

Book Review:***Lender Force-Placed Insurance Practices*, by Dennis J. Wall**

Reviewed by: John K. DiMugno*

John K. DiMugno is a member of the California bar. He is the Editor-in-Chief of *Insurance Litigation Reporter*, *California Tort Reporter*, and *California Insurance Law & Regulation Reporter*, and author of several insurance law treatises published by Thomson Reuters. He is an elected member of the American Law Institute's Consulting Group on "Principles of Liability Insurance."

Several years ago, after a major forest fire struck the county in which I live, my homeowners insurer decided to withdraw from the market and stopped renewing policies in my county. Within days of receiving a non-renewal notice from my insurer, I received a separate notice from my mortgage lender informing me that it had procured insurance to cover my property. My first reaction was one of relief—I had (or thought I had) insurance until I could find one of the few insurers willing to underwrite homeowners insurance in my county, which, located in the California foothills, has a heightened risk of forest fires. On closer inspection, however, the insurance my lender had force placed on my property looked like a money grab by the lender that was of no benefit to me. The insurance covered only the lender's mortgage interest in the property. My interest in the property's equity after the lender was paid for a loss was unprotected. Moreover, the policy provided no protection against liability claims. Most infuriating, the annual premium for this lender force-placed policy, which my lender graciously agreed to fold into the principal balance of my loan, was *five* times what I had paid for my soon-to-be cancelled policy, which provided much better coverage.

The first question that came to mind after receiving my lender's notice was: Is this legal? Unfortunately, finding an answer to my question was frustratingly difficult. I ran searches in Westlaw's legal data base and the Reuters news service for any information I could find about lender force-placed insurance. I learned that class actions had been filed around the country, all of which had resulted in settlements or were in the process of being settled. None had been tried to a verdict, and the terms of the settlements were secret. The case law I found dealt mostly with class certification issues rather than substantive legal theories. I found a few general news

articles on the problem of lender force placed insurance, but no in depth law review treatment of the subject. No treatises were devoted to the subject or even contained chapters addressing force placed insurance.

This void has now been filled with the publication earlier this year by the American Bar Association of *Lender Force-Placed Insurance Practices*. The treatise's author, Dennis J. Wall, is known to the readers of this publication as the author of *Litigation and Prevention of Insurer Bad Faith*, which addresses more than 5,000 cases and statutes. In addition to being the author of two critically acclaimed blogs "Insurance Claims and Issues" and "Insurance Claims and Bad Faith Law", Mr. Wall is an experienced litigator in the state and federal trial and appellate courts, as well as an experienced mediator certified by the Florida Supreme Court.

Lender Force-Placed Insurance Practices is a useful tool both for those in need of a substantive foundation in the issues and for experienced professionals in the field, including financial counselors and lawyers who counsel borrowers and lenders concerning lender force-placed insurance practices. The structure of the treatise makes it suitable for use both as a training textbook for people new to the fields of banking and insurance and as a reference tool for bankers, litigators, regulators, and other public policy professionals. Introductory chapters provide a comprehensive discussion of legal issues, while subsequent chapters focus on an array of public policy and regulatory approaches to curbing abusive practices while ensuring adequate insurance protection for lenders' collateral.

The treatise's extensive use of discrete subheadings and comprehensive index provide ready access to authoritative information that can be found in no other source. Much of the information in the treatise

is gleaned from Mr. Wall's extensive review of the actual court files, including pleadings and exhibits to pleadings, deposition transcripts, and interrogatory answers. The information contained in these unsealed court files is essential to a complete understanding of lender force-placed insurance practices since virtually all litigation challenging such practices has ended in settlements containing secrecy stipulations with no judicial comment.

The first three chapters of the treatise provide a concise but comprehensive discussion of how lender forced-placed insurance works and the grievances raised against the practice. Chapter 2 thoroughly analyzes the contractual provisions in residential mortgages governing the obligations of borrowers to maintain insurance and the role of various governmental and quasi-governmental agencies—including the Federal Housing Finance Administration, Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal National Mortgage Association (Freddie Mae)—in regulating that language. Chapter 3 examines the devices mortgage servicers have used to turn lender's contractual right to protect the value of their collateral into a new source of revenue and profit for lenders. Commission rebates to lenders, the use of captive reinsurers controlled by lenders to place the insurance, and policy backdating to cover periods in which no loss occurred are discussed in depth.

Chapter 4 discusses some of the efforts of Congress and various administrative agencies to curb these practices. In addition, a significant part of Chapter 4 analyzes of the effect of the National Mortgage Settlement on lender force-placed insurance practices. Mr. Wall sheds light on some of the more unusual features of the 2012 settlement, led by the U.S. Attorney General, the Secretary of Housing and Urban Development, and forty-nine state attorneys general on one side and the five largest

mortgage servicers on the other side. These features include an agreement merely to "term limit" (rather than end) challenged practices, and the absence of any agreement by the banks to rein in the mortgage servicers to which the banks sold their mortgage servicing book of business.

Chapters 5 and 6 are devoted to the substantive legal arguments asserted by plaintiffs and the defenses invoked by lenders in force-placed insurance litigation. In addition to discussing common law legal and equitable principles, these chapters focus on the role various federal and state statutes play in the litigation. The federal Real Estate Settlement Procedures Act (RESPA), Dodd-Frank Act, Truth in Lending Act, and Racketeer Influenced and Corrupt Organizations Act (RICO) are examined in detail. In addition, Chapter 5 analyses how state unfair business practice and consumer fraud statutes apply in the context in lender force-placed insurance litigation. Special attention is paid to the use of arbitration provisions and class action waivers to prevent a full airing of plaintiffs' grievances.

The part of the treatise to which legislators and regulators are likely to refer most often is Chapter 7, titled "Some Possible Solutions." Among the proposed solutions are specific revisions to standard mortgage forms, and an array of changes to state and federal statutes, rules and regulations. Most important, the author, believing along with Justice Brandeis that sunshine is the best disinfectant, calls for an end to the secrecy surrounding lender force-placed insurance litigation.

In short, *Lender Force-Placed Insurance Practices* will become an essential part of any banking or insurance professional's library. It will pay for its \$99.95 price tag many times over by making financial experts and lawyers who counsel borrowers and lenders more effective.