

# San Diego International Law Journal

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Volume 9  
Issue 1 *Fall* 2007

Article 2

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11-1-2007

## Foreword

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### Recommended Citation

Christina Clemm, *Foreword*, 9 San Diego Int'l L.J. 1 (2007)  
Available at: <https://digital.sandiego.edu/ilj/vol9/iss1/2>

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# Foreword

CHRISTINA CLEMM\*

In August 2007, stock markets around the world suffered significant losses upon news of the ill-effects the subprime mortgage crisis<sup>1</sup> was having on the economy.<sup>2</sup> While the Dow Jones Industrial Index and the S&P 500 had reached their highest levels in history<sup>3</sup> and some correction was inevitable, no one could have anticipated the events that would take

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1. For more information on factors that led to the credit crisis, the structure of mortgage securitization transactions, and the risks associated with subprime mortgages, see Kathleen C. Engel & Patricia A. McCoy, *Turning a Blind Eye: Wall Street Finance of Predatory Lending*, 75 FORDHAM L. REV. 2039, 2042-69 (2007). For an analysis of why the current crisis differs from the one in 1998, see Faten Sabry & Thomas Schopfloch, *The Subprime Meltdown: Not Again!*, AM. BANKR. INST. J., Sept. 2007, at 42.

2. Seventeen consecutive interest rate hikes took place between June 2004 and June 2006 and began to take their toll on holders of adjustable rate mortgages. See Sabry, *supra* note 1, at 42. Home foreclosure increased 9 percent in July 2007, up 93 percent from the previous year. Press Release, Realty-Trac, Foreclosure Activity Increases 9 Percent in July, (Aug. 21, 2007), available at <http://www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=3221&acct=64847>. As result of this and other news, on August 9th the Dow Jones Industrial Average declined over 300 points. Vikas Bajaj, *U.S. Stocks Tumble after European Sell-Off*, INT'L HERALD TRIB., Aug. 9, 2007, <http://www.iht.com/articles/2007/08/09/business/09cndstox.php?page=1>. See also Sudip Kar-Gupta, *BNP Paribas Suspends Funds Hit by Subprime Woes*, REUTERS, Aug. 9, 2007, <http://www.reuters.com/article/companyNewsAndPR/idUSL0912844020070809> (describing the move by France's largest listed bank to suspend redemption of several of its funds because of the difficulty of calculating the value of certain assets). On August 10th, Asian markets dropped on average 2% with the Korean market declining over 4%. Wayne Arnold, *Asian Markets Fall as Credit Fears Spread*, INT'L HERALD TRIB., Aug. 10, 2007, <http://www.iht.com/articles/2007/08/10/business/10asiastox.php>.

3. Joanna L. Ossinger, *Stocks Rebound as Dow Hits 14000*, WALL ST. J. ONLINE, July 19, 2007, [http://online.wsj.com/article/SB118484493082471547.html?mod=home\\_whats\\_news\\_us](http://online.wsj.com/article/SB118484493082471547.html?mod=home_whats_news_us).

place in days after August 9th and 10th. It may seem surprising that such a distinctly national problem—within one segment of the U.S. economy—would have such a large effect on global financial markets. However, because many of the world's banks and a number of large mutual and hedge funds had invested in credit derivatives that were subject to a higher level of risk than previously anticipated, the crisis reached far beyond United States border. The result of increased foreclosures was that the market for such securities became highly illiquid as banks could not pass the debt on through to the market.<sup>4</sup> Additionally, the financial losses reported by lenders caused a panic of those holding the securitized debt.<sup>5</sup>

Response to the crisis was similarly worldwide. Central banks from across the globe pumped over \$300 billion into the world's banking systems to calm worries over the credit crisis.<sup>6</sup> Further, although regulators were aware of the problems posed by the credit crunch,<sup>7</sup> the need for legislation became clearer after the August crisis. Domestically, commentators and politicians suggested amending the bankruptcy code to provide relief from the effects of mortgage foreclosures.<sup>8</sup> Abroad,

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4. James Norton, *Banks Bite the Bullet*, GLOBAL INVESTOR, Oct. 2007.

5. See, e.g., Jonathan Stempel, *Countrywide Plunges on Bankruptcy Fear*, REUTERS, Aug. 15, 2007, [http://www.reuters.com/article/ousiv/idUSN1524031520070816?src=0914071240\\_factbox2\\_factbox2](http://www.reuters.com/article/ousiv/idUSN1524031520070816?src=0914071240_factbox2_factbox2).

6. Glen Somerville & David Milliken, *Central Banks Act to Head Off Global Credit Crisis*, REUTERS, Aug. 10, 2007, [http://www.reuters.com/article/bondsNews/idUSL1019586620070810?src=082107\\_1352\\_factbox2\\_factbox2](http://www.reuters.com/article/bondsNews/idUSL1019586620070810?src=082107_1352_factbox2_factbox2); see also Carl Steidtmann, *The Subprime Mortgage Crisis: Where Are We Headed?*, DELOITTE ECON. & MARKET REV., Sept. 2007, at 1, available at [www.deloitte.com/dtt/cda/doc/content/dtt\\_dr\\_emr2qse081.707.pdf](http://www.deloitte.com/dtt/cda/doc/content/dtt_dr_emr2qse081.707.pdf) (stating that the European Central Bank responded to the crisis by engaging in \$211 billion of repurchase agreements and that banks world wide engaged in \$339 billion of repurchase agreements on August 9th and August 10th).

7. See Statement, Fed. Reserve Bd., Working with Mortgage Borrowers, (Apr. 17, 2007), available at <http://www.federalreserve.gov/boarddocs/srletters/2007/SR0706.htm> (encouraging mortgage lenders to engage in prudent workout agreements with those financially unable to make their mortgage payments); see also Statement, Fed. Reserve Bd., Subprime Mortgage Lending, (July 24, 2007), available at <http://www.federalreserve.gov/boarddocs/srletters/2007/SR0712.htm> (encouraging banks to be prudent in their underwriting standards and provide consumers with balanced clear information on the risks of adjustable rate mortgages). See also *Hearing on "Mortgage Turmoil: Causes and Consequences" Before the S. Comm. on Banking, Housing, and Urban Affairs*, 110th Cong. (2007) (opening statement of Sen. Chris Dodd, Chairman, S. Comm. on Banking, Housing, and Urban Affairs).

8. See Press Release, Sen. Sherrod Brown, New JEC Report: Subprime Crisis To Cost Billions In Family Wealth, Prop. Values, And Tax Revenue Unless Action Is Taken To Prevent Foreclosures, (Oct. 25, 2007), available at [http://brown.senate.gov/newsroom/press\\_releases/release/?id=D2E4785C-0018-40E9-9AE3-BBC20839AA96](http://brown.senate.gov/newsroom/press_releases/release/?id=D2E4785C-0018-40E9-9AE3-BBC20839AA96); Henry Hildebrand III, *Let's Remove Special Bankruptcy Protection for Subprime Mortgages*, AM. BANKR. INST. J., Sept. 2007, at 14; R. Stephen Painter Jr., *Subprime Lending, Suboptimal Bankruptcy: A Proposal to Amend §§522(f)(1)(B) and 548(a)(1)(B) of the Bankruptcy Code to Protect Subprime Mortgage Borrowers and Their Unsecured Creditors*, 38 LOY.

France called for regulation tightening the rules regarding when banks could invest in securities located in the United States.<sup>9</sup> Further, the European Commission conducted investigations about the role rating agencies played in the crisis.<sup>10</sup> Many others in the United States also called for regulation of those providing credit ratings.<sup>11</sup>

Luckily, after the announcement by the Federal Reserve Board on August 17th that it would cut the discount rate by fifty basis points, markets across the world were recovered.<sup>12</sup> However, the crisis is far from over. On November 15, 2007, the Federal Reserve made a \$47.25 billion injection of funds into the banking system, its largest temporary injection since the September 11th attacks.<sup>13</sup> While solving the financial catastrophe posed by the subprime mortgage crisis is an imperative problem that the countries of the world must tackle, it is but one example of the problems that face the international community.

Regulation of global networks, human rights concerns, the effect of violence on children, and the regulatory authority of bodies like the WTO are also issues that no country can ignore. These topics in particular are highlighted in the 9th volume of the San Diego International Law Journal. However, like the subprime mortgage crisis, they are but a few of the important international issues facing the world.

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U. CHI. L.J. 81 (2006). For information regarding assignee liability for predatory lending practices, see Christopher L. Peterson, *Predatory Structured Finance*, 28 CARDOZO L. REV. 2185 (2007).

9. Jenny Anderson & Heather Timmons, *Why a U.S. Subprime Mortgage Crisis Is Felt Around the World*, N.Y. TIMES, Aug. 31, 2007, at C1 (stating that the Council of Economic Analysis in France has called to have complex securities analyzed before banks may purchase them).

10. *The Game is Up*, ECONOMIST, Aug. 16, 2007, at 64, 64-65; Statement, European Comm'n Internal Mkt. and Servs. DG, Response to European Comm'n Call for Evidence on Price Transparency in Non-Equity Mkts., (Sept. 15, 2007), available at <http://www.europeansecuritisation.com/Final%20ESFResponseToECCallForEvidenceOnMiFID.pdf>.

11. See, e.g., Annette L. Nazareth, SEC Comm'r, Remarks Before the L.A. County Bar Ass'n 40th Annual Securities Regulation Seminar (Oct. 19, 2007), available at <http://www.sec.gov/news/speech/2007/spch101907aln.htm>.

12. Press Release, Fed. Reserve Bd., Fed. Reserve Bd. Disc. Rate Action (Aug. 17, 2007), available at <http://www.federalreserve.gov/newsevents/press/monetary/20070817a.htm> (announcing a cut in the discount rate to 5-¾ percent in order to "promote the restoration of orderly conditions in financial markets"); *Market Boosted By Fed Rate Cut*, CNN.COM, Aug. 17, 2007, <http://edition.cnn.com/2007/BUSINESS/08/17/world.stocks.reut/index.html>.

13. John Parry, *CREDIT WRAPUP 3-Fed Makes its Biggest Temporary Injection Since September '01*, REUTERS, Nov. 14, 2007, [http://today.reuters.com/news/article investing.aspx?type=bondsNews&storyID=2007-11-15T183033Z\\_01\\_N15309025RTRIDST\\_0\\_ECONOMY-CREDIT-WRAPUP-3.XML](http://today.reuters.com/news/article investing.aspx?type=bondsNews&storyID=2007-11-15T183033Z_01_N15309025RTRIDST_0_ECONOMY-CREDIT-WRAPUP-3.XML).

In his article *Public International Law and the WTO: A Reckoning of Legal Positivism and Neoliberalism*, S.G. Sreejith addresses a fundamental epistemological question in international law; is international law “truly law?” He posits that legal positivists would not have changed their view about the validity of international law because of the creation of the World Trade Organization (WTO). However, he asserts that the forces of neoliberalism have given the WTO its power and that the social order not the apparatuses of the WTO have conferred upon international law a “thickened normativity.” Additionally, he argues that neoliberalism is positivism in another manifestation.

Chris Connolly also addresses an important international law issue in his article *Seeking the Final Court of Justice: The European Court of Human Rights and Accountability for State Violence in Northern Ireland*. As the title suggests, Connolly examines the British government’s use of force in the North Ireland conflict and its response in assuring a “procedural right to life” in wake of the European Court of Human Right’s *Jordan, et al* decisions.

Additionally in the issue, Susan Minamizono discusses regulations aimed at curbing the violent behavior of children by limiting their access to sexually suggestive and violent material, particularly video games. In her comment *Japanese Prefectural Scapegoats in the Constitutional Landscape: Protecting Children from Violent Video Games in the Name of “Public Welfare,”* she compares the Constitutional jurisprudence of the United States and Japan and discusses how the culture and legal framework of each country has shaped its free speech law.

Lastly, Fred Pfister discusses the net neutrality debate and proposes a solution to the issue in his comment *Net Neutrality: An International Policy for the U.S.* Pfister offers criticism of various proposals including an interconnection proposal and tiered services regulation but proposes a global solution that incorporates their benefits. His recommendation is presented within the framework of the Telecommunications Act of 1996, the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act of 2003, the WTO General Agreement on Trade in Services, and European Community Council Directives 2002/21 and 97/33.

The articles presented in this issue discuss but a few of the many international problems facing the world today. We hope by bringing these problems to light to encourage critical analysis of the matters underlying them. Further, we hope through subsequent issues to highlight the international law concerns that are most deserving of scholarly attention.