2026 WL 705724 (C.A.7) (Appellate Brief)
United States Court of Appeals, Seventh Circuit.

TOWER CROSSING CONDOMINIUM ASSOCIATION, Plaintiff-Appellant,
v.
AFFILIATED FM INSURANCE COMPANY, Defendant-Appellee.

No. 25-3167.
March 2, 2026.

On Appeal from an Order Entered in the United States District Court for the Northern District of Illinois, Case No. 1:21-CV-06228, Honorable Lashonda A. Hunt, Judge Presiding

Brief and Appendix of Plaintiff-Appellant

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v** ***TABLE OF CONTENTS

26.1 DISCLOSURE STATEMENTS i
TABLE OF AUTHORITIES vii
JURISDICTIONAL STATEMENT 1
REQUEST FOR ORAL ARGUMENT 1
STATEMENT OF ISSUES PRESENTED FOR REVIEW 1
STATEMENT OF THE CASE 2
I. TOWER CROSSING'S PROPERTY IS DAMAGED BY WIND AND HAIL - A LOSS COVERED BY THE AFM POLICY 2
II. THE POLICY'S PROOF-OF-LOSS REQUIREMENT AND TWO-YEAR LIMITATIONS PERIOD 2
III. AFM'S INDEPENDENT INVESTIGATION OF TOWER CROSSING'S CLAIM 4
IV. TOWER CROSSING SUBMITS THE PROOF OF LOSS 5
V. AFM REJECTS AND RETURNS TOWER CROSSING'S PROOF OF LOSS AND CONTINUES TO KEEP THE CLAIM OPEN. ONLY AFTER TOWER CROSSING FILES SUIT DOES AFM PAY 8
VI. PROCEDURAL HISTORY 11
A. AFM Seeks Dismissal on Limitations Grounds 11
B. Tower Crossing and AFM Seek Summary Judgment on the Two-Year Limitations Issue 12
C. The District Court's Decision 13
SUMMARY OF ARGUMENT 18
ARGUMENT 20
I. STANDARD OF REVIEW 20
II. ILLINOIS LAW REQUIRES COURTS TO LIBERALLY CONSTRUE INSURANCE POLICIES, STRICTLY CONSTRUE SHORTENED LIMITATIONS PERIODS, AND AVOID POLICY INTERPRETATIONS THAT RESULT IN FORFEITURE OF PAID-FOR BENEFITS 21
***vi** III. TOWER CROSSING SUBMITTED A PROOF OF LOSS THAT COMPLIED WITH THE POLICY. AS SUCH, TOWER CROSSING'S LAWSUIT WAS TIMELY BECAUSE THE TWO-YEAR LIMITATIONS PERIOD WAS TOLLED PASSED THE DATE ON WHICH TOWER CROSSING FILED SUIT 23
A. The Policy does not Require a Notarized Proof of Loss 24

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B. The Term "Sworn" is Susceptible to Reasonable Alternative Meanings that do not Include Taking an Oath 25
C. A Notary *Only* Verifies a *Signature*, not the Contents of a Document 27
D. The District Court's Interpretation of "Sworn" Failed to Account for the Purpose of the Proof of Loss Requirement, the Purpose of the Illinois Tolling Statute, and the Undisputed Facts of this Case ... 31
E. To the Extent the Policy Prescribed a Particular Proof of Loss "Form," Strict Compliance with that "Form" was not Necessary 35
F. Because Tower Crossing Complied with the Proof-of-Loss Requirement, its Insurance Claim was Timely 38
IV. ALTERNATIVELY, THE DISTRICT COURT'S DECISION SHOULD BE REVERSED BECAUSE TOWER CROSSING SUBSTANTIALLY COMPLIED WITH THE PROOF-OF-LOSS REQUIREMENT IN THE POLICY 39
CONCLUSION 47

vii *TABLE OF AUTHORITIES

Cases:

Allstate Floridian Ins. Co. v. Farmer, 104 So. 3d 1242 (Fla. App. Ct. 2012) 42-43, 44
Allstate Ins. Co. v. Charity, 496 S.E.2d 430 (Va. 1998) 43
Am. Nat'l Bank & Trust Co. of Chicago v. Reserve Ins. Co., 187 N.E.2d 343 (Ill. App. Ct. 1962) 42
Anderson v. Inter-State Business Men's Acc. Ass'n of Des Moines, Iowa, 188 N.E. 844 (Ill. 1933) 41-42
Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) 20
Ankus v. Government Employees Ins. Co., 674 N.E.2d 865 (Ill. App. Ct. 1996) 3
Atlas Asset Management v. Kang, --- N.E.3d ---, 2025 WL 3012347 (Ill. App. Ct. Oct. 28, 2025) 39
Austin Bldg. Co. v. Nat'l Union Fire Ins. Co., 403 S.W.2d 499 (Tex. App. Ct. 1966) 44, 45
Bellmer v. Charter Security Life Ins. Co., 488 N.E.2d 1338 (Ill. App. Ct. 1986) 22
Brown v. Osmundson, 38 F.4th 545 (7th Cir. 2022) 20
Budelman v. American Ins. Co., 130 N.E. 513 (Ill. 1921) 21, 22
Burton v. Williams, 202 N.C. App. 81 (2010) 28
Butler v. Encyclopedia Britanica, 41 F.3d 285 (7th Cir. 1994) 16, 27, 31
Cerentano v. UMWA Health & Ret. Funds, 735 F.3d 976 (7th Cir. 2013) 20
Cheli v. Taylorsville Cmty. School Dist., 986 F.3d 1035 (7th Cir. 2020) 30
Commerce Bank, N.A. v. AMCO Ins. Co., No. 08-cv-669, 2009 WL 702220 (S.D. Ill. Mar. 17, 2009) 23
***viii** *Contact Lenses Unlimited, Inc. v. Johnson*, 531 N.E.2d 928 (Ill. App. Ct. 1988) 29
Cope Const. Co. v. Am. Home Assur. Co., 622 P.2d 395 (Wash. App. Ct. 1980) 43
Corl v. Monticello Ins. Co., No. 94 C, 50363, 1995 WL 390050 (N.D. Ill. Jan. 30, 1995) 22
Cottle v. Falcon Holdings Mgmt., LLC, 892 F. Supp. 2d 1053 (N.D. Ind. 2012) 26
Crawford v. Powers, 419 F. Supp. 723 (D.S.C. 1974) 43
Crowell v. State Farm Fire & Cas. Co., 631 N.E.2d 418 (Ill. App. Ct. 1994) 40
Dairyland County Mut. Ins. Co. v. Keys, 568 S.W.2d 457 (Tex. App. Ct. 1978) 43
Daniel v. Pawtucket Mut. Ins. Co., 506 A.2d 1032 (R.I. 1986) 43
Davis v. Allstate Ins. Co., 303 N.W.2d 596 (Wis. 1981) 43
Della Porta v. Hartford Fire Ins. Co., 118 A.D.2d 1045 (N.Y. App. Ct. 1986) 43
Dickman v. Country Mut. Ins. Co., 458 N.E2d 199 (Ill. App. Ct. 1983) 23
Dixie Warehouse v. FEMA, 547 F. Supp. 81 (M.D.N.C. 1982) 43
Downing v. Wolverine Ins. Co., 210 N.E.2d 603 (Ill. App. Ct. 1965) 22, 23
Eide v. Southern Sur. Co., 226 N.W. 555 (S.D. 1929) 43
Equitable Life Assur. Soc. v. Darriety, 157 So. 59 (Ala. 1934) 42
Farmers Ins. Exchange v. Cheekati, 196 N.E.3d 1209 (Ill. App. Ct. 2022) 26
Fishel v. Yorktowne Mut. Ins. Co., 385 A.2d 562 (Pa. Super. 1978) 43
***ix** *Forest City Ins. Co. v. Hardesty*, 55 N.E. 139 (Ill. 1899) 21
German Fire Ins. Co. of Peoria v. Grunert, 1 N.E. 113 (Ill. 1884) 41
Glidden v. Farmers Auto. Ins. Ass'n, 312 N.E.2d 247 (Ill. 1974) 32
Granite State Ins. Co. v. Degerlia, 925 F.2d 185 (7th Cir. 1991) 31, 32
Green Plains Trade Grp. LLC v. Archer Daniels Midland Co., 90 F.4th 919 (7th Cir. 2024) 30, 36, 43-44
Green v. General Acc. Ins. Co. of Am., 746 P.2d 152 (N.M. 1987) 43
State Farm Mut. Auto. Ins. Co. v. Guerrero, No. 1-15-1079, 2015 WL 9594070 (Ill. App. Ct. Dec. 31. 2015) 32
Hahn v. McElroy, 239 N.E.3d 792 (Ill. App. Ct. 2023) 25
Hameed v. Pundt, 964 F. Supp. 836 (S.D.N.Y. 1997) 26

Hartford Fire Ins. Co. v. Himelfarb, 736 A.2d 295 (Md. 1999) 43
Hartford Fire Ins. Co. v. Smith, 3 Colo. 422 (1877) 42
Hartford Roman Catholic Diocesan, Corp. v. Interstate Fire Ins. Co., 199 F. Supp. 3d 559 (D. Conn. 2016) 42
Hartshorn v. State Farm Ins. Co., 838 N.E.2d 211 (Ill. App. Ct. 2007) 18, 40
Herrero v. Cumis Mid- Am., 930 S.W.2d 18 (W. Dist. Mo. Ct. App. 1996) 28
Hines v. Allstate Ins. Co, 698 N.E.2d 1120 (Ill. App. Ct. 1998) 38
Hobbs v. Hartford Ins. Co. of the Midwest, 214 Ill. 2d 11 (2005) 21
Hoekstra v. Farm Bureau Mut. Ins. Co., 382 N.W.2d 100 (Iowa 1986) 43
***x** *Home Fire Ins. Co. v. Hammang*, 62 N.W. 883 (Neb. 1895) 43
Hornback v. Hornback, 667 S.W.2d 399 (Ky. App. Ct. 1984) 43
Horton v. Allstate Ins. Co., 467 N.E.2d 284 (Ill. App. Ct. 1984) 40
Howe v. Nat'l Life Ins. Co., 72 N.E.2d 425 (Mass. 1947) 43
Illinois Ins. Guaranty Fund v. Nwidor, 105 N.E.3d 1035 (Ill. App. Ct. 2018) 24
In re Estate of Alfaro, 703 N.E.2d 620 (Ill. App. Ct. 1998) 28, 31
In re Richmond, 580 B.R. 617 (E.D.N.Y. Bankr. 2017) 28
In re Zimmer, 884 F.3d 746 (7th Cir. 2018) 44
Indianapolis Airport Auth. v. Travelers Prop. Cas. Co. of Am., 849 F.3d 355 (7th Cir. 2017) 42, 43
Jentz v. Nat'l Cas. Co., 204 N.W. 344 (N.D. 1925) 43
John Hancock Mut. Life Ins. Co. v. Highley, 445 P.2d 241 (Okla. 1968) 43
Johnson v. Randle, No. 10-cv-135, 2011 U.S. Dist. LEXIS 149172 (S.D. Ill. Dec. 29. 2011) 26
Lane v. Structural Iron Workers Local No. 1 Trust Fund, 75 F.4th 445 (7th Cir. 2023) 20
Lentin v. Continental Assurance Co., 105 N.E.2d 735 (Ill. 1952) 22
Manufacturers' & Merchants' Ins. Co. v. Zeitinger, 48 N.E. 179 (Ill. 1897) 41
Mass. Protective Ass'n v Cranford, 102 So. 171 (Miss. 1924) 43
McCormick v. Sentinel Life Ins. Co., 153 Cal. App. 3d 1030 (1984) 42, 46
***xi** *McDonald v. Am. Family Mut. Ins. Co.*, 622 N.E.2d 63 (Ill. App. Ct. 1993) ..... *passim*
Metro. Prop. & Cas. Ins. Co. v. Stranczek, 968 N.E.2d 717 (Ill. App. Ct. 2012) 21
Morris v. Scottsdale Ins. Co., No. 3-11-0587, 2012 WL 7006567 (Ill. App. Ct. 2012) 15, 30
Myers & Chapman, Inc. v. Thomas G. Evans, Inc., 323 N.C. 559 (1988) 28
Nat'l Cas. Co. v. White Mts. Reinsurance Co. of Am., 735 F.3d 549 (7th Cir. 2013) 21
Nat'l Union Fire Ins. Co. of Pitt. v. F.D.I.C., 957 P.2d 357 (Kan. 1998) 43
O'Regan v. Arb. Forums, Inc., 246 F.3d 975 (7th Cir. 2001) 20
Oakley Transp. v. Zurich Ins. Co., 648 N.E.2d 1099 (Ill. App. Ct. 1995) 32
Ornoff v. Westfield Nat. Ins. Co., No 1-12-2728, 2013 WL 3972162 (Ill. App. Ct. Aug. 1, 2013) 15, 29, 30, 31
Pannell v. Missouri Ins. Guaranty, 595 S.W.2d 339 (Mo. Ct. App. 1980) 43
Patel v. Allstate Ins. Co., 570 N.E.2d 357 (Ill. App. Ct. 1991) 40
Pekin Ins. Co. v. Equilon Enterprises LLC, 980 N.E.2d 1139 (Ill. App. Ct. 2012) 22
Penn. Lumbermens Mut. Fire Ins. Co., 223 S.W.2d 203 (Tenn. App. Ct. 1949) 43
People v. Carnalla-Ruiz, No. 1-20-1183, 2023 WL 2445587 (Ill. App. Ct. Mar. 10, 2023) 16
Peoria Marine & Fire Ins. Co. v. Whitehill, 25 Ill. 466 (1861) 41
Peters v. Lincoln Elec. Co., 285 F.3d 456 (6th Cir. 2002) 26
Petrice v. Federal Kemper Ins. Co., 260 S.E.2d 276 (W. Va. 1979) 43
***xii** *Philadelphia Reserve Supply Co. v. Zarrelli*, No. 90-5680, 1993 U.S. Dist. LEXIS 6299 (E.D. Pa. May 17, 1993) .. 28
Pick v Associated Indem. Corp., 547 N.E.2d 555 (Ill. App. Ct. 1989) 3, 18, 40
Piro v. Pekin Ins. Co., 514 N.E.2d 1231 (Ill. App. Ct. 1987) 3, 18, 22, 40
Pisciotta v Old Nat'l Bancorp, 499 F.3d 629 (7th Cir. 2007) 44
Porter v. USAA Cas. Ins. Co., No. 19-cv-3912, 2022 WL 3290715 (N.D. Ill. Aug. 11, 2022) 40
Prate Roofings & Installations, LLC v. Liberty Mut. Ins. Co., 219 N.E.3d 1198 (Ill. App. Ct. 2022) 26
Priddy v. Atlantic Specialty Ins. Co., 468 F. Supp. 3d 1030 (N.D. Ind. 2020) 44
Romano v. Morrisroe, 759 N.E.2d 611 (Ill. App. Ct. 2001) 22
Ryerson v. Ryerson, 151 N.Y.3d 349 (Sup. Ct. 2021) 28
Slyce Coal Fired Pizza Co. v. Metropolitan Square Plaza, LLC, 258 N.E.3d 199 (Ill. App. Ct. 2025) 39
Sproull v. State Farm Fire & Cas. Co., 183 N.E.3d 203 (Ill. 2021) 21, 26
Staggers v. U.S. Fidelity & Guaranty Co., 496 P.2d 1161 (Mont. 1972) 43
State ex rel. Koste v. Maryland Cas. Co., 335 S.W.2d 510 (E.D. Mo. Ct. App. 1960) 28
State Farm Mut. Auto Ins. Co. v. Leon, 134 N.E.3d 946 (Ill. App. Ct. 2019) 34
State Farm Mut. Auto. Ins. Co. v. Arroyo, 252 N.E.3d 285 (Ill. App. Ct. 2023) 24
State Sec. Ins. Co. v. Burgos, 583 N.E2d 547, 554 (Ill. 1991) 21, 25

Sterling State Bank v. Virginia Sur. Co., 173 N.W.2d 342 (Minn. 1969) 43
***xiii** *Stonewall Ins. Co. v. Moorby*, 298 A.2d 826 (Vt. 1972) 43
Sutton v. Fire Ins. Exch., 509 P.2d 418 (Or. 1973) 43, 44, 45
Tell v. Cambridge Mut. Fire Ins. Co., 375 A.2d 315 (N.J. Super. Ct. 1977) 43
Trinity Bible Baptist Church v. Fed. Kemper Ins. Co., 578 N.E.2d 1375 (Ill. App. Ct. 1991) 38
Truck Ins. Exch. v. Hale, 386 P.2d 846 (Ariz. 1963) 42, 44, 45
United States v. Papia, 910 F.2d 1357 (7th Cir. 1990) 30
United States v. Wellman, 830 F.2d 1453 (7th Cir. 1987) 26
Vemulapalli v. Lake State Mut. Ins. Co., No. 194284, 1997 WL 33334386 (Mich. Ct. App. Nov. 14, 1997) 43
Walker v. Am. Bankers Ins. Group, 836 P.2d 59 (Nev. 1992) 43, 44, 45
Weininger v. Metropolitan Ins. Co., 195 N.E. 420 (Ill. 1935) 3, 42
Western World Ins. Co. v. Johnson, No. 05-cv-880, 2007 WL 1100777 40
Westfield v. Vandenberg, 796 F.3d 773 (7th Cir. 2015) 21, 32
Windridge of Naperville Condo. Ass'n v. Phila. Indem. Ins. Co., 932 F.3d 1035 (7th Cir. 2019) 31
Woltman v. Am. States Ins. Co., No. 05-2198, 2006 WL 1305236 (C.D. Ill. May 9, 2006) 40, 41
Wright v. Chicago Title Insurance Co., 554 N.E.2d 511 (Ill. App. Ct. 1990) 24
Zions First Nat'l Bank v. Nat'l Am. Title Ins. Co., 749 P.2d 651 (Utah 1988) 43, 44

***xiv Statutes & Other Authorities:**

3 NEW APPLEMAN ON INSURANCE § 20.01[3] 43
5 ILCS 312-6-102(a) 16
5 ILCS 312-6-104(k) 29
12 NEW APPLEMAN ON INSURANCE § 149.03[1] 43
13 COUCH ON INSURANCE § 186:33 44
28 U.S.C. § 1291 1
28 U.S.C. § 1332 1
28 U.S.C. § 1746 26
735 ILCS 5/1-109 26
735 ILCS 5/13-206 ..... 4, 23
215 ILCS 5/143.1 ..... 14, 34, 38
Black's Law Dictionary 15
Fed. R. App. P. 4(a)(1)(A) 1
Fed. R. App. P. 34(a) 1
Fed. R. Civ. P. 56(a) 20
ILCS S. Ct. Rule 23(e)(1) 30
Merriam-Webster Dictionary 25
Rule 32.1 30
Seventh Circuit Rule 34(f) 1

1** ***JURISDICTIONAL STATEMENT

The District Court had subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeded $75,000, exclusive of interest and costs, and the parties were citizens of different states. Specifically, Appellant is a not-for-profit corporation incorporated under the laws of Illinois with its principal place of business in Illinois. Appellee is incorporated under the laws of Rhode Island with its principal place of business in Rhode Island.

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 because Appellant appeals from a final judgment entered by the District Court on November 3, 2025. This appeal is timely pursuant to Federal Rule of Appellate Procedure 4(a)(1)(A) because Appellant's Notice of Appeal was filed on December 1, 2025.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the District Court err in granting summary judgment for Appellee Affiliated FM Insurance Company ("AFM") when it held that the proof of loss ("the Proof of Loss") submitted by Appellant Tower Crossing Condominium Association Inc. ("Tower Crossing") was not "sworn" when the undisputed facts demonstrated ***2** Tower Crossing's Board President - who was

an attorney - signed and swore to the Proof of Loss before it became necessary to update certain calculations and later approved using his sworn signature for those updated calculations?

2. Assuming the Proof of Loss submitted to AFM was not properly "sworn," did the District Court err in granting summary judgment for AFM when it failed to address Tower Crossing's alternative argument that it substantially complied with the policy's Proof-of-Loss requirement?

STATEMENT OF THE CASE

I. TOWER CROSSING'S PROPERTY IS DAMAGED BY WIND AND HAIL - A LOSS COVERED BY THE AFM POLICY

Tower Crossing manages a 27-building, high-end condominium complex located at 1992 Patriot Boulevard in Glenview, Illinois (the "Property"). SA-8, SA-9, SA-71. [1] AFM issued Tower Crossing a replacement cost, all-risk policy that was in effect May 1, 2018 to May 1, 2020 (the "Policy"). SA-125 - SA-197. On July 2, 2019, the Property's roofs were damaged by a wind and hailstorm (the "Storm"). SA-120. The Policy covered damage to the Property caused by the Storm. SA131, SA-186.

II. THE POLICY'S PROOF-OF-LOSS REQUIREMENT AND TWO-YEAR LIMITATIONS PERIOD

The Policy provided that, if a loss-event occurred, Tower Crossing was required to, among other things, submit a "signed and sworn proof of loss" which "must state the knowledge and belief" of Tower Crossing about five separate items of information. SA-177. Specifically, the Proof of Loss had to state:

***3** 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, whether valid or not, 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 this Policy.

e) By whom and for what purpose any location insured by this Policy was occupied on the date of loss, and whether or not it then stood on leased ground.

SA-177. The Policy required Tower Crossing to submit the Proof of Loss to AFM within "90 days after the loss." SA-177. Because the loss occurred on July 2, 2019, the Proof of Loss was due on or about October 1, 2019 unless that deadline was extended by AFM. SA-177.

The Proof-of-Loss requirement is among several other "REQUIREMENTS IN CASE OF LOSS," including "immediate" written notification of the loss, producing documents requested by AFM, and submitting to an examination under oath if requested by AFM. SA-177. Under Illinois law, these Policy requirements are conditions precedent to coverage. *See Weininger v. Metropolitan Ins. Co.*, 195 N.E. 420, 424 (Ill. 1935) (proof of loss); *Ankus v. Government Employees Ins. Co.*, 674 N.E.2d 865, 870 (Ill. App. Ct. 1996) (notice of loss); *Pick v Associated Indem. Corp.*, 547 N.E.2d 555, 560 (Ill. App. Ct. 1989) (documents); *Piro v. Pekin Ins. Co.*, 514 N.E.2d 1231, 1233-34 (Ill. App. Ct. 1987) (examination under oath).

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***4** The Policy also dramatically shortens Illinois's breach-of-contract limitations period from ten years (*see* 735 ILCS 5/13-206 (applicable to written contracts)) to two. SA-196. But the Policy permitted an extension of the two-year period that is inextricably linked to the Proof-of-Loss requirement:

LEGAL ACTION AGAINST THE COMPANY - 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 (emphasis added).

III. AFM'S INDEPENDENT INVESTIGATION OF TOWER CROSSING'S CLAIM

On August 21, 2019, Tower Crossing submitted a claim to AFM for "[d]amage to roof[s]" caused by the Storm. SA-204. AFM retained two consultants to investigate Tower Crossing's claim: Roof Consultants Ltd. ("RCL"), engineers who produced a roof investigation report dated September 8, 2020; and Newman Construction Consultants ("Newman"), construction contractors who quantified roof repair costs in a report dated September 28, 2020. SA-269 - SA-318. Before those reports were ever issued, AFM knew from the beginning of the adjustment process that Tower Crossing's claim could be in the range of several million dollars. As early as March 2020, AFM understood that the estimated cost of repairs to Tower Crossing's roofs was between $4.5 and $5.2 million. SA-325, SA-328. And, according to an April 2020 ***5** internal AFM "loss memo," Tower Crossing was seeking "property building damages" of $4.75 million. SA-338.

Brian Reid ("Mr. Reid") was the first adjuster assigned to Tower Crossing's claim, and on October 23, 2020, he sent the RCL and Newman reports to Tower Crossing. Docket Entry ("D.E.") 133, ¶ 8. In that correspondence, Mr. Reid accepted coverage and offered Tower Crossing a payment of $203,982.18 to resolve the claim - an amount taken directly from the Newman report. SA-352. In his deposition, Mr. Reid admitted that this offer was to "start[] a dialogue" with Tower Crossing, and the claim therefore remained open. SA-351. AFM claimed it wanted to "continue to investigate the loss." SA-214. At the time that Mr. Reid made this offer, Tower Crossing had not submitted a proof of loss to AFM nor had AFM asked for one.

Sometime before March 2021, Mr. Reid was replaced by another adjuster, Sean Taylor ("Mr. Taylor"). SA-352. On March 17, 2021, Tower Crossing responded to AFM's offer and informed the carrier that (1) it disagreed with the repair estimate of $203,982.18; (2) it was seeking an independent review of its claims; and (3) it requested an extension of time of the suit limitations period. SA-19. On July 1, 2021, Mr. Taylor agreed to extend the time to file suit against AFM to October 2, 2021. SA-320. As of March 17, 2021, Tower Crossing had not submitted a proof of loss and neither AFM adjuster had asked for one.

IV. TOWER CROSSING SUBMITS THE PROOF OF LOSS

On October 1, 2021, Tower Crossing, through its public adjuster Ron Cooper ("Mr. Cooper"), submitted the Proof of Loss to AFM. SA-220, SA-226, SA-324. As the

***6** chart below shows, Tower Crossing's Proof of Loss contained the information the Policy required.

Policy Requirement	Tower Crossing's Proof of Loss
Signed	SA-221
Sworn	SA-221

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The time and origin of the loss	SA-220 (§ 1)
The Insured's interest and that of all others in the property	SA-220 (§ 3)
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, whether valid or not, covering any of the property	SA-220 (§§ 5, 6, 7, 9)
Any changes in the title, use, occupation, location, possession or exposures of the property since the effective date of this Policy	SA-220 (§ 4)
By whom and for what purpose any location insured by this Policy was occupied on the date of loss, and whether or not it then stood on leased ground	SA-220 (§ 2)

In addition, the Proof of Loss made clear that the information provided was "to the best of [Tower Crossing's] knowledge," "based on currently available information," and was subject to "modification or supplementation based on [Tower Crossing's] ongoing investigation." SA-220. Tower Crossing also bound itself to anti-fraud statements, such as: "no attempt to deceive [AFM], as to the extent of said loss, has in any manner been made." SA-220. AFM, moreover, understood that the Proof of Loss did not "tie [Tower Crossing] to a specific amount." SA-215.

Nevertheless, Tower Crossing took great pains to provide AFM a Proof of Loss that was accurate. Specifically, Mr. Cooper prepared a draft proof of loss (the "Draft ***7** Proof of Loss") for Tower Crossing's consideration that reflected $2,954,405.44 as the replacement cost value ("RCV") of the loss. SA-239 - SA-240. On September 30, 2021, Tower Crossing's then-Board President, Kenneth Freedman ("Mr. Freedman"), an attorney by trade with no personal construction expertise, signed the Draft Proof of Loss and had his signature notarized. SA-342, ¶ 4. However, Ken Egidi ("Mr. Egidi"), another member of Tower Crossing's Board and a construction industry executive, spoke by phone with both Mr. Cooper and Mr. Freedman and expressed his concerns that the estimates in the Draft were too low because they undervalued the cost of roof work in the Chicago area. SA, 225, SA-227, SA-228, SA-242, SA-246. After that conversation, Mr. Cooper agreed to revise the estimates, which is why the Draft Proof of Loss was never submitted to AFM. SA-210 - SA-211, SA-230, SA-242.

Mr. Egidi confirmed with Mr. Cooper, Mr. Freedman, and all other Board members that the estimates in the Draft Proof of Loss would be changed: "Here is the signed the document. Ron as discussed you are revising the first page numbers based on our conversations. Please send us a final document with the revised numbers when you have that completed." SA-248. Mr. Egidi attached the Draft Proof of Loss with the estimates crossed out, knowing the numbers would be updated. SA-117, SA-229, SA-250. For his part, Mr. Freedman was aware that Mr. Cooper was revising the estimates based on Mr. Egidi's expertise as the "construction guy." SA-117, SA-121, SA-122, SA-123, SA-217, SA-232. In a separate phone conversation between Mr. Freedman and Mr. Egidi only, Mr. Freedman wanted to understand the ***8** revised estimates to which he would affix his signature. SA-117, SA-121, SA-230, SA-231, SA-232.

After that one-on-one phone call with Mr. Egidi, Mr. Freedman agreed that, instead of signing a proof of loss a second time, Mr. Cooper was authorized to use the signature page from the Draft Proof of Loss and attach it to the Proof of Loss that was going to be submitted to AFM. SA-117, SA-121, SA-230, SA-231, SA-232. Mr. Freedman explained his decision-making as follows:

I was fully aware of the contents of the [Proof of Loss] that was submitted to AFM and st[ood] behind the contents of that document.... [¶] The [Proof of Loss] that was submitted to AFM was updated to reflect revised construction costs that I understood to be more realistic than the original draft [Proof of Loss] that I signed and had notarized. My understanding at the time I signed the draft [Proof of Loss] was that neither the AFM policy nor AFM itself required or otherwise asked for a

notarized [Proof of Loss].... [¶] The draft [Proof of Loss] that I signed stated that it was 'sworn' to by me. Therefore, when I agreed to have my previously sworn signature attached to the revised [Proof of Loss], I was affirming and swearing to the contents of the [Proof of Loss] that was being submitted to AFM.... [¶] I never believed that I was required to provide a second sworn signature for the updated [Proof of Loss] because the signature page that I agreed to have attached to the [Proof of Loss] submitted to AFM already stated that I was swearing to the contents of that document.

SA-341 - SA-342. Thus, there was no dispute that the Proof of Loss had Mr. Freedman's notarized signature. SA-117. Mr. Cooper then submitted the Proof of Loss on October 1, 2021. SA-219.

V. AFM REJECTS AND RETURNS TOWER CROSSING'S PROOF OF LOSS AND CONTINUES TO KEEP THE CLAIM OPEN. ONLY AFTER TOWER CROSSING FILES SUIT DOES AFM PAY.

On October 29, 2021, AFM "formally *reject[ed]*" the Proof of Loss and returned it to Tower Crossing. SA-199 (original emphasis). AFM cited only one reason for the ***9** rejection/return: Disagreement about the "scope of damage" to the Tower Crossing Property that was caused by the Storm. SA-199. AFM never claimed that that the Proof of Loss was missing information required by the Policy or that the Proof of Loss was deficient in any way. SA-199 - SA-200. In its Proof-of-Loss-rejection letter, AFM restated the coverage determination made by Mr. Reid in October 2020 - *i.e.*, that the Storm was a "recoverable loss." SA-200. Relying on the full and independent investigation it undertook with respect to Tower Crossing's claim, AFM admitted the Property damage was "directly related" to the Storm and quantified the recoverable loss at $203,982,19 (minus deductible). SA-200. Importantly, AFM did not deny Tower Crossing's insurance claim in whole or in part. SA-200. Instead, AFM kept the claim open and invited Tower Crossing to provide additional information: "Should you find information that differs from the above or if there is additional information that has not been considered in our evaluation of this loss, please contact us promptly, and we will be happy to review any additional information provided." SA-200.

On October 30, 2021, Mr. Cooper requested by email that AFM's consultant (Newman) re-inspect the Property with him. SA-259. On November 1, 2021, Mr. Cooper also asked by email that AFM extend the time to file suit "while the parties discuss the remaining questions." SA-323. On November 3, 2021, Mr. Taylor stated that AFM would not be "providing any further extensions to the time to file suit for this claim," but that no final decision had yet been made on Tower Crossing's claim. SA-323. Rather, AFM was "happy to review any additional relevant information ***10** related to this loss you wish to provide," and promised to "continue to work with [Mr. Cooper] and [Tower Crossing] in an effort to try and conclude this matter." SA-323.

On November 9, 2021, Mr. Taylor declined Mr. Cooper's invitation to re-inspect the Property but re-confirmed that the Tower Crossing Property experienced a "recoverable loss." SA-257 - SA-259. Mr. Taylor also re-affirmed that the Proof of Loss had been "rejected and returned" and that AFM supposedly would issue payment for "the undisputed portion of [the] claim" in the amount of $193,982.19 ($203,982.19 less the $10,000 deductible). SA-259. However, AFM never issued payment at that time. It continued to keep the claim open and again invited Tower Crossing to submit information that the Association believed "differ[ed] from" the findings set forth in Mr. Taylor's November 9 email. SA-259.

With the claim still open and a Proof of Loss that it believed tolled the limitations period past the agreed-to-extension date of October 2, 2021, Tower Crossing sued AFM on November 19, 2021. SA-1. Approximately three weeks after suit was filed, AFM eventually paid Tower Crossing the amount recommended by AFM's consultants after their 2020 investigation. SA-263. By letter dated December 2, 2021, AFM sent Mr. Cooper a "final payment" for Tower Crossing's claim in the amount of $193,982.19 and a settlement statement confirming that the Storm damage was covered by the Policy. SA-263. In the District Court, AFM conceded that Tower Crossing's insurance claim remained open from October 2021 to December 2, 2021. SA-216; *see also* D.E. 137, at ¶ 47.

***11** In the end, there was no dispute that, during the lengthy adjustment process (August 2019 to December 2021), AFM conducted a full, fair, and complete investigation of Tower Crossing's claim. SA-267. AFM's own consultant confirmed this. SA-63. AFM's coverage determination - initially made on October 23, 2020, restated on October 29, 2021 and November 9,

2021, and finalized on December 2, 2021 - was made independent of the representations made in Tower Crossing's Proof of Loss. *See* pp. 4-5, 8-10, *supra*. Most importantly, Tower Crossing sued AFM *after* submitting the Proof of Loss but *before* AFM denied the claim in whole or in part. *Id.*

VI. PROCEDURAL HISTORY

A. AFM Seeks Dismissal on Limitations Grounds

Tower Crossing filed an amended complaint on February 28, 2022. SA-8. AFM moved to dismiss, arguing that Tower Crossing did not comply with the two-year limitation period in the Policy. D.E. 13. On January 27, 2023, the District Court (Hon. Robert Blakey) denied the motion. SA-20. *First*, the Court reasoned that AFM's conduct suggested it did not intend to enforce the proof-of-loss requirement because, as alleged in the amended complaint:

AFM began its own investigation, which it did not complete until October 23, 2020, more than a year after the 90-day [Proof of Loss] deadline passed. Nothing in the record suggests that AFM asked Tower Crossing for a [Proof of Loss] while it investigated or demanded other information to support the claimed losses. Instead, on October 23, 2020, AFM submitted to Tower Crossing the RCL Report and Newman Estimate setting out the proposed repairs and the cost to complete them. Then, when Tower Crossing disagreed with the proposal, AFM agreed to extend the limitation period until October 2, 2021. ***12** SA-26. *Second*, the Court noted that AFM issued payment to Tower Crossing after it filed suit. SA-26. *Third*, the Court concluded that the October 29, 2021 letter in which AFM agreed to pay Tower Crossing $203,982.19 (minus the deductible) was not a "denial." SA-26.

B. Tower Crossing and AFM Seek Summary Judgment on the Two-Year Limitations Issue

At the conclusion of discovery, [2] Tower Crossing and AFM each moved for summary judgment on, among other things, whether Tower Crossing's claim was barred by the Policy's two-year limitations period. D.E. 125, 136, 139 (Tower Crossing SJ Motion (125) and Reply (139); AFM Opposition (136)); D.E. 130, 132, 143 (AFM SJ Motion (130) and Reply (143); Tower Crossing Opposition (132)). Tower Crossing demonstrated that its breach-of-contract claim was not time-barred because it complied with the Proof of Loss term of the Policy. D.E. 125, at Point I, D.E. 139, at Point I. Specifically, Tower Crossing showed that, even though a notary public did not witness his signature a second time, Mr. Freedman nevertheless signed and swore to the Proof of Loss that was submitted to AFM because he was fully aware of the changes to the Proof of Loss, approved those changes, and consented to having his signature page attached to the final Proof of Loss. D.E. 125, at 7-8, D.E. 139, at 4. In the alternative, Tower Crossing argued that, even if the Proof of Loss did not ***13** technically comply with the "sworn" term in the Policy, there was substantial evidence that the Association "substantially complied" with the Proof of Loss requirements, which was a question of fact for the jury. D.E. 132, at 8-10.

By contrast, AFM argued that Tower Crossing's claim was time-barred because the Proof of Loss was not "sworn." D.E. 130, at 5-13; D.E. 136, at 2-9; D.E. 143, at 2-13. According to AFM, attaching Mr. Freedman's signature page on the Draft Proof of Loss to the final Proof of Loss did not satisfy the "sworn" requirement of the Policy. D.E. 130, at 5-13. AFM also took the extreme (and factually/legally meritless) position that the Proof of Loss was somehow a "forgery" under Illinois law. D.E. 130, at 14. AFM, however, never addressed Tower Crossing's showing that, even if Mr. Freedman did not technically "swear" to the Proof of Loss, Tower Crossing nevertheless substantially complied with the Proof of Loss requirement of the Policy, an issue that must be decided by the jury. D.E. 132, at 8-10.

C. The District Court's Decision

On November 3, 2025, the District Court granted AFM's summary judgment motion, holding that Tower Crossing's breach-of-contract claim was barred by the two-year limitations period prescribed by the Policy. A-1. The Court concluded that the Proof

of Loss submitted to AFM was not "sworn" because it was not notarized a second time, the two-year period was not tolled beginning on October 1, 2021 (when Tower Crossing submitted the Proof of Loss to AFM), and therefore the limitations clock expired on October 2, 2021 - approximately 48 days before the Association filed suit. A-10.

***14** The District Court began its analysis with Section 143.1 of the Illinois Insurance Code, the statutory tolling provision that extends the two-year limitations period in the Policy "from the date proof of loss is filed, **in whatever form is required by the policy**, until the date the claim is denied in whole or in part." A-4 (quoting 215 ILCS 5/143.1) (bold added by Court). The District Court next acknowledged the "'generally accepted"' purpose of a proof-of-loss requirement in an insurance policy, which

is to afford the insurer an adequate opportunity for investigation, to prevent fraud and imposition upon it, and to enable it to form an intelligent estimate of its rights and liabilities before it is obliged to pay. Its object is to furnish the insurer with the particulars of the loss and all data necessary to determine its liability and the amount thereof.

A-5 (internal citations omitted). The Court reasoned that Tower Crossing could have provided AFM "'information ... [that] constitute[d] a proof of loss ... to start the tolling period,"' but only if the Policy did not "'require a particular *form* of proof of loss."' A-5 (internal citations omitted).

The District Court then sought to determine the meaning of "sworn" and whether the Policy prescribed a particular "form" for a Proof of Loss. A5-A10. But the Court began that analysis with an error. It held that the parties supposedly agreed that the "sworn" requirement in the Policy meant Mr. Freedman had to "swear an oath in front of a notary." A-7. Tower Crossing *never* agreed that the Policy required notarization. The Association took precisely the opposite position, as the District Court acknowledged. A-7 (Tower Crossing's position was that "transfer[ing] ***15** [the] sworn signature" of the Draft Proof of Loss "to the [Proof of Loss] it did submit" satisfied the Policy's "sworn" requirement).

Error aside, the District Court concluded that the Policy prescribed "a *particular* form of proof of loss," although it did not explain the basis for that holding. A-5 (original emphasis). Citing Black's Law Dictionary, the Court noted that "a 'sworn proof of loss' under the Policy is the equivalent of a proof of loss 'given under oath,' like a notarized 'affidavit.'" A-8. The Court then relied on the unpublished, never-before-cited, and non-precedential decision in *Ornoff v. Westfield Nat. Ins. Co.*, No 1-12-2728, 2013 WL 3972162 (Ill. App. Ct. Aug. 1, 2013) for the proposition that the term "sworn" meant "'notarized."' A-7.[3] In *Ornoff*, the insured allegedly submitted a "detailed, itemized account of their loss" on one date (April 6, 2009) and a signed and sworn proof of loss on a later date (June 3, 2009). 2013 WL 3972162, at *2, *3. The *Ornoff* court held that tolling of the policy's limitation period was triggered on the later date, making the suit untimely. *Id.* at *2, *12-*13.

Importantly, the District Court's interpretation of the "sworn" requirement - derived both from Black's Law Dictionary and *Ornoff* - was that Tower Crossing had to *swear to the contents of the Proof of Loss*, and that notarization was the only method by which to satisfy that requirement. A-8. In so doing, the Court ignored Tower Crossing's showing that the law of Illinois, this Circuit, and everywhere else (*see* ***16** Argument, Part III.C, *infra*) is that "'[a] notary's function is simply to certify *the validity of the signature; the notary does not attest to the validity of the statements made in the document itself*."' D.E. 125 (Tower Crossing SJ Mot.), at 8 (quoting *Butler v. Encyclopedia Britanica*, 41 F.3d 285, 293 (7th Cir. 1994); citing 5 ILCS 312-6-102(a) (same) and *People v. Carnalla-Ruiz*, No. 1-20-1183, 2023 WL 2445587, at *5 (Ill. App. Ct. Mar. 10, 2023) (same)).

Applying its interpretation of "sworn" to Tower Crossing's Proof of Loss, the District Court concluded that the Proof of Loss was not "sworn" because "Tower Crossing did not swear to the Proof of Loss under oath or otherwise notarize that specific document." A-8. The Court confirmed its understanding that notarization supposedly equated with swearing to the contents of the Proof of Loss: "Tower Crossing swore in front of a notary that the [Draft Proof of Loss]'s $2.9 million valuation was accurate and proper but did not do the same for the [Proof of Loss]'s $4.3 million valuation." A-9. As such, "the statute of limitations on Tower Crossing's claim was not tolled upon its submission of the Proof of Loss on October 1, 2021." A-9. In reaching this conclusion, the District Court ignored AFM's own expert's deposition testimony that, under the facts of this case,

nothing in Illinois notarial law prohibited Mr. Freedman from consenting to attach his "sworn to" signature on the Draft Proof of Loss to the Proof of Loss submitted to AFM. *See* D.E. 142, at 2 (AFM's expert "could not point to any provision of Illinois notarial law that prohibited Mr. Freedman from consenting to have a representative of Tower Crossing attach his signature page to the Proof of Loss submitted to AFM."); SA-356 - SA-357.

***17** The District Court next distinguished the Illinois Court of Appeals' decision in *McDonald v. Am. Family Mut. Ins. Co.*, 622 N.E.2d 63, 65 (Ill. App. Ct. 1993), a case that is directly on point and upon which Tower Crossing relied. A-9, 10. In *McDonald*, the court concluded that the sworn-proof-of-loss requirement was satisfied even though the insured did not provide a signed or sworn proof of loss, but instead three good-faith estimates. 622 N.E.2d at 64-65. In the District Court's view, the policy in *McDonald* did not prescribe the "form" of the Proof of Loss and required the insurer to request one (but the carrier did not do so). A-9. The Court found the policy language and the good-faith estimate significant because the "the insured [in *McDonald*] upheld its obligations ... but the insurer did not." A-9. By contrast, according to the District Court, Tower Crossing was required to submit a Policy-compliant Proof of Loss within 90 days but it did not do so. A-9-A-10. That alleged failure proved "fatal" to Tower Crossing because the two-year limitations period was not tolled at all and thus expired on October 2, 2021 (the AFM extension date), several weeks before Tower Crossing filed suit. A-10.

Finally, despite holding that Tower Crossing had forfeited substantial insurance benefits based on an immaterial technicality, the District Court failed to address Tower Crossing's alternative argument that it substantially complied with the Policy's Proof of Loss requirements. D.E. 132, at 8-10. In particular, the Court ignored the well-settled rule that, so long as an insured like Tower Crossing makes "some effort to comply" with a policy requirement that is a condition precedent to coverage (such as the Proof of Loss requirement at issue here), "the sufficiency of ***18** those efforts [presents] a question of fact" for the jury and precludes entry of summary judgment for an insurer. *Id.* (citing *Hartshorn v. State Farm Ins. Co.*, 838 N.E.2d 211, 214 (Ill. App. Ct. 2007)); *accord id.* at 9 n.7 (citing *Piro*, 514 N.E.2d at 1234; *Pick*, 547 N.E.2d at 560).

SUMMARY OF ARGUMENT

Without this Court's correction, the District Court's errant opinion could set a dangerous precedent in Illinois insurance coverage law. In concluding that Tower Crossing's lawsuit was time-barred, the Court strictly construed the "sworn" requirement in the Policy, strictly construed the two-year limitations period, ignored the undisputed evidence that Tower Crossing's Proof of Loss satisfied the purposes of the Proof of Loss, and ignored that AFM never even considered the Proof of Loss in its investigation or its coverage determination because it was provided to AFM long *after* the carrier completed its investigation. The District Court thus endorsed the forfeiture of significant paid-for insurance benefits on the basis of a Proof of Loss that was immaterial to AFM. There is no precedent for this draconian result in Illinois law. The District Court's decision should be reversed.

First, a proof of loss is not some magical talisman that triggers coverage in only limited or specific circumstances. The whole purpose of a proof of loss is to give an insurer a sufficient opportunity to investigate a claim and assess coverage. Here, AFM was able to conduct a full, fair, and unimpeded investigation *before* the Proof of Loss was ever submitted. Yet, the Court completely ignored that undisputed fact and never considered the Proof of Loss's purpose in its interpretation of the "sworn" Proof ***19** of Loss requirement. The District Court simply picked one dictionary definition of "swear" and ignored others that define the term differently and consistent with the facts here (*i.e.*, that Mr. Freedman "swore" to the contents of the Proof of Loss even if he didn't take an oath).

Second, under the law of this Circuit and across the country, notarization simply verifies that the signatory of a document is who he purports to be. That's all. Notarization does not, as the District Court erroneously held, confirm the accuracy of the contents of the Proof of Loss. If the District Court were right, notaries would face unpredictable, limitless liability for the contents of documents about which they know nothing. That is why the Illinois Notary Act specifically prohibits non-attorney notaries from verifying the contents of documents that they notarize.

Third, the District Court erroneously held that Tower Crossing did not comply with the Proof of Loss "form" prescribed by the Policy. The Illinois Court of Appeals in *McDonald*, 566 N.E.2d at 65, however, held that an insured (like Tower Crossing) complied with a proof-of-loss requirement almost identical to the one in this case even though the insured never submitted a signed and sworn proof of loss. That case dictated the outcome here, not the unpublished, never-before-cited, and non-precedential Court of Appeals decision in *Ornoff* (upon which the District Court relied).

Finally, the District Court ignored Tower Crossing's alternative argument that, even if the Proof of Loss was not "sworn," the Association substantially complied with the proof-of-loss Policy requirement, which presented an issue of fact for the

***20** jury. The Illinois Supreme Court and Courts of Appeal for some time have never insisted on strict compliance with conditions precedent to coverage and have permitted lawsuits to proceed so long as the insured made "some effort to comply" with these types of policy requirements. There is no dispute that Tower Crossing made at least "some effort" to meet the seven Proof of Loss requirements in the Policy (it indisputably satisfied six of seven). The issue therefore presented a fact dispute for the jury, not a question of law for summary disposition. As such, the District Court's decision should be reversed on this alternative basis.

***1** *REQUEST FOR ORAL ARGUMENT*

Pursuant to Federal Rule of Appellate Procedure 34(a) and Seventh Circuit Rule 34(f), Appellant respectfully requests oral argument because argument would assist the Court in addressing ambiguous provisions of an insurance policy and unsettled questions of Illinois law.

***20** *ARGUMENT*

I. STANDARD OF REVIEW

This Court reviews the grant of summary judgment *de novo*. *Brown v. Osmundson*, 38 F.4th 545, 549 (7th Cir. 2022). This Court "give[s] the district judge's conclusion no deference and view[s] the evidence in the light most favorable to the party that lost below." *Lane v. Structural Iron Workers Local No. 1 Trust Fund*, 75 F.4th 445, 451 (7th Cir. 2023) (citing *Cerentano v. UMWA Health & Ret. Funds*, 735 F.3d 976, 981 (7th Cir. 2013); *O'Regan v. Arb. Forums, Inc.*, 246 F.3d 975, 983 (7th Cir. 2001)). Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). If "there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party," then summary judgment should be denied. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

***21** II. ILLINOIS LAW REQUIRES COURTS TO LIBERALLY CONSTRUE INSURANCE POLICIES, STRICTLY CONSTRUE SHORTENED LIMITATIONS PERIODS, AND AVOID POLICY INTERPRETATIONS THAT RESULT IN FORFEITURE OF PAID-FOR BENEFITS.

We begin with well-settled rules that govern the interpretation of insurance policies in Illinois. "An insurance policy is a contract, and the general rules governing the interpretation of other types of contracts also govern the interpretation of insurance policies." *Westfield v. Vandenberg*, 796 F.3d 773, 777 (7th Cir. 2015) (quoting *Hobbs v. Hartford Ins. Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005)). If the policy language is unambiguous, the policy will be applied as written, unless it contravenes public policy. *Hobbs*, 214 Ill. 2d at 17-18. If, on the other hand, a policy is susceptible to more than one meaning and is therefore ambiguous - which is a question of law for the Court - the policy "will be construed *strictly against the insurer* who drafted the policy." *Nat'l Cas. Co. v. White Mts. Reinsurance Co. of Am.*, 735 F.3d 549, 556 (7th Cir. 2013) (internal citations omitted) (emphasis added). Indeed, "where competing reasonable interpretations of a policy exist, a court is not permitted to choose which interpretation

it will follow." *Sproull v. State Farm Fire & Cas. Co.*, 183 N.E.3d 203, 209-210 (Ill. 2021) (internal citations and quotations omitted) (cleaned up). It must be construed in favor of the insured. *Id.*

In addition, for more than a century, the Illinois Supreme Court has repeatedly held that insurance policies are liberally construed to favor coverage. *See State Sec. Ins. Co. v. Burgos*, 583 N.E2d 547, 554 (Ill. 1991); *Budelman v. American Ins. Co.*, 130 N.E. 513, 514 (Ill. 1921); *Forest City Ins. Co. v. Hardesty*, 55 N.E. 139, 141 (Ill. 1899); *accord* ***22** *Metro. Prop. & Cas. Ins. Co. v. Stranczek*, 968 N.E.2d 717, 722 (Ill. App. Ct. 2012); *Bellmer v. Charter Security Life Ins. Co.*, 488 N.E.2d 1338, 1340 (Ill. App. Ct. 1986). Hyper-technical interpretations of policy terms, divorced from the purpose of those terms, should be avoided. *See Pekin Ins. Co. v. Equilon Enterprises LLC*, 980 N.E.2d 1139, 1147 (Ill. App. Ct. 2012); *Piro*, 514 N.E.2d at 1234. Thus, for more than half-a-century, Illinois has followed the "well settled rule" that, in insurance cases involving uncertainty, "the court will always adopt that construction which will avoid forfeiture" of insurance benefits. *See Lentin v. Continental Assurance Co.*, 105 N.E.2d 735, 739 (Ill. 1952) (internal quotations and citation omitted); *Budelman*, 130 N.E. at 514; *Piro*, 514 N.E.2d at 1234; *Bellmer*, 488 N.E.2d at 1340; *accord Corl v. Monticello Ins. Co.*, No. 94 C 50363, 1995 WL 390050, at *4 (N.D. Ill. Jan. 30, 1995) (Illinois law; noting that "declaring forfeiture of the benefits of insurance bought and paid for based solely on events subsequent to the event of the insured-against loss [*i.e.*, adequacy of proof of loss] should be avoided and ... the insured should be given the opportunity to cure any alleged non-compliance.") (internal citations omitted)).

Consistent with this principle, limitations periods in insurance policies that are shorter than those prescribed by the Illinois Legislature are strictly construed and easily waivable by the insurer. *See Romano v. Morrisroe*, 759 N.E.2d 611, 615 (Ill. App. Ct. 2001) ("[I]n the area of insurance contracts, clauses imposing a period of limitation less than that required by the statute of limitations are strictly construed; they are allowed to be readily waived, and slight circumstances will be held sufficient to constitute waiver of such stipulations."); *accord Downing v. Wolverine Ins. Co.*, 210 N.E.2d 603, 606 (Ill. App. Ct. 1965) (same). The Illinois Court of Appeals has held ***23** that a waiver occurs where an insurer leads an insured to believe that a claim remains open after the limitations period has expired. *See Dickman v. Country Mut. Ins. Co.*, 458 N.E2d 199, 202 (Ill. App. Ct. 1983); *Downing*, 210 N.E.2d at 606-07. Courts have reasoned that strict construction and easy waiver are required to avoid the "harsh" result of forfeiture of insurance benefits. *Downing*, 210 N.E.2d at 606; *Commerce Bank, N.A. v. AMCO Ins. Co.*, No. 08-cv-669, 2009 WL 702220, at *3 (S.D. Ill. Mar. 17, 2009) (Illinois law). Here, the two-year period in Policy is dramatically shorter than the ten-year period applicable to breach-of-written-contract claims. *See* 735 ILCS 5/13-206. The Policy's limitations period thus must be strictly construed and waivable if AFM led Tower Crossing to believe that the claim remained open after the limitations period had expired.

As we next demonstrate, the District Court committed reversible error when it concluded that Tower Crossing's breach-of-contract lawsuit was barred by the two-year limitations period in the Policy.

III. TOWER CROSSING SUBMITTED A PROOF OF LOSS THAT COMPLIED WITH THE POLICY. AS SUCH, TOWER CROSSING'S LAWSUIT WAS TIMELY BECAUSE THE TWO-YEAR LIMITATIONS PERIOD WAS TOLLED PASSED THE DATE ON WHICH TOWER CROSSING FILED SUIT.

There is no dispute that Tower Crossing complied with at least six of the seven Proof of Loss requirements in the Policy. *See* Chart, at 6, *supra*. The only open issue, according to the District Court, was whether the Proof of Loss was "sworn." A-7. That issue revolved around a singular ministerial decision by Mr. Freedman: Authorizing Mr. Cooper to attach the signature page of the Draft Proof of Loss - which indisputably was a "sworn" Proof of Loss because it contained the phrase "sworn to" - ***24** to the Proof of Loss submitted to AFM. *Id.* The District Court's holding that Mr. Freedman did not swear to the Proof of Loss because he did not notarize it (*id.* at A-8 - A-10) was error.

A. The Policy does not Require a Notarized Proof of Loss.

Contrary to the District Court's reasoning, the Policy nowhere states that a Proof of Loss must be "notarized," "given under oath," or in the form of an "affidavit." A-7 - A-8. Of course, courts cannot re-write an insurance contract and add terms to the Policy and impose obligations on Tower Crossing that are not there. *See State Farm Mut. Auto. Ins. Co. v. Arroyo*, 252 N.E.3d 285, 289 (Ill. App. Ct. 2023). If AFM had intended for a Proof of Loss to contain those requirements, it should have said so in the policy that it drafted. *See Illinois Ins. Guaranty Fund v. Nwidor*, 105 N.E.3d 1035, 1046 (Ill. App. Ct. 2018) ("'There is a *strong presumption* against provisions that easily could have been included in the contract but were not.'" (emphasis added) (quoting *Wright v. Chicago Title Insurance Co.*, 554 N.E.2d 511 (Ill. App. Ct. 1990)). Thus, just because Mr. Freedman did not re-notarize his signature is immaterial. Mr. Freedman's clear testimony that he was swearing to the Proof of Loss when he authorized use of his signature page - which included the words "sworn to" - is more than sufficient to meet the "sworn" requirement of the Policy. SA-220 - SA-221, SA-341 - SA-342. Indeed, AFM's own expert agreed that, under the facts of this case, nothing in Illinois notarial law prohibited Mr. Freedman from consenting to attach his "sworn to" signature on the Draft Proof of Loss to the Proof of Loss submitted to AFM. *See* D.E. 142, at 2 (AFM's expert "could not point to any provision of Illinois ***25** notarial law that prohibited Mr. Freedman from consenting to have a representative of Tower Crossing attach his signature page to the Proof of Loss submitted to AFM."); *see also* SA-356-357 (deposition testimony of AFM's notarial law expert).

B. The Term "Sworn" is Susceptible to Reasonable Alternative Meanings that do not Include Taking an Oath.

As the District Court recognized, the term "sworn" is not defined in the Policy. A-5, A-6. Thus, the term should be given its "plain, ordinary, and popular meaning" that should be understood by the "average person." A-6 (internal quotations and citation omitted). That is because, "[w]ith no policy provision defining [a] term, the insured is left to determine for himself" the meaning of the undefined term. *Burgos*, 583 N.E.2d at 555. The District Court confined its search for the "ordinary" meaning of "sworn" to a dictionary for lawyers - Black's Law Dictionary. A-7, 8. This was error.

The term "sworn" has reasonable, alternative meanings other than the one the District Court ascribed to it. According to the Merriam-Webster Dictionary, for example, "swear" means, among other things, "to assert as true" or "to... promise emphatically or earnestly." *See* https://www.merriam-webster.com/dictionary/swear. Likewise, the Cambridge Dictionary defines "swear" as "to promise or say firmly that you are telling the truth ...." *See* https://dictionary.cambridge.org/us/dictionary/ english/swear. And, Dictionary.com defines "swear" as making a "solemn declaration or affirmation." *See* https://www.dictionary.com/browse/swear. Illinois courts have relied on these dictionaries to ascertain the "ordinary" meaning of contract terms. *Hahn v. McElroy*, 239 N.E.3d 792, 803-04 (Ill. App. Ct. 2023) (Merriam-Webster); ***26** *Prate Roofings & Installations, LLC v. Liberty Mut. Ins. Co.*, 219 N.E.3d 1198, 1207 n.4 (Ill. App. Ct. 2022) (Cambridge); *Farmers Ins. Exchange v. Cheekati*, 196 N.E.3d 1209, 1217 (Ill. App. Ct. 2022) (Dictionary.com).

Plainly, none of these alternative definitions *requires* an oath for a statement and/or document to be "sworn."[4] Thus, because the term "sworn" is susceptible to more than one reasonable interpretation, the term is ambiguous and must be construed in favor of Tower Crossing. *See Sproull*, 183 N.E.3d at 209-10. The undisputed evidence was that Mr. Freedman "swore" to the contents of the Proof of Loss because he "asserted as true," "promised emphatically or solemnly," or "firmly told the truth" when he authorized Mr. Cooper to attach the signature page from the Draft Proof of Loss to the Proof of Loss submitted to AFM. SA-220 - SA-221, SA-341 - SA-342. That signature page stated that the contents of the Proof of Loss were ***27** "sworn to." SA-221. By using those words, Mr. Freedman understood that he was swearing to the document because he represented to AFM that the contents of the Proof of Loss were true and correct to the best of his knowledge and belief after conferring with other construction professionals on the Tower Crossing Board. SA-341-42.

C. A Notary *Only* Verifies a *Signature*, not the Contents of a Document.

The District Court construed the "sworn" requirement in the Policy to require Tower Crossing to swear to the contents of the Proof of Loss in front of a notary. A-8 - A-9. The Court said that Tower Crossing supposedly "agree[d]" that notarization was required. *Id.*at 7. The Court then held that Mr. Freedman did not notarize the Proof of Loss submitted to AFM, and therefore

the Proof of Loss did not comply with the Policy. *Id.* at 9 (Mr. Freedman did not "swear in front of a notary" that the Storm loss totaled $4.3 million, therefore failing to meet the "sworn" requirement of the Policy). In so holding, the District Court not only misconstrued Tower Crossing's position [5] but more importantly, erred as a matter of law in holding that notarization as the only vehicle for Mr. Freedman to swear to the contents of the Proof of Loss.

It is well established that "[a] notary's function is simply to *certify the validity of the signature*; *the notary does not attest to the validity of the statements made in the document itself*." *Butler v. Encyclopedia Britanica*, 41 F.3d 285, 293 (7th Cir. 1994) ***28** (emphasis added); *accord, e.g.*, *In re Estate of Alfaro*, 703 N.E.2d 620, 627 (Ill. App. Ct. 1998) (applying Illinois law in the context of probate and holding that "when one acts strictly in his capacity as a notary public, such as by notarizing the witnesses' signatures on a will, the act of notarization tends to prove the authenticity of the witnesses' signatures and the verification of the attestation clause. A notary public is an official who is authorized by the state or federal government to administer oaths and to attest to the authenticity of signatures"). [6] Moreover, the Illinois Notary Act makes this crystal clear: "*No notary public shall be authorized to explain, certify, or* ***29** *verify the contents of any document ....*" 5 ILCS 312-6-104(k) (emphasis added). This hornbook law makes abundant sense. If notaries were required to verify the accuracy and truth of a document's substantive contents, the liability potential would be limitless and unpredictable. Notaries are not lie detectors - their important function is narrow and strictly limited to verifying that the person who is signing a document is who s/he purports to be. Nothing more.

Thus, because a notary is only authorized to verify a signature, the District Court created a redundancy and/or absurdity in the Policy. The Court substituted the Policy language of "signed and sworn" with "signed and signed." This is impermissible. *See Contact Lenses Unlimited, Inc. v. Johnson*, 531 N.E.2d 928, 931 (Ill. App. Ct. 1988) ("Contract terms should be construed to avoid the conclusion that other terms are redundant or meaningless. [Citation.] Courts will give a reasonable construction to contracts rather than one leading to absurd results, and a construction is favored which will be most equitable to both parties, instead of one which will give one party an unfair advantage over the other." [Citation.]). As we have demonstrated, *see* Part III.B, *supra*, Mr. Freedman could swear to the contents of the Proof of Loss without taking an oath or having the document notarized.

For these reasons, the District Court erred in relying on the unpublished Illinois Court of Appeals' decision in *Ornoff*, 2013 WL 3972162 (Ill. App. Ct. 2013) for the proposition that Mr. Freedman could have "sworn" to the contents of the Proof of ***30** Loss only by notarizing it. *See* A-8-A-9. [7] Tellingly, no Illinois court has relied on *Ornoff* despite the decision being on the books for more than a decade. Nor is *Ornoff* precedential or a case that should strip Tower Crossing of its bought-and-paid-for insurance benefits. Under Rule 32.1 of this Circuit, unpublished authority like *Ornoff* is not precedential. *Cheli v. Taylorsville Cmty. School Dist.*, 986 F.3d 1035, 1042 n. 2 (7th Cir. 2020). Rather, an unpublished decision can only be *persuasive* in certain limited circumstances, and as such, "'is entitled only to the weight that the force of its reasoning commands.'" *Id.* (quoting *United States v. Papia*, 910 F.2d 1357, 1362 (7th Cir. 1990)); *see also* ILCS S. Ct. Rule 23(e)(1) (stating that unpublished written and summary orders may be cited as persuasive only if entered after January 1, 2021).

Here, *Ornoff* is not persuasive, and its reasoning should carry no weight. It speaks volumes that no Illinois state court has ever cited *Ornoff*. And this Court, like any district court sitting in diversity, "must apply state law as [it] believe[s] the *highest court of the state* would apply it if the case were now before that tribunal." *Green Plains Trade Grp. LLC v. Archer Daniels Midland Co.*, 90 F.4th 919, 927 (7th Cir. 2024) (emphasis added); *see also id.* at 928 ("*[I]n the absence of persuasive reasons to the contrary*, we will follow a holding of the state's intermediate appellate court." (original emphasis)). The Illinois Supreme Court and Court of Appeals have held that ***31** insurance policies should be liberally construed in favor of coverage and that forfeiture of paid-for benefits based on technicalities should be avoided. *See* Part II, *supra* (cases cited therein). *Ornoff* does the opposite and erroneously equates notarizing a signature on a proof of loss with swearing to all of its contents. *Butler*, 41 F.3d at 293; *In re Estate of Alfaro*, 703 N.E.2d at 627. The District Court's sole reliance on *Ornoff* for its holding that Tower Crossing did not comply with the "sworn" requirement of the Proof of Loss term in the Policy was thus reversible error.

D. The District Court's Interpretation of "Sworn" Failed to Account for the Purpose of the Proof of Loss Requirement, the Purpose of the Illinois Tolling Statute, and the Undisputed Facts of this Case.

Although the District Court recognized general principles of insurance-policy interpretation, *see* A-5 - A-7, the Court made the error of interpreting the "sworn" Proof of Loss requirement in a vacuum, divorced from the purpose of that requirement and the undisputed facts. As this Court has observed, courts "must construe the policy as a whole and take into account the type of insurance purchased, the nature of the risks involved, and the overall purpose of the contract." *Windridge of Naperville Condo. Ass'n v. Phila. Indem. Ins. Co.*, 932 F.3d 1035, 1039 (7th Cir. 2019) (interpreting Illinois law; internal citations and quotations omitted). Thus, a court's interpretation of an insurance policy "does not end ... with the four corners of the ... policy." *Granite State Ins. Co. v. Degerlia*, 925 F.2d 185, 192 (7th Cir. 1991) (interpreting Illinois law). Instead, "[u]nder Illinois law, '[a]n insurance policy is not to be interpreted in a factual vacuum; it is issued under given factual circumstances. What at first blush might appear unambiguous in the insurance contract might not ***32** be such in the factual setting in which the contract was issued."' *Id.* (quoting *Glidden v. Farmers Auto. Ins. Ass'n,* 312 N.E.2d 247, 250 (Ill. 1974)). Accordingly, Illinois courts have subscribed to the view that a policy term must be interpreted consistent with its purpose. *See Oakley Transp. v. Zurich Ins. Co.*, 648 N.E.2d 1099, 1107 (Ill. App. Ct. 1995); *Westfield Ins. Co. v. Vandenberg*, 796 F.3d 773, 778 (7th Cir. 2015) (Illinois law).

As the District Court recognized, the purpose of the Proof of Loss was to give AFM an opportunity to investigate Tower Crossing's claim by having the "'particulars of the loss,"' avoid fraud, "'form an intelligent estimate of its rights and liabilities before it is obligated to pay,"' and evaluate "'all data necessary to determine its liability and the amount thereof."' A-5 (quoting *State Farm Mut. Auto. Ins. Co. v. Guerrero*, No. 1-15-1079, 2015 WL 9594070 (Ill. App. Ct. Dec. 31. 2015), at *6)). Here, the undisputed evidence showed that (1) even before the Proof of Loss was ever submitted, AFM had a full, fair, and complete opportunity to (and in fact did) investigate Tower Crossing's insurance claim and assess its liability; (2) Tower Crossing's Proof of Loss provided AFM all of the substantive information required by the Policy (*see* Chart, at 6, *supra*); (3) the Proof of Loss contained several anti-fraud statements; and (4) Tower Crossing did not interfere or inhibit AFM's investigation in any way. SA-63.

Moreover, the RCV and ACV estimates in the October 2021 Proof of Loss submitted to AFM were familiar to the carrier because, long before Tower Crossing submitted the Proof of Loss, AFM knew that the cost of repairs could be several

***33** million dollars. For example, in March 2020, AFM understood that the estimated cost of repairs to Tower Crossing's roofs was between $4.5 million and $5.2 million, an estimate that was higher than the Proof of Loss RCV estimate of approximately $4.3 million. SA-220, SA-328, SA-335. Likewise, in April 2020, an internal AFM "loss memo" confirmed that Tower Crossing reported to AFM "property building damages" of "USD4.75M." SA-338. AFM, therefore, was well aware of the nature and extent of Tower Crossing's claim and the estimated loss amount *more than seventeen months before* Tower Crossing submitted the Proof of Loss.

Despite this knowledge, AFM never requested a proof of loss from Tower Crossing and extended the deadline to sue long after the proof of loss was due. SA-320. Perhaps most importantly, the record before the District Court demonstrated that AFM conducted its investigation *before* Tower Crossing ever submitted its Proof of Loss and *independent of* the information that Tower Crossing provided in that document. SA-269 - SA-318. In fact, AFM *rejected and returned the Proof of Loss* after receiving it because it disagreed with the scope of damages that Tower Crossing claimed. SA-199. In other words, the Proof of Loss was meaningless to AFM, and the carrier did not rely on it for any purpose in making its final coverage determination. Thus, under no conceivable set of facts could the supposedly "unsworn" Proof of Loss have made any difference whatsoever to AFM's assessment of its liability and defenses. Yet, the District Court relied on the inconsequential Proof of Loss as the sole basis to forfeit Tower Crossing's insurance benefits, a decision that clearly violates established Illinois law. *See* Part II, *supra* (collecting cases).

***34** The District Court's interpretation of the Proof of Loss requirement also contravenes the purpose of the tolling statute. Section 143.1 of the Illinois Insurance Code states:

> Whenever any policy or contract for insurance, except life, accident and health, fidelity and surety, and ocean marine policies, 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 is required by the policy, until the date the claim is denied in whole or in part.

215 ILCS 5/143.1. "The purpose of [section 143.1] is to prevent insurance companies from sitting on claims, allowing the limitations period to run and depriving insureds of their opportunity to litigate their claims in court." *State Farm Mut. Auto Ins. Co. v. Leon*, 134 N.E.3d 946, 951 (Ill. App. Ct. 2019) (internal citations and quotations omitted). The Proof-of-Loss requirement in the tolling statute should not be used against insureds to impose hyper-technical obligations that serve only to time-bar claims *after* the adjustment process is complete. *See* Part II, *supra* (collecting cases).

Here, AFM indisputably sat on the claim, led Tower Crossing to believe that the claim remained open even after October 2, 2021 (the date on which the District Court held the Association's lawsuit expired), did not make any payment until after Tower Crossing filed suit, and then - in this litigation - relied on an immaterial technicality in a rejected-and-returned Proof of Loss to avoid liability. The District Court's erroneous interpretation of the "sworn" requirement and its failure to strictly construe the two-year limitations period in the Policy simply rewarded AFM for this strategy.

***35 E. To the Extent the Policy Prescribed a Particular Proof of Loss "Form," Strict Compliance with that "Form" was not Necessary.**

The District Court compounded its erroneous interpretation of "sworn" by holding that Tower Crossing had to strictly comply with the "*particular* form of proof of loss [in the Policy] to start the tolling period." A-5 (original emphasis). The District Court did not rely on any Policy language for that holding. Instead, the Court stated that the point supposedly was "undisputed." A-5. Not so. Tower Crossing disputed that Policy interpretation because it relied on *McDonald*, 622 N.E.2d 63 for the proposition that "a good faith estimate [and not any particular 'form'] satisfied the 'sworn proof of loss' requirement" so long as a good faith estimate satisfies the purpose of the proof-of-loss requirement in the Policy, which Tower Crossing's Proof of Loss unquestionably did. D.E. 132, at 5-6; *see also* D.E. 125, at 3-5; D.E. 139, at 2-3; SA-219 - SA-221 (Proof of Loss submitted to AFM).

In any event, the District Court distinguished *McDonald*, a case in which the carrier requested a proof of loss after denying the claim. *McDonald*, 622 N.E.2d at 64-65. *McDonald* "is distinguishable from the present situation," the Court reasoned, "because the Policy here does not require [AFM] to request a proof of loss; instead it requires Tower Crossing to submit a compliant proof of loss within 90 days after the loss occurs, which it failed to do." A-9. That's a distinction without a difference, and it ignores the undisputed record in this case. Here, AFM *never* requested a proof of loss. Instead, it investigated Tower Crossing's claim fully and fairly without interference from the Association, found coverage, and made a "final payment" after this lawsuit was filed. SA-63, SA-261 - SA-263.

***36** More fundamentally, however, the District Court misread *McDonald*. The policy in *McDonald* - like the one here - listed the information that was to be included in a proof of loss (signed, sworn, and nine other items). 622 N.E.2d at 64-65. The plaintiffs in *McDonald* never submitted to the insurer a "signed and sworn" proof of loss document with the required information. *Id.* at 64. Instead, the plaintiffs provided the insurer three estimates - two from contractors, one from an architect. *Id.* The trial court dismissed the plaintiffs' claim on limitations grounds, holding that the policy's one-year limitation period was not tolled. *Id*. The court of appeals reversed. The *McDonald* court agreed with the plaintiffs that their estimates were sufficient to trigger tolling. *Id.* at 65. The court reasoned that plaintiffs' submissions were "good faith submission[s] of [a] proof of loss" because

they met the purpose of the proof-of-loss requirement in the policy - namely, the estimates "adequately apprised the insurer of the nature and amount of the claim and afforded the insurer sufficient notice to investigate any possible defense." *Id.*

This Court should follow *McDonald* because it is fully consistent with the Illinois Supreme Court's rulings in insurance-coverage cases. *See* Part II, *supra*; *Green Plains*, 90 F.4th at 927 ("We must apply state law as we believe the highest court of the state would apply it if the case were now before the tribunal rather than before our court."). The *McDonald* court assessed the insured's compliance with the Proof of Loss requirement in the policy against the purpose of that requirement and found that tolling was appropriate because the plaintiffs provided the insurer all of the information necessary to enable the insurer to investigate and make an informed ***37** decision about the plaintiffs' claim. 622 N.E.2d at 64-65. *McDonald* ignored technicalities to avoid forfeiture of paid-for insurance benefits. *Id.* That is precisely what the Illinois Supreme Court has dictated for decades. *See* Part II, *supra* (collecting cases).

The District Court's decision endorses just the opposite rule - reliance on an immaterial technicality that never had any impact on AFM's investigation of, or decision regarding, Tower Crossing's insurance claim. There was no dispute below that Tower Crossing provided AFM all of the claim information required in the Policy - RCV estimate, ACV estimate, and the like. *See* Chart, at 6, *supra*. And, as to the "sworn" requirement, the District Court essentially punished Tower Crossing for not submitting the Draft Proof of Loss, which would have met the Court's strict (but erroneous) interpretation of "sworn" as requiring notarization and rendered Tower Crossing's lawsuit timely. A-8 - A-9. But Tower Crossing believed in good faith that the Draft Proof of Loss was not accurate, so it amended the document to make it *more accurate* with the knowledge and consent of the Proof-of-Loss signatory, Mr. Freedman. SA-248; *see also* SA-117, SA-121, SA-230, SA-231, SA-232. Yet, this 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. As we have demonstrated, a repeat notarization would have accomplished nothing required by the Policy. *See* Part III.C, *supra*. There was never any dispute that the signature on the Proof of Loss was that of Mr. Freedman, who "swor[e] to" that Proof of Loss by ***38** authorizing a document - that had his signature and that language - to be attached to the document submitted to AFM. SA-117. That's all the Policy required.

F. Because Tower Crossing Complied with the Proof-of-Loss Requirement, its Insurance Claim was Timely.

Because the Proof of Loss that Tower Crossing submitted on October 1, 2021 complied with the Policy, the two-year limitations period in the Policy was tolled until AFM denied Tower Crossing's claim "'in whole or in part.'" *See* 215 ILCS 5/143.1. There is no dispute that, after AFM's October 29, 2021 letter to Tower Crossing in which it rejected and returned the Proof of Loss, AFM still considered the claim open and its coverage determination subject to change. SA-200. AFM reiterated that point on November 3, 2021 and again on November 9, 2021. SA-257 - SA-259, SA-323. AFM considered the claim open until it made a partial, "final payment" to Tower Crossing on December 2, 2021. SA-216; *see also* D.E. 137, at ¶ 47. Tower Crossing filed suit on November 19, 2021. SA-1. Therefore, Tower Crossing's lawsuit was timely because it was filed *before* the tolling period ended on December 2, 2021. *See Hines*, 698 N.E.2d 1120, 1124 (Ill. App. Ct. 1998) ("The better view is that section 143.1 refers to the point at which the insurer has made a final disposition of the claim, whether the claim is thereby denied in its entirety or paid in part and denied in part."); *Trinity Bible Baptist Church v. Fed. Kemper Ins. Co.*, 578 N.E.2d 1375, 1378 (Ill. App. Ct. 1991) ("The statute of limitations is tolled only for the limited time that the [insurer] is continuing its investigative and deliberative processes after it has received all the information from its insured."). The District Court's contrary holding should be reversed.

***39 IV. ALTERNATIVELY, THE DISTRICT COURT'S DECISION SHOULD BE REVERSED BECAUSE TOWER CROSSING SUBSTANTIALLY COMPLIED WITH THE PROOF-OF-LOSS REQUIREMENT IN THE POLICY.**

If this Court were to agree with the District Court that Tower Crossing did not submit a "sworn" proof of loss to AFM sufficient to trigger the statutory tolling provision, the Court's decision should still be reversed. Even though Tower Crossing argued in the alternative that (1) it substantially complied with the Proof-of-Loss requirement in the Policy and (2) substantial compliance with that requirement was sufficient to trigger tolling, *see* D.E. 132, at 8-10, the District Court inexplicably ignored those points.

The substantial compliance doctrine is firmly established in Illinois contract law generally and in the specific context of interpreting insurance policies. For example, as a matter of general contract law, a party seeking to bring a breach-of-contract action must have substantially complied with the terms of the contract that is the subject of the lawsuit. *See Slyce Coal Fired Pizza Co. v. Metropolitan Square Plaza, LLC*, 258 N.E.3d 199, 222 (Ill. App. Ct. 2025). Whether a contract party has substantially complied with a contract is a question of fact. *See Atlas Asset Management v. Kang*, --- N.E.3d ---, 2025 WL 3012347, at *5 (Ill. App. Ct. Oct. 28, 2025).

In insurance cases, Illinois courts have consistently applied the substantial compliance doctrine to several policy terms. The established rule is that where an insured makes "some effort to comply" with a policy requirement, the "sufficiency of those efforts" and whether an insurer is prejudiced presents a question of fact for a ***40** jury and not a question of law fit for summary judgment. *See Crowell v. State Farm Fire & Cas. Co.*, 631 N.E.2d 418, 420 (Ill. App. Ct. 1994); *Patel v. Allstate Ins. Co.*, 570 N.E.2d 357, 360 (Ill. App. Ct. 1991); *Pick*, 547 N.E.2d at 560; *Piro*, 514 N.E.2d at 1234-35; *Porter v. USAA Cas. Ins. Co.*, No. 19-cv-3912, 2022 WL 3290715, at *6 (N.D. Ill. Aug. 11, 2022) (Illinois law; same); *Western World Ins. Co. v. Johnson*, No. 05-cv-880, 2007 WL 1100777, at *2 (S.D. Ill. April 12, 2007 (Illinois law; same); *Woltman v. Am. States Ins. Co.*, No. 05-2198, 2006 WL 1305236, at *3 (C.D. Ill. May 9, 2006) (Illinois law; same). The rule applies even if an insured's compliance with a policy term is "incomplete." *Id.*

This settled rule has been applied to several post-loss policy requirements, including notice of loss, insurer requests for information/documents, and examinations under oath. *See Crowell*, 631 N.E.2d at 420 (examination under oath); *Patel*, 570 N.E.2d at 360 (request for documents and examination under oath); *Pick*, 547 N.E.2d at 560 (request for documents/information); *Piro*, 514 N.E.2d at 1234 (same); *compare Horton v. Allstate Ins. Co.*, 467 N.E.2d 284, 286 (Ill. App. Ct. 1984) (affirming summary judgment for insurer where insured "made no attempt to comply with the request [for documents/records] or excuse his noncompliance."); *Hartshorn v. State Farm Ins. Co.*, 838 N.E.2d 211, 214 (Ill. App. Ct. 2007) (same). The substantial-compliance doctrine thus fits hand-in-glove with the well-settled policy in Illinois that "declaring forfeiture of the benefits of insurance bought and paid for based solely on events occurring subsequent to the event of the insured-against loss should be avoided." *Crowell*, 631 N.E.2d at 420; *Piro*, 514 N.E.2d at 1234.

***41** Although not expressed in exactly the same terms used by the Illinois Court of Appeals, the Illinois Supreme Court has applied the substantial compliance doctrine to the proof-of-loss requirement in insurance policies. The cases date back to as early as 1861. In *Peoria Marine & Fire Ins. Co. v. Whitehill*, 25 Ill. 466 (1861), the Illinois Supreme Court held that an insured substantially complied with the proof-of-loss requirement in a fire insurance policy that required the insured to procure from a notary or magistrate "most contiguous to the place of [a] fire" a certificate containing several items of information. *Id.* at *3. The insured obtained a certificate from a notary that was not closest to the fire. *Id.* at *4. The Illinois Supreme Court held that the insured substantially complied with that requirement because the insurer never raised the issue and denied the claim on other grounds. *Id.* The *Whitehill* court reasoned:

> The rule is well established, that if an insurance company put their refusal to pay on some other grounds than a defect in the preliminary proofs, and suggest no defects in such proofs, their silence will be held as a waiver of the defects, and the proofs must be considered as having been duly made according to the conditions of the policy.

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Id. The Illinois Supreme Court has thus required a non-compliant proof of loss to be material to the insurer before a court declares paid-for insurance benefits forfeited. [8]

***42** The sum of it all is that the Illinois Supreme Court's endorsement of the substantial-compliance rule governing proofs of loss, together with the Illinois Court of Appeals' substantial-compliance standard governing similar policy requirements, requires reversal of the District Court's decision. That outcome makes eminent "good sense" because, as this Court has observed in connection with proof-of-loss requirements, "a rule requiring strict compliance with the fine print buried in an insurance contract could result too easily in unintended forfeitures, which are anathema to the law." *Indianapolis Airport Auth. v. Travelers Prop. Cas. Co. of Am.*, 849 F.3d 355, 365 (7th Cir. 2017) (Indiana law).

Illinois certainly is not alone in rejecting a rule that requires strict compliance with a proof-of-loss requirement. To the contrary, the Illinois Supreme Court's flexible rule is in line with the virtually unanimous view of other State courts that substantial compliance with proof-of-loss policy requirements is all that's required. [9] ***43** Leading insurance-law commentators agree. [10] The view among the States and that expressed in treatises are valid data points for making an *Erie* guess. *See* ***44** *Green Plains*, 90 F.4th, at 928 (federal courts "may consult learned treatises"); *In re Zimmer*, 884 F.3d 746, 751 (7th Cir. 2018) (federal courts making an *Erie* guess "'shall examine the reasoning of courts in other jurisdictions addressing the same issue and applying their own law for whatever guidance about the probable direction of state law.'" (quoting *Pisciotta v Old Nat'l Bancorp*, 499 F.3d 629, 635 (7th Cir. 2007)).

Furthermore, consistent with the Illinois Court of Appeals' decision in *McDonald*, 622 N.E.2d 63, several state courts have found substantial compliance where a proof of loss was either not signed, not sworn, nor submitted at all because the insurer suffered no harm from those omissions. [11] The reasoning is virtually identical in all of the cases: So long as the insurer had sufficient information to investigate a claim or was not prejudiced, technical defects in a proof of loss did not bar the claim. [12]

***45** In this case, there are disputed issues of fact as to whether the signature page attached to the Proof of Loss - which indisputably contained Mr. Freedman's signature and the statement that it was "sworn to" - substantially complied with the proof-of-loss requirement in the Policy. For example, after signing and stating that the contents of the Draft Proof of Loss were "sworn to," Mr. Freedman was fully aware of and endorsed the changes to the Draft Proof of Loss when he authorized Mr. Cooper to attach the "sworn to" signature page to the Proof of Loss submitted to AFM. SA-117, SA-121, SA-122, SA-123, SA-217, SA-232. But, Tower Crossing's Proof of Loss had no impact whatsoever on AFM's investigation of the insurance claim because it was submitted *after* AFM had completed its investigation (SA-214, SA-352). AFM never asked Tower Crossing to submit a Proof of Loss, and AFM voluntarily extended the limitations deadline without a Proof of Loss and did so many months after the 90-day Proof of Loss deadline had passed. SA-320.

AFM, moreover, kept Tower Crossing's claim open after October 2, 2021 (the District Court's limitation-expiration date); it kept Tower Crossing's claim open after ***46** the Association submitted the Proof of Loss on October 1, 2021; and it *still* kept the claim open even after Tower Crossing filed suit. SA-200, SA-216, SA-259, SA-263, D.E. 137, at ¶ 47. Before that, AFM conducted a full, fair, and complete investigation without interference from Tower Crossing and without the Proof of Loss. SA-63. AFM rejected and returned the Proof of Loss only because it disagreed with the "scope of damages" and not because Tower Crossing omitted any information or otherwise did not comply with the Policy. SA-199. In simple terms, AFM never required Tower Crossing to "dot all of the i's and cross all of the t's" in a proof-of-loss form to make a coverage determination. *See, e.g.*, *McCormick*, 153 Cal. App. 3d at 1046 (insurer does not act in good faith "in denying a claim merely because an insured failed to dot the i's or cross the t's on a claim form or other submission"). AFM made that determination and paid the claim (although it was a low-ball payment) but only after suit was filed. SA-263.

Under the totality of these circumstances, the District Court should never have granted AFM summary judgment on limitations grounds and caused Tower Crossing to forfeit substantial paid-for insurance benefits. Tower Crossing substantially complied

with the proof-of-loss requirement in the Policy, and the limitations period was therefore tolled well past the suit-file date. At a minimum, the jury should decide the question. The District Court's contrary decision should be reversed on this alternative basis.

*47 *CONCLUSION*

For the foregoing reasons, the District Courts's grant of summary judgment in AFM's favor should be reversed.

Respectfully submitted,

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Appendix not available.

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Footnotes

1 "SA-" refers to Tower Crossing's Separate Appendix.

2 Throughout the proceedings in the District Court, AFM repeatedly and falsely accused Tower Crossing of discovery violations, claiming Tower Crossing was trying to "hide" facts concerning the Proof of Loss. We anticipate that AFM will make the same (irrelevant) argument in this appeal. While those issues are not before this Court, not one of AFM's motions to compel was granted.

3 In a footnote, the Court relied on another 2012 never-before-cited, non-precedential decision for the proposition that an insurance claim was time-barred because the insured did not recall whether she signed or swore to a loss statement. A-8 n.3 (citing *Morris v. Scottsdale Ins. Co.*, No. 3-11-0587, 2012 WL 7006567, at *5 (Ill. App. Ct. 2012)).

4 *See Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 475 (6th Cir. 2002) ("Courts are generally consistent in validating documents that were *sworn to* under penalty of perjury, notwithstanding the fact that *they were not notarized*." (citing *Hameed v. Pundt*, 964 F. Supp. 836, 840 (S.D.N.Y. 1997) (relying upon unsworn documents, pursuant to § 1746, to grant summary judgment)) (emphasis added)); *Cottle v. Falcon Holdings Mgmt., LLC*, 892 F. Supp. 2d 1053, 1059 (N.D. Ind. 2012) ("In fact, sworn signatures to interrogatory response do not have to be notarized.") (citing *Johnson v.* Randle, No. 10-cv-135, 2011 U.S. Dist. LEXIS 149172 (S.D. Ill. Dec. 29. 2011)); *United States v. Wellman*, 830 F.2d 1453, 1467 (7th Cir. 1987)). Indeed, both federal and Illinois law permit a party to swear to the contents of a document without a notarization. For example, under federal law, a person may, "with like force and effect" support a sworn statement with a statement that the statement is "true under penalty of perjury." 28 U.S.C. §1746. Likewise, Illinois law provides that a statement may be verified by certification. "Any pleading, affidavit, or other document certified in accordance with this Section 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 ... document be sworn before an authorized person." 735 ILCS 5/1-109.

5 Tower Crossing repeatedly stated in its summary judgment briefs that the Proof of Loss submitted to AFM did *not* have to be notarized. *See* D.E. 125, at 8-9; D.E. 132, at 2, 3-8; D.E. 139, at 4.

6 *Accord Ryerson v. Ryerson*, 151 N.Y.3d 349, 355 (Sup. Ct. 2021) (holding that, in connection with a marital separation agreement and proper notarization, "[A]n acknowledgment is an authentication or verification of the signature of the signer. It establishes merely that the document was duly signed. It proves the identity of the person whose name appears on the [document] and that such person signed the document. *But it goes no further*.") (cleaned up) (emphasis added) (New York law); *Burton v. Williams*, 202 N.C. App. 81, 88 (2010) ("A notary public ... 'does not swear to the truth of the information in the document being notarized.'") (quoting *Myers & Chapman, Inc. v. Thomas G. Evans, Inc.*, 323 N.C. 559, 573 (1988)) (applying North Carolina law); *Herrero v. Cumis Mid- Am.*, 930 S.W.2d 18, 22 (W. Dist. Mo. Ct. App. 1996) ("The rationale for notarization is to avoid the risk that the signature will not be authentic. [Citation]. Thus, the notary's duty is to acknowledge the authenticity of the signature.") (Missouri law); *In re Richmond*, 580 B.R. 617, 627 (E.D.N.Y. Bankr. 2017) ("A notary's obligation is to attest to the validity of the signature, and the notary attestation should be dated on the date that the signer of the document presents it to her and acknowledges his signature.") (applying New York law); *Philadelphia Reserve Supply Co. v. Zarrelli*, No. 90-5680, 1993 U.S. Dist. LEXIS 6299, at *4-5 (E.D. Pa. May 17, 1993) ("Under Pennsylvania law, when a notary public certifies a document, he or she attests that the document has been executed or is about to be executed, that the notary knows that he or she is confronted by the signer, and that the signer is asserting the fact of his or her execution. [Citation]. Notarization certifies the fact of execution by a person who purports to be the signer.") (Pennsylvania law); *State ex rel. Koste v. Maryland Cas. Co.*, 335 S.W.2d 510, 515 (E.D. Mo. Ct. App. 1960) ("A notary's certificate can in no wise be deemed to certify or guarantee the facts stated

in the instrument to which it is attached. To hold otherwise would make the surety on the notary's bond an insurer of all statements contained in the instrument notarized. That is not the law.").

7 The District Court likewise erred in relying on another never-before-cited non-precedential decision in footnote 3 of its opinion, although that decision is distinguishable on its face in any event. *See Morris*, 2012 WL 7006567, at *5 (no tolling where "there is no evidence in the record as to when [the insured] filed the loss statement with [the insurer].").

8 *See German Fire Ins. Co. of Peoria v. Grunert*, 1 N.E. 113, 116 (Ill. 1884) ("There is a slight mistake in one or more of the dates of the proofs of loss, but this is unimportant, and could not, in our opinion, have misled. Their dates, in that connection, are not of material consequence."); *Manufacturers' & Merchants' Ins. Co. v. Zeitinger*, 48 N.E. 179, 180-81 (Ill. 1897) (rejecting as "too narrow and strained" an insurer's argument that a proof of loss had to be received 60 days after a loss as opposed to mailed within 60 days; "[t]here is no dispute that the first proofs of loss were mailed before the expiration of the 60 days, and we think that was a substantial compliance with the requirements of the policy"); *Anderson v. Inter-State Business Men's Acc. Ass'n of Des Moines, Iowa*, 188 N.E. 844, 848 (Ill. 1933) (approving jury instruction that "'proof of loss' means such proof as is reasonable 'in view of all the facts and circumstances connected with the case.'"); *Weininger*, 195 N.E. at 424 (rejecting insurers' strict compliance rule; "none of the defendants made any objection to the form or sufficiency of the proofs of loss until after the present proceeding was instituted. By the weight of authority, if the insured attempted to comply with the requirements of the policies as to notice and proof of loss, the receipt and retention of the notice and proof without objection constitute a waiver of the insurers' right to object thereto as not satisfying the requirements of the policies."); *see also Am. Nat'l Bank & Trust Co. of Chicago v. Reserve Ins. Co.*, 187 N.E.2d 343, 346-47 (Ill. App. Ct. 1962) (substantial compliance with proof-of-loss requirement).

9 *See* **Alabama**: *Equitable Life Assur. Soc. v. Darriety*, 157 So. 59, 62 (Ala. 1934); **Arizona**: *Truck Ins. Exch. v. Hale*, 386 P.2d 846, 850 (Ariz. 1963); **California**: *McCormick v. Sentinel Life Ins. Co.*, 153 Cal. App. 3d 1030, 1046 (1984); **Colorado**: *Hartford Fire Ins. Co. v. Smith*, 3 Colo. 422, 425 (1877); **Connecticut**: *Hartford Roman Catholic Diocesan, Corp. v. Interstate Fire Ins. Co.*, 199 F. Supp. 3d 559, 582 (D. Conn. 2016) (Connecticut law); **Florida**: *Allstate Floridian Ins. Co. v. Farmer*, 104 So. 3d 1242, 1250 (Fla. App. Ct. 2012); **Indiana**: *Indianapolis Airport Auth.*, 849 F3d at 365 (Indiana law; collecting cases); **Iowa**: *Hoekstra v. Farm Bureau Mut. Ins. Co.*, 382 N.W.2d 100, 106-07 (Iowa 1986); **Kentucky**: *Hornback v. Hornback*, 667 S.W.2d 399, 401-02 (Ky. App. Ct. 1984); **Maryland**: *Hartford Fire Ins. Co. v. Himelfarb*, 736 A.2d 295, 301 (Md. 1999); **Massachusetts**: *Howe v. Nat'l Life Ins. Co.*, 72 N.E.2d 425, 426-27 (Mass. 1947); **Michigan**: *Vemulapalli v. Lake State Mut. Ins. Co.*, No. 194284, 1997 WL 33334386, at *2 (Mich. Ct. App. Nov. 14, 1997); **Minnesota**: *Sterling State Bank v. Virginia Sur. Co.*, 173 N.W.2d 342, 346 (Minn. 1969); **Mississippi**: *Mass. Protective Ass'n v Cranford*, 102 So. 171, 173 (Miss. 1924); **Missouri**: *Pannell v. Missouri Ins. Guaranty*, 595 S.W.2d 339, 350-51 (Mo. Ct. App. 1980); **Montana**: *Staggers v. U.S. Fidelity & Guaranty Co.*, 496 P.2d 1161, 1164 (Mont. 1972); **Nebraska**: *Home Fire Ins. Co. v. Hammang*, 62 N.W. 883, 884 (Neb. 1895); **Nevada**: *Walker v. Am. Bankers Ins. Group*, 836 P.2d 59, 61-62 (Nev. 1992); **New Jersey**: *Tell v. Cambridge Mut. Fire Ins. Co.*, 375 A.2d 315, 319 (N.J. Super. Ct. 1977); **New Mexico**: *Green v. General Acc. Ins. Co. of Am.*, 746 P.2d 152, 153-54 (N.M. 1987); **New York**: *Della Porta v. Hartford Fire Ins. Co.*, 118 A.D.2d 1045, 1047 (N.Y. App. Ct. 1986); **North Carolina**: *Dixie Warehouse v. FEMA*, 547 F. Supp. 81, 84 (M.D.N.C. 1982) (North Carolina law); **North Dakota**: *Jentz v. Nat'l Cas. Co.*, 204 N.W. 344, 348-49 (N.D. 1925); **Oklahoma**: *John Hancock Mut. Life Ins. Co. v. Highley*, 445 P.2d 241, 246 (Okla. 1968); **Oregon**: *Sutton v. Fire Ins. Exch.*, 509 P.2d 418, 419-20 (Or. 1973); **Pennsylvania**: *Fishel v. Yorktowne Mut. Ins. Co.*, 385 A.2d 562, 564 (Pa. Super. 1978); **Rhode Island**: *Daniel v. Pawtucket Mut. Ins. Co.*, 506 A.2d 1032, 1033 (R.I. 1986); **South Carolina**: *Crawford v. Powers*, 419 F. Supp. 723, 729 (D.S.C. 1974) (South Carolina law); **South Dakota**: *Eide v. Southern Sur. Co.*, 226 N.W. 555, 556 (S.D. 1929); **Tennessee**: *Penn. Lumbermens Mut. Fire Ins. Co.*, 223 S.W.2d 203, 207 (Tenn. App. Ct. 1949); **Texas**: *Dairyland County Mut. Ins. Co. v. Keys*, 568 S.W.2d 457, 460 (Tex. App. Ct. 1978); **Utah**: *Zions First Nat'l Bank v. Nat'l Am. Title Ins. Co.*, 749 P.2d 651, 656 (Utah 1988); **Vermont**: *Stonewall Ins. Co. v. Moorby*, 298 A.2d 826, 829 (Vt. 1972); **Virginia**: *Allstate Ins. Co. v. Charity*, 496 S.E.2d 430, 431-32 (Va. 1998); **Washington**: *Cope Const. Co. v. Am. Home Assur. Co.*, 622 P.2d 395, 400 (Wash. App. Ct. 1980); **West Virginia**: *Petrice v. Federal Kemper Ins. Co.*, 260 S.E.2d 276, 278 (W. Va. 1979); **Wisconsin**: *Davis v. Allstate Ins.*

Co., 303 N.W.2d 596, 599 (Wis. 1981); *see also* **Kansas**: *Nat'l Union Fire Ins. Co. of Pitt. v. F.D.I.C.*, 957 P.2d 357, 368 (Kan. 1998) (holding that "insurer must prove prejudice before denying coverage based on a late filing of proof of loss").

10 *See* 3 NEW APPLEMAN ON INSURANCE ON INSURANCE LAW LIBRARY EDITION § 20.01[3] ("Most jurisdictions require substantial compliance, rather than strict or technical compliance with the proof of loss condition."); 12 NEW APPLEMAN ON INSURANCE ON INSURANCE LAW LIBRARY EDITION § 149.03[1] ("Many courts hold that the provisions in an insurance policy for furnishing proof of loss are to be liberally construed in favor of the insured, and substantial and not strict compliance with such provisions is all that is required."); 13 COUCH ON INSURANCE § 186:33 ("[T]he view that appears to prevail in modern times is that, in keeping with the general rules of construction in favor of the insured and against forfeitures, substantial, rather than strict, compliance is all that is required as to notice of loss or claim, as well as proof of loss provisions." (collecting State-court cases in footnote 10)).

11 *See Priddy v. Atlantic Specialty Ins. Co.*, 468 F. Supp. 3d 1030, 1045 (N.D. Ind. 2020) (Indiana law; no signature); *Farmer*, 105 So. 3d at 1250 (Florida law; not signed or sworn); *Zions First Nat'l Bank*, 749 P.2d at 655-56 (Utah law; not sworn); *Hale*, 386 P.2d at 850 (Arizona law; not sworn); *Austin Bldg. Co. v. Nat'l Union Fire Ins. Co.*, 403 S.W.2d 499, 506 (Tex. App. Ct. 1966) (Texas law; not sworn); *Walker*, 836 P.2d at 61-62 (Nevada law; not signed or sworn); *Sutton*, 509 P.2d at 419 (Oregon law; not signed or sworn).

12 *See Priddy*, 468 F. Supp. 3d at 1045 (Indiana law; "Priddy's Proof of Loss form provided the required notice to enable the Defendants to proceed with claim processing. Indeed, the Defendants have not alleged anywhere in their briefs that the absence of Priddy's signature on the Proof of Loss form prejudiced their ability to make an informed coverage decision or proceed with an investigation of the claim."); *Zion's Nat'l Bank*, 749 P.2d at 656 (Utah law; unsworn letter sufficient because it allowed insurer to "make an intelligent estimate of its rights and liabilities under the policy and thus fulfilled the purpose of the proof-of-loss provision"); *Hale*, 386 P.2d at 850 (unsworn but signed statement transcribed by secretary sufficient; "there was substantial compliance with the proof of loss requirement because all of the pertinent information had been supplied" to the insurer); *Austin Bldg. Co.*, 403 S.W.2d at 506 (Texas law; insured substantially complied with proof-of-loss requirement where adjuster had all relevant information); *Walker*, 836 P.2d at 62 (one-page list that was not signed or sworn sufficient "fulfills the purpose of a proof of loss requirement" because the list included the insured's "destroyed personal property and the replacement cost for each item claimed"); *Sutton*, 509 P.2d at 325-26 (Oregon law; list not signed or sworn sufficient because insurer investigated claim and therefore satisfied the purpose of the proof-of-loss requirement).

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