2026 WL 982477 (C.A.7) (Appellate Brief)
United States Court of Appeals, Seventh Circuit.

TOWER CROSSING CONDOMINIUM ASSOCIATION, Petitioner-Appellant,

v.

AFFILIATED FM INSURANCE COMPANY, Defendant-Appellee.

No. 25-3167.
April 1, 2026.

Appeal from the United States District Court for the Northern District of Illinois
No.: 1:21-cv-06228
The Honorable Lashonda A. Hunt, Judge Presiding
Oral Argument Requested

Brief of Defendant-Appellee

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***1 III. JURISDICTIONAL STATEMENT**

Plaintiff-Appellant's jurisdictional statement is complete and correct.

IV. *STATEMENT OF THE ISSUE*

Did the District Court correctly grant summary judgment to Affiliated FM Insurance Company ("Affiliated FM"), where the Proof of Loss Tower Crossing Condominium Association Inc. ("Tower Crossing") submitted to Affiliated FM was not "sworn" as unambiguously required by the subject insurance Policy; and, as a result, did not toll the limitations period applicable to Tower Crossing's claim?

V. *STATEMENT OF THE CASE*

A. The Parties And The Insured Property

Tower Crossing manages a 27-building condominium complex containing 154 four-story brick townhomes located at 1992 Patriot Boulevard in Glenview, Illinois (the "Property"). (SA-8; SA-9; SA-71; SA-338.) Tower Crossing insured the Property from May 1, 2018 to May 1, 2020 through an insurance policy (the "Policy") issued by Affiliated FM. (SA-131.)

B. The Policy's Proof Of Loss Requirement And Two-Year Limitations Period

The Policy issued to Tower Crossing contains a section entitled "**REQUIREMENTS IN CASE OF LOSS"** (bold in original), which among other things expressly requires Tower Crossing to "[g]ive a signed and sworn proof of loss to the Company..." in connection with any claim. (SA-176 to SA-177.)

***2** The Policy also provides that the required Proof of Loss is to "state the knowledge and belief of [Tower Crossing]" regarding five enumerated categories of information: (a) the time and origin of the loss; (b) the Insured's interest and that of all others in the property; (c) the actual cash value and replacement value of each item and the amount of loss to each item, all encumbrances, and all other contracts of insurance covering any of the property; (d) any changes in the title, use, occupation, location, possession, or exposures of the property since the effective date of the Policy; and (e) by whom and for what purpose any location insured by the Policy was occupied on the date of loss. (*Id*.)

In addition, the Policy provides a two-year contractual suit limitations provision. More specifically, the Policy's Illinois Amendatory Endorsement provides that:

No suit, action, or proceeding for the recovery of any claim under this Policy, will be sustainable in any court of law or equity unless: 1. The Insured has fully complied with all terms and conditions of the Policy; 2. It is Initiated within two years after the date on which the direct physical loss or damage first commenced or occurred, extended by the number of days between the date the proof of loss was filed until the date the claim is denied in whole or in part.

(SA-196.) The Parties do not dispute that these provisions form part of the Policy.

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C. Tower Crossing's Claim

Tower Crossing claims, and Affiliated FM disputes, that a storm that produced high winds and caused hail damage to the Property on July 2, 2019. (ECF No. 137, ¶ 4.) Affiliated FM retained Roof Consultants, Ltd. ("RCL") to inspect the property and RCL finalized its Report on September 8, 2020. (SA-269 to SA-318, ECF No. 137, ¶ ***3** 7.) RCL's report concluded that the properties' roofs were not extensively or functionally damaged. (SA-275; SA-278 to SA-317.) Affiliated FM also retained Newman Construction Consulting ("Newman") who prepared a cost estimate (ECF No. 137, ¶ 30.) Newman quantified the limited damage at $203,982.19. (ECF No. 140, ¶ 31.) On October 23, 2020, Affiliated FM provided Tower Crossing with RCL's report and Newman's estimate. (ECF No. 137-3, ¶ 13.)

D. Tower Crossing's Request For An Extension And Affiliated FM's Agreement

On March 17, 2021, Tower Crossing notified Affiliated FM that it disagreed with RCL's report and Newman's estimate and had hired its own consultant to conduct an independent review and requested an extension of the suit limitations period. (SA-19.) Affiliated FM agreed to extend the deadline for Tower Crossing to file a lawsuit to October 2, 2021. (ECF No. 133, ¶ 10.)

E. A $4.3 Million Proof of Loss Was Submitted To Affiliated FM

On the last day of the extended suit limitations deadline, Tower Crossing, through its Public Adjuster, Ron Cooper, provided the Proof of Loss to Affiliated FM estimating damages at roughly $4.3 million (the "$4.3 Million Proof of Loss"). (ECF No. 133, ¶ 25.).

On October 29, 2021, Affiliated FM notified Tower Crossing that it was "not in agreement with the Partial Sworn Statement in Proof of Loss [the $4.3 Million Proof of Loss] as submitted" and was "formally rejecting the Partial Sworn Statement in Proof of Loss." (SA-199 to SA-200.) The rejection letter cited the findings of the RCL ***4** Report, which found that "[n]one of the composition shingle roofs, on any building in the complex experienced hail damage" and that "[n]either repair, nor replacement of the composition shingle roofs is warranted as a result of hail impact." (*Id*.) Affiliated FM's letter further stated that the "Newman Construction Consultants estimate includes costs to repair these items in the gross amount of USD 203,982.19, which is the basis for our measurement of the recoverable loss for damages directly related to the wind and hail event on 02-July-2019." (*Id*.)

Discovery uncovered that prior to Affiliated FM's inspection of roofs but *after* the alleged "date of loss" and the alleged "hail" damage (July 2, 2019), Tower Crossing's representatives were discussing Tower Crossing's claim for insurance recovery and a future weather forecast for hail in an email exchange and one of its representatives, Sean Sandona, wrote: "I've been praying all day and doing a hail dance around our house. I hope it works." (ECF No. 137-20; ECF No. 140, ¶ 36.)

F. Tower Crossing Requested Another Extension, But The Second Extension Was Denied

Tower Crossing requested another extension of the suit limitations period on November 1, 2021, which Affiliated FM denied. (ECF No. 133, ¶¶ 39-40.)

G. Tower Crossing Filed Suit After The Limitations Period Expired And Attached A Copy Of The $4.3 Million Proof Of Loss As An Exhibit To Its Amended Complaint

Tower Crossing filed this lawsuit on November 19, 2021. (*See generally*, ECF No. 1.) This was approximately 48 days after the extended limitations period expired ***5** on October 2, 2021. Tower Crossing also attached a copy of the $4.3 Million Proof of Loss as an exhibit to its Amended Complaint. (ECF No. 11, ¶ 18; ECF No. 11-4.)

H. Discovery Later Revealed The Existence Of A $2.9 Million Proof Of Loss

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During discovery, Affiliated FM learned the $4.3 Million Proof of Loss was not signed and sworn before a Notary Public. Tower Crossing had instead taken the signature page and notary certification from an earlier executed-and-sworn but unsubmitted Proof of Loss and attached it to the $4.3 Million Proof of Loss. (ECF No. 133, ¶¶ 14-16, 43-44.)

Tower Crossing's Public Adjuster, Ron Cooper, prepared that earlier Proof of Loss, which estimated the cost of repair and replacement at $2,954,405.44 (the "$2.9 Million Proof of Loss"). (*Id*.) On September 30, 2021, Tower Crossing's Board President, Kenneth Freedman, signed this $2.9 Million Proof of Loss in front of Notary Public Charles Alexander, who contemporaneously acknowledged Mr. Freedman's signature. (*Id*.)

The signature page of that $2.9 Million Proof of Loss states that the document was "subscribed and sworn before me this 30th day of September, 2021," above the Notary Public signature line and the signature of Notary Public Charles Alexander, and his official notary stamp and seal. (*Id*. at ¶ 14; SA-240.)

Mr. Freedman testified that, when he signed the $2.9 Million Proof of Loss, he believed that the $2.9 Million amount accurately quantified the full cost of repair and replacement as $2,954,405.44, "[b]ased on what was furnished to [him]." (ECF No. 133, ¶ 15.) Mr. Freedman sent the signed and notarized $2.9 Million Proof of Loss to ***6** Board Member Ken Egidi via email at approximately 7:56 PM that evening, stating "Ken, Here you go!" (*Id*. at ¶ 12.)

I. The Signature And The Notary Certification Page Attached To The $4.3 Million Proof Of Loss Is The Exact Signature And Notary Certification Page From The $2.9 Million Proof Of Loss And It Was Simply Removed From The $2.9 Million Proof Of Loss And Attached To The $4.3 Million Proof Of Loss

Tower Crossing simply attached the signature and notary certification page from the $2.9 Million Proof of Loss to the $4.3 Million Proof of Loss. *Id*. at ¶ 16-18, 29 and 32.

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(SA-237; SA-240.)

Mr. Freedman did not swear to the $4.3 Million Proof of Loss's contents in front of a Notary Public or any other person licensed or authorized to administer an oath. (*Id*. at ¶ 32.) Instead, the signature and notary certification page from the $2.9 Million Proof of Loss was removed and attached to the $4.3 Million Proof of Loss to make that ***7** document appear as if it had been signed and sworn. (*Id*. at ¶¶ 16, 18, 29; *see* SA-220.)

J. The District Court Granted Summary Judgment In Favor Affiliated FM's Favor And Denied Tower Crossing's Motion

At the conclusion of discovery, both parties moved for summary judgment on whether Tower Crossing's claim was barred by the Policy's two-year limitations period. (ECF No. 124; ECF No. 129.) On November 3, 2025, the District Court granted Affiliated FM's motion for summary judgment and denied Tower Crossing's motion for partial summary judgment. (*See generally*, A-1 to A-11.)

The District Court found that because Tower Crossing did not submit a Proof of Loss in the manner required by the Policy - specifically, that it was not "sworn" - the statute of limitations for Tower Crossing's Policy-related claims was not tolled under 215 ILCS 5/143.1. (A-8 to A-10.) With reference to dictionary definitions of "swear" and "sworn statement" and an analogous Illinois Appellate Court decision that considered the same issue on substantially the same facts, the District Court interpreted "sworn" to mean "notarized." (A-7 to A-8.)

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The District Court specifically found that "it is undisputed that Tower Crossing did not swear to the Proof of Loss under oath or otherwise notarize that specific document." (A-8 to A-9.) Rather, Tower Crossing "swore in front of a notary that the [$2.9 Million Proof of Loss]'s $2.9 million valuation was accurate and proper but did not do the same for the [$4.3 Million Proof of Loss's] valuation." (*Id.*) Accordingly, "the statute of limitations on Tower Crossing's claim was not tolled upon its submission ***8** of the [$4.3 Million] Proof of Loss on October 1, 2021," and the limitations period expired on October 2, 2021 - "over a month before the present suit was filed." (*Id.*)

***9** VI. *SUMMARY OF THE ARGUMENT*

The District Court's well-reasoned Opinion faithfully applied Illinois law and should be affirmed in all respects. This appeal turns on a straightforward contractual requirement: the Policy required a "signed and sworn" Proof of Loss. Tower Crossing did not provide one. That failure is dispositive as, under Illinois law, compliance with a Proof of Loss provision in an insurance Policy is a condition precedent to recovery and necessary to toll the contractual limitations period. The District Court correctly concluded that because this express condition was not satisfied, the limitations period was never tolled, and Tower Crossing's claim is time-barred.

On appeal, Tower Crossing asks this Court to accept the extraordinary proposition that an insured may notarize one Proof of Loss, then unilaterally transplant that notary certification onto a second Proof of Loss - reflecting a loss valuation approximately $1.4 million higher - and call that fabricated document "sworn." There is no precedent for such a result, and Illinois law does not permit it.

This case demonstrates why. Tower Crossing pretended that it complied with contractual requirement of the Proof of Loss being "signed and sworn" by removing a signature page and notarization certification from one document (the $2.9 Million Proof of Loss) and attaching it to a completely and materially different document (the $4.3 Million Proof of Loss). But this contractually required document was not actually signed and was not actually sworn under to oath as required by the Policy terms and Illinois law. Thus, it is a nullity and does not toll the time period for filing a claim. Because Tower Crossing did not submit a properly "signed and sworn" Proof of Loss, ***10** the Policy's two-year limitations period was never tolled. The extended limitations period expired on October 2, 2021 - approximately 48 days before Tower Crossing filed this lawsuit on November 19, 2021.

If the Court were to reward or tolerate Tower Crossing's conduct of switching signature and notary certification pages from one legal document to a different legal document it would undermine the integrity of the legal process and undercut the ability to rely upon a whole array of legal documents such as a Proof of Loss, last will and testaments, real estate contracts, power of attorneys, and court pleadings. It would also transmogrify the legally recognized process of notarizing documents to ensure authenticity and accuracy into a sham to perpetuate deceit. The District Court's grant of summary judgment in favor of Affiliated FM was entirely correct and should be affirmed.

***11** VII. *ARGUMENT*

A. The District Court Correctly Held That The Proof Of Loss Was Not "Sworn" And Therefore Did Not Toll The Contractual Limitations Period

The District Court's ruling in favor of Affiliated FM should be affirmed as the Court faithfully applied the relevant law, applied the Policy's clear and unambiguous requirements, and rejected Tower Crossing's efforts to pursue a claim based upon a fabricated and false document in contravention of the relevant law.

The Policy's "signed and sworn" Proof of Loss requirement is unambiguous. Under Illinois law, insurance Policy terms are given their plain, ordinary meaning in the context in which they are used, and courts will not search for ambiguity where none exists. The term "sworn," as used in the Policy's Proof of Loss provision, unambiguously requires that the Proof of Loss be executed under oath, such as through notarization.

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The District Court's interpretation is consistent with Black's Law Dictionary, which defines a "sworn statement" as a "statement given under oath; an affidavit," and is supported by the Illinois Appellate Court's decision in *Ornoff v. Westfield National Insurance Company*, (2013 IL App (1st 122728-U)) which held in substantially the same context that "sworn" means notarized. Tower Crossing's alternative dictionary definitions - such as "to promise emphatically or earnestly" - are not reasonable interpretations of "sworn" in the context of a legal document that creates binding obligations and whose recognized function is to prevent fraud.

***12** Tower Crossing's own conduct (*i.e.*, submitting a $4.3 Million Proof of Loss that purported to be signed and notarized) confirms the parties' mutual understanding that the Policy's "signed and sworn" requirement necessitated notarization. Tower Crossing prepared the Proof of Loss with notarization fields, arranged for a Notary Public to notarize Mr. Freedman's execution of the $2.9 Million Proof of Loss, and then - when it determined to increase the loss values by approximately $1.4 million - recycled that notarized signature page rather than having Mr. Freedman sign the new document without notarization. If Tower Crossing truly believed that notarization was unnecessary (as it now urges), it would not have gone through the process of notarizing the $2.9 Million Proof of Loss in the first instance, nor would it have recycled that notarization for the Proof of Loss submitted to Affiliated FM.

Tower Crossing's remaining attempts to inject ambiguity into the Policy - including its arguments about the limited function of Notary Publics and the supposed redundancy of "signed and sworn" - are unavailing and amount to precisely the sort of searching that Illinois courts have cautioned against.

B. The $4.3 Million Proof Of Loss Was Not "Sworn" As Required By The Policy

1. The Policy Unambiguously Required Tower Crossing To File A "Signed and Sworn" Proof of Loss As A Condition To Coverage

Among other "**REQUIREMENTS IN CASE OF LOSS**," the Policy's Proof of Loss provision unambiguously requires Tower Crossing to "[g]ive a signed and sworn proof of loss" as a condition precedent to coverage. (SA-176 to SA-177 (emphasis in original).) This Policy requirement is not only a condition precedent to coverage under ***13** the Policy but must be complied with in order to toll the Policy's limitations period pursuant to Illinois Insurance Code Section 143.1.

2. Proof Of Loss "Requirements" Constitute Enforceable Conditions Precedent To An Insurer's Liability Under An Insurance Policy

Tower Crossing cannot be permitted to so cavalierly dismiss the express contractual requirements a Proof of Loss as, under Illinois law, it is a well-established law that compliance with a Proof of Loss requirement, such as the one at issue here, is a valid precondition to recovery under an insurance Policy. *Koclanakis v. Merrimack Mut. Fire Ins. Co.*, 709 F. Supp. 801, 806 (N.D. Ill. 1988), aff'd, 899 F.2d 673 (7th Cir. 1990); *Vogelsang v. Credit Life Ins. Co.*, 119 Ill. App. 2d 67, 73, 255 N.E.2d 479, 483 (1970) (*citing Mosby v. Mut. Life Ins. Co.*, 405 Ill. 599, 92 N.E.2d 103 (1950)) ("the requirement of proof of loss in an insurance Policy is a condition precedent to the enforcement of liability under such Policy.[] It is the duty of the insured to allege and prove the performance of all conditions precedent."); *Diamond Residential Mortg. Corp. v. Liberty Surplus Ins. Corp.*, No. 19-cv-06439, 2020 U.S. Dist. LEXIS 223093, at *15 (N.D. Ill. Nov. 30, 2020) (In Illinois, a failure to provide sworn Proof of Loss within the time requirements of an insurance Policy relieves the insurer of liability).

The Policy's "Requirements" for the Proof of Loss are not a mere technicality but rather is regarded as a fundamental and valid precondition to recovery under the Policy. Courts in Illinois routinely recognize that one of the fundamental purposes of a requirement of a Proof of Loss is to "prevent fraud." ***14** *Vala v. Pac. Ins. Co.*, 695 N.E.2d 581, 586 (Ill. App. 4th Dist. 1998); *Direct Auto Ins. Co. v. Reynosa*, 2020 IL App (1st) 190610-U, ¶ 41.

Tower Crossing does not dispute the validity of this requirement, but instead now imagines that the term "sworn" is ambiguous such that Tower Crossing's submitted $4.3 Million Proof of Loss (with a signature page and a notarial certification from a completely different document) may be construed as satisfying the Policy's Proof Loss requirement. It does not.

3. "Switching" The Signature And Notary Certification Page, As Was Done Here, Renders The Neither-Sworn-Nor-Notarized $4.3 Million Proof Of Loss A Nullity

The $4.3 Million Proof of Loss was never actually signed and sworn in the presence of a Notary Public and thus it is a nullity. (ECF No. 133, ¶ 32.) Under Illinois law, an unsigned or unsworn Proof of Loss is insufficient to satisfy Proof of Loss requirements where, as here, the Policy explicitly mandates a signed and sworn statement. [1]

Tower Crossing attempts to explain away that the $4.3 Million Proof of Loss not being signed and sworn by claiming that Mr. Freedman gave his retroactive consent to have the signature and notary certification page removed and "reattached" ***15** to a materially different Proof of Loss (for over a million dollars higher) is completely unavailing.

In that regard, when asked if he actually signed the $4.3 Million Proof of Loss, Mr. Freedman testified that: "I'm sure that whoever prepared the revised partial sworn statement [the $4.3 Million Proof of Loss] would have asked me for my okay to attach my signature." (ECF No. 133, ¶ 32.) Any such "okay" or consent (even if actually given) does not render the $4.3 Million Proof of Loss sworn or signed, much less notarized. (*Id*. at ¶¶ 33-36.)

The Illinois Notary Public Act, 5 ILCS 312/1 et seq. (the "Notary Act"), which sets forth the proper notarial acts, does not provide that a signatory (or Notary Public for that matter) can simply switch the signature and notary pages even if the signatory later thinks that he might, could, would, or actually did give his "okay." (ECF No. 133, ¶¶ 19-20, 33-36.)

4. Switching Out Notary Certification Pages From One Document To Another Is Not A Notarial Act And Does Not Make The Resulting Document "Signed And Sworn"

The act of taking the notary certificate from the $2.9 Million Proof of Loss and re-attaching it to a second materially different document does not make the second document signed or sworn (notarized). Fundamentally, it does not satisfy the requirement of appearing before a Notary Public to sign and swear an oath to the truthfulness of the particular document as mandated by the Notary Act. (ECF No. 133, ¶¶ 19-20, 33-36).

***16** The Notary Act prescribes the requirements for and authorities of Notary Publics in Illinois, including what constitutes a notarial act and notarization. 5 ILCS 312/3-105 ("A Notary Public shall have authority to perform notarial acts ..."). The Notary Act, 5 ILCS 312/1-104, defines "notarial act" as "an act ... that a Notary Public ... may perform under the laws of this State" and as including "taking an acknowledgment, administering an oath, or affirmation, taking a verification on oath, or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument". The Notary Act defines "notarization" as "the performance of a notarial act." 5 ILCS 312/1-104.

The Notary Act makes clear that signatures, authorizations, or any other verifications that are not the product of an enumerated notarial act are not to be considered notarized. *Id*. [2] Here, there was no recognized notarial act with regard to the $4.3 Million Proof of Loss and it therefore was not notarized.

5. "Sworn" Requires An Oath At The Time Of Execution - Not A Retroactive Attachment Of A Signature Page

The District Court correctly held that a "sworn" document is one made under oath. This interpretation follows the ordinary usage, legal dictionaries, and long-standing insurance and document notary practices.

***17 a. Verification Upon Oath Or Affirmation Requires An Oath**

In this case, the specific notarial act, evidenced by the language "subscribed and sworn before me" in the notary certificate for the $2.9 Million Proof of Loss, was a verification upon oath or affirmation. (ECF No. 133, ¶¶ 14, 19). A verification upon oath or affirmation is "a declaration that a statement is true made by a person upon oath or affirmation." (*Id*. at ¶¶ 15, 19).

A verification upon oath or affirmation requires the signatory to personally appear before the notary and sign the document in the presence of the notary and the Notary Public is required to administer an oath. (*Id*. at ¶ 20). However, Mr. Freedman testified that, "my signature which Charles Alexander acknowledged and which was attached to the original proof of loss for two-million-plus, was later attached to the revised, what I would call the revised proof of loss for -- that being for four-million-plus." (*Id*. at ¶¶ 17-18). Mr. Freedman testified that he believed and swore that the $2.9 Million Proof of Loss contents were true in the presence of Notary Public Mr. Alexander. (*Id*. at ¶¶ 12-20).

b. Verification Upon Oath Or Affirmation Requires Personally Appearing In The Physical Presence Of The Notary Public

Along with the oath, performing a verification upon oath or affirmation requires the person signing the document to personally appear and sign the document in the physical presence of the Notary Public. *See* ILLINOIS NOTARY PUBLIC HANDBOOK, p. 17, available at https://www.ilsos.gov/content/dam/publications/ pdf_publications/ipub16.pdf (last visited March 25, 2026) (explaining that a ***18** verification upon oath or affirmation requires that the "person requesting this notarial act must personally appear before the notary and sign the document in the presence of the notary"); *see also* 5 ILCS 312/1-104 (defining "In the presence of" or "appear before" as "being in the same physical location as another person and close enough to see, hear, communicate with and exchange credentials with that person ....").

Here, no such oath was administered as to the $4.3 Million Proof of Loss at issue in this case.

6. Like With Other Contracts, Illinois Courts Interpret Insurance Policies by Evaluating the Intent of the Parties And Do Not Go Searching For Ambiguity Where None Exists

Now, only after having been exposed for submitting and relying upon an unsworn and unsigned Proof of Loss, Tower Crossing claims the Policy requirement is "ambiguous." Tower Crossing is wrong. Under Illinois law, "insurance policies are subject to the same rules of construction applicable to other types of contracts." *Nicor, Inc. v. Associated Elec. & Gas Ins. Servs.*, 223 Ill. 2d 407, 416, 307 Ill. Dec. 626, 631, 860 N.E.2d 280, 285 (2006). "When interpreting the provisions of an insurance policy, the court's primary objective is "to ascertain and give effect to the intentions of the parties as expressed by the language of the Policy." *State Farm Fire & Cas. Co. v. Dubrovsky*, 2018 IL App (1st) 170282, ¶ 28, 422 Ill. Dec. 182, 187, 102 N.E.3d 851, 856 (quoting *Valley Forge Insurance Co. v. Swiderski Electronics, Inc.*, 223 Ill. 2d 352, 362, 860 N.E.2d 307, 307 Ill. Dec. 653 (2006)).

***19** "Clear and unambiguous policy language will be enforced as written." *Kuhn v. Owners Ins. Co.*, 2024 IL 129895, ¶ 15, 476 Ill. Dec. 637, 642, 241 N.E.3d 397, 402. [3] Further, courts may not "search for ambiguity where there is none." *Valley Forge Ins. Co. v. Swiderski Elecs., Ins.*, 223 Ill. 2d 352, 860 N.E.2d 307, 314 (2006). "If the policy's language is unambiguous when given its plain and ordinary meaning, it must be applied as written." *Dubrovsky*, 2018 IL App (1st) 170282, ¶ 28, 422 Ill. Dec. 182, 187, 102 N.E.3d 851, 856.

7. Tower Crossing's Criticism Of The District Court's Use Of The "Ordinary" Meaning Of "Sworn" Is Unfounded

Emphasizing the Illinois interpretive precept that contract terms should be given their "ordinary" meaning, Tower Crossing argues that the District Court should have considered other, more colloquial definitions of "sworn" or "swear" that better reflect the average person's understanding of those terms. (Appellant's Brief, p. 25 (advocating alternative definitions, like "to ... promise emphatically or earnestly," "to promise or say firmly that you are telling the truth ...," and a "solemn declaration or affirmation").) But this misconstrues what Illinois law mandates.

***20** Courts applying Illinois law are not instructed to find ambiguity by considering *any conceivable definition* of the subject contract terms. Instead, they must ascribe "ordinary" meanings to contract terms in light of the context in which they are used. *Ruffolo v. Jordan*, 2015 IL App (1st) 140969, ¶ 10, 397 Ill. Dec. 125, 129, 41 N.E.3d 536, 540 ("The words of a contract derive their meaning from the context in which they are used."). [4]

For example, defining "swear" as "to assert or promise emphatically or earnestly" as Tower Crossing advocates might be appropriate in the context of a spouse promising not to be late for dinner again. But that definition is hardly reflective of the common understanding of "sworn" in the context of legal contracts, like insurance policies, that purport to designate the legal obligations and legal consequences among parties.

Obligating an insured to "promise emphatically or earnestly" that the required Proof of Loss contents are true and accurate would be meaningless - especially considering Proof of Loss requirements seek to commit insureds to a position on the nature and extent of their claimed losses and prevent fraud. *See* ***21** *Vala*, 695 N.E.2d at 586; *State Farm Mut. Auto. Ins. Co. v. Guerrero*, 2015 IL App (1st) 151079-U, ¶ 25 (quoting 14 COUCH, CYCLOPEDIA OF INSURANCE LAW (2d ed.) § 49:373, p. 15); 5 NEW APPLEMAN ON INSURANCE LAW LIBRARY EDITION § 53.01 [9][d] [i] (2012) ("The proof of loss is a legal document whereby the insured swears under penalty of perjury that the claim it is submitting to the insurer is accurate and proper."). [5]

Accordingly, because "sworn" is ordinarily understood to mean under oath in the legal or insurance policy contexts, the Policy unambiguously required Tower Crossing to notarize or otherwise execute the Proof of Loss under oath.

Tower Crossing's argument that the $4.3 Million Proof of Loss that it submitted to Affiliated FM was "sworn" because even though it was not notarized or otherwise executed under oath it contained the recycled the signature page that had been previously notarized by a Notary Public in connection with Tower Crossing's execution of the $2.9 Million Proof of Loss (an entirely different valuation of the claimed loss) is utterly farcical.

Notwithstanding the District Court's correct determination that the Policy unambiguously required the Proof of Loss to be notarized or otherwise sworn under oath, even if the "signed and sworn" requirement were susceptible to other reasonable interpretations - in this context, it is not - Tower Crossing's advocated interpretation ***22** cannot possibly be one of them. *Hae Sun Kang v. Travco Ins. Co.*, No. 24 CV 3391, 2025 U.S. Dist. LEXIS 63999, at *6-7 (N.D. Ill. Apr. 3, 2025) (citing *Rich v. Principal Life Ins. Co.*, 875 N.E.2d 1082, 1090 (Ill. 2007)) ("A court will consider *only reasonable interpretations* of Policy language and will not strain to find an ambiguity.") (emphasis added).

8. Like the District Court Here, Other Courts In Illinois And Other Jurisdictions Hold That "Sworn" Means Notarized

The District Court is at least the second court applying Illinois law to hold the term "sworn" in insurance Policy's Proof of Loss provisions unambiguously means notarized. [6] Indeed, considering substantially the same situation and policy language, in *Ornoff v. Westfield National Insurance Company*, the Illinois Appellate Court specifically held that "sworn" means notarized. 2013 IL App (1st) 122728-U. There, the insureds first submitted an unsworn Proof of Loss and later a sworn proof of loss. *Id*. at ¶¶ 7-8. The insureds challenged the circuit court's holding that the initial submission did not satisfy the policy's signed and sworn Proof of Loss requirement and thus the contractual limitations period was not tolled. *Id*. at ¶12. They argued ***23**

that the Proof of Loss requirement was ambiguous as to whether their first submission satisfied the requirement and thus that ambiguity should be construed in the insureds' favor (the same argument Tower Crossing continues to make here). *Id*. at ¶ 16.

The Illinois Appellate Court rejected this argument, holding that the Proof of Loss requirement was not ambiguous: "We read the Duties section as requiring a Proof of Loss to be 'signed' by the insured and 'sworn,' *i.e.*, notarized, and to contain the specified types of information." *Id*. at ¶ 18.

The Illinois Appellate Court further reasoned that this interpretation of the Proof of Loss provision was supported by the fact that the requirement served the "significant" purpose of "obtain[ing] a statement of the loss from the insured under oath [that] will subsequently bind the insured and protect against the imposition of fraud." *Id*. at ¶ 38 (quoting *New Appleman on Insurance Law Library Edition*, § 53.01[9][d][I] (2012)'s statement that "the proof of loss is a legal document whereby the insured swears under penalty of perjury that the claim it is submitting to the insurer is accurate and proper."). The Illinois Appellate Court, like the District Court here, concluded that the non-notarized submission did not toll the Policy's limitations period. *Id*. at ¶¶ 27, 44.

Tower Crossing asserts that the District Court committed reversable err by its "*sole* reliance on *Ornoff* for its holding that Tower Crossing did not comply with the 'sworn' requirements of the Proof of Loss term," spending considerable time droning ***24** that the decision is not precedential because it is not a published decision. (*See* Appellant's Brief, p. 27-31 (emphasis added).) [7]

Despite conceding as it must that the District Court was permitted to treat *Ornoff* as persuasive, which it undoubtedly is, Tower Crossing summarily accuses the District Court of treating *Ornoff* as binding. There is no indication the District Court treated *Ornoff* as such. [8]

To the contrary, the District Court's Opinion merely recognizes that "[o]ne Illinois appellate court has interpreted 'sworn' to mean 'notarized' in substantially the same context." (A-7 (citing *Ornoff*, 2013 IL App (1st) 122728-U).) Its analysis appropriately continues and purports to principally rely on Black's Law Dictionary's definitions of "swear," "[t]o administer an oath (to a person)" or "[t]o taken an oath," and "sworn statement," "[a] statement given under oath; an affidavit." (A-8 (quoting SWEAR, Black's Law Dictionary (12th ed. 2024) and SWORN STATEMENT, Black's Law Dictionary (12th ed. 2024)).) Based on these definitions, the District Court held that ***25** "[i]t therefore follows that a 'sworn proof of loss' under the Policy is the equivalent of a proof of loss 'given under oath,' like a notarized 'affidavit.'" (*Id*.)

Tower Crossing improperly criticizes the District Court for "confin[ing] its search for the 'ordinary' meaning of 'sworn' to a dictionary for lawyer." (Appellant's Brief, p. 25.) This is an odd tact given Tower Crossing's brief repeatedly emphasizes that Mr. Freedman, Tower Crossing's President who had his execution of the $2.9 Million Proof of Loss notarized and who purportedly authorized the repurposing of that notarization for the $4.3 Million Proof of Loss, is himself a lawyer. (*See id*. at 2, 7.) Nevertheless, the alternative dictionary definitions that Tower Crossing advances do not present reasonable, alternative meanings for "sworn," as used in the Policy's Proof of Loss requirement.

9. Tower Crossing's Other Attempts To Manufacture Ambiguity Where None Exists Are Unavailing And Thus Should Not Undermine The Policy's Unambiguous "Signed And Sworn" Requirement

Tower Crossing attempts to do precisely what Illinois law instructs courts not to do: inject ambiguity into an otherwise unambiguous contract term. *Universal Underwriters Ins. Grp. v. Griffin*, 287 Ill. App. 3d 61, 70-71, 222 Ill. Dec. 522, 529, 677 N.E.2d 1321, 1328 (1997) ("A court will not search for an ambiguity, however, where none exists [], and a policy term is not ambiguous merely because the parties can suggest creative possibilities for its meaning.") (internal citations omitted).

First, Tower Crossing cites a collection of authorities for the proposition that a document need not be notarized or otherwise sworn under oath to be considered "sworn." (*See* Appellant's Brief, p. 26, n. 4.) Among these cited authorities is the ***26** Illinois Rule of Civil Procedure rule that provides that when a "document or pleading [is] filed in any court of this State" that

contains specified certification language, it "may be used in the same manner and with the same force and effect as though subscribed and sworn to under oath, and there is no further requirement that the pleading, affidavit, or other document be sworn before an authorized person." 735 ILCS 5/1-109. Also among the cited authorities is Section 1746 of the U.S. Code, which authorizes the use of "*unsworn* declarations under penalty of perjury" where federal law normally requires a sworn statement so long as the declaration is made in a writing that is signed, dated, and contains specified subscription language. 28 U.S.C. § 1746 (emphasis added).

Like these statutory rules, the cases Tower Crossing cites in Footnote 4 are also inapplicable to the Policy's "signed and sworn" Proof of Loss requirement because they apply only to *court filings* and other situations where an oath is otherwise *required by law*. They do, however, inform the interpretive analysis - albeit, not in the way that Tower Cross intended.

Indeed, these authorities articulate exceptions for declarations that do not require notarization or an equivalent swearing under oath because either a court has inherent authority or state or federal law provides a mechanism to ensure the veracity of the declared statements. *See* 18 U.S.C. § 1623(a) (providing that false material declarations made pursuant to 28 U.S.C. § 1746 are punishable by fine or imprisonment); *see Zavala-Alvarez v. Darbar Mgmt.*, 617 F. Supp. 3d 870, 885-86 (N.D. Ill. 2022) (recognizing that 28 U.S.C. § 1746 creates a narrow exception for ***27** certain "unsworn declarations" to the general rule that affidavits must be sworn under oath). While not applicable to the Policy, here, these exceptions underscore that "sworn" in the legal context, including contracts that create legal rights or obligations, is ordinarily understood to mean "under oath." Simply stated, the Policy does not exempt Proof of Losses from being signed and sworn. To the contrary, the Policy expressly requires that they be signed and sworn.

Second, Tower Crossing argues that the District Court erred in holding that the Policy's "sworn" requirement necessitated notarization or an equivalent swearing under oath because a Notary Public's "function is simply to certify the validity of signatures," not to "attest to the validity of statements made in the document itself." (Appellant's Brief, p. 27 (quoting *Bulter v. Encyclopedia Britanica*, 41 F.3d 285, 293 (7th Cir. 1994)).) This argument relies on - at best - a gross oversimplification.

Courts in Illinois have long recognized that the "[t]he purpose of notarization is to prevent fraud and forgery" and that where a document "requires the administration of an oath, *the person must personally appear before the notary*, be administered the appropriate oath, and **sign *the* document** in the notary's presence." *Vancura v. Katris*, No. 1-06-2750, 2008 Ill. App. LEXIS 1317, at *4-5 (Dec. 26, 2008) (italics emphasis in original; other emphasis added).

Indeed, Notary Publics do not simply verify the identity of the declarant and provide a notarization that the declarant can proceed to transpose onto any document that he or she wishes, as Tower Crossing suggests. They confirm that the declarant is who he or she says she is, that they have appeared before the Notary Public, and ***28** that they have sworn to the contents of the particular declaration before them. Although not responsible for the substance of declarations, in this way, Notary Publics aid the prevention of fraud, deception, and oscillation by binding a particular person to particular assertions made in particular documents *who can thereby be held to account* for the statements made in the notarized statement.

Third, and based on its fundamental misconception of the notarization function, Tower Crossing argues that the District Court's interpretation of the Policy's "signed and sworn" Proof of Loss requirement as requiring notarization creates a redundancy. (Appellant's Brief, p. 29 ("The Court substituted the Policy language of 'signed and sworn' with 'signed and signed.'").) Specifically, according to Tower Crossing, because Notary Publics merely verify signatures, they do nothing to make the notarized document "sworn." This view ignores the plain and unremarkable fact that Notary Publics are definitionally individuals licensed to administer oaths. *Zavala-Alvarez*, 617 F. Supp. 3d at 885-886 ("An affidavit must be sworn before *an officer authorized to administer an oath, such as a notary public*.") (emphasis added); *Vasquez v. City of Chi.*, No. 19-CV-6014, 2024 U.S. Dist. LEXIS 252758, at *3 (N.D. Ill. Feb. 12, 2024) (recognizing that a Notary Public is "an officer ... authorized to administer oaths.").

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Again, cabining of notarization as doing nothing more than facilitating a signature is clearly wrong. By Tower Crossing's logic, a person need only secure the notarization of a Notary Public once and then proceed to affix it to any document it wishes. That is neither a reasonable construction of the Notary Public function nor ***29** the Policy's "signed and sworn" Proof of Loss requirement. It is Tower Crossing's conduct and position - not the signed and sworn requirement - that is a sham.

Accordingly, Tower Crossing's interpretation of the "signed and sworn" Proof of Loss requirement as encompassing its unilateral repurposing of Mr. Freedman's signature that was notarized in connection with an entirely different loss valuation is patently unreasonable and thus cannot be accepted.

10. Having Submitted a $4.3 Million Proof Of Loss That It Asserted Was Notarized, Tower Crossing Cannot Now Claim That Notarization Was Not Required

Unable to demonstrate compliance with the Notary Act, Tower Crossing instead asserts that the Proof of Loss did not need to be notarized, and that this Illinois law is now irrelevant. Tower Crossing is wrong for several reasons.

First, Tower Crossing cannot credibly claim to read the Policy's express "REQUIREMENTS" which mandate that the Proof of Loss must be "signed and sworn" to mean that an insured could submit a document (that had a signature and notary page from a different document re-attached to it) and then, well over a year later (and only after being forced to concede that the signature and notary pages were lifted from a different document), simply pronounce by fiat that affixing a prior signature from a different document with different numbers means that the new document is now "sworn." Second, the argument that the Policy's "sworn" requirement did not require a notarization or some equivalent swearing under oath has been roundly rejected by courts which have routinely found that a "sworn" Proof of Loss requires notarization. (See p. 21 and n. 6). Third, Tower Crossing's current ***30** position that notarization was not required is contradicted by its own conduct and the fact that it actually submitted a Proof of Loss that it purported and pretended was notarized.

11. Tower Crossing's Own Conduct Evinces the Parties' Mutual Understanding That The Policy's "Signed and Sworn" Requirement Necessitated Notarization

It is axiomatic that under Illinois law, the primary objective in interpreting a contract is to give effect to the intent of the parties. *Thompson v. Gordon*, 241 Ill. 2d 428, 441, 948 N.E.2d 39, 349 Ill. Dec. 936 (2011)). While courts often rely on dictionary meanings of contract language to assess parties' intent, "[u]nder Illinois law, the parties' actions under a contract 'is often the strongest evidence of their intended meaning.'" *Blue Cross & Blue Shield Ass'n v. Am. Express Co.*, No. 99 C 6679, 2005 U.S. Dist. LEXIS 15158, at *14 (N.D. Ill. July 25, 2005) (quoting *Chicago & North Western R. v. Peoria & Pekin Union R.,* 46 Ill. App. 3d 95, 101, 360 N.E.2d 404, 407, 4 Ill. Dec. 468 (1977)). Here, Tower Crossing's own actions belie its current argument that the Policy's "signed and sworn" Proof of Loss requirement does not require notarization or some equivalent swearing under oath.

The undisputed facts indicate that Tower Crossing prepared the Proof of Loss with the false appearance that this specific document had been signed and notarized. First, Tower Crossing selected a signature page that indicates the Proof of Loss is "sworn" and that included the following notarization fields:

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLE
TABLE

***31** (SA-237; SA-240.) Indeed, this form conforms with the short form certifications provided by the Notary Act. *See* 5 ILCS 312/6-105.

Second, Tower Crossing arranged to have a Notary Public notarize Mr. Freedman's execution of the $2.9 Million Proof of Loss. (ECF No. 133, ¶ 14.) If Tower Crossing truly did not believe that the Policy required the Proof of Loss to be notarized, it surely

would not have gone through the extra step of having the $2.9 Million Proof of Loss notarized in the first place. And once Tower Crossing determined to increase the loss values and decided to instead submit to Affiliated FM the $4.3 Million Proof of Loss, it surely would have simply signed that Proof of Loss instead of removing and recycling the notarized signature page from the $2.9 Million Proof of Loss in an effort to make the $4.3 Million Proof of Loss appear to be compliant.

Third, Tower Crossing submitted a Proof of Loss to Affiliated FM that appeared, on its face, to contain a licensed Notary Public's certification, stamp, and signature. (ECF No. 133, ¶ 5; ECF No. 131-2). Again, if Tower Crossing really believed ***32** that this was not required, why did it submit a Proof of Loss that falsely represented that it was notarized?

Fourth, Tower Crossing based its lawsuit upon and attached the $4.3 Million Proof of Loss as an exhibit to its First Amended Complaint (ECF No. 11-4), and continued to falsely represent that it was signed and sworn and notarized in subsequent pleadings. (See ECF No. 15, PageID #292, 294-95). If, as it now claims, the Proof of Loss did not need be notarized, why did Tower Crossing repeatedly parade the purportedly notarized Proof of Loss before the District Court?

Fifth, and perhaps most telling of all, if Tower Crossing really believed that notarization was not required, why did it fight so hard to keep the truth about the notary certification and signature page from coming to light in this litigation and why did it repeatedly deny that the signature page and notary page was simply lifted from the $2.9 Million Proof of Loss and reattached to the $4.3 Million Proof of Loss so as to make it appear notarized? (*See* ECF No. 138, PageID #2676-78; *see*, *e.g.*, ECF No. 138-6, ¶¶ 15-17; ECF No. 133, ¶ 44; ECF No. 131-21). The only logical conclusion is that it did so because it too understood that "sworn" meant notarized.

More importantly, however, regardless of what Tower Crossing actually believed or what the Policy required, Tower Crossing decided to present the $4.3 Million Proof of Loss to Affiliated FM and to the District Court which, on its face, purported to be signed and notarized, when it knew that it was neither. It is difficult to escape the conclusion that that Tower Crossing committed fraud on the Court. (*See* ECF No. 130, PageID #1643-44.) Accordingly, the undisputed facts make clear that ***33** Tower Crossing understood the Policy's "signed and sworn" Proof of Loss requirement to mean notarized or some equivalent execution under oath.

12. Tower Crossing's "Signature Switching" Theory is Legally Unsupportable, Thwarts The Policy Requirements, And Mocks The Notary Laws And Was Far From Harmless

Tower Crossing does not cite to a single case that stands for the proposition that a party can take the signature page and notary certification page from one document and attach it to another much less repeatedly present that fabricated document to the Court.

In that regard, prior of the revelation (in discovery) that the $4.3 Million Proof of Loss was not signed and sworn, the Court (J. Blakey) denied Affiliated FM's motion to dismiss on January 27, 2023 replying upon the $4.3 Million Proof of Loss. (ECF No. 21, PageID #335). However, unbeknownst to both Affiliated FM and the Court at the time of that ruling, the $4.3 Million Proof of Loss upon which Tower Crossing based its tolling arguments (ECF No. 15 at PageID #292-295) and upon which Judge Blakey based his ruling (ECF No. 21) was not as it appeared (and as Tower Crossing had represented). On the contrary, this document was not actually signed and not actually sworn under oath as required by the Policy terms and Illinois law and thus, as a nullity, does not toll the time period. *See LaMonica Family Ltd. Partnership, LLC v. West Bend Mut. Ins. Co.*, No. 3:23-cv-50258, 2024 U.S. Dist. LEXIS 59396, *9 (N.D. Ill. April 1, 2024) (finding no tolling of the Policy's limitation period by an unsigned, unsworn estimate).

***34** Again, at that time only Tower Crossing and its representative, Ron Cooper, and Tower Crossing's attorneys knew that the signature page and notary certification has been switched from one document to another. By deceiving the Court and Affiliated FM, Tower Crossing caused the Court to be burdened with this litigation for 5 years and caused Affiliated FM to be burdened with the expense of this litigation which was premised on fabricated and false document that was not signed or sworn as Tower Crossing purported to represent.

C. The District Court Correctly Rejected Tower Crossing's Attempts To Avoid Strict Compliance With The Policy And Law

Tower Crossing's reliance upon the substantial-compliance argument is misplaced here. The substantial-compliance doctrine exists to prevent forfeiture based on "fine print" technicalities, but it does not eliminate the insured's obligation to comply with the Proof of Loss condition precedent. *Indiana Airport Auth. v. Travelers Prop. Cas. Co. of Am.*, 849 F.3d 355 (7th Cir. 2017). Under Illinois authority, the signature and oath are not mere formalities in the Proof of Loss context; rather, Illinois courts recognize that insurers may require a sworn Proof of Loss-especially where fraud is suspected-because the sworn statement serves an important investigative and anti-fraud function. *Vala*, 695 N.E.2d 581. An unsigned and unsworn document lacks the very feature Illinois courts identify as "important" to the insurer in the Proof of Loss setting: the insured's attestation under oath.

*35 1. This Case Is Not About A Mere Technicality - It Is About Tower Crossing's Failure To Satisfy A Fundamental Condition Precedent

Illinois law treats false swearing in a sworn Proof of Loss as a basis to deny recovery and the oath is part of the substantive framework by which insurers and courts evaluate claim integrity; removing the oath removes the mechanism Illinois law recognizes as central to that framework. *Marvel Eng'g Co. v. Commercial Union Ins. Co.*, 118 Ill. App. 3d 844, 74 Ill. Dec. 272, 455 N.E.2d 545 (1983). Accordingly, where, as here, the Policy requires a "signed and sworn" Proof of Loss, an unsigned and unsworn submission is *not* a minor defect-it is a failure to provide the kind of proof that Illinois courts recognize that insurers may legitimately demand. An unsigned and unsworn Proof of Loss is not merely a minor defect in form; it omits the very features that make a Proof of Loss a formal, attestable statement by the insured.

2. No Reported Illinois Case Has Found Substantial Compliance Where, As Here, A Sworn Proof Of Loss Was Required And Was Missing

Under well-established law, Proof of Loss requirements are conditions precedent and substantial compliance is a narrow anti-forfeiture doctrine aimed at technical defects not omissions that strip the Proof of Loss of its essential character. *Indiana Airport Auth.*, 849 F.3d 355. Accordingly, an unsigned and unsworn Proof of Loss should not be deemed substantial compliance, and the insured cannot rely on the substantial-compliance doctrine to satisfy the condition precedent on those facts.

Tower Crossing's efforts to conceal the truth behind the "switched" signature pages and it dancing around this issue throughout the litigation undermines its new ***36** so-called substantial compliance argument. Tower Crossing repeatedly obstructed efforts to reach the truth, and initially refused to concede that the signature and notary pages were identical. [9]

Tower Crossing's efforts to hide the truth behind the signature and notary pages knew no bounds. (ECF No. 137-8, 84-89.) Tower Crossing was not only repeatedly telling Affiliated FM that the signature pages were not identical but Tower Crossing also misled the District Court that that the signature pages were not identical. For example, when opposing Affiliated FM's motion to amend the Second Amended Answer and Affirmative Defenses which added affirmative defenses of fraud and forgery, Tower Crossing filed a brief in the District Court opposing the motion stating at page 6 that:

> AFM's sole contention is that the signature page of the Final Proof of Loss was the same as the Draft Proof of Loss. D.E. 91, at 17. Assuming, arguendo, the truth of the allegation, AFM alleges nothing more than a (sic) mere technicality that, as a matter of law, does not render the Final Proof of Loss invalid.

(ECF No. 94, PageID #1199.)

"Assuming arguendo"? In that Court filing, Tower Crossing continued the dance and did not come clean or admit that the signature page of the submitted $4.3 ***37** Million Proof of Loss was the exact same signature page from the $2.9 Million Proof of Loss. Instead, it suggested to the Court that it was disputed issue by stating "assuming arguendo." (*Id*.)

No longer able to continue to masquerade the $4.3 Million Proof of Loss as being "signed and sworn," Tower Crossing asks the Court to ignore the express "REQUIREMENTS" of the Policy, to ignore the Illinois Notary Act (even though it tried to pass off the $4.3 Million Proof of Loss as being notarized), and to disregard the troubling fact that Tower Crossing submitted a "false document" to the Court (and Affiliated FM) which, contrary to its appearance, was neither signed or notarized. (ECF No. 136, ¶¶ 4-8.) Although the $4.3 Million Proof of Loss, on its face, indicated that the Notary Public's certification and signature were executed on that specific document, this was not the case. In reality, the Notary Public did not sign that document, he did not stamp that document, he did not administer an oath as to that document, and he did not place his official seal upon that document. (ECF No. 133, ¶¶ 14, 17, 18, 28, 32, 43.)

D. Tower Crossing's Misleading Statements That Mr. Freedman's Signature "Appears" On The $4.3 Million Proof Of Loss Further Highlights The Gamesmanship Which Has Plagued Its Presentment Of This Claim

Tower Crossing repeatedly made misleading statements such as there is "no dispute of fact that the Proof of Loss "contained" the notarized signature of Tower Crossing's President, Kenneth Freedman" or that "Mr. Freedman testified repeatedly that his notarized signature appears on the Proof of Loss ..." (ECF No. 128, PageID #1598; ECF No. 125, PageID #1332.) These statements are downright deceptive ***38** insofar as they falsely imply that Mr. Freedman actually signed that document and/or that the document was actually notarized. He did not sign that document and that document was not notarized. (*See* ECF No. 131, ¶¶ 5-9.)

While it may be true that Mr. Freedman's signature now "appears" on that document this does *not* mean that he actually signed that document or, more importantly, that it was actually notarized/sworn to as required under the Policy. On the contrary, it has been established that Mr. Freedman's signature only "appears" on the $4.3 Million Proof of Loss because his signature page was removed from $2.9 Million Proof of Loss and was "re-attached" to the $4.3 Million Proof of Loss in an effort to make that document appear to have been signed and notarized (ECF No. 131, ¶¶ 30-37). [10]

E. The District Court Correctly Held That, Because The $4.9 Million Proof Of Loss Was Not "Signed And Sworn," The Limitation Period Was Not Tolled

Section 143.1 of the Illinois Insurance Code is unequivocal: the running of a Policy's limitations period is tolled only "from the date proof of loss is filed, *in whatever form required by the Policy*." Illinois courts consistently require strict compliance with the Policy's Proof of Loss form requirements to effectuate tolling, and no amount of "substantial compliance" can override this legislative mandate. ***39** Tower Crossing's reliance on *McDonald v. American Family Mutual Insurance Company* is misplaced because, unlike the Policy here, the *McDonald* Policy conditioned the Proof of Loss requirement on a request from the insurer - a critical distinction that the District Court correctly identified. Notwithstanding this distinction, *McDonald* stands apart from other Illinois courts that have consistently disaggregated questions of whether an insurer waived the Proof of Loss as a precondition to coverage from whether the insured complied with the form requirements necessary to effectuate tolling under Section 143.1.

1. Contractual Suit Limitations - Like The One In The Policy Here - Are Enforced As Conditions Precedent

Courts applying Illinois law construe the contractual suit limitation provisions contained in property insurance policies to time-bar suits filed after the expiration of the suit limitation period. *See Cramer v. Ins. Exch. Agency*, 174 Ill. 2d 513, 529-30, 675

N.E.2d 897 (Ill. 1995); *Hoover v. Country Mut. Ins. Co.*, 975 N.E.2d 638, 645-46 (Ill. Ct. App. 2012); *Omega Demolition Corp. v. Travelers Prop. Cas. Of Am.*, No. 14-cv-01288, 2015 WL 3857341, at *6 (N.D. Ill. June 19, 2015). Under Illinois law, a suit limitation provision is essentially a contractual statute of limitations. *See Cramer*, 174 Ill. 2d at 529-30.

It is well-ensconced in Illinois law that the parties to a contract may agree to limit the time in which a party to the contract may file a complaint based upon the contract, and Illinois Courts have enforced suit limitation provisions appropriately. *See Hoover*, 975 N.E.2d at 645-46; *Cramer*, 174 Ill. 2d at 529-30. Further, a suit ***40** limitation provision is a valid condition precedent under a property insurance Policy. *Id*. (citations omitted).

2. Tower Crossing's Action Is Barred By The Policy's Suit Limitations Provisions

It is undisputed that the Policy contained a contractual suit limitations period requiring the Insured bring suit within two years of the alleged date of loss, which was extended by agreement to October 2, 2021 in a letter. (ECF No. 133, ¶¶ 3, 10) It is also undisputed that this lawsuit was filed on November 19, 2021, and thus after the agreed October 2, 2021 extension. (ECF No. 1.)

Having missed the October 2, 2021 extended deadline, Tower Crossing claims that the $4.3 Million Proof of Loss which it submitted to Affiliated FM, tolled the time period pursuant to Section 143.1 of the Illinois Insurance Code. (ECF No. 11, ¶¶ 18-20). However, that Code provision (and the cases interpreting it) provide that for tolling to occur the Proof of Loss "must" be in the form "required by the Policy." 215 ILCS 5/143.1. Accordingly, whether the period for Tower Crossing to file suit was tolled turns on whether the Proof of Loss that was submitted was in the form required by the Policy, *i.e.*, "signed and sworn." It was not "signed and sworn" and, therefore, not in the form required by the Policy.

Tower Crossing's argument ignores the Policy "REQUIREMENTS" (that the Proof of Loss must be "signed and sworn") and flouts the Illinois's notary laws. In addition, this precise argument that "other information" should suffice in place of a Policy compliant Proof of Loss has been rejected by Illinois Courts. The limitation period is not tolled if the insured never filed a Proof of Loss in the form required by ***41** the Policy. *Koclanakis*, 709 F.Supp. at 808 (holding that limitation period not tolled where insured never filed Proof of Loss in the form required by policy).

Courts also hold that merely supplying "other information" to an insurer in a form other than required by the Policy does not effectuate tolling. *Vala*, 296 Ill.App.3d at 972; *LaMonica Family Ltd. Partnership, LLC*, No. 3:23-cv-50258, 2024 U.S. Dist. LEXIS 59396, *9 (holding that policy required the Proof of Loss to be signed and sworn and that an unsigned Proof of Loss did not operate to toll).

3. Illinois Law Requires The Proof Of Loss To Be In The "Form Required By The Policy" To Toll The Suit Limitations Period

Section 143.1 of the Illinois Insurance Code ("Section 143.1") provides that "[w]henever any policy or contract for insurance ... contains a provision limiting the period within which the insured may bring suit, the running of such period is tolled from the date proof of loss is filed, ***in whatever form required by the policy***, until the date the claim is denied in whole or in part." 215 ILCS 5/143.1 (emphasis added).

As the District Court properly recognized, Illinois courts adhere to Section 143.1's requirement that proofs of loss conform to the form required by the Policy to toll the contract limitations period. *See Vala*, 695 N.E.2d at 583 ("Section 143.1 requires the proof of loss must be filed in the form required by the Policy in question before the limitations period provided in the Policy will be tolled."); *Davis v. Allstate Ins. Co.*, 498 N.E.2d 246, 247-48 (Ill. App. Ct. 1986) (recognizing that "legislative intent is best indicated by the statute's specific words" and holding that limitations period was not tolled under Section 143.1 because insured failed to comply with Policy's "proof of loss, signed and sworn" requirement); ***42** *Guerrero*, 2015 IL App

(1st) 151079-U at 12 ("By its plain and clear terms, section 143.1 is triggered only by the filing of a Proof of Loss that comports with the Policy.") (citations omitted).

Read together, the Policy and Section 143.1 required Tower Crossing to bring this lawsuit within two years of the date of loss, unless it submitted to Affiliated FM a Proof of Loss that complied with the Policy's requirements, including that it be "signed and sworn." The undisputed facts demonstrate that Tower Crossing did not trigger tolling under Section 143.1 and that this lawsuit was thus untimely.

4. Tower Crossing's Substantial Compliance Arguments Do Not Override Section 143.1's And The Policy's Proof of Loss Requirements To Make Its Lawsuit Timely

Tower Crossing argues that, notwithstanding the fact that the Proof of Loss was not "sworn" as required by the Policy, it is entitled to Section 143.1's tolling benefit because it substantially complied with the Policy's Proof of Loss requirement. [11] However, court after court has rejected substantial compliance arguments and held that Section 143.1 is absolutely clear: tolling is not triggered under the statute unless and until the insured submits a Proof of Loss to the insurer in the "form required by the Policy." *Vole v. Atlanta Int'l Ins. Co.*, 172 Ill.App.3d 480, 482-83, 526 N.E.2d 653, 122 Ill. Dec. 394 (1988) (concluding that the Policy clearly ***43** required the insured to file a sworn Proof of Loss statement and that the submission of other documents did not commence the tolling period); *Weyers v. Travelers Pers. Ins. Co.*, No. 14-cv-5070, 2015 U.S. Dist. LEXIS 164639, at *8 (N.D. Ill. Dec. 8, 2015) (applying Illinois law) (holding that there is no tolling when the proof of loss is not submitted in the form required by the Policy).

Tower Crossing still clings to *McDonald v. Am. Family Mut. Ins. Co.*, 251 Ill. App. 3d 354, 190 Ill. Dec. 653, 622 N.E.2d 63 (1993), which it asserts stands for "the proposition that a good faith estimate and not any particular 'form' satisfied the 'sworn proof of loss' requirements so long as a good faith estimate satisfies the purpose of the proof-of-loss requirement in the Policy." (Appellant's Brief, p. 35.) The case, however, does not make any such broad pronouncement.

Instead, as the District Court noted, unlike the Policy here, the policy in *McDonald* conditioned the Proof of Loss requirement on the insurer requesting a Proof of Loss (*i.e.*, there was a precondition to the Proof of Loss precondition), which is not contained in the Policy. *See* A-9; *McDonald*, 622 N.E.2d at 64 (emphasizing the policy provided the insured must "submit to us, within 60 days *after we request*, you signed, sworn proof of loss ...") (emphasis in original). Although Tower Crossing would discard this as "a distinction without a difference," *McDonald* itself indicates that the request element of the Proof of Loss requirement in that policy was central to its decision:

> While the Policy provided for a possibility of a proof of loss if requested, it was not requested before the claim was denied, and therefore we find that the limitation period could be tolled by the plaintiffs' submission of a good faith proof of loss.

***44** *Id.* at 65.

In other words, because the policy conditioned the Proof of Loss requirement on a request from the insurer, the court concluded that it would accept "a good faith submission of Proof of Loss" to toll the limitations period. *Id.* Again, the Policy at issue here does not contain such a request requirement, and thus the District Court correctly held that Tower Crossing needed to but did not provide a proof of loss in the "form required by Policy" to toll the limitations period. *See Lewandowski v. State Farm & Cas. Co.*, 2019 Ill. Cir. LEXIS 28001 (declining to follow *McDonald* based on lack of insurer request component in Policy's Proof of Loss requirement).

Despite this meaningful difference between the Policy and the policy in *McDonald*, Tower Crossing still inexplicably protests that Affiliated FM "*never* requested a proof of loss." (Appellant's Brief, p. 35.) Even if the Policy did contain such a requirement - it does not - *McDonald* is still at odds with other Illinois decisions on the subject.

Additionally, whereas *McDonald* transposed an issue of whether the insurer could enforce the Proof of Loss requirement as a precondition to coverage (*i.e.*, whether the Proof of Loss precondition to coverage ever arose) onto the issue of whether the limitations period was effectively tolled under Section 143.1 (*i.e.*, whether the insured's submission was in the "form" required by the policy), other Illinois courts have consistently consider these questions separately. *See*, *e.g.*, *Trinity Bible Baptist Church v. Fed. Kemper Ins. Co.*, 219 Ill. App. 3d 156, 160, 161 Ill. Dec. 729, 731, 578 N.E.2d 1375, 1377 (1991) ("We conclude that the trial court erred in ***45** holding that because no proof of loss was requested, no tolling of the period of limitations occurred."). [12]

In other words, irrespective of whether there are any issues that may prevent an insurer from enforcing a Proof of Loss requirement as a precondition to coverage (*i.e.*, whether the condition arose, or whether the insurer waived the condition), Illinois courts nonetheless require an insured to submit a Proof of Loss in the form required by the Policy in order to trigger the tolling period afforded under Section 143.1.

Given that Tower Crossing secretly switched signature pages and then, throughout the litigation, fought to conceal this fact and contended (even in filings before the District Court) that the signature page on the $4.3 Million Proof of Loss was not the same signature page as the one from the $2.9 Million Proof of Loss, it cannot now seek any refuge in *McDonald*. In view of this conduct, there can be no valid claim that the information submitted to Affiliated FM was done so in "good faith" under those circumstances.

***46** Tower Crossing further complains that its repurposing of the $2.9 Million Proof of Loss notarization was "not good enough for the District Court, who seemingly required Tower Crossing to either submit an inaccurate proof of loss, or have Mr. Freedman call back the notary and repeat the notarization process for the final Proof of Loss." (Appellant's Brief, p. 37.) Tower Crossing concludes that it has "demonstrated [that] a repeat notarization would have accomplished nothing required by the Policy." (*Id.*) Incorrect - it would have accomplished the Policy's "signed and sworn" requirement and thereby effectively tolled the limitations period under the Policy and Section 143.1.

Accordingly, because Section 143.1 and Illinois courts required Tower Crossing to strictly comply with the form requirements contained in the Policy, and it is undisputed that Tower Crossing did not, the Policy's two-year limitations period was not tolled and this lawsuit was thus untimely.

F. Courts Condemn The Conduct Of Switching Signature Pages To Make An Unsigned Document Falsely Appear To Be Signed

Courts have condemned the action of switching signature pages from one legal document to another legal document. Tower Crossing appears to miss the fundamental point, namely, that it is improper to switch signature pages from one legal document to another in order to pass off the reattached signature pages as valid signatures to the new document. In *Rivera v. Allstate Ins. Co.*, the Court made clear that the effect of re-using a signature facsimile rendered the document a nullity and ***47** that such a maneuver does not magically make the new document signed or sworn. 140 F. Supp. 3d 722 (N.D. Ill. 2015). [13]

As the court in *Rivera* noted, the consequence of the plaintiffs' signature pages in their declarations being "recycled" from their earlier interrogatory responses was that the declarations themselves were unsigned, not evidence, and therefore should be disregarded. *Id.* at 729-730. Similarly, here, the signature page of the $4.3 Million Proof of Loss was undisputedly "recycled" and taken from the $2.9 Million Proof of Loss and, as a necessary result, the $4.3 Million Proof of Loss is, as a matter of law, deemed unsigned, unsworn, undated, unnotarized, and a nullity, masquerading as a signed and sworn Proof of Loss. [14]

Tower Crossing misses the most basic point - you ***48** cannot take a signature page from one legal document and stick it to a different document.

G. Tower Crossing's Argument Makes A Mockery Of Notarizations And Undermines The "Integrity" Of Legal Documents And The Legal System

Tower Crossing mocks the notary laws and requirements that legal documents actually be signed and sworn, and would have this Court bless the disturbing and costly conduct of switching of signature pages and notary certifications. Tower Crossing's conduct undermines the "integrity" of the legal system. Courts around the country have condemned the very conduct Tower Crossing advocates here. *See In re Application for Discipline of Danna*, 403 N.W.2d 239, 241 (Minn. 1987) ("The fact that no overt harm was done to respondent's client by the false notarizations does not mean that no harm was done. Harm was done to the integrity of the legal system."); *People v. Barringer*, 61 P. 3d 495, 503 (Colo. 2001) (cautioning that "[t]he misuse of a notary undermines the integrity of the legal system").

In *Luscier v. Risinger Bros. Transfer, Inc*., the court noted that the lawyer's actions "undermined the integrity of a federal court proceeding" and explained that:

> "[t]he administration of an oath by a notary public and the notary's attestation to the same is not merely a quaint custom mindlessly carried over from ancient precedents. A notary public is a public officer appointed and commissioned by the...Secretary of State."

No. 13-CV-8553 PKC, 2015 WL 5638063, at *10, 2015 U.S. Dist. LEXIS 129640 at *27 (S.D.N.Y. Sept. 17, 2015).

***49** It can hardly be disputed that "what [Notary Publics] do is critical to the integrity of the legal and commercial activity in this nation." Milton G. Valera, *New Technology And A Global Economy That American Notaries Better Prepare For the Future*, 32 J. MARSHALL L. REV. 935, 964 (1999). In *Tripp v. Scholz*, this Court in recognized in the context of the electoral process that "the notarization requirement was supported by the 'legitimate need' to protect the integrity..." 872 F.3d 857, 869 (7th Cir. 2017). [15]

The Illinois Notary Public Act also expressly provides that a Notary Public "shall not change anything in a written instrument after it has been signed by anyone." 5 ILCS 312/6-104(g). This provision directly addresses the impropriety of transferring a notary certification page to a different document, as such an act would constitute an unauthorized alteration of the original document.

H. Alternatively, the District Court's Order Should Be Affirmed Because Of Tower Crossing's Improper Conduct

While Affiliated FM should prevail on this Appeal on the basis that the $4.3 Million Proof of Loss was not signed and "sworn" as required by the Policy and thus did not effectuate any tolling, the Appeal should be denied for an equally compelling reason. Here, Tower Crossing improperly fabricated and transplanted a notary certification which cannot and did not happen by accident but rather it demonstrates ***50** an effort to create a false appearance. It created a false appearance that the amounts in the $4.3 Million Proof of Loss had been sworn to under oath, that the oath had been administered, and the Notary Public had stamped that document ----when none of that had been so.

Tower Crossing's conduct (and it's Public Adjuster, Ron Cooper's) is so egregious that its unavailing arguments and the excuses that it now proffers (only having been exposed) should not be tolerated much less rewarded. Illinois Courts recognize that intent

to defraud may be inferred from such circumstances. *See*, *e.g*, *Szajna v. General Motors Corp*., 115 Ill. 2d 294 (1986) (the court stated that intent to deceive can be inferred when a person makes a statement knowing it to be false, particularly when the statement is made to induce action by the recipient; *Passero v. Allstate Ins. Co.*, 196 Ill. App. 3d 602 (1st Dist. 1990)(the court addressed the issue of material misrepresentations in insurance claims and emphasized that knowingly false statements made with the intent to deceive the insurer constitute a breach of policy conditions.); *Barth v. State Farm Fire & Cas. Co*., 228 Ill. 2d 163 (2008)(the Illinois Supreme Court noted that the insured's personal reasons for making false statements were irrelevant, as the insured's willful misrepresentation was sufficient to establish fraudulent intent).

VIII. *CONCLUSION*

For the foregoing reasons, the District Court's grant of summary judgment should be affirmed. The District Court correctly applied Illinois law in holding that Tower Crossing's proof of loss was not "sworn" as required by the Policy and therefore ***51** did not toll the statute of limitations under Section 143.1 of the Illinois Insurance Code. Tower Crossing's lawsuit, filed after the expiration of the limitations period, is thus time-barred. This Court should affirm.

Footnotes

1 As addressed below, such a submission would not trigger statutory tolling under 215 ILCS 5/143.1 or otherwise fulfill the insured's obligations under the Proof of Lossicy. *Koclanakis v. Merrimack Mut. Fire Ins. Co*., 899 F.2d 673 (7th Cir. 1990); *Great Lakes Reinsurance UK v. 1600 Western Venture*, LLC, 261 F. Supp. 3d 860 (N.D. Ill. 2017).

2 To illustrate, once a will leaving an heir $2.9 million has been signed and notarized, not even the Testator can remove their own signature and attach it to another will leaving the heir $4.3 million. Doing so does not make the fabricated will signed, sworn, notarized or valid.

3 Although Illinois law resolves ambiguities in an insurance policy in favor of insureds, "the mere absence of a definition does not necessarily render a policy term ambiguous, nor is any ambiguity created simply because the parties disagree about the meaning of the policy language." *Milwaukee Guardian Ins., Inc. v. Taraska*, 236 Ill. App. 3d 973, 974, 176 Ill. Dec. 763, 765, 602 N.E.2d 70, 72 (1992). *Hobbs v. Hartford Ins. Co.*, 214 Ill. 2d 11, 17, 291 Ill. Dec. 269, 272, 823 N.E.2d 561, 564 (2005) ("Although policy terms that limit an insurer's liability will be liberally construed in favor of coverage, this rule of construction only comes into play when the policy is ambiguous.").

4 *See, e.g., Uncle Tom's, Inc. v. Lynn Plaza, LLC*, 2021 IL App (1st) 200205, ¶ 61, 458 Ill. Dec. 474, 486, 196 N.E.3d 1034, 1046 (*citing Owens v. McDermott, Will & Emery*, 316 Ill. App. 3d 340, 344, 736 N.E.2d 145, 249 Ill. Dec. 303 (2000)) ("Terms used in a contract are to be given their ordinary and natural meaning, considered in the context of the lease as a whole."); *Sproull v. State Farm Fire & Cas. Co.*, 2021 IL 126446, ¶ 16, 451 Ill. Dec. 616, 621, 184 N.E.3d 203, 208 ("Based on case law and dictionary definitions, the appellate court determined that the plain and *ordinary meaning of depreciation in an insurance context* is a reduction in value of a property because of aging and wear and tear to the physical structure of that property.") (emphasis added; internal quotation omitted).

5 It bears noting that the dictionary sources that Tower Crossing advocates include other definitions that more aptly reflect the common understand of sworn in the legal context and thus support the District Court's conclusion. SWORN, Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/sworn ("swear; formally or officially stated to be true"); SWEAR, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/swear ("to ... promise under oath").

6 Courts in other jurisdictions have similarly held that "sworn" in the insurance claims context means notarized. *Woodland Villas Condos. v. Wright Nat'l Flood Ins. Co.*, No. 24-30722, 2025 U.S. App. LEXIS 10565, at *3 (5th Cir. May 1, 2025) ("To be sworn, a proof of loss must be notarized or declare that the insured guarantees the truth of his submissions under penalty of perjury."); *Siedzikowski v. Criswell*, No. 22-3369, 2023 U.S. Dist. LEXIS 74062, at *10 (E.D. Pa. Apr. 28, 2023) ("While the term 'sworn' is not defined in the [insurance policy] it has been **routinely interpreted as requiring notarization** or something beyond a signature.") (Emphasis added); *New York Property Ins. Underwriting Ass'n v. Primary Realty, Inc.*, 166 A.D.2d 376 (1990) (the court held that an unsworn Proof of Loss did not satisfy the policy's requirement for sworn Proofs of Loss).

7 Tower Crossing also criticizes the District Court's consideration of *Ornoff* on the basis that it has not been cited by other courts. It bears pointing out, however, that Tower Crossing does not identify *any* contrary decisions - published or unpublished - in which a court applying Illinois law has held that a similar sworn proof of loss requirement was ambiguous as to whether the proof of loss needed to be notarized or otherwise sworn under oath. Indeed, the dearth of case law on this question indicates the novelty of Tower Crossing's argument.

8 Despite *Ornoff*'s consideration of similar facts and legal issues and concession that courts may find unpublished opinions persuasive, Tower Crossing also summarily declares that it "not persuasive" and that "its reasoning should carry no weight" without engaging at all with the Illinois Appellate Court's reasoning in that case. (*See* Appellant's Brief p. 30.) Tower Crossing does nothing to explain why *Ornoff* is not persuasive.

9 For example, Mr. Cooper, the very creator of the two Proofs of Loss and the one who actually submitted the $4.3 Million Proof of Loss to Affiliated FM was asked at his deposition to compare the signature page and the notary certification pages of the two documents and, despite him being well aware they were the same signature and notary pages on both the Proofs of Loss, testified he did not know if they looked the same. (*See* ECF No. 137-8, 151:6-14.) Mr. Freedman, the President of Tower Crossing, himself an attorney and a Notary Public and the signatory to the Proof of Loss, was asked if he ever signed the $4.3 Million Proof of Loss and he testified that "that is my signature on the signature page, page 2." (*Id*. at 82:22-83:16.)

10 Under Tower Crossing's flawed logic, if someone took Mr. Freedman's signature and notary certification page from the $2.9 Million Proof of Loss and attached it the Magna Carta, it could just as easily assert that Mr. Freedman's signature "appears" on the Magna Carta. Most fundamentally, this would not mean that the Magna Carta was signed by Mr. Freedman or, more critically, that it was notarized.

11 Tower Crossing makes substantially this same argument in two separate sections of its brief. First, it argues that strict compliance with the "sworn" proof of loss requirement was not needed to trigger Section 143.1 tolling. (*See* Appellant's Brief p. 35-37.) Later, it argues that Illinois's and other jurisdiction's substantial compliance doctrine applies to excuse its failure to satisfy the "sworn" proof of loss requirement. *See id*. at 39-46. As explained further below, because the Illinois legislature and Illinois courts specifically require strict compliance with proof of loss form requirements in order to trigger Section 143.1 tolling, both versions of Tower Crossing's compliance argument fail.

12 *Hae Sun Kang*, No. 24 CV 3391, 2025 U.S. Dist. LEXIS 63999, at *10-11 (applying Illinois law) ("waiving the proof-of-loss requirement does not mean the suit limitations period is also waived"); *LaMonica Family Ltd. P'ship, LLC*, No. 3:23-cv-50258, 2024 U.S. Dist. LEXIS 59396, at *6 (applying Illinois law) (holding arguments that insurer waived Proof of Loss requirement as a precondition to coverage did not operate to also waive the required form of the proof of loss or the requirement of such form to toll the limitations period); *Galloway v. W. Bend Ins. Co.*, No. 3:23-cv-50217, 2024 U.S. Dist. LEXIS 66407, at *4 (N.D. Ill. Apr. 11, 2024) ("the lack of a request doesn't change either the suit limitations provision or the proof-of-loss requirement for tolling the time limit").

13 Other courts too have condemned the conduct of switching signature pages and notary pages and have sanctioned and reprimanded attorneys who do so and have also rendered such altered documents a nullity. *See, e.g., In re Conduct of Hostetter*, 348 Or. 574, 602-4, 238 P.3d 13, 29-30 (2010) (affirming trial panel's conclusion that attorney's attachment

of notarized signature page from an earlier deed to a later deed that was substantively different from the first constituted fraudulent preparation of documents in attorney disciplinary case); *Fleigel v. Blonder*, 121 Misc. 2d 502, 503-04, 468 N.Y. S 2d 95, 95-96 (Sup. Ct. 1983) (an affidavit made out of the presence of a notary and altered was legally insufficient); *Grissom v. Stange*, No. 18-cv-960-jdp, 2019 WL 1877300 (W.D. Wis. Apr. 26, 2019) (dismissing case where plaintiff copied a notary certification from a filing in another case, fraudulently altered it, and attached it to a motion.); *Mahoning Cnty. Bar Ass 'n v. Mac Ala*, 175 Ohio St. 3d 416, 424-428, 244 N.E.3d 15, 23-26 (Ohio 2024) (A public reprimand and sanction for an attorney's fraudulent signing, alteration and /or notarization of documents that were filed with a court.

14 *See also Flava Works Inc. v. Moment*, where the Court noted that switching signature pages between different documents was "the most egregious fraud on the Court that this Court has encountered in its nearly 33 years on the bench" and that the offending party's complaint should be dismissed with prejudice as a sanction for this fraud on the court. No. 11 C 6306, 2013 U.S. Dist. LEXIS 54520, *6, 2013 WL 1629428, at *2-3 (N.D. Ill. Apr. 16, 2013) (citations omitted).

15 Similarly, in *Klem v. Was. Mut. Bank*, the Supreme Court of Washington rejected a trustees' argument that the falsely notarized documents did not cause harm, noting that "[t]he trustee is wrong; a false notarization is a crime and undermines the integrity of our institutions upon which all must rely on the faithful fulfillment of the notary's oath." 176 Wn.2d 771, 795 (Wash. 2013).

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