CITY OF CLEVELAND SUBPRIME MORTGAGE FORECLOSURE LITIGATION

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INTRODUCTION

On January 10, 2008, the City of Cleveland filed a lawsuit against leading investment banking firms to recoup damages sustained in connection with the subprime mortgage foreclosure crisis. Cleveland charged the defendants with creating a public nuisance by financing subprime mortgages in the City when they knew or should have known that doing so would inevitably lead to mass defaults and foreclosures. As an essential premise to its case, Cleveland alleged that its unique economic situation and stagnant real estate market made it singularly unsuitable for subprime, even while the housing boom provided putative justification for this type of financing elsewhere in the country.

Cleveland's case began in Ohio state court, though the defendants immediately removed it to the United States District Court for the Northern District of Ohio. Three district judges recused themselves before the lawsuit landed on the docket of the Honorable Sara Lioi.

In an amended complaint, Cleveland asserted its public nuisance claim against a total of 19 defendants. Some of these were related subsidiaries.

In May 2009, Judge Lioi granted the defendants' motion to dismiss Cleveland's lawsuit. In doing so, Judge Lioi principally held that state law preempted the public nuisance claim, that Cleveland failed to present viable allegations of proximate cause, and that the Economic Loss Rule barred the City's recovery. Cleveland is challenging the dismissal before the Sixth Circuit Court of Appeals, which is also reviewing Judge Lioi's earlier denial of a motion by Cleveland to have the litigation remanded to Ohio state court.

FACTUAL BACKGROUND

I. Subprime Lending

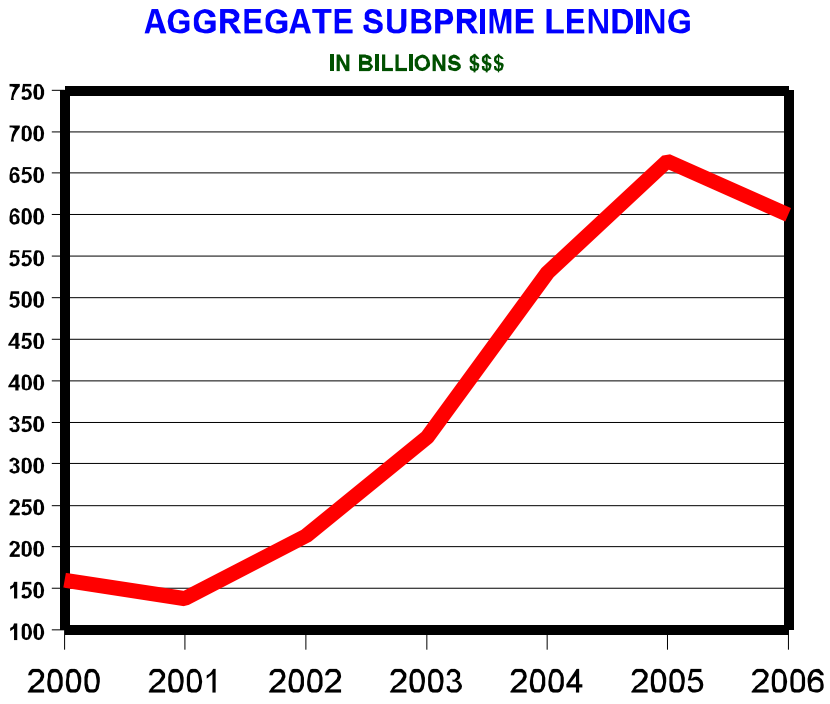
As its name implies, subprime lending involves transactions made at relatively high rates of interest, typically to borrowers with "high credit risk" who do not qualify for conventional loans.[1] Subprime borrowing typically

[1] ***See*** FRBSF ECONOMIC NEWSLETTER NO. 2001-38 (DEC. 28, 2001), p. 1.

has higher "up-front costs" like application fees, as well as higher mortgage insurance rates and more costly late charges and prepayment penalties.[2]

Subprime financing became increasingly popular during the 1990s – from 1994 to 2000, subprime lending grew from $35 billion, representing five percent of all originations, to $140 billion, representing 13.4 percent of the total. This increase represents an average annual growth rate of 26 percent.[3]

The subprime explosion continued into the new millennium. Between 2000 and 2006, the number of subprime loan originations jumped by more than 250 percent, from 911,369 to 3,219,749.[4] The aggregate sums involved grew at an even more dramatic pace:[5]



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2 SOUPHALA CHOMSISENGPHET & ANTHONY PENNINGTON-CROSS, "THE EVOLUTION OF THE SUBPRIME MARKET," 88 (1) ***FED. RES. BANK OF ST. LOUIS REVIEW*** 31, 32 (JAN./FEB. 2006).

3 FRBSF ECONOMIC NEWSLETTER NO. 2001-38, p. 1.

4 "SUBPRIME LENDING: A NET DRAIN ON HOME OWNERSHIP," (CENTER FOR RESPONSIBLE LENDING MAR. 27, 2007), p. 3.

5 DAN IMMERGLUCK, "CONCENTRATED FORECLOSURES AND EFFECTS ON NEIGHBORHOODS," and ***TOP SUBPRIME MORTGAGE MARKET PLAYERS & KEY SUBPRIME DATA*** (INSIDE MTG. FIN. PUB. 2007), pp. 8-9.

II. Mortgage-Backed Securities

The defendants in Cleveland's lawsuit financed subprime mortgages through the process of ***securitization***. Securitization involves the bundling of individual mortgages for purposes of offering ***mortgage-backed securities*** to investors.

A. The Process of Securitization

Mortgage-backed securities comprise a collection of mortgages that originators resell to the issuer of the securities.[6] Investors buy bonds from the issuer, which uses the cash flow generated by the mortgage pools to pay interest and ultimately to return investors' capital.[7]

Mortgages undergo a series of transfers involving multiple entities before the issuer acquires them. This separation between the issuer and "entity that originated" the loans represents the "key compenent" to securitization, since without it "the originator ... could go into bankruptcy and the loans would be part of the bankruptcy estate ..."[8]

B. Essential Participants In Process

The essential participants in the securitization of subprime mortgages perform the following specific functions:

ORIGINATOR	Processes loan applications and handles all steps from taking loan applications through disbursement of funds.
MORTGAGE BROKER	Brings prospective borrowers together with lenders for purposes of loan origination; may negotiate with lender to obtain favorable terms for borrower.
DEPOSITOR	Pools loans for purpose of transferring them to trust. (Also known as "special-purpose entity.")

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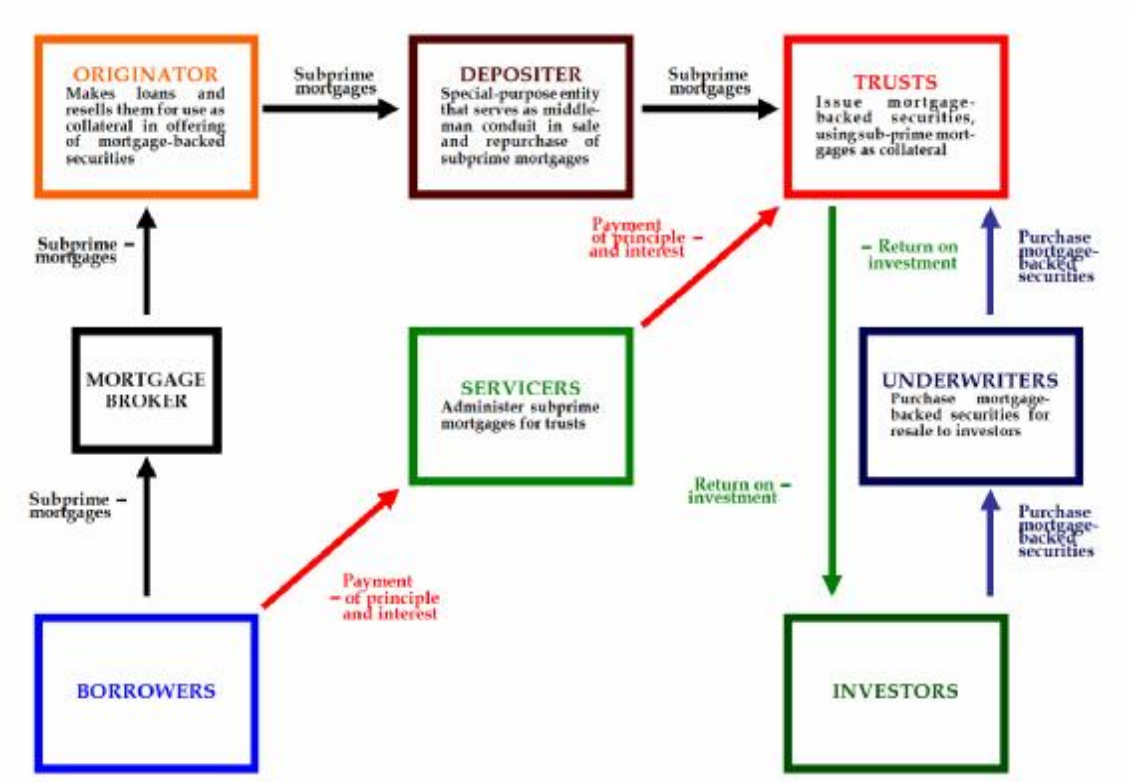
[6] JOINT HUD/TREAS. "RPT. ON RECOM. TO CURB PREDATORY HOME MTGE. LENDING (2001), p.43.

[7] "MORTGAGE-BACKED SECURITIES," www.sec.gov/answers.morgage-securities.htm; ***see also*** "SMART BOND INVESTING–MORTGAGE-BACKED SECURITIES,"SaveandInvest.org**.**

[8] KEVIN BYERS, "RESEARCHING SUBPRIME RESIDENTIAL LOAN SECURITIZATIONS," ***THE CONSUMER ADVOCATE*** (4th Quarter 2007).

TRUST	Bankruptcy-remote entity that issues securities for sale to investors. (Also known as "special purpose vehicles.")
TRUSTEE	Holds loan documents and distributes payments received from servicer to the bondholders. Have discretion to delgegate authority to servicers.
PRIMARY SERVICER	Maintains the direct borrower contact, and may sub-contract with master servicers to perform certain loan administration duties.
MASTER SERVICER	Oversees primary servicers; holds fiduciary position with respect to trust and faces liability for failures to service mortgages in accordance with applicable standards; initiates credit decisions necessitated by borrower requests; remits proceeds from loans and issue reports to trustee.
UNDERWRITER	Brokers, investment banks or banks that sell mortgage-backed securities in public offering or private placement.

The following diagram graphically depicts the process of securitization:



Accordingly, in the process of securitization,

- ORIGINATORS procure subprime loans from BORROWERS, possibly with the assistance of MORTGAGE BROKERS,
- then package the mortgages and sell them to SPECIAL-PURPOSE ENTITIES known as "DEPOSITORS," which
- resell them to TRUSTS, for use as collateral in offering MORTGAGE-BACKED SECURITIES to investors.[9]

C. Extent of Proliferation

Since the mid-1990s, at least 50 to 60 percent of all outstanding mortgage debt in the United States has undergone "securitization" in this fashion.[10] (Some estimate that "[a]round two-thirds of outstanding mortgage debt in the [United States] has been securitized.")[11] Mortgage-backed securities became "the hottest products on Wall Street" after the market for technology stocks faltered in 2000.[12]

A substantial portion of mortgage-backed securities come from two government-sponsored entities, Federal Home Loan Mortgage Corporation ("Freddie Mac") and the Federal National Mortgage Association ("Fannie Mae").[13] Freddie Mac and Fannie Mae deal principally in "conforming mortgages" that meet certain restrictive "borrower quality characteristics and loan-to-value ratios."[14]

In contrast, Wall Street firms have looked more to subprime mortgages to fund their mortgage-backed offerings. These securities offer higher rates of return than those issued by Freddie Mac or Fannie Mae, since

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9 ***See*** "What are Asset-Backed Securities?," www.investinginbonds.com.

10 RICHARD J. ROSEN, "THE ROLE OF SECURITIZATION IN MORTGAGE LENDING," ***CHICAGO FED LETTER*** (Nov. 2007).

11 KEVIN CONNOR, "WALL STREET AND THE MAKING OF THE SUBPRIME DISASTER (NATIONAL TRAINING AND INFORMATION CTR. NOV. 2007), p. 3.

12 ***Id.***

13 "MORTGAGE-BACKED SECURITIES," ***www.sec.gov/answers.morgagesecurities.htm***.

14 ROSEN, "THE ROLE OF SECURITIZATION IN MORTGAGE LENDING."

they involve higher rates of interest. They also involve higher degrees of risk, since subprime borrowers by definition have a greater likelihood of defaulting than those who qualify for "conforming mortgages."

III. Wall Street's Participation In Subprime Market

A. Adverse Effects

Wall Street's predominance in subprime lending has had a number of adverse effects. The abundance of new money has attracted "small, thinly capitalized" players into the subprime market, more willing to engage in abusive sales practices and less able to answer for the unlawful conduct they commit.[15] "Securitized" mortgages also effectively invite even scrupulous lenders and brokers to extend riskier credit, since they know that investors (and not they) will bear the financial consequences of defaults that occur.[16] Moreover, subprime loans originating on Wall Street typically cost more[17] and include terms designed to protect investors, including "lengthy prepayment penalties" and "[b]alloon clauses" in the event of default. Provisions of this sort materially increase borrowers' risk of default and foreclosure.[18]

B. The Phenomenon Of "Money Seeking Borrowers"

In 2002 or 2003, a fundamental shift took place in how Wall Street constructed their securities offerings backed by subprime mortgages. By that juncture, the demand for this type of investment had grown so significantly that the offerings essentially became exercises in "money seeking borrowers." The firms, in other words, began directing originators on the type of loans to procure in which amounts in order to fill out the pool needed as collateral for each new security.

This process subverted the normal operation of the market and inevitably led to the abandonment of meaningful underwriting standards. Even unworthy borrowers would have to receive loans in order for the

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[15] KATHLEEN C. ENGEL & PATRICIA A. MCCOY, "TURNING A BLIND EYE: WALL STREET FINANCE OF PREDATORY LENDING," 75 ***FORDHAM L. REV.*** 2039, 2041 (2007).

[16] ***Id.***

[17] ***Id.***

[18] ***Id.***, p. 2042.

supply of subprime mortgages to keep pace with the burgeoning demand. Lenders devised various new products to bring in the necessary volume of business:

> HYBRID ADJUSTABLE RATE MORTGAGES, known as "ARMS," that carry "low fixed teaser rates ... that jump to much higher adjustable rates ... after two or three years."
>
> LOW- AND NO-DOCUMENTATION LOANS, sometimes referred to as "liar loans," which borrowers can obtain without having to verify their financial resources.
>
> INTEREST-ONLY LOANS, which obligate borrowers to pay interest only for a specified period, after which the principal becomes due.[19]

These arrangements each obscure (at least temporarily) the true financial burden that the borrower is taking on.[20]

C. Wall Street's Preeminence In Subprime Market

Wall Street's involvement in the subprime market encompassed more than just the purchase and pooling of mortgages to back new securities offerings. The investment bankers also provided lenders with lines of credit and other means of financing required to accommodate the dramatic increase in the number of mortgages they were procuring.[21] In fact, "[m]ortgage securitization ... [became] the key source of capital for subprime mortgage lenders, which used the process to quickly convert mortgages into money for future lending."[22]

The Wall Street firms themselves also accounted for much of the investor demand for mortgage-backed securities. They did so principally through their proprietary trading programs and hedge funds.[23]

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[19] "WALL STREET AND THE MAKING OF THE SUBPRIME DISASTER," p. 14.

[20] FINAL INTERAGENCY STATEMENT ON SUBPRIME MORTGAGE LENDING, 72 F. REG. 131 at 37569 (JULY 10, 2007) (discussing adjustable rate mortgages).

[21] "WALL STREET AND THE MAKING OF THE SUBPRIME DISASTER, pp. 12-13.

[22] ***Id.,*** p. 9.

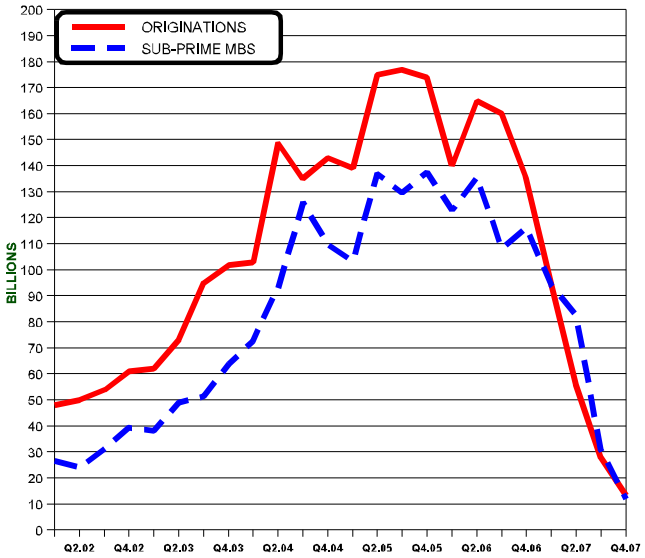
[23] ***Id.,*** p. 17.

Wall Street necessarily held significant influence over subprime lenders, given its concurrent positions as financier, underwriter, and investor in the subprime market. Certain academicians and consumer advocates have suggested that the investment banking firms used their preeminent status to set "the standards that loan originators appl[ied]" in determining who did (almost everyone) and did not (almost no one) qualify for subprime financing.[24]

Wall Street bankers understood the extreme riskiness of indulging their infatuation with securities backed by subprime mortgages. Recent news stories have focused upon ominous "due diligence" reports commissioned by investment banking firms in connection with new mortgage-backed offerings.[25] Yet the firms hid the negative data from "credit rating agencies [and] investors, according to some of those who prepared the reports."[26]

D. Wall Street As Impetus Behind Subprime Boom

The following chart tracks on a quarterly basis the origination of sub-prime loans and the issuance of securities backed by subprime mortgages:[27]



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[24] ***Id.,*** p. 13.

[25] PATRICK RUCKER, "WALL STREET OFTEN SHELVED DAMAGING SUBPRIME REPORTS," ***INTERNATIONAL HERALD TRIB.*** (AUG. 1, 2007); ***see also*** "WALL STREET AND THE MAKING OF THE SUBPRIME DISASTER," p. 21.

[26] "WALL STREET OFTEN SHELVED DAMAGING SUBPRIME REPORTS."

[27] ***TOP SUBPRIME MORTGAGE MARKET PLAYERS & KEY SUBPRIME DATA*** , p. 10.

IV. Rationale Underlying Subprime Craze

As discussed above, subprime mortgages match loans with higher-than-average interest rates to borrowers with less-than-average credit. Why did Wall Street commit so extensively to the subprime market, given the elevated threat of default intrinsic to this kind of lending?

The investment banking firms presumably believed that the booming real estate market would mitigate the risk. Property values in the United States were generally on the rise during the early part of this decade. As a result, the collateral securing borrowers' loans was appreciating in value – so much so, that default and foreclosure would not necessarily result in a loss.

Confidence ran so high that Wall Street could turn a blind eye when originators and brokers sold loans that made no economic sense, either because they involved borrowers with poor credit histories or because the amount borrowed far exceeded the current value of the home. These mortgages would ultimately become good deals for the holder, so long as the boom continued in the housing market, since the value of the collateral would eventually appreciate beyond the amount of the loan.

V. Housing Market and Economy in City of Cleveland

A. Impact of Subprime Lending

Whatever merit this hypothesis otherwise may have held, it never had any applicability to the situation in Ohio, or to Cleveland in particular. As illustrated below, property values never appreciated in the City anywhere near the extent to which they did elsewhere. Moreover, the high rate of poverty along with the general sluggishness of the economy and limited employment opportunities both increased the likelihood of defaults on subprime loans and diminished the possibility of attracting new buyers when the rush of foreclosures inevitably hit.

These circumstances predetermined the draconian results of the subprime blitz aimed at Cleveland during the period when "money was seeking borrowers." In Cuyahoga County, this type of high-cost financing "accounted for 84 percent of the foreclosures on home purchase and

refinance loans" made during the three-year period ending in early 2008.[28] Almost one-third of the subprime loans made in Cuyahoga County during 2005 went to foreclosure by early 2008, while nearly one-fourth of subprime loans made during 2006 met that same fate.[29]

A study commissioned by the City found that as of November 2007, Cleveland had a total of 7,014 "buildings" that qualified as "vacant and abandoned residents."[30] This total represented 5.6 percent of all residential properties in the City.[31] Vacant and abandoned property in Cleveland provides

> a thriving scene for property crime. Most obvious [are] houses completely stripped of copper pipes, fixtures, and aluminum siding. Often times, the money required to put a house back together after it has been ransacked is more than the restored home could bring on the market.[32]

Moreover, neighborhoods

> with high numbers of vacant and abandoned properties have become the target of investors who seek to make a quick profit by "flipping" ... properties .... * * * Neighborhoods like these also attract predatory lenders ....[33]

B. The Housing Market

The following graph illustrates the relatively poor performance of the Cleveland housing market between 2000 and 2006:[34]

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[28] CLAUDIA COULTON, TSUI CHAN, MICHAEL SCHRAMM & KRISTEN MIKELBANK, "PATHWAYS TO FORECLOSURE: A PROSECTIVE STUDY OF MORTGAGE LOANS, CLEVELAND AND CUYAHOGA COUNTY, 2005-2008" (2008), p. 1.

[29] ***Id.***, p. 8.

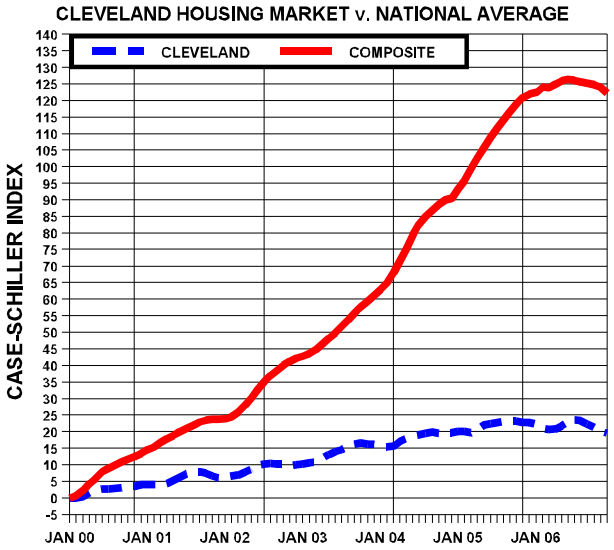
[30] "$60 MILLION AND COUNTING: THE COST OF VACANT AND ABANDONED PROPERTIES TO EIGHT OHIO CITIES," (ReBuild Ohio Feb. 2008), p. 5-12.

[31] ***Id.***

[32] ***Id***., p. 5-47.

[33] ***Id.***

[34] The chart tracks the Case-Shiller Index, which measures the price of single family homes in the United States on a monthly basis.



C. Economic Indicators

Data from the Living Cities Census Series sponsored by the Brookings Institute confirms that economically, Cleveland ranked at or near the bottom of cities in the United States during the subprime craze:

	2000			2005			2006		
	NO	PCT	RANK	NO	PCT	RANK	NO.	PCT	RANK
LOW (>$20,000)	75,518	39.6	3	74,033	41.6	2	65,067	38.6	2
MODERATE ($20,000 -$34,999)	44,999	23.6	7	41,772	23.5	4	39,547	23.5	6
MIDDLE ($35,000-$59,999) ($35,000-$49,999) (2000)	28,814	15.1	78	33,034	18.6	98	28,814	21.6	78
UP. MIDDLE ($60,000-$99,999) ($50,000-$74,999) (2000)	25,592	13.4	95	21,625	12.2	96	19,342	11.5	99
HIGH ($100,000+) ($75,000+) (2000)	15,802	8.3	100	7,353	4.1	98	8,103	4.8	10

Gross numbers refer to households.
Rankings place Cleveland among 100 largest cities in United States.

	2000		2005		2006	
	AMOUNT	RANK	AMOUNT	RANK	AMOUNT	RANK
HOUSEHOLD MEDIAN INCOME	$26,735	98	$24,105	100	$26,535	100
POVERTY RATE	26.3%	5	32.4%	1	27.0%	6

Rankings place Cleveland among 100 largest cities in United States.

Cleveland's gross metropolitan product (as tracked by the U.S. Conference of Mayors) reflects the City's relatively poor economic status:

YEAR	RANK	TOTAL GMP	REPORT
1997	N/A	$67,900,000,000	Nov. 1999
1998	24	$71,110,000,000	Nov. 1999
1999	N/A	$76,600,000,000	July 2003
2000	N/A	$79,800,000,000	July 2003
2001	26	$84,530,000,000	June 2002
2002	27	$83,260,000,000	Jan. 2003
2003	25	$87,500,000,000	Oct. 2004
2004	25	$83,600,000,000	Jan. 2006
2005	25	$87,300,000,000	Jan. 2007

These figures paint a picture of apparent stability – hardly one that would have alarmed Wall Street as it ramped up its commitment to the subprime market. Viewed in a broader perspective, however, Cleveland's gross-metropolitan-product statistics revealed a city in decline. Over the ten-year period ending in 2003, Cleveland's GMP grew at an annual rate of 4.2 percent ($56.4 billion to $87.7 billion). This total put Cleveland ***243rd*** amongst major cities in the United States. Of the 25 largest metropolitan economies in the U.S., only Detroit ranked lower.[35]

D. Pre-Existing Foreclosure Crisis

Moreover, by the beginning of the new millennium, the ongoing erosion of the manufacturing sector had locked Ohio in a state of seemingly perpetual recession. As a result, Ohio's foreclosure rate peaked long before the crisis hit the rest of the county.[36] In January, 2003, the ***Cleveland Plain Dealer*** reported that the state's

> foreclosure rate is twice as high as the nation's. And mortgage delinquencies and foreclosures both increased dramatically in Ohio in the third quarter of 2002, while the national averages stayed flat or dropped slightly.[37]

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[35] OCTOBER 2004 ***METRO ECONOMIES REPORT (U.S. CONF. OF MAYORS).***

[36] ***See generally*** BILL FAITH AND PAUL BELLAMY, "DIMENSIONS OF OHIO'S FORECLOSURE CRISIS AND THE PROMINENT RULE SUBPRIME LENDING PLAYS," (COALITION ON HOMELESSNESS AND HOUSING IN OHIO 2006).

[37] THERESA MURRAY, "OHIO HOME FORECLOSURES SOAR," ***CLEVELAND PLAIN DEALER*** A1 (JAN 10, 2003).

E. Delinquencies And Foreclosure Rates

The following statistics reflect Ohio's national position with respect to "serious delinquent loans" (those either in foreclosure or more than 90 days past due) at the end of the first quarter of 2007:[38]

	Subprime ADJUSTABLE	Subprime FIXED	FHA	PRIME ADJUSTABLE	PRIME FIXED	ALL LOANS
NATIONAL AVG	10.13%	5.89%	5.26%	0.67%	0.67%	2.23%
OHIO	19.86%	12.70%	8.72%	4.10%	1.92%	5.14%
RANK	1	2	2	3	1	1

The pertinent statistics for Cleveland proper paint a particularly grim picture. According to data provided by the City, foreclosures in Cleveland increased by more than 7,000 percent between 2002 and 2007:



VI. Foreclosure's Effect on Property Values

As a significant component of its case, Cleveland alleges that the avalanche of subprime foreclosures has severely impaired property values within its borders, thereby diminishing its past and prospective tax revenues. Not surprisingly, foreclosure sharply decreases the value of the residences at issue in the proceedings.[39]

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[38] AUG. 15, 2007 LETTER FROM J. ROBBINS, CHAIRMAN, MORTGAGE BANKERS ASS'N, TO JENNIFER J. JOHNSON, SECRETARY, BOARD OF GOV., FED. RES. SYS, p. 5.

[39] CLAUDIA COULTON, KRISTEN MIKELBANK & MICHAEL SCHRAMM, ***FORECLOSURE & BEYOND: A REPORT ON OWNERSHIP AND HOUSING VALUES FOLLOWING SHERIFF'S SALES, CLEVELAND & CUYAHOGA CTY, 2000-2007***, pp. 10-11 (2008).

A number of studies have also detailed how foreclosures negatively impact the value of surrounding properties as well.[40] For instance, a report released in November 2007 indicated that foreclosures "lowered the price of other nearby single-family homes, on average, by 0.9 percent."[41] The national loss totaled $223 billion – an average of approximately $5,000 on each of the 44.5 million affected homes.[42]

In Cuyahoga County alone, properties lost $462,205,097 in value based upon their proximity to foreclosed homes:[43]

SUBPRIME LOANS	PCT. OF ALL LOANS	PROJECTED FORECLOSURE RATE	PROJECTED HOMES LOST/ FORECLOSURE	NEIGHBORING RESIDENCES AFFECTED	TOTAL LOSS IN VALUE/ TAX BASE	AVERAGE LOSS
19,929	29.9%	17.0%	3,388	357,758	$462,205,097	$1,292

BASED UPON 2005-2006 SUBPRIME LOANS

THE LAW OF PUBLIC NUISANCE

Public nuisance generally involves activity that "injuriously affects the safety, health, or morals of" the community at large.[44] At its essence, the tort consists of an unreasonable interference with a public right.[45] In this context, a "public right is one common to all members of the general public ... [and] is collective in nature."[46]

Defendants incur liability for public nuisance if they act negligently in interfering with a public right.[47] In order to recover on these grounds,

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40 ***See, e.g.,*** "THE EXTERNAL COST OF FORECLOSURE"; DAN IMMERGLUCK & GEOFF SMITH, ***THERE GOES THE NEIGHBORHOOD: THE EFFECT OF SINGLE FAMILY MORTGAGE FORECLOSURES ON PROPERTY VALUES*** (WOODSTOCK INST. JUNE 2005).

41 ***SUBPRIME SPILLOVER: FORECLOSURES COST NEIGHBORS $223 BILLION; 44.5 MILLION HOMES LOSE $5,000 ON AVERAGE*** (CTR. FOR RESP. LENDING NOV. 13, 2007).

42 ***Id.***, p. 1.

43 ***Id.***, p. 22.

44 58 AM. JUR. 2D ***NUISANCES*** § 34 (2009).

45 ***Id.***

46 RESTATEMENT (SECOND) TORTS § 821B, comment g (1979).

47 ***City of Cincinnati v. Beretta USA Corp.***, 95 Ohio St. 3d 416, 420, fn. 4,768 N.E.2d 1136 (2002), ***see also White v. Smith & Wesson Corp.***, 97 F. Supp. 2d 816, 829 (N.D. Ohio 2000) (applying Ohio law).

individual plaintiffs must show that they suffered some injury separate and distinct from the one inflicted upon the "community at large."[48]

To recover for public nuisance, plaintiffs must prove that their injury proximately resulted from the defendant's wrongdoing.[49] In some states, the evidence must also establish that the defendant controls the instrumentality effecting the nuisance at the time damage occurred.[50]

Certain cases hold that while cities may sue to abate public nuisances, they cannot recover damages under this theory of liability.[51] Various courts, however, have at least implicitly recognized cities' right to recover damages for public nuisance.[52] The availability of punitive damages remains largely untested.[53]

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48 RESTATEMENT (SECOND) TORTS § 821B, comment g (1979).

49 ***See, e.g., City of New York v. Milhelm Attea & Bros., Inc.***, 550 F. Supp. 2d 332, 351-52 (E.D.N.Y. 2008).

50 ***See, e.g., State v. Lead Indus. Ass'n, Inc***, 951 A.2d 428, 449 (R.I. 2008); ***Camden Cty. Bd. of Chosen Freeholders v. Beretta U.S.A. Corp.***, 273 F.3d 536, 539 (3rd Cir. 2001); ***but see Beretta U.S.A. Corp.***, 95 Ohio St. 3d at 420 (under Ohio law, "control" does not constitute element of public nuisance).

51 ***See, e.g. In re Lead Paint Litig.***, 191 N.J. 405, 429, 924 A.2d 484 (2007).

52 ***See, e.g., City of Chicago v. Latronica Asphalt & Grading***, 346 Ill. App. 3d 264, 805 N.E.2d 281 (2004); ***City of Gary ex rel. King v. Smith & Wesson Corp.***, 801 N.E.2d 1222 (Ind. 2003); ***Beretta U.S.A. Corp.***, 95 Ohio St. 3d 416; ***City of Portland v. Boeing Co.***, 179 F. Supp. 2d 1190 (D. Or. 2001); ***City of Milwaukee v. NL Indus.***, 278 Wis. 2d 313, 691 N.W.2d 888 (2004).

53 ***But see City of New York v. Taliaferrow***, 158 A.D.2d 445, 551 N.Y.S.2d 253 (1990) (suggesting that cities may recover punitive damages under claims for punitive damages).