

THE UNETHICAL PRACTICES OF FORCE-PLACED INSURANCE: HOW TO PROTECT AND INDEMNIFY THE FORGOTTEN INVESTORS OF MORTGAGE-BACKED SECURITIES

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I. INTRODUCTION: THE GENERAL ISSUE WITH FORCE-PLACED INSURANCE

In the United States, the media has been attempting to inform homeowners of an abusive insurance policy: force-placed insurance.¹ Force-placed insurance is a type of policy that only protects the interest of the mortgage lender or mortgage servicer, and not the homeowner.² While federal and state governments have restricted force-placed insurance policies for homeowners, the laws do not protect investors of mortgage-backed securities with force-placed

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¹ See Julia Kagan, *Force-Placed Insurance*, INVESTOPEDIA (July 27, 2022), <https://www.investopedia.com/terms/f/forced-place-insurance.asp> (explaining that the mortgage servicers do not act in the best interest of the homeowner, and that uneducated homeowners may falsely believe that a force-placed insurance policy is the same product as a traditional homeowners insurance policy); see also Sandy John, *Force-Placed Insurance*, U.S. NEWS & WORLD REP. (Nov. 25, 2024), <https://www.usnews.com/insurance/glossary/force-placed-insurance> (noting that force-placed insurance is considerably more expensive than traditional homeowners insurance, and that “there is no incentive for them to look for the cheapest rates or even the best overall coverage”).

² See *Lender-Placed Insurance Coverage*, FLA. OFF. OF INS. REGUL., <https://www.flair.com/sections/pandc/lenderplacedincoverage.aspx> (last visited Mar. 16, 2025) (“Lender-placed (or Force-placed) insurance is coverage that a mortgage lender or bank purchases for property it owns to protect its interests when the homeowner fails to purchase this coverage.”); see also *What is force-placed insurance?*, CONSUMER FIN. PROT. BUREAU (Aug. 28, 2020), <https://www.consumerfinance.gov/ask-cfpb/what-is-force-placed-insurance-en-827/> (“This insurance protects only the lender, not you, but the lender will charge you for the insurance.”).

insurance policies.³ These investors have an extensive impact on the general population since their investments are funded by retirement savings plans.⁴ As a result, the investors could lose the retirement savings of millions without proper protection.⁵

To protect investors and the general public, the government must hold the mortgage servicers and force-placed insurance companies accountable through criminal prosecution and strict antitrust scrutiny.⁶ Part II of this Comment covers the history of force-placed insurance, Part III analyzes the harmful effects and legal issues present in the force-placed insurance market, Part IV proposes a solution that will create accountability for mortgage servicers and force-placed insurers, and Part V concludes with why justice must be served on behalf of the investors of mortgage-backed securities effected by force-placed insurance.⁷

³ See, e.g., Real Estate Settlement Procedures Act (Regulation X), 12 C.F.R. § 1024.37(b) (2022) (establishing requirements for when force-placed insurance may be assessed); see, e.g., FLA. STAT. §§ 627.9901–13 (2023) (providing restrictions on mortgage servicers and force-placed insurers; stating how much insurers are allowed to charge for policy premiums). See generally *Starting July 1, Florida Insurers Face New Guardrails on Force-Placed*, INS. J. (June 30, 2023), <https://www.insurancejournal.com/news/southeast/2023/06/30/727953.htm> (statement of Lori Augustyniak) (“This [bill] still puts the banks first. It does not require contents coverage or additional living expenses for consumers.”).

⁴ See Jason Fernando, *401(k): What It is, How It Works, Pros, and Cons?*, INVESTOPEDIA (Mar. 19, 2023), <https://www.investopedia.com/terms/1/401kplan.asp> (“The employee who signs up for a 401(k) agrees to have a percentage of each paycheck paid directly into an investment account The employee gets to choose among a number of investment options, usually mutual funds.”); see also Miranda Marquit, *What Is A 401(k)? How Does It Work?*, FORBES ADVISOR (Nov. 3, 2023, 2:09 PM), <https://www.forbes.com/advisor/retirement/what-is-401k/> (“You can choose different investments with the money saved in your 401(k) account, typically mutual funds or exchange-traded funds.”).

⁵ See, e.g., Emily Brandon, *Retirement Savers Lost \$2 Trillion in the Stock Market*, U.S. NEWS & WORLD REP. (Oct. 8, 2008), <https://money.usnews.com/money/blogs/planning-to-iretire/2008/10/08/retirement-savers-lost-2-trillion-in-the-stock-market> (“Stock market turmoil has wiped out roughly \$2 trillion of Americans’ retirement savings over the past 15 months The value of pension funds and retirement accounts dropped by roughly \$1 trillion, or almost 10 percent, in the year ending June 30”); see also FT Contributor, *How the 2008 Financial Crisis Affected Retirement*, FISCAL TIGER (Nov. 25, 2019), <https://www.fiscaltiger.com/how-the-2008-financial-crisis-affected-retirement/> (“Another way in which the Great Recession affected seniors was in their retirement savings and 401(k)s. In some cases, baby boomers nearing retirement saw their savings wiped out by over forty percent.”).

⁶ See generally McCarran-Ferguson Act, 15 U.S.C. §§ 1011–15 (1945) (stating that the business of insurance is exempt from federal antitrust laws); see generally Sherman Anti-Trust Act of 1890, 15 U.S.C. §§ 1–7 (1890) (“Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”); see generally Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961–68 (1970) (listing out the definition of “racketeering activity,” predicate offenses required to be charged under this act, and the criminal penalties if convicted).

⁷ See *infra* Section II A–D (elaborating on the role of mortgage-backed securities in the 2008 housing market crash, defining what force-placed insurance is, pointing out the main parties affected by forced-placed insurance, and discussing past settlements for homeowners); see *infra* Section III (explaining how mortgage servicers and force-placed insurers are taking advantage of investors); see *infra* Section IV (expounding on what actions should be taken to solve the investors’ problem).

II. BACKGROUND: A HISTORY OF FORCE-PLACED INSURANCE

A. THE 2008 HOUSING MARKET CRASH AND MORTGAGE-BACKED SECURITIES

A mortgage-backed security is a secondary market investment secured by home mortgages and other debt obligations.⁸ On one side of the investment, investors purchase mortgage-backed securities in order to be paid based on the performance of the underlying mortgages.⁹ On the other hand, banks sell mortgage-backed securities to receive additional funds and create new mortgages.¹⁰ Thus, investors are concerned when the underlying mortgages default causing the mortgage-backed securities to lose their value.¹¹ If too many mortgage-backed securities lose their value, the overall loss can lead to a housing market crash or financial crisis.¹²

The 2008 housing market crash can be attributed to the predatory and unregulated lending present in the private label securities market (mortgage-backed securities not backed or secured by government-sponsored enterprises

⁸ See Julia Kagan, *Mortgage-Backed Securities (MBS) Definition: Types of Investment*, INVESTOPEDIA (Apr. 29, 2023), <https://www.investopedia.com/terms/m/mbs.asp> (“Each [mortgage-backed security] consists of a bundle of home loans and other real estate debt bought from the banks that issued them.”); see also *Mortgage-Backed Securities and Collateralized Mortgage Obligations*, U.S. SEC. AND EXCH. COMM’N, <https://www.investor.gov/introduction-investing/investing-basics/glossary/mortgage-backed-securities-and-collateralized> (last visited Mar. 16, 2025) (“Mortgage-backed securities (MBS) are debt obligations that represent claims to the cash flows from pools of mortgage loans, most commonly on residential property.”).

⁹ See Kagan, *supra* note 8 (“Investors in mortgage-backed securities receive periodic payments similar to bond coupon payments.”); see also Thomas Kenny, *The Risks and Returns of Mortgage-Backed Securities (MBS)*, THE BALANCE (Jan. 2, 2022), <https://www.thebalancemoney.com/what-are-mortgage-backed-securities-mbs-417136> (“This is the risk investors take when borrowers decide to pay the principal on their mortgages ahead of schedule. The result, for investors in MBSs, is an early return of principal . . .”).

¹⁰ See Sean Ross, *Why Do MBS (Mortgage-Backed Securities) Still Exist?*, INVESTOPEDIA (Oct. 2, 2022), <https://www.investopedia.com/ask/answers/040915/why-do-mbs-mortgagebacked-securities-still-exist-if-they-created-so-much-trouble-2008.asp> (“The money received is used to offer other borrowers loans, including subsidized loans for low-income or at-risk borrowers.”); see also *Mortgage Lenders and Mortgage Servicers*, INVESTOPEDIA (May 7, 2021), <https://www.investopedia.com/ask/answers/100314/whats-difference-between-mortgage-lender-and-mortgage-servicer.asp> (“Also, a bank might make more profit initiating new mortgages than servicing existing ones.”).

¹¹ See Kagan, *supra* note 8 (“As became glaringly obvious in the subprime mortgage meltdown of 2007 to 2008, a mortgage-backed security is only as sound as the mortgages that back it up.”).

¹² See Mark Kolakowski, *Mortgage-Backed Bonds That Spurred 2008 Crisis Are in Trouble Again*, INVESTOPEDIA (Sept. 16, 2019), <https://www.investopedia.com/why-mortgage-backed-bonds-that-spurred-2008-crisis-are-in-trouble-again-4770040> (“A major catalyst of the general financial crisis of 2008 was the subprime mortgage crisis of 2007, when a rising wave of defaults on home mortgages sent the value of mortgage backed securities plunging.”); see also Kenny, *supra* note 9 (“MBSs played a role in the sub-prime mortgage crises of 2007 to 2010. Sub-prime loans were packed into MBSs. When the loans began defaulting en masse, investors and lenders lost large amounts of money when MBS values dropped.”).

(i.e., Fannie Mae and Freddie Mac)).¹³ The high costs of force-placed insurance could lead to significantly more mortgage defaults, creating a market collapse.¹⁴ A market crash, like in 2008, will negatively affect more than investors since large amounts of the investors' funds are derived from the general public in the form of retirement savings plans.¹⁵ Individuals that take part in any fraudulent activities relating to securities, like the ones previously mentioned, should face criminal charges.¹⁶

B. WHAT IS FORCE-PLACED INSURANCE?

Force-placed insurance (also known as lender-placed or collateral protection insurance) is an insurance policy that is unilaterally placed by a mortgage servicer either when a homeowner lapses on their property insurance or their property insurance is inadequate.¹⁷ Mandatory force-placed insurance policies

¹³ See Collin McArthur & Sarah Edelman, *The 2008 Housing Crisis: Don't Blame Federal Housing Programs for Wall Street's Recklessness*, CTR. FOR AM. PROGRESS (Apr. 13, 2017), <https://www.americanprogress.org/article/2008-housing-crisis/> (“[T]he housing crisis was caused primarily by the rise of predatory lending and products with exotic features marketed to consumers without adequate information or preparation and sometimes using fraudulent information, as well as the failure of the [private label securities] market.”).

¹⁴ See Meaghan Hunt, *What is Force-placed Insurance?*, BANKRATE (June 7, 2023), <https://www.bankrate.com/insurance/car/force-place-insurance/> (“[F]orce-placed insurance is generally more expensive because insurance companies do not typically use the same criteria for finding a company as individuals might.”).

¹⁵ See John Manganaro, *\$35 Trillion in Retirement Savings Tells a Tale of Two Economies*, PLANADVISER (Mar. 18, 2021), <https://www.planadviser.com/35-trillion-retirement-savings-tells-tale-two-economies/> (stating that as of December 31, 2020, retirement assets, like individual retirement accounts (IRAs), defined contribution (DC) plan assets, and defined benefit (DB) plans contained \$34.9 trillion); see also *401(k) Resource Center*, INV. CO. INST., <https://www.ici.org/401k> (last visited Mar. 16, 2025) (“401(k) plans hold \$7.4 trillion in assets as of December 31, 2023, in more than 710,000 plans, on behalf of about 70 million active participants and millions of former employees and retirees.”).

¹⁶ See generally Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) (2021) (“To use or employ . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.”); see generally 18 U.S.C. § 1348(1)–(2) (2021) (creating criminal charges for anyone that knowingly attempts to defraud another in connection with a security or commodity); see generally James Chen, *What Is Securities Fraud? Definition, Main Elements, and Examples*, INVESTOPEDIA (June 9, 2022), <https://www.investopedia.com/terms/s/securities-fraud.asp> (“In many cases, the fraudster seeks to dupe investors through misrepresentation and to manipulate financial markets in some way. This crime includes providing false information, withholding key information . . .”).

¹⁷ See Birny Birnbaum, *Overview of Lender-Place Insurance Products, Markets and Issues*, NAT’L ASS’N OF INS. COMM’RS. 3 (June 13, 2013), https://content.naic.org/sites/default/files/inline-files/committees_c_130613_birnbaum_fhfa_lpi_overview_1.pdf (“[I]f the borrower fails to maintain the required

insurance or fails to provide required evidence of insurance, the lender, through the servicer, may place insurance on the property serving as collateral for the loan and charge the borrower for this insurance.”); see also Ctr. for Ins. Pol’y & Rsch., *Lender-Placed Insurance*, NAT’L ASS’N OF INS. COMM’RS. (Mar. 20, 2024), <https://content.naic.org/cipr-topics/lender-placed-insurance> (“Lender-placed insurance, also known as ‘creditor-placed’ or ‘force-placed’ insurance is an insurance policy

are lawful because all mortgage contracts in the United States require a homeowner to secure their property or purchase homeowners insurance to protect their house and its attached loan.¹⁸ A force-placed insurance policy is typically more expensive than a standard homeowners insurance policy.¹⁹ Despite the high cost, force-placed insurance only insures the homeowner's outstanding mortgage balance, and does not protect the homeowner's personal property or extend liability protection.²⁰

Even more concerning, the excessive cost to obtain a force-placed insurance policy is likely so that force-placed insurers can pay the servicer a high commission, or rather, a kickback.²¹ The mortgage servicers are choosing force-placed insurance policies that are tailored to their own interests.²² The excessive premiums the mortgage servicers are provided from the force-placed insurers are not justified by the loss ratios of the force-placed insurance policies; they are significantly lower than regular homeowners insurance loss ratios.²³ These

placed by a bank or mortgage servicer on a home when the homeowners' own property insurance may have lapsed or where the bank deems the homeowners' insurance insufficient."); *see also* Kagan, *supra* note 1 ("Lien holders will put force-placed insurance onto a mortgaged property in cases where the borrower allows the coverage they were required to purchase to lapse.").

¹⁸ *See* Birnbaum, *supra* note 17, at 3 ("Mortgage loan agreements include a requirement that the borrower maintain insurance to protect the property serving as collateral for the loan . . ."); *see also* Ctr. for Ins. Pol'y & Rsch., *supra* note 17 ("All mortgages require borrowers to maintain adequate homeowners insurance on their property.").

¹⁹ *See* Birnbaum, *supra* note 17, at 14 ("The 2012 LPI rate filings in California by ASIC, QBE and American Modern Home indicate average LPI premiums from \$1,800 to \$2,500. This compares with an average homeowners premium for the standard HO-3 policy of about \$930."); *see also* Ctr. for Ins. Pol'y & Rsch., *supra* note 17 ("Typically, the lender-placed insurance premiums are significantly higher than the property insurance the borrower could have purchased on their own.").

²⁰ *See* Ctr. for Ins. Pol'y & Rsch., *supra* note 17 ("For example, these policies generally do not cover personal items or owner liability."); *see also* Kagan, *supra* note 1 ("The policy will cover only the amount due to the lender, which may not adequately protect the home in the case of a full or partial loss. Also, these policies usually do not include personal property or liability protection.").

²¹ *See, e.g.,* Gallo v. PHH Mortg. Corp., 916 F. Supp. 2d 537, 546 (D.N.J. 2012) ("Plaintiff is challenging the lawfulness and purpose of payments that PHH Mortgage received in the form of commissions, kickbacks, reinsurance premiums, or other financial benefits, pursuant to several alleged pre-arranged agreements designed to maximize profits for Defendant."); *see, e.g.,* Kagan, *supra* note 1 ("As an example, a lender may receive substantial cash incentives or kickbacks from the insurer, as compensation for giving it the policy. Some consumer advocates say the higher prices for force-placed insurance are a result of price gouging or kickbacks to unscrupulous lenders."); *see, e.g.,* Montanez v. HSBC Mortg. Corp. (USA), 876 F. Supp. 2d 504, 509 (E.D. Pa. 2012).

According to plaintiffs, defendants receive kickbacks from insurers that provide force-placed insurance policies. Specifically, defendants purchase force-placed insurance policies at unreasonably high prices—which the borrower ultimately pays—and then receive a certain amount of the premiums back from the insurer pursuant to either a "commission arrangement" or a "captive reinsurance arrangement."

Id.

²² *See* Ctr. for Ins. Pol'y & Rsch., *supra* note 17 ("Reverse competition is a market condition that tends to drive up premium prices to the consumers, as the lender is not motivated to select the lowest price for coverage since the cost is born by the borrower."); *see also* Kagan, *supra* note 1 ("Some lenders do not practice in the best interest of the borrow.").

²³ *See* Birnbaum, *supra* note 17, at 27–31 (illustrating that across the country the loss ratios for

excessive premiums are in clear violation of the duties held by the force-placed insurers that are owed to policyholders.²⁴ The mortgage servicers' decision to place these excessive policies on homeowners, without justification, is also a violation of their duties.²⁵ These unethical practices constitute fraud, and both mortgage servicers and force-placed insurers should face criminal charges.²⁶

C. WHY MORTGAGE SERVICERS NEED TO PROTECT THEIR INTEREST

There are several rationalizations for mortgage servicers to place some type of insurance on the homeowner in order to protect their own interest with the mortgage. Firstly, servicing provides a steady stream of income, especially when these servicers are originating less loans and mortgages.²⁷ Without the proper protection, the mortgage servicers can lose an important and steady stream of income. Secondly, the placement of insurance also protects the investors' interest; timely payments and the proper coverage can prevent a foreclosure.²⁸ However, the previously mentioned rationalizations does not justify the mortgage servicers placing the excessive policies found in force-placed insurance.

force-placed insurance policies are far less than homeowners insurance policies from 2004 to 2012, even in the years that there was a catastrophe event); *see also* Ctr. for Ins. Pol'y & Rsch., *supra* note 17 ("However, in this case, the lender is motivated to select coverage from an insurer looking out for the lender's interest rather than the borrower.").

²⁴ *See, e.g.*, Fla. Stat. 626.9541(1)(o)(2) (2023) ("Knowingly collecting as a premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, in accordance with the applicable classifications and rates as filed with and approved by the office . . ."); *see also* Julia Kagan, *What is Bad Faith Insurance and How Companies Can Act*, INVESTOPEDIA (Apr. 20, 2023), <https://www.investopedia.com/terms/b/bad-faith-insurance.asp> ("Examples of insurers acting in bad faith include misrepresentation of contract terms and language and nondisclosure of policy provisions, exclusions, and terms to avoid paying claims.").

²⁵ *See generally* 15 U.S.C. § 1639a(a)(1) (2021) ("To the extent that the servicer owes a duty to investors or other parties to maximize the net present value of such mortgages, the duty shall be construed to apply to all such investors and parties, and not to any individual party or group of parties[.]"); *see generally* *Servicing Guide*, FANNIE MAE 62 (July 12, 2025), <https://singlefamily.fanniemae.com/media/41666/display> ("The servicer must . . . [p]rotect against fraud, misrepresentation, or negligence by any parties involved in the mortgage loan servicing process.").

²⁶ *See, e.g.*, 18 U.S.C. § 1001(a)(1)–(3) (2011) (creating criminal charges for any individual that falsifies or conceals material fact, or makes a fraudulent statement).

²⁷ *See How Retaining Servicing Provides a Competitive Advantage*, HOUSINGWIRE (Feb. 14, 2023, 12:14 PM), <https://www.housingwire.com/articles/how-retaining-servicing-provides-a-competitive-advantage/> ("Mortgage servicing rights (MSRs) are valuable assets for mortgage lenders when origination business is slow. . . . Servicing retention generates servicing fee income and helps servicers improve the customer experience.").

²⁸ *See generally* *What is Mortgage Servicing*, URB. INST., <https://www.urban.org/policy-centers/housing-finance-policy-center/projects/mortgage-servicing-collaborative/help-me-understand-mortgage-servicing/what-mortgage-servicing> (last visited Mar. 16, 2025) ("Servicers also work to protect investors' interests in mortgaged properties, for example, by ensuring homeowners maintain proper insurance coverage. If homeowners fall behind on their payments, the servicer's role is to work with the homeowner and help them get back on track.").

D. TODAY'S PROTECTIONS FOR HOMEOWNERS

Uneducated homeowners must be protected since the mortgage servicers have demonstrated that they will violate the laws to further their own interests at the expense of the homeowners.²⁹ To better protect homeowners from the negatives of force-placed insurance, Congress passed 12 C.F.R. § 1024.37, the Real Estate Settlement Procedures Act.³⁰ This act requires the mortgage servicer to provide the homeowner with notice before the mortgage servicer can activate the force-placed insurance.³¹ In 2023, Florida created timing restrictions for mortgage servicers and force-placed insurers to assess the force-placed insurance.³²

Regardless of federal and state legislation, the courts have seen numerous class action lawsuits collect settlements for homeowners.³³ These settlements

²⁹ See Kagan, *supra* note 1 (“Uneducated or first-time buyers may not fully understand how to shop for insurance and will assume the lender-placed policy is the same or as-good-as any other product.”); see also Lorelei Salas, *Seven Examples of Unfair Practices and Other Violations by Mortgage Servicers: CFPB Supervision Activities Uncover Red Flags*, CONSUMER FIN. PROT. BUREAU (Dec. 9, 2021), <https://www.consumerfinance.gov/about-us/blog/seven-examples-unfair-practices-and-other-violations-mortgage-servicers-cfpb-supervision-activities-uncover-red-flags/> (“During the pandemic, we’ve closely monitored mortgage servicing companies as over [seven] million homeowners entered forbearance programs to defer their monthly payments. A recent report revealed numerous violations of consumer protection laws[.]”).

³⁰ See *Real Estate Settlement Procedures Act (Regulation X)*, NAT’L CREDIT UNION ADMIN. (Jan. 12, 2023), <https://ncua.gov/regulation-supervision/manuals-guides/federal-consumer-financial-protection-guide/compliance-management/lending-regulations/real-estate-settlement-procedures-act-regulation-x>

On August 4, 2016, the CFPB issued a final rule (2016 Mortgage Servicing Rule) amending certain mortgage servicing provisions in Regulation X and Regulation Z issued by the CFPB in 2013. This final rule clarifies, revises, or amends provisions regarding force-placed insurance notices, policies and procedures, early intervention, and loss mitigation requirements under Regulation X’s servicing provisions

Id. See generally 12 C.F.R. § 1024.37 (establishing requirements for lenders, mortgage brokers, and servicers of loans when conducting business with borrowers).

³¹ See 12 C.F.R. § 1024.37(c)(1)–(4) (2022) (determining when notice must be given to the homeowner, what must be included in that notice, and the format of that notice); see also Stephanie Lyon, *CFPB Issues Mortgage Servicing Rules – Part Deux: Force-Placed Insurance*, NAT’L ASS’N OF FEDERALLY-INSURED CREDIT UNIONS (Aug. 19, 2016), <https://www.nacfu.org/compliance-blog/cfpb-issues-mortgage-servicing-rules-part-deux-force-placed-insurance> (“Prior to force-placing insurance, there are a couple of notices that a servicer must provide an initial notice (45 days prior to force-placing) and a reminder notice (15 days prior).”).

³² See FLA. STAT. § 627.9904(1) (2023) (“Collateral protection insurance must become effective no earlier than the date of lapse of insurance upon mortgaged real property subject to the terms of a mortgage agreement or any state or federal law requiring the same.”); see also INS. J., *supra* note 3 (“The law, based on model legislation from the National Association of Insurance Commissioners, notes that lender-placed policies cannot take effect sooner than the date of lapse on the HO policy, and must terminate as soon as the mortgagee finds new market coverage.”).

³³ See, e.g., Dena Aubin, *JPMorgan in \$300 Mln Settlement Over Force-placed Insurance*, REUTERS (Sept. 9, 2013, 4:14 PM), <https://www.reuters.com/article/jpm-insurance-settlement/jpmorgan-in-300-mln-settlement-over-force-placed-insurance-idUSL2N0H511R20130909> (“JPMorgan Chase & Co and a major insurer have agreed to a \$300 million settlement to resolve accusations that they forced homeowners into over-priced property insurance and entered into kickback arrangements that inflated the policies’ prices.”); see, e.g., Press Release, Off. of Att’y Gen. Maura Healey,

have brought light to the fact that the mortgage servicers are accepting commissions from the force-placed insurers, which is barred by several of the settlements.³⁴ Although the settlements have made the general public aware of the unethical nature of force-placed insurance, the settlements may not be the best mechanism to repay the homeowners for the excessive premiums because of the difficulties class members face when trying to collect their portion of the award.³⁵

III. DISCUSSION: THE LEGAL IMPLICATIONS OF FORCE-PLACED INSURANCE

A. WHAT CAN STILL BE DONE TO PROTECT HOMEOWNERS

In theory, force-placed insurance makes sense for the mortgage servicers since the borrower will have a difficult time acquiring a new homeowners policy after a lapse.³⁶ However, the best option for homeowners is to break up the

Insurance Company Refunding More Than \$2.4 Million to Massachusetts Homeowners Over Improper Charges (Sept. 10, 2018), <https://www.mass.gov/news/insurance-company-refunding-more-than-24-million-to-massachusetts-homeowners-over-improper-charges> (“Attorney General Maura Healey announced today that QBE Insurance (QBE) will pay more than \$2.4 million in refunds to more than 2,100 Massachusetts homeowners who were improperly charged for property insurance.”); see, e.g., Karen Freifeld & Ashutosh Pandey, *Assurant Settles with New York Over “Force-placed” Insurance*, REUTERS (Mar. 21, 2013, 11:06 AM), <https://www.reuters.com/article/us-insurance-newyork-assurant/assurant-settles-with-new-york-over-force-placed-insurance-idUSBRE92K0PS20130321>.

Assurant Inc settled a New York probe of its “force-placed” insurance by agreeing to pay the state a \$14 million penalty, refund some homeowner premiums and reform certain business practices. The investigation found Assurant made improper financial arrangements with banks and mortgage servicers that pushed up the price of insurance . . .

Id.

³⁴ See Aubin, *supra* note 33 (“The settlement calls for JPMorgan to stop accepting commissions for force-placed insurance.”); see also Freifeld & Pandey, *supra* note 33 (“The settlement bars Assurant from paying commissions to a bank or a mortgage servicer for generating force-placed insurance policies . . .”).

³⁵ See Daniel Fisher, *Study Shows Consumer Class-Action Lawyers Earn Millions, Clients Little*, FORBES (Dec. 11, 2013, 8:46 AM), <https://www.forbes.com/sites/danielfisher/2013/12/11/with-consumer-class-actions-lawyers-are-mostly-paid-to-do-nothing/?sh=7f13db231472>.

When consumer class actions do settle, lawyers usually negotiate a deal that pays them and their named plaintiffs well, but delivers little to nothing to their other clients. The most common tool is a “claims made” settlement, under which everybody who supposedly lost money because of a company’s chicanery is bound by the terms of the settlement, but must make individual claims to be paid.

Id.; see also Daniel Fisher, *Study: Class Action Lawyers Often Take More Money from Settlements than Class Members*, TEXANS FOR LAWSUIT REFORM (Apr. 8, 2020), <https://legalnewsline.com/stories/530006806-study-class-action-lawyers-often-take-more-money-from-settlements-than-class-members> (“A detailed examination of eight years of consumer class actions in federal court found that consumers received only a tiny fraction of the money awarded in those cases while plaintiff lawyers frequently claimed a bigger share of the settlement than their clients.”).

³⁶ See Shannon Martin, *What Happens When Your Home Insurance Lapses?*, BANKRATE (Aug. 19, 2024), <https://www.bankrate.com/insurance/homeowners-insurance/home-insurance-lapse> (“Even the insurance company that insured you before your lapse may not offer new coverage depending

force-placed insurance market or require the mortgage servicers to obtain coverage from the borrower's existing homeowners insurance company.³⁷ During the 1900s, American Telephone & Telegraph Company ("AT&T") had a monopoly over the American telecommunications market.³⁸ In 1974, AT&T was faced with antitrust lawsuits that aimed to break up their market control.³⁹ By 1984, AT&T was forced to divest their control over their regional telephone companies.⁴⁰ In the force-placed insurance market, Assurant, QBE, and Balboa control a massive market share similar to AT&T.⁴¹ Thus, a divestiture of the force-placed insurance market will create competition between insurers.⁴² With more competition in the industry, homeowners will experience lower premiums and costs in the force-placed insurance market.⁴³

on its underwriting guidelines."); see also Valencia Patrice Higuera, *Homeowners Insurance Lapse: What Happens if There's a Gap in Coverage*, MYBANKTRACKER (Mar. 30, 2024), <https://www.mybanktracker.com/insurance/faq/home-insurance-lapse-312298> ("Another reason why you shouldn't allow a lapse in coverage is that it becomes harder to get future insurance.").

³⁷ See Jim Travers & Ally Sabatina, *What Does Homeowners Insurance Cover?*, U.S. NEWS & WORLD REP. (Aug. 21, 2024), <https://www.usnews.com/insurance/homeowners-insurance/what-does-homeowners-insurance-cover> (elaborating on what type of losses and damages are typically covered under a standard homeowners insurance policy). See generally Adrian Gianforti, *This Month in Business History: The Breakup of the Bell System*, HIST. FACTORY (Jan. 24, 2022), <https://www.historyfactory.com/insights/this-month-in-business-history-bell-system> (discussing how and why the American Telephone & Telegraph Company was forced to divest their control over the American telephone market).

³⁸ See Gianforti, *supra* note 37 ("Over the next 20 years, AT&T continued to grow its telephone business, ultimately reaching [ninety] percent of households in the U.S.").

³⁹ See Gianforti, *supra* note 37 ("By 1974, there was again trouble in paradise—this time in the form of a Justice Department lawsuit to break up the organization once and for all.").

⁴⁰ See Gianforti, *supra* note 37.

In January 1982, in order to bring the nearly eight-year suit to an end, AT&T agreed to break up its local business into seven smaller regional operating companies known as "Baby Bells." The divestiture process took two years. When it ended in 1984, AT&T retained only long-distance, Bell Labs, and Western Electric.

Id.

⁴¹ See Birnbaum, *supra* note 17, at 21–23 (displaying that Assurant, QBE, and Balboa have written the most force-placed premiums, in dollar amounts, and together have a market share of roughly ninety-nine percent); see also Freifeld & Pandey, *supra* note 33 ("In the United States, the force-placed homeowner's market is dominated by Assurant and Australian insurer QBE.").

⁴² See Cem Dilmegani, *How Does Increased Competition among Firms Affect Markets?*, AIMULTIPLE (Jan. 11, 2024), <https://research.aimultiple.com/increased-competition/> ("[C]ompanies are less successful compared to the past, there is more concentration in most industries . . . We believe that because of the entrenchment of top companies, smaller companies are facing stronger rivals and it is getting harder to start new companies.").

⁴³ See Heather Boushey & Helen Knudsen, *The Importance of Competition for the American Economy*, THE WHITE HOUSE (July 9, 2021), https://www.whitehouse.gov/cea/written-materials/2021/07/09/the-importance-of-competition-for-the-american-economy/#_ftnl ("Basic economic theory demonstrates that when firms have to compete for customers, it leads to lower prices, higher quality goods and services, greater variety, and more innovation."); see also Leslie Kramer, *How Does the Law of Supply and Demand Affect Prices?*, INVESTOPEDIA (Nov. 15, 2024), <https://www.investopedia.com/ask/answers/033115/how-does-law-supply-and-demand-affect-prices.asp> ("It's a fundamental economic principle that explains when supply exceeds demand for a good or service, prices fall.").

It can be difficult for a homeowner to find a new insurance policy once their coverage has lapsed.⁴⁴ When a homeowner is searching for a new policy, insurance companies will ask the homeowner if they have previously lapsed on prior insurance.⁴⁵ Mortgage servicers should look to include coverage in the pre-existing policy, rather than assessing overly expensive force-placed insurance.⁴⁶ This could be achieved during the grace period that the homeowners' insurance company allows prior to a lapse in coverage.⁴⁷ With lower costing premiums, the number of defaults by homeowners would decrease, strengthening the mortgage-backed securities purchased by investors.⁴⁸

B. WHY INVESTORS NEED TO BE PROTECTED

Investors need to be protected from the large losses they have experienced in force-placed insurance since the investors' funds are derived from the savings of the general population.⁴⁹ With trillions of the general population's dollars

⁴⁴ See Lorraine Roberte, *What Does It Mean When Insurance Policy Lapses?*, THE BALANCE (Apr. 14, 2022), <https://www.thebalancemoney.com/what-is-a-lapse-in-insurance-coverage-5198474> ("Coverage lapses could also cause your insurer to see you as a higher insurance risk. They could refuse to reinstate your coverage . . . finding new coverage could prove challenging or expensive."); see also Higuera, *supra* note 36 ("If another insurance company discovers a previous gap in coverage, or learns a provider dropped your coverage, you're deemed a risky applicant.").

⁴⁵ See Martin, *supra* note 36 ("One of the questions most insurance applications ask is if you have had a home insurance lapse in the past. If you did, you might be denied coverage."); see also Pat Howard, *What Happens if Your Homeowners Insurance Policy Lapses?*, POLICYGENIUS (May 30, 2024), <https://www.policygenius.com/homeowners-insurance/what-happens-when-your-homeowners-insurance-lapses> ("[S]ome companies will also refuse to insure your home if you have any gaps or lapses in your insurance history.").

⁴⁶ See generally Cynthia Brown, *Complete Guide to Homeowners Insurance Endorsements*, INSURANCE.COM (May 28, 2024), <https://www.insurance.com/home-and-renters-insurance/homeowners-insurance-endorsements> ("A homeowners insurance policy endorsement expands on the standard homeowners coverage by adding to or modifying the insurance policy Homeowners insurance endorsements allow you to customize your coverage based on your needs."); see generally *Homeowners Insurance Add-Ons You Should Know About*, LEMONADE, <https://www.lemonade.com/homeowners/explained/homeowners-insurance-add-ons-you-should-know-about> (last visited Mar. 16, 2025) (establishing that homeowners can purchase add-ons like swimming pool coverage, equipment breakdown coverage, buried utility, water backup, foundation water backup, scheduled property, and extended reconstruction cost).

⁴⁷ See Martin, *supra* note 36 (summarizing the implications of a lapse in insurance coverage, such as the denial of future insurance coverage); see also Roberte, *supra* note 44 ("Many insurance companies offer grace periods to help you avoid an insurance lapse due to missed payment.").

⁴⁸ See generally Julia Kagan, *Residential Mortgage-Backed Security: Definition Pros, and Cons*, INVESTOPEDIA (May 17, 2023), <https://www.investopedia.com/terms/r/rmbs.asp> ("Risks associated with [Residential Mortgage-Backed Securities] include financial system stress that uniformly affects all investments within the pool that underlies the asset. This risk was evident in the 2008 financial crisis."); see generally *Crisis and Response: An FDIC History, 2008-2013*, FED. DEPOSIT INS. CORP., <https://www.fdic.gov/bank/historical/crisis/chap1.pdf> (last visited Mar. 16, 2025) ("When mortgage defaults began to rise, the system's interconnectedness, complexity, lack of transparency, and leverage exacerbated the effects of the crisis.").

⁴⁹ See generally Ali Hussain, *What Does an Investor Do? What Are the Different Types?*, INVESTOPEDIA (Nov. 15, 2024), <https://www.investopedia.com/terms/i/investor.asp> ("A wide variety of investment vehicles exist to accomplish goals, including (but not limited to) stocks, bonds,

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tied up in investment ventures, it is imperative that the U.S. government step in and protect its citizens.⁵⁰ Investors of mortgage-backed securities see a majority of their losses in the event of a short sale.⁵¹ A short sale is an attempt to sell a property with an asking price lower than the actual worth of the property or mortgage.⁵² This short sale occurs when the homeowner can no longer make mortgage payments for the property.⁵³ A short sale is a less severe alternative to a foreclosure since funds from the sale will go to the mortgage holder.⁵⁴ However, before any funds are liquidated to the mortgage holder, any expenses of the mortgage servicer must be paid off.⁵⁵ The force-placed insurance

commodities, mutual funds, exchange-traded funds (ETFs), options, futures, foreign exchange, gold, silver, retirement plans”); *see generally* *Retirement Accounts*, FINRA, <https://www.finra.org/investors/investing/investment-accounts/retirement-accounts> (last visited Mar. 16, 2025) (“A growing number of plans offer one or more automatic features that require no action from the participant. An increasingly common feature is automatic enrollment, where employees are enrolled at a preset contribution rate and are also automatically enrolled into a preselected investment fund.”).

⁵⁰ *See generally* Cheyenne DeVon, *Here’s How Much Americans Have in Their 401(k)s at Every Age*, CNBC (June 3, 2023, 9:00 AM), <https://www.cnbc.com/2023/06/03/fidelity-how-much-americans-have-in-their-401ks-at-every-age.html> (illustrating that the average 401(k) balance in the U.S., as of quarter one in 2023, for Generation Z, Millennials, Generation X, and Baby Boomers is \$7,100, \$44,900, \$145,500, and \$215,000, respectively); *see generally* Derick Moore, *U.S. Population Estimated at 334,233,854 on Jan. 1, 2023*, U.S. CENSUS BUREAU (Dec. 29, 2022), <https://www.census.gov/library/stories/2022/12/happy-new-year-2023.html> (“As our nation prepares to ring in the new year, the U.S. Census Bureau projects the United States population will be 334,233,854 on Jan. 1, 2023.”); *see generally* Jack Flynn, *25+ Gen Z Statistics [2023]: Tech, Preferences, and More*, ZIPPPIA (May 9, 2023), <https://www.zippia.com/advice/gen-z-statistics> (demonstrating that the population share in 2023 for Generation Z, Millennials, Generation X, and Baby Boomers is 20.67%, 21.75%, 19.83%, and 21.16%, respectively).

⁵¹ *See generally* James Chen, *What is a Short Sale on a House? Process, Alternatives, and Mistakes to Avoid*, INVESTOPEDIA (Aug. 26, 2024), <https://www.investopedia.com/terms/t/real-estate-short-sale.asp> (defining what a short sale is and explaining the process for the parties involved); *see generally* *What is a Short Sale?*, CONSUMER FIN. PROT. BUREAU (Feb. 2, 2024), <https://www.consumerfinance.gov/ask-cfpb/what-is-a-short-sale-en-290> (elaborating on the differences between a short sale and a foreclosure and laying out the entire process of a short sale).

⁵² *See* Chen, *supra* note 51 (“A short sale in real estate is an offer of a property at an asking price that is less than the amount due on the current owner’s mortgage.”). *See generally* *What is a Short Sale?*, *supra* note 51 (“A short sale, which is a type of loss mitigation, is a sale of your home for less than what you owe on your mortgage.”).

⁵³ *See* Chen, *supra* note 51 (“A short sale is usually a sign of a financially distressed homeowner who needs to sell the property before the lender seizes it in foreclosure.”). *See generally* *What is a Short Sale?*, *supra* note 51 (“If your lender or servicer agrees to a short sale, you may be able to sell your home to pay off your mortgage, even if the sale price or proceeds turn out to be less than the balance remaining on your mortgage.”).

⁵⁴ *See* Chen, *supra* note 51 (“The financial consequences of a short sale may be less severe than a foreclosure for both the seller and the lender.”). *See generally* *What is a Short Sale?*, *supra* note 51 (“A short sale is an alternative to foreclosure, but because it is a sale, you will have to leave your home.”).

⁵⁵ *See* FANNIE MAE, *supra* note 25, at 548.

Fannie Mae will reimburse the servicer for real estate taxes and property and flood insurance premiums it advances to protect Fannie Mae’s interests when there are insufficient funds in the escrow account to cover payments (or for a non-escrowed mortgage loan). Such escrow advances are reimbursable even if the expenses were advanced prior to the

premiums qualify as expenses that must be paid off prior to sale of the property.⁵⁶ Considering that the premiums do not match loss ratios present in the force-placed market, both mortgage servicers and force-placed insurers should be charged with fraud, under the United States Code, for their unwarranted premium prices.⁵⁷

C. THE MORTGAGE SERVICERS AND FORCE-PLACED INSURERS BREACH OF THEIR DUTIES

Insurance companies are required to follow the doctrine of utmost good faith, which requires them to act honestly and not mislead their clients.⁵⁸ If the insurance company violates any of its duties, the injured party can bring suit against the insurer.⁵⁹ In both federal and state jurisdictions, courts have ruled for both insureds and insurers in bad faith insurance claims.⁶⁰ Regardless of which side a court's ruling supports, it is agreed that in order to bring a bad faith

mortgage loan becoming delinquent.

Id.; see also FANNIE MAE, *supra* note 25, at 549 ("The servicer must pay any out-of-pocket expenses . . .").

⁵⁶ See Birnbaum, *supra* note 17, at 13 ("In the event of Borrower Default / Foreclosure, Mortgage Owner Pays LPI Premiums to Mortgage Servicer."). See generally Chen, *supra* note 51 ("Carrying costs are your expenses for holding onto the property. The longer you own the property, the more you will spend on carrying costs, which include: Mortgage payment (including interest), Property taxes, Insurance . . .").

⁵⁷ See 18 U.S.C. § 1001(a)(1) (2011) ("[F]alsifies, conceals, or covers up by any trick, scheme, or device a material fact[.]"); see also Birnbaum, *supra* note 17, at 29 (illustrating that across the country, the loss ratios for force-placed insurance have been roughly thirty-five percent less than the loss ratios for standard homeowners insurance).

⁵⁸ See Daniel Liberto, *What Is the Doctrine of Utmost Good Faith in Insurance?*, INVESTOPEDIA (Apr. 30, 2024), <https://www.investopedia.com/terms/d/doctrineofutmostgoodfaith.asp> ("The doctrine of utmost good faith, also known by its Latin name uberrimae fidei, is a minimum standard, legally obliging all parties entering a contract to act honestly and not mislead or withhold critical information from one another."); see also Jason Mance Gordon, *Doctrine of Utmost Good Faith – Explained*, THE BUS. PROFESSOR (Apr. 4, 2023), https://thebusinessprofessor.com/en_US/122296-law-transactions-amp-risk-management-commercial-law-contract-payments-security-interests-amp-bankruptcy/doctrine-of-utmost-good-faith-definition ("The Doctrine of Utmost Good Faith is observed in transaction in insurance, financial markets, real estate, and other businesses This doctrine serves as the basis of trust in a contractual agreement, where both parties believe that the transaction is truthful and ethical.").

⁵⁹ See Christy Bieber, *What is A Bad Faith Insurance Claim?*, FORBES ADVISOR (Sept. 8, 2023, 5:51 AM), <https://www.forbes.com/advisor/legal/personal-injury/bad-faith-insurance/> ("If an insurer unfairly fails to fulfill these obligations, the insurer may be in violation of the duty of good faith and fair dealing. They are said to be acting in bad faith, which can lead to a bad faith insurance claim."); see also Gordon, *supra* note 58 ("Violations of the doctrine of good faith in a contract often has legal consequences depending upon the nature or degree of the violation.").

⁶⁰ See, e.g., *N. Am. Van Lines, Inc. v. Lexington Ins. Co.*, 678 So. 2d 1325, 1333–34 (Fla. Dist. Ct. App. 1996) (finding that the trial court should not have dismissed the counts in plaintiff's complaint, and allowing the plaintiff to recover against the insurer for a bad faith action). But see, e.g., *Caycho v. Am. Security Ins. Co.*, 668 F.Supp.3d 1251, 1255 (M.D. Fla. 2023) (ruling in favor of the defendant as the bad faith claim was premature since there was no determination of liability against the defendant).

claim, there must be a determination of liability.⁶¹ In a majority of bad faith insurance claims, the insurance company's alleged breach is a denial of coverage or failure to pay.⁶² Even though force-placed insurance policies only protect the homeowner's outstanding mortgage balance and does not make payments to the insured, the insurance companies are fraudulently pricing the policies and breaching their duties.⁶³

Every contract in the United States is embedded with the implied covenant of good faith and fair dealing.⁶⁴ When a mortgage servicer decides to take on a new loan, they are agreeing to enter into a contract with whoever owns the loan.⁶⁵ In the United States, mortgage servicers are required by law to act in the best interest of any investor or owner of the loan.⁶⁶ However, the overpriced

⁶¹ See *Blanchard v. State Farm Mut. Auto. Ins. Co.*, 575 So. 2d 1289, 1291 (Fla. 1991) ("Absent a determination of the existence of liability on the part of the uninsured tortfeasor and the extent of the plaintiff's damages, a cause of action cannot exist for a bad faith failure to settle."); see also *Vest v. Travelers Ins. Co.*, 753 So. 2d 1270, 1276 (Fla. 2000) ("We continue to hold in accord with *Blanchard* that bringing a cause of action in court for violation of section 624.155(1)(b)1 is premature until there is a determination of liability and extent of damages owed on the first-party insurance contract.").

⁶² See, e.g., *Blanchard*, 575 So. 2d at 1290 ("Following State Farm's alleged refusal to make a good faith offer to settle their claim, the Blanchards filed a suit in state court charging the original tortfeasor with negligence and seeking to compel State Farm to perform under the policy."); see also *Bieber*, *supra* note 59 ("[T]he insurer generally must have acted unreasonably or egregiously in wrongfully denying coverage you deserve. In some cases, you must also prove the insurer acted intentionally, purposefully preventing you from getting the coverage you paid for.").

⁶³ See 18 U.S.C. § 1001(a)(1)–(2) (2011) (prohibiting any conduct that conceals a scheme or makes fraudulent statement); see also *Kagan*, *supra* note 1 (emphasizing that force-placed insurance policies do not cover personal items of the homeowner, and only protect the lender by covering the outstanding balance of the mortgage).

⁶⁴ See Catherine Pastrikos Kelly, *What You Should Know about the Implied Duty of Good Faith and Fair Dealing*, A.B.A. (July 26, 2016), <https://www.americanbar.org/groups/litigation/resources/newsletters/business-torts-unfair-competition/what-you-should-know-about-implied-duty-good-faith-fair-dealing/> ("In general, every contract contains an implied duty of good faith and fair dealing. This duty requires that neither party will do anything that will destroy or injure the right of the other party to receive the benefits of the contract."); see also Will Newman, *The Implied Covenant of Good Faith and Fair Dealing*, UNPREDICTABLE (Dec. 19, 2022), <https://www.unpredictableblog.com/blog/implied-covenant> ("The implied covenant of good faith and fair dealing is a promise that state law declares is inherent in every contract unless the contract expressly disclaims it. The Uniform Commercial Code, for example, codifies it at UCC 1-304.").

⁶⁵ See *Who is Involved with Mortgage Servicing*, URBAN INST., <https://www.urban.org/policy-centers/housing-finance-policy-center/projects/mortgage-servicing-collaborative/help-me-understand-mortgage-servicing/who-involved-mortgage-servicing> (last visited Mar. 16, 2025) ("The servicers are then responsible for understanding and following all of these rules and for helping homeowners when they run into trouble paying their mortgages. In practice, this means servicers are legally accountable to multiple stakeholders: investors, insurers, guarantors, and regulators."). See generally Laurie Richards, *Mortgage Lender vs. Servicer: What's the Difference?*, BANKRATE (Aug. 15, 2023), <https://www.bankrate.com/mortgages/mortgage-servicer-vs-lender/> ("Some lenders do their own mortgage servicing, but many aren't large enough to deal with loan servicing profitably. These lenders often hand that task off to a mortgage servicing company.").

⁶⁶ See 15 U.S.C. § 1639a(a)(1)–(2) (2021) (requiring mortgage servicers to have a duty to maximize profits, and laying out the timeframe for this duty). See generally Kevin Graham, *Truth in Lending Act (TILA): Defined And Explained*, ROCKET MORTGAGE (Nov. 5, 2024),

insurance policies chosen by the mortgage servicers are likely to lead to an increase in foreclosures.⁶⁷ It is safe to say that the mortgage servicers are not acting in the best interest of the investors since the value of the mortgage-backed securities will drop with an increase in the number of foreclosures.⁶⁸

D. ANTITRUST IMPLICATIONS

In 1890, Congress passed the Sherman Antitrust Act with the goal of preserving competition among businesses across the country.⁶⁹ Since its conception, the Sherman Antitrust Act has criminally and civilly charged industry giants in their respective fields.⁷⁰ Two landmark cases for Antitrust Law include

<https://www.rocketmortgage.com/learn/what-is-tila> (“[TILA] aims to protect consumers from lending practices that could be considered unethical or unfair. The primary way this is achieved is by requiring lenders to list fees and charges completely so a borrower fully understands what they’ll be charged.”).

⁶⁷ See Mary Ellen Klas, *With Florida’s High Property Insurance Rates, Many Are Forced to ‘Go Bare’*, TAMPA BAY TIMES (Dec. 16, 2022), <https://www.tampabay.com/news/florida-politics/2022/12/13/with-floridas-high-property-insurance-rates-many-are-forced-go-bare/> (“Hart and other members of her caucus warn that high property insurances costs could result in a surge in mortgage foreclosures Even bankers and mortgage insurers who finance people’s homes are worried that the reforms may not do enough to prevent turmoil for many homeowners.”). See generally Hunter Dane, *Why Homeowners Insurance Premiums Could Cause Massive Foreclosures Throughout Florida in 2022*, THE DANE GROUP (June 5, 2022), <https://danegroupllc.com/blog/why-homeowners-insurance-premiums-could-cause-massive-foreclosures-throughout-florida-in-2022/> (“[W]e are in a moment in time where we could see 2007/2008 all over again simply because homeowners prices are unaffordable.”).

⁶⁸ See generally Kagan, *supra* note 8 (“The avalanche of non-payments meant that many MBSs and collateralized debt obligations (CDOs) based on pools of mortgages were vastly overvalued.”); see generally Jason Steele, *Mortgage-Backed Securities: A Guide*, QUICKEN LOANS (Jul. 22, 2024), <https://www.quickenloans.com/learn/mbs> (“The return on a mortgage-backed security is based on a percentage of all the principal and interest payments associated with that particular bundle of mortgages. The individual investor’s return is based on the size of their stake in the MBS.”).

⁶⁹ See *The Antitrust Laws*, FED. TRADE COMM’N, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited Mar. 16, 2025) (“Congress passed the first antitrust law, the Sherman Act, in 1890 as a ‘comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade[.]’”); see also Maurice E. Stucke & Ariel Ezrachi, *The Rise, Fall, and Rebirth of the U.S. Antitrust Movement*, HARV. BUS. REV. (Dec. 15, 2017), <https://hbr.org/2017/12/the-rise-fall-and-rebirth-of-the-u-s-antitrust-movement> (“The Sherman Act enabled the Department of Justice to criminally and civilly prosecute unreasonable restraints of trade and monopolistic abuses. This 1890 statute ‘was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade.’”). See generally 15 U.S.C. § 1 (“Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”)

⁷⁰ See *Sherman Act Violations Resulting in Criminal Fines & Penalties of \$10 Million or More*, U.S. DEP’T OF JUST.: ANTITRUST DIV., <https://www.justice.gov/atr/sherman-act-violations-yielding-corporate-fine-10-million-or-more> (last visited Mar. 16, 2025) (listing out defendants that have been charged under the Sherman Antitrust Act, including companies like JPMorgan Chase & Co. and Citicorp). See generally *Amazon Antitrust Lawsuit: Here’s How US Regulators Break Up Other Monopoly Powers*, REUTERS (Sept. 27, 2023, 1:34 PM), <https://www.reuters.com/legal/amazon-antitrust-lawsuit-latest-us-efforts-rein-big-firms-clout-2023-09-27/> (“U.S. antitrust regulators on Tuesday filed a lawsuit against Amazon.com (AMZN.O) accusing the online retailer of harming

the breakups of Standard Oil and Kodak.⁷¹ Both cases show that any entity is not allowed to restrain trade or commerce, whether it is done by fixing the prices of a specific good, or through monopolization of a primary market for the purpose of monopolizing a subsidiary market.⁷² In 1914, Congress further regulated monopolies by passing the Clayton Antitrust Act.⁷³ The Clayton Antitrust Act was designed to strengthen the Sherman Antitrust Act and address any issues it missed.⁷⁴ Under both the Sherman Antitrust Act and the Clayton Antitrust Act, the Federal Trade Commission and the U.S. Department of Justice are tasked with enforcing these antitrust laws.⁷⁵

Generally, a monopoly occurs when a company controls and dominates their respective industry.⁷⁶ However, to be considered a monopoly, courts will

consumers with higher prices . . .”).

⁷¹ See *Eastman Kodak Co. v. Image Tech. Services, Inc.*, 504 U.S. 451, 486 (1992) (ruling that Kodak’s assertion “that its part[,], service, and equipment” were one unified market was insufficient to justify their antitrust violations); see also *Standard Oil Co. of N.J. v. U.S.*, 221 U.S. 1, 81 (1911) (holding Standard Oil Company unreasonably restrained trade and competition in their field by fixing the prices of oil).

⁷² See *Eastman Kodak Co.*, 504 U.S. at 483 (“As recounted at length above, respondents have presented evidence that Kodak took exclusionary action to maintain its parts monopoly and used its control over parts to strengthen its monopoly share of the Kodak service market.”); see also *Standard Oil Co. of N.J.*, 221 U.S. at 32 (“[The defendant] engaged in purchasing, shipping, refining, and selling petroleum and its products among the various states[,] for the purpose of fixing the price of crude and refined oil and the products thereof . . . and thereby restraining trade and commerce among the several states[.]”).

⁷³ See Clayton Antitrust Act of 1914, 15 U.S.C. §§ 12–27 (1914) (prohibiting price discrimination against competitors, serving on the board of directors for two competing companies, the conditioning of sales on exclusive dealings, and mergers acquisitions that substantially decrease competition); see also Troy Segal, *Clayton Antitrust Act of 1914: History, Amendments, Significance*, INVESTOPEDIA (Apr. 18, 2023), <https://www.investopedia.com/terms/c/clayton-antitrust-act.asp> (“The Clayton Antitrust Act is a piece of legislation, passed by the U.S. Congress and signed into law in 1914, that defines unethical business practices, such as price fixing and monopolies, and upholds various rights of labor.”).

⁷⁴ See Alexandra Twin, *Antitrust Laws: What They Are, How They Work, Major Examples*, INVESTOPEDIA (May. 31, 2024), <https://www.investopedia.com/terms/a/antitrust.asp> (“The Clayton Act was also passed in 1914, addressing specific practices that the Sherman Act does not ban.”); see also *Clayton Antitrust Act*, CORP. FIN. INST., <https://corporatefinanceinstitute.com/resources/wealth-management/clayton-antitrust-act/> (last visited Mar. 16, 2025) (“The Clayton Antitrust Act sought to address the weaknesses in the Sherman Act by expanding the list of prohibited business practices that would prevent a level playing field for all businesses.”).

⁷⁵ See Segal, *supra* note 73 (“The Federal Trade Commission (FTC) and the Antitrust Division of the U.S. Department of Justice (DOJ) enforce the provisions of the Clayton Antitrust Act, which continue to affect American business practices today.”); see also Twin, *supra* note 74 (“The Federal Trade Commission (FTC) and the U.S. Department of Justice (DOJ) are tasked with enforcing federal antitrust laws . . . these two authorities may also work with other regulatory agencies to ensure that certain mergers fit the public interest.”).

⁷⁶ See Adam Hayes, *What Is a Monopoly? Types, Regulations, and Impact on Markets*, INVESTOPEDIA (Jun. 21, 2024), <https://www.investopedia.com/terms/m/monopoly.asp> (“A monopoly is a market structure where a single seller or producer assumes a dominant position in an industry or a sector.”); see also Andres Bylund, *What Is a Monopoly?*, THE MOTLEY FOOL (Oct. 21, 2024, 3:56 PM), <https://www.fool.com/terms/m/monopoly/> (“A monopoly occurs when a single company or entity dominates a particular market, holding most, if not all, of the market share . . . allows the

not require a company to have sole control over their market since a true monopoly is so rare.⁷⁷ Rather, courts will look at a company's market share to determine their market power.⁷⁸ Courts may find a company to have monopolistic power if its market share exceeds fifty percent.⁷⁹

IV. SOLUTION: HOW TO PROTECT AND INDEMNIFY INVESTORS

A. STRICT ANTITRUST SCRUTINY

In promoting ethical practices and healthy competition in the force-placed insurance market, Congress should enforce strict antitrust scrutiny against force-placed insurers and mortgage servicers.⁸⁰ Banks are already subject to antitrust laws and tend to service the mortgages they sell, so there should be no issue with the Federal Trade Commission and the U.S. Department of Justice stepping in to enforce strict antitrust scrutiny.⁸¹ However, enforcing antitrust

monopolistic entity to control prices, quality, and the availability of the product or service.”).

⁷⁷ See *Monopolization Defined*, FED. TRADE COMM’N, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/single-firm-conduct/monopolization-defined> (last visited Mar. 16, 2025) (“Courts do not require a literal monopoly before applying rules for single firm conduct; that term is used as shorthand for a firm with significant and durable market power — that is, the long term ability to raise price or exclude competitors.”). See generally Caroline Banton, *Monopolistic Markets: Characteristics, History, and Effects*, INVESTOPEDIA (May 1, 2024), <https://www.investopedia.com/terms/m/monopolymarket.asp> (“Purely monopolistic markets are scarce and perhaps even impossible in the absence of absolute barriers to entry, such as a ban on competition or sole possession of all-natural resources.”).

⁷⁸ See FED. TRADE COMM’N, *supra* note 77 (“[A] ‘monopolist’ is a firm with significant and durable market power. Courts look at the firm’s market share . . .”). See generally 15 U.S.C. § 2 (“Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony[.]”).

⁷⁹ See, e.g., Hayes, *supra* note 76 (showing that Microsoft was deemed to have a monopoly with a market share of seventy-five percent); see also *Monopolization Defined*, *supra* note 77 (“[Courts] typically do not find monopoly power if the firm (or a group of firms acting in concert) has less than [fifty] percent of the sales of a particular product or service within a certain geographic area.”); see also Sterling Miller, *Antitrust Law Basics – Section 2 of the Sherman Act*, THOMSON REUTERS (May 17, 2023), <https://legal.thomsonreuters.com/blog/antitrust-law-basics-section-2-of-the-sherman-act/> (“U.S. courts have interpreted Section 2 as requiring: a) the possession of monopoly power in the relevant market; and b) the willful acquisition or maintenance of that monopoly power. This means you need to start worrying about Section 2 any time your company crosses over 50%[.]”).

⁸⁰ See generally Diane Bartz & Anirban Sen, *US Regulators Unveil Antitrust Roadmap with Big Tech in Crosshairs*, REUTERS (July 19, 2023, 8:33 PM), <https://www.reuters.com/markets/deals/us-antitrust-enforcers-tackle-digital-platforms-new-merger-guidelines-2023-07-19/> (expanding on the new guidelines U.S. antitrust regulators have set out for enforcing antitrust laws against the mergers and acquisitions of Big Tech companies); see generally Pete Schroeder, *U.S. Justice Antitrust Chief Details Renewed Bank Merger Scrutiny*, REUTERS (June 20, 2023, 4:02 PM), <https://www.reuters.com/business/finance/us-justice-antitrust-chief-urges-update-bank-merger-guidelines-2023-06-20/> (explaining that the U.S. Justice Department is planning on expanding their review process for bank mergers).

⁸¹ See Courtney Hoff Dockerty, *20 Mortgage Servicing Banks With The Largest MSR Volumes*, NAT’L MORTGAGE NEWS (Oct. 24, 2022, 5:00 AM), <https://www.nationalmortgage-news.com/list/20-mortgage-servicing-banks-with-the-largest-msr-volumes> (“The top five banks in

laws against force-placed insurers presents more of a challenge since the business of insurance is immune to antitrust litigation under the McCarran-Ferguson Act.⁸² Insurance companies are exempt from antitrust laws if their conduct qualifies as the business of insurance, is regulated by state law, and is not an act of boycott, coercion, or intimidation.⁸³ To qualify as the business of insurance, the business conduct must deal with the transferring of risk of policyholders, be an integral part of the policy relationship between the insurer and insured, and be limited to entities within the insurance industry.⁸⁴

One of the primary issues in force-placed insurance, the unjustified price of the policies, would qualify under this exemption since ratemaking is an integral part of the policy relationship between the insured and the insurer.⁸⁵ To

our ranking have a combined MSR volume of more than \$15 billion at the end of Q2. Many servicers saw growth between Q1 and Q2, with one seeing growth of [forty-two and 14/100 percent].”). See generally Leah Nylen & Katanga Johnson, *Bank Mergers Face Fresh Antitrust Heat at Justice Department (1)*, BLOOMBERG L. (June 20, 2023, 10:35 AM), <https://news.bloomberglaw.com/antitrust/bank-mergers-face-fresh-antitrust-heat-at-us-justice-department> (“The Justice Department ‘is modernizing its approach to investigating and reporting on the full range of competitive factors involved in a bank merger to ensure that we are taking into account today’s market realities and the many dimensions of competition in the modern banking sector.’”).

⁸² See 15 U.S.C. § 1012(b) (“No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance[.]”); see also Anthony H. Gamboa, *Legal Principles Defining the Scope of the Federal Antitrust Exemption for Insurance*, U.S. GOV’T ACCOUNTABILITY OFF., 3 (Mar. 4, 2005), <https://www.gao.gov/assets/b-304474.pdf> (“The McCarran-Ferguson Act gives the insurance industry a very limited exemption from the federal antitrust laws.”).

⁸³ See Gamboa, *supra* note 82, at 3 (“To qualify for the exemption, an activity must satisfy three prerequisites. It must: (a) constitute the ‘business of insurance’; (b) be ‘regulated by State law’; and (c) not constitute ‘an agreement to boycott, coerce, or intimidate, or an act of boycott, coercion, or intimidation.’”); see also Jarod Bona, *Is Insurance Really Exempt from the U.S. Antitrust Laws?*, THE ANTITRUST ATT’Y BLOG (Feb. 13, 2021), <https://www.theantitrustattorney.com/insurance-really-exempt-u-s-antitrust-laws/> (“The conduct in question must be regulated by the state or states. The conduct must qualify as the business of insurance—the business of insurers is not sufficient. The conduct must not consist of a group boycott or related form of coercion.”).

⁸⁴ See Bona, *supra* note 83 (“The conduct must be concerned with transferring or spreading the risks of policyholders; it must be an integral part of the policy relationship between an insured and its insurer; and it must concern entities within the insurance industry itself.”); see also Gamboa, *supra* note 82, at 3.

In determining whether a particular activity qualifies as the “business of insurance,” the Supreme Court has developed three factors to be considered: (1) whether the activity has the effect of transferring or spreading a policyholder’s risk; (2) whether the activity is an integral part of the policy relationship between insurer and insured; and (3) whether the activity is limited to entities within the insurance industry. None of these criteria is dispositive in itself.

Id.

⁸⁵ See Birnbaum, *supra* note 17, at 27 (“[B]ased on the industry explanation for higher LPI rates, we would expect higher LPI loss ratios than homeowners loss ratios . . . [t]he loss ratio results from 2004 through 2012 show LPI loss ratios have been far less than homeowners loss ratios.”); see also Gamboa, *supra* note 82, at 1 (“Today, only those activities directly tied to ratemaking and other functions at the core of and unique to the insurance industry, and activities directly related to the relationship between insurer and insured, are deemed to be the business of insurance potentially

overcome this hurdle, Congress should amend the McCarran-Ferguson Act to limit the insurance companies' use of this defense.⁸⁶ Congress has previously amended the McCarran-Ferguson Act in relation to health and dental insurance companies.⁸⁷ This amendment to the McCarran-Ferguson Act forces health and dental insurers to play by the same rules as other industries since previously lawful activities, like ratemaking or claims handling, may no longer be exempt.⁸⁸ An amendment specific to force-placed insurance, and similar to the one present in the health and dental insurance industry, would allow for an influx of litigation and settlements.⁸⁹ There would be little difficulty to bring

immune from the federal antitrust laws.”).

⁸⁶ See generally Mark Strand & Timothy Lang, *Open House: How the House of Representatives Can Reinvigorate the Amendment Process*, CONG. INST., <https://www.congressionalinstitute.org/open-house-how-the-house-of-representatives-can-reinvigorate-the-amendment-process/> (last visited Mar. 16, 2025) (“Amending legislation is a critical power for legislators, since it offers the most direct means for Members of Congress to represent their district and address constituent needs . . . [t]he House can also promote an open amendment process short of actually changing the standing Rules of the House.”); see generally *The Amending Process in the Senate*, CONG. RSCH. SERV. (Sept. 16, 2015), <https://crsreports.congress.gov/product/pdf/RL/98-853> (classifying the types of amendment to congressional acts and laying out the steps required to finalize the process).
⁸⁷ See, e.g., Press Release, Off. of Pub. Affs., Justice Department Welcomes Passage of The Competitive Health Insurance Reform Act of 2020 (Jan. 13, 2021), <https://www.justice.gov/archives/opa/pr/justice-department-welcomes-passage-competitive-health-insurance-reform-act-2020> (“The Competitive Health Insurance Reform Act amends the McCarran-Ferguson Act and will assist the Antitrust Division in its mission to enforce the antitrust laws by narrowing this defense . . .”); see also Kathy L. Osborn et al., *New Amendment to McCarran-Ferguson Act Repeals Important Antitrust Exemption for Health and Dental Insurance Companies*, FAEGRE DRINKER (Feb. 16, 2021), <https://www.faegredrinker.com/en/insights/publications/2021/1/congress-passes-amendment-to-mccarran-ferguson-act-to-repeal-important-antitrust-exemption-for-health> (“Under CHIRA, certain practices by health and dental insurance companies that had previously been exempt from antitrust scrutiny may expose these companies to new antitrust risks.”).

⁸⁸ See Off. of Pub. Aff., *supra* note 87 (“[E]xcept for certain activities that improve health insurance services for consumers, the conduct of health insurers is subject to the federal antitrust laws.”); see also Osborn, *supra* note 87.

Health insurance companies should be particularly cautious about “business of insurance” activities that were previously exempt from federal antitrust scrutiny under the Act but may now be outside the scope of the McCarran-Ferguson Act’s exemption. Depending on the facts and nature of the collaborations, these activities may include, for example, ratemaking activities, joint claims handling and reinsurance agreements.

Id.

⁸⁹ See, e.g., Mike Scarcella, *\$2.7 Bln Blue Cross Antitrust Settlement Upheld by US Appeals Court*, REUTERS (Oct. 25, 2023, 6:21 PM), <https://www.reuters.com/legal/litigation/27-bln-blue-cross-antitrust-settlement-upheld-by-us-appeals-court-2023-10-25/> (“A U.S. appeals court has rejected legal challenges to a \$2.67 billion settlement that resolves civil antitrust claims that Blue Cross Blue Shield Association and member plans conspired to drive up health insurance costs.”); see, e.g., Troyen Brennan, *The Settlement of the Blue Cross Blue Shield Antitrust Litigation*, JAMA NETWORK (Dec. 16, 2022), <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2799531> (“The recent settlement of the class action antitrust lawsuit against the Blue Cross Blue Shield (BCBS) Association and [thirty-four] plans will bring substantial change to insurance markets in the US . . .”).

antitrust lawsuits against force-placed insurers like Assurant, since their market share exceeds fifty percent and constitutes as a monopoly.⁹⁰

B. CRIMINAL CHARGES

The unjustified prices of force-placed insurance and the misrepresentations made by both the mortgage servicers and the force-placed insurers merit criminal fraud charges.⁹¹ The mortgage servicers and force-placed insurers are also committing securities fraud with their misleading prices, with regard to the investors of mortgage-backed securities.⁹² Within the past year, multiple company officials have been charged with securities fraud for actions extremely similar to those of the mortgage servicers and force-placed insurers.⁹³ However, the threat of criminal charges under the Racketeer Influenced and Corrupt Organizations (“RICO”) Act will be a stronger deterrent than general fraud charges because of the longer terms of imprisonment.⁹⁴

⁹⁰ See Birnbaum, *supra* note 17, at 13 (demonstrating that Assurant’s market share from 2004-2012, in force-placed insurance, is roughly sixty-six percent); see also Miller, *supra* note 79 (explaining that companies are considered to hold a monopoly if their market share exceeds fifty percent). See generally Freifeld & Pandey, *supra* note 33 (“Assurant, the country’s largest force-placed insurer . . .”).

⁹¹ See, e.g., 18 U.S.C. § 1001(a)(1)–(3) (2011) (establishing felony charges for willful misrepresentations or attempts to withhold material information). See generally Press Release, Off. of Pub. Affs., Danske Bank Pleads Guilty to Fraud on U.S. Banks in Multi-Billion Dollar Scheme to Access the U.S. Financial System (Dec. 13, 2022), <https://www.justice.gov/archives/opa/pr/danske-bank-pleads-guilty-fraud-us-banks-multi-billion-dollar-scheme-access-us-financial> (“For years, Danske Bank lied and deceived U.S. banks to pump billions of dollars of suspicious and criminal funds through the U.S. financial system.”).

⁹² See 18 U.S.C. § 1348(2) (2021) (disallowing the collection of funds, by any individual, through “false or fraudulent pretenses, representations, or promises”). See generally Jeremy Salvucci, *What is Securities Fraud? Definition, Types & Examples*, THE STREET (May 3, 2023, 4:31 PM), <https://www.thestreet.com/dictionary/s/securities-fraud> (“Securities fraud occurs when one party illegally acts on or misrepresents information in order to make money in the securities market at the expense of other parties.”).

⁹³ See, e.g., Press Release, Off. of Pub. Affs., Former CEOs of MoviePass and Parent Company Charged in Securities Fraud Scheme (Nov. 4, 2022), <https://www.justice.gov/archives/opa/pr/former-ceos-moviepass-and-parent-company-charged-securities-fraud-scheme> (“Theodore Farnsworth, 60, of Miami, and J. Mitchell Lowe, 70, of Miami Beach, allegedly engaged in a scheme to defraud investors through materially false and misleading representations relating to HMNY and MoviePass’s business and operations to artificially inflate the price of HMNY’s stock and attract new investors.”); see, e.g., Press Release, Off. of Pub. Affs., Two Biotech CEOs Charged in Securities Fraud Schemes (Dec. 20, 2022), <https://www.justice.gov/archives/opa/pr/federal-jury-maryland-convicted-two-men-yesterday-their-roles-scheme-lie-investors-cytodyn> (“According to court documents, Nader Pourhassan, 59, of Lake Oswego, Oregon, and Kazem Kazempour, 69, of Potosi, Maryland, allegedly engaged in a conspiracy to defraud investors through false and misleading representations and material omissions relating to CytoDyn’s development of leronlimab.”).

⁹⁴ See generally 18 U.S.C. § 1348(2) (2021) (“[S]hall be fined under this title, or imprisoned not more than 25 years, or both.”); see generally 18 U.S.C. § 1001(a)(3) (2011) (“[T]he term of imprisonment imposed under this section shall be not more than 8 years.”); see generally 18 U.S.C. § 1963 (1970) (“Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment) . . .”).

The RICO Act allows prosecutors to go after entire organizations or enterprises, rather than just the individual that committed the offense.⁹⁵ Even though the RICO Act was created to combat organized crime, charges can still be brought under the Act against corporations and other entities.⁹⁶ To be charged under the RICO Act, two of the predicate offenses must be committed, which include a list of thirty-five crimes.⁹⁷ The list of predicate offenses include fraud and securities fraud, and both have been committed by mortgage servicers and force-placed insurers.⁹⁸ The threat of extensive jail time will surely deter mortgage servicers and force-placed insurers from continuing their unethical practices.⁹⁹

⁹⁵ See Jeff Wagner, *What is the RICO Act, and How Does It Impact Organized Crime?*, CBS NEWS MINN. (Aug. 22, 2023, 10:38 PM), <https://www.cbsnews.com/minnesota/news/rico-act-explainer/> (“So what RICO did is it allowed prosecutors to prosecute people who didn’t get their hands bloody in the crime, but were operating and managing an enterprise knowing that that enterprise was engaged in criminal conduct.”); see also *Racketeer Influenced and Corrupt Organizations (RICO) Law*, JUSTIA, <https://www.justia.com/criminal/docs/rico/> (last visited Mar. 16, 2025) (“RICO allows for prosecution of all individuals involved in a corrupt organization.”).

⁹⁶ See *Racketeer Influenced and Corrupt Organizations (RICO) Law*, *supra* note 95 (“Note that an enterprise is required. This might be a crime family, a street gang or a drug cartel. But it may also be a corporation, a political party, or a managed care company.”); see also Wagner, *supra* note 95 (“Created in 1970, the RICO Act targeted the mafia, ensuring the leaders of these syndicates could be held responsible for up to [thirty-five] crimes, including murder, gambling, extortion, robbery, drug dealing and money laundering.”).

⁹⁷ See 18 U.S.C. § 1961(1) (1970) (defining racketeering acting and listing out the predicate offenses required under RICO charges); see also *Racketeer Influenced and Corrupt Organizations (RICO) Law*, *supra* note 95 (“The law defines [thirty-five] offenses as constituting racketeering, including gambling, murder, kidnapping, arson, drug dealing, bribery. . . . These crimes are known as ‘predicate’ offenses. To charge under RICO, at least two predicate crimes within [ten] years must have been committed through the enterprise.”).

⁹⁸ See *Federal Racketeering (RICO) Crimes*, KORNER L., <https://kornerlaw.com/federal-crimes/federal-racketeering/> (last visited Mar. 16, 2025) (listing out the thirty five specific crimes contained in the RICO Act, including fraud and securities fraud). See generally *Fraud 101: What is Fraud?*, ASS’N OF CERTIFIED FRAUD EXAM’RS, <https://www.acfe.com/fraud-resources/fraud-101-what-is-fraud/> (last visited Mar. 16, 2025) (“‘Fraud’ is any activity that relies on deception in order to achieve a gain. Fraud becomes a crime when it is a ‘knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.’”); see generally *Securities Fraud Awareness & Prevention Tips*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/stats-services/publications/securities-fraud> (last visited Mar. 16, 2025) (“The term Securities Fraud covers a wide range of illegal activities, all of which involve the deception of investors or the manipulation of financial markets.”).

⁹⁹ See, e.g., *Mob Boss Turned Government Informant Sentenced To Time Served*, CBS N.Y. (July 10, 2013, 9:52 PM), <https://www.cbsnews.com/newyork/news/mob-boss-turned-government-informant-sentenced-to-time-served/> (“Massino faced life in prison for eight murders and numerous other mob crimes.”); see, e.g., *Throwback: Tampa Mob Trial*, TAMPA BAY TIMES (Oct. 16, 2006), <https://www.tampabay.com/archive/2006/10/16/throwback-tampa-mob-trial/> (“The stakes are high for the defendants, who face potential sentences of [twenty] years to life.”).

V. CONCLUSION: WE MUST BRING JUSTICE ON BEHALF OF THE INVESTORS

Unethical practices were the root of the 2008 financial crisis, leading to millions of jobs lost, millions of homes foreclosed, and several hundred bank failures.¹⁰⁰ Trillions of dollars that were invested into retirement investment plans disappeared over the span of a couple months.¹⁰¹ The aftermath of the 2008 financial crisis showed that the only way to prevent a catastrophe of this level is through legislation and litigation.¹⁰² Antitrust scrutiny and significant criminal charges will not only put an end to the unethical practices of mortgage servicers and force-placed insurers, but these solutions will prevent another financial crisis.¹⁰³

¹⁰⁰ See Caleb Silver, *Lessons From the 2008 Financial Crisis*, INVESTOPEDIA (Sept. 12, 2023), <https://www.investopedia.com/news/10-years-later-lessons-financial-crisis/> (“Financial crisis statistics: 8.8 million jobs lost, unemployment spiked to 10% by October 2009, eight million home foreclosures, \$17 trillion in household wealth evaporated, [and] home price declines of 40% on average”); see also Manoj Singh, *The 2008 Financial Crisis Explained*, INVESTOPEDIA (Aug. 25, 2024), <https://www.investopedia.com/articles/economics/09/financial-crisis-review.asp> (“More than 500 banks failed between 2008 and 2015, compared to a total of 25 in the preceding seven years, according to the Federal Reserve of Cleveland.”).

¹⁰¹ See Darla Mercado, *These 401(k) Funds Took a Beating in 2008 — and It Could Happen Again*, CNBC (Sept. 14, 2018, 11:48 AM), <https://www.cnbc.com/2018/09/13/these-retirement-funds-took-a-beating-in-2008-it-could-happen-again.html> (elaborating on how some 401(k) funds experienced losses exceeding twenty percent during the financial crisis of 2008); see also Teresa Ghilarducci, *Big Retirement Losses if the Market Crashes Tomorrow*, FORBES (Dec. 15, 2020, 01:45 PM), <https://www.forbes.com/sites/teresaghilarducci/2018/12/05/big-retirement-losses-if-the-market-crashes-tomorrow/> (“Indeed, the nation’s 401(k)s and IRAs lost about \$2.4 trillion in the final two quarters of 2008.”).

¹⁰² See Silver, *supra* note 100 (“Following the crisis, changes were made, laws were passed, and promises were made . . . [p]olicymakers were forced to make critical decisions with conviction and speed that helped formulate legislation and changes for the future.”). See generally Singh, *supra* note 100 (“The financial crisis of 2007–2008 . . . grew big enough that, when it burst, it damaged entire economies and hurt millions of people, including many who were not speculating in mortgage-backed securities.”).

¹⁰³ See generally Kimberly Amadeo, *2008 Financial Crisis*, THE BALANCE (Feb. 10, 2022), <https://www.thebalancemoney.com/2008-financial-crisis-3305679> (“The financial crisis of 2008 proved that banks could not regulate themselves. Without government oversight like Dodd-Frank, they could create another global crisis.”); see generally Noel Sacasa, *Preventing Future Crises*, INT’L MONETARY FUND (Dec. 2008), <https://www.imf.org/external/pubs/ft/fandd/2008/12/sacasa.htm>

The recent developments have made it clear that action is needed in at least four areas to reduce the risk of crises and address them when they occur. These are (a) finding a better way to assess systemic risk and prevent its buildup in good times; (b) improving transparency and disclosure of risks being taken by various market participants; (c) expanding the cross-institutional and cross-border scope of regulation while safeguarding constructive diversity; and (d) putting in place mechanisms for more effective, coordinated actions.

Id.