Delegate, Spouse)	Address	License #	Bkfst	Lunch	Adj Hr
				\$35	\$40	\$40
<input type="checkbox"/>	_____	_____	_____	_____	_____	_____
<input type="checkbox"/>	_____	_____	_____	_____	_____	_____
<input type="checkbox"/>	_____	_____	_____	_____	_____	_____
<input type="checkbox"/>	_____	_____	_____	_____	_____	_____
<input type="checkbox"/>	_____	_____	_____	_____	_____	_____

Attending FMDC Director Session: (Number Attending)

Total: \$ \_\_\_\_\_

## District Court Rules for NAMIC on HUD Disparate Impact Rule



In an important legal victory for NAMIC, mutual insurers, and the property/casualty industry as a whole, the disparate impact rule finalized earlier this year by the Department of Housing and Urban Development has been vacated by a federal court.

In an often strongly worded ruling, Judge Richard Leon of the federal District Court for the District of Columbia accepted NAMIC's arguments that HUD did not have statutory authority to issue the rule, and described it as "an artful misinterpretation of Congress' intent that is, frankly, too clever by half."

In his Memorandum Opinion, Leon found that the Fair Housing Act prohibited only disparate treatment, and that HUD violated the Administrative Procedures Act in promulgating the disparate impact rule. The ruling is a major victory against an overreach by the federal government that could have had a profoundly negative impact on the homeowner's insurance market. Had the rule withstood our legal challenge, any underwriting metric could have been challenged, either by a plaintiff's lawyer or HUD, for a potential disparate impact on federal protected classes – those defined by race, religion, sex, or other demographic factors – even if there is no intent to discriminate. Not only would companies then have to justify the use of those metrics, but they would have been required to do so with a far more difficult and specific standard for evidence.

To provide for such a defense could have required insurers to collect and maintain, with the proper safeguards, demographic information for all policyholders and applicants, and Leon agreed in his ruling that doing so would force insurers into a legally impossible position as complying with HUD's interpretation of the Fair Housing Act would require insurers to violate state insurance

laws and regulations. It was "utterly incomprehensible," Leon wrote, that Congress would intentionally require insurers to engage in conduct expressly proscribed by state law.

Leon began the conclusion of his order by referring to the rule as "yet another example of an Administrative Agency trying desperately to write into law that which Congress never intended to sanction," and he noted that the issue has again been taken up by the Supreme Court. In the meantime, the judicial process gives HUD until early January to file an appeal.



Submitted by,  
*Jimi Grande*  
 National Association of Mutual  
 Insurance Companies



By John Dunn, Priority Data

Technology  
Corner**How to Spot “Phishing Scams”**

Many of you may have heard of “Phishing” scams and know you should avoid them, but do you know what they are and how to spot them?

Scammers send out tons of emails looking like a legitimate business such as eBay, a bank or other company that have access to important private data. These emails include links for you to “reset” or “update” your account. However these links don’t take you to the legitimate business page instead it takes you to a page the scammer set up to capture your secure information. Essentially they go “fishing” for information they can use to steal.

So how do you spot them? The easy ones to spot use a different email address than the actual business so you should avoid those. The more sophisticated ones make it look like the email is coming for the real business. *If you get an email asking you to reset or otherwise share secure information that you are not anticipating don’t use the links in it.* Go to the company’s site yourself or call the company. Similar to the person who comes to your door unexpected from the “power” company be skeptical and ask questions before sharing private information. Just because it came via email doesn’t make it true!


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## 2015 MAFMIC CALENDAR OF EVENTS

- Feb 1-3** MAFMIC Convention  
DoubleTree by Hilton, Bloomington
- Mar 18-19** Short Course  
Mayo Civic Center, Rochester
- April 15** Spring Agents' Meeting, Mankato
- April 16** Spring Agents' Meeting, Bemidji
- May 5-6** Manager's Workshop, Nisswa
- May 19-21** Farm Mutual Forum (NAMIC),  
Elkhart, WI
- July 15** Manager & Director Seminar,  
St. Cloud
- July 16** MAFMIC Golf Outing  
Little Crow, Spicer
- Aug 5-6** Leadership Development (NAMIC),  
Chicago, IL
- Sept 27-30** NAMIC 120th Annual Convention  
San Diego, Calif



To submit an article to be published in the Mutual Link please send them to Mutual Link, PO Box 880, St. Joseph, MN 56374 or email them to [info@mafmic.org](mailto:info@mafmic.org).

### Financial Statements

It is also time again to collect company financial statements. You can send them to:  
PO Box 880, St. Joseph, MN 56374  
or fax to: (320) 271-0912

## IN SYMPATHY



**David L. Zylstra** 63, of Maple Lake died Friday, November 21, 2014. David was born July 21, 1951 in St. Cloud to Henry & Anna (Weidema) Zylstra.

He worked as an insurance agent, owning and operating Zylstra Insurance Agency and co-managed Cokato Mutual Fire Insurance Co. with his wife Darlene.

David is survived by his wife Darlene, children; Kelley, Joe, Alison, Ryan & Ashley.

*MAFMIC wishes to express its sincerest condolence to family and friends of David.*

Dues must be paid in full in order for a member to vote at the Annual Meeting, held at the MAFMIC Convention, February 1-3, 2015

Please submit your Membership Dues to:

**MAFMIC**  
**P.O. Box 880**  
**601 Elm Street East**  
**St. Joseph, MN 56374**