



The Coming Wave: Keys of Distress M & A

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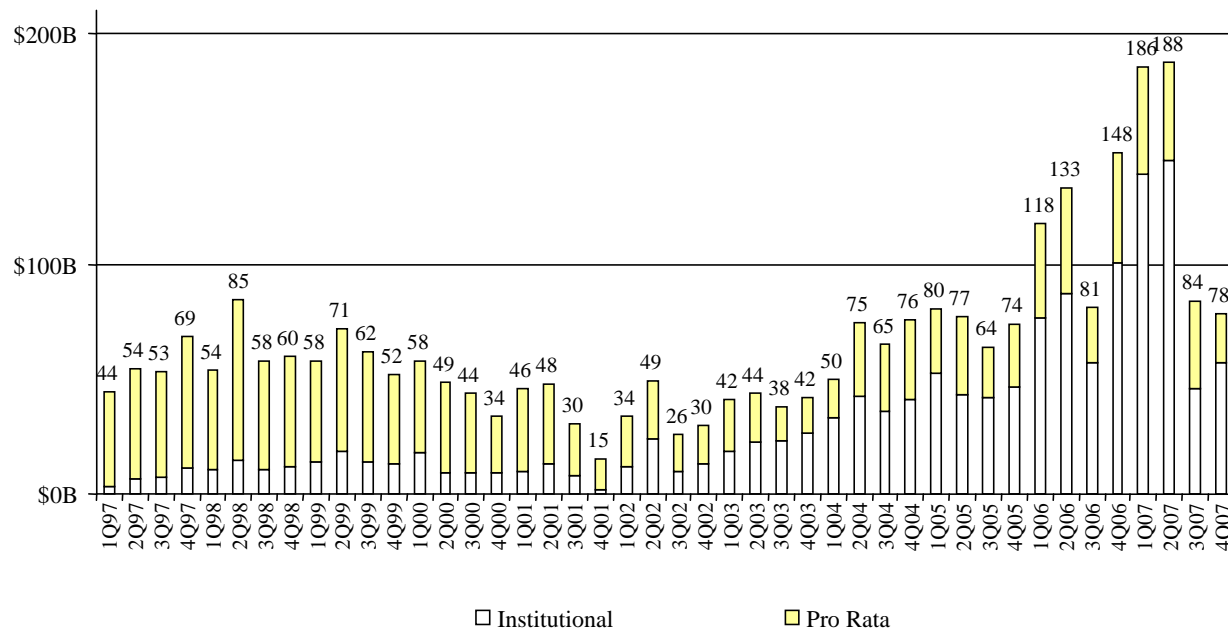
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March 12, 2008

Recent Credit Trends

Volume of New Issue Leverage Loans



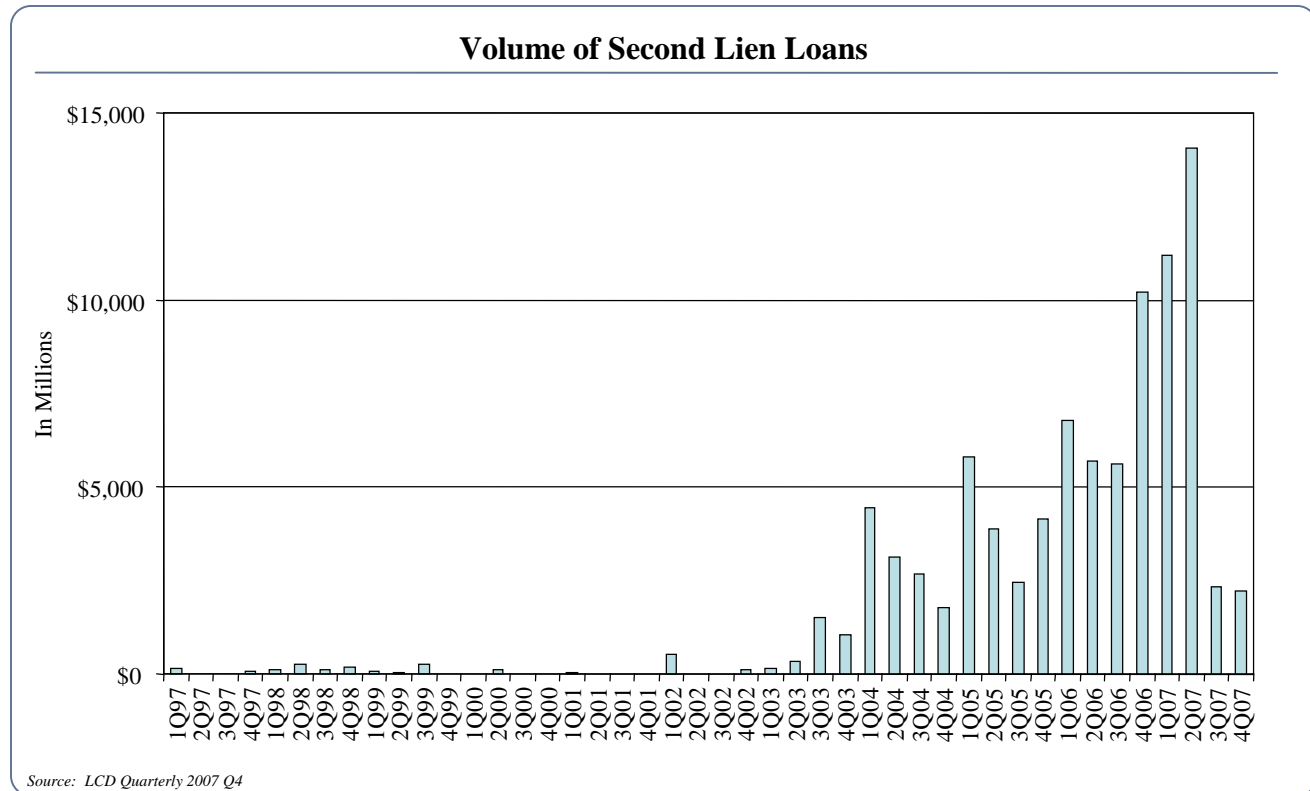
Source: LCD Quarterly 2007 Q4

- **The availability of credit to corporates fell dramatically in the second half of 2007 as the mortgage market issues spilled over into other credit markets. [DUNAYER]**
- **This trend continues into Q1 2008 and will likely remain at this constrained level for some time as structural weaknesses in the credit markets unwind. [DUNAYER]**

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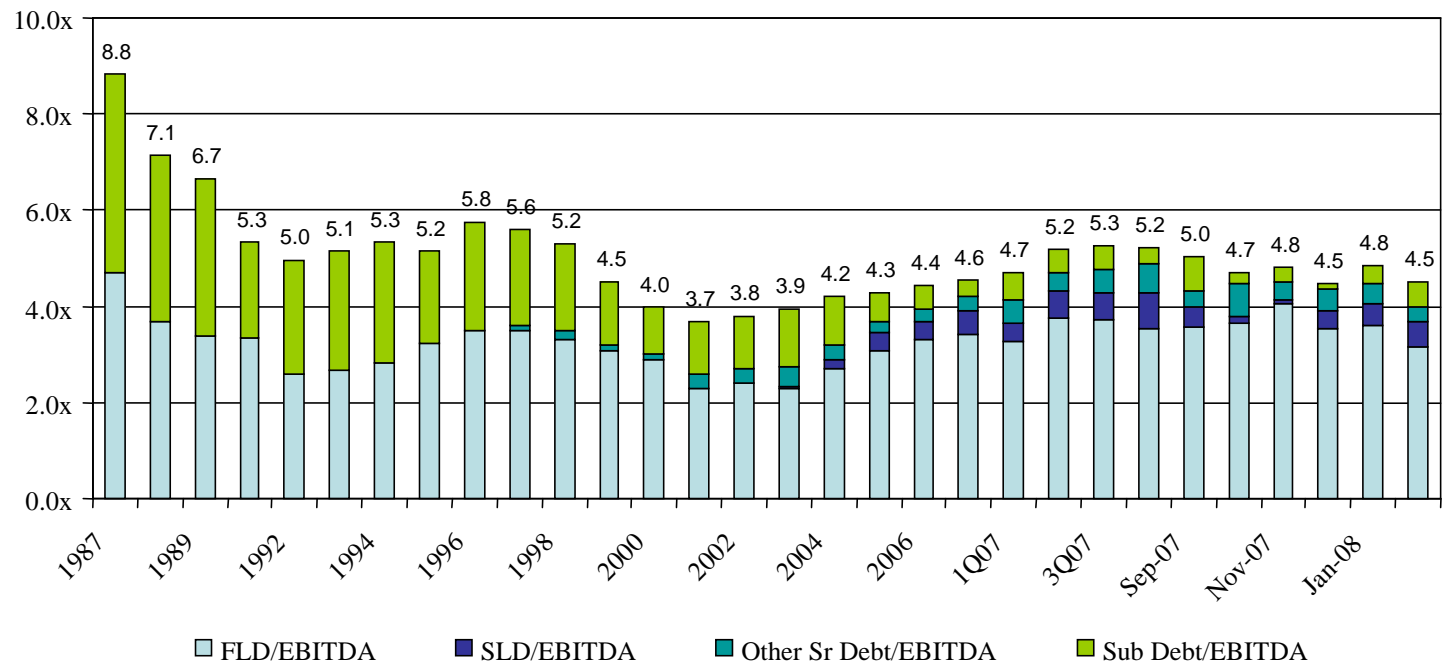
Recent Credit Trends (cont'd)



- **The availability of second lien loans has been a significant factor in the higher leveraged LBO's in recent years. [HULL]**
- **Second lien debt financing availability has fallen off as well. [HULL]**

Recent Credit Trends (cont'd)

Average Debt Multiples of Highly Leveraged Loans



Source: LCD Quarterly 2007 Q4

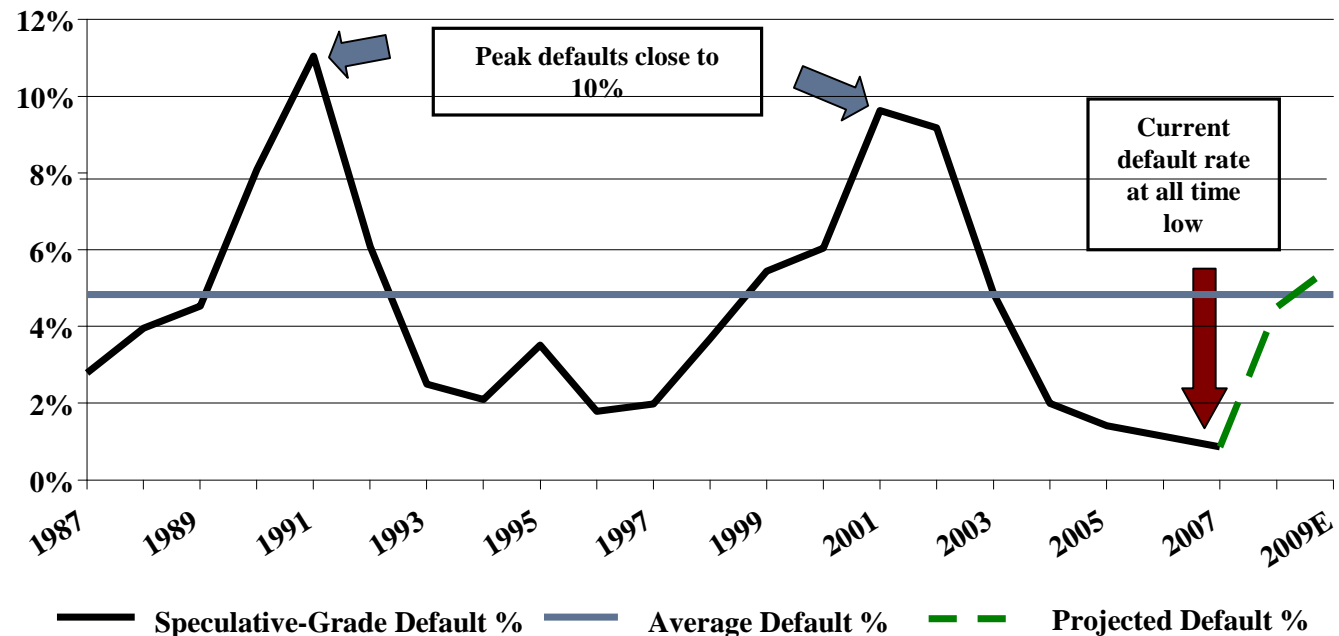
Criteria: Pre-1996: L+250 and Higher; 1996 to Date: L+225 and Higher; Media Loans. Excluded; There were too few deals in 1991 to form a meaningful sample

- **In the fourth quarter of 2007, leverage rates for larger LBO's (greater than \$50mm EBITDA) pulled back slightly. [ARRA]**
- **Middle market LBO leverage ratios remained flat, however the senior debt portion of these financings pulled back slightly. [ARRA]**

Recent Credit Trends (cont'd)

- Financing frenzy and easy credit have led to historically low defaults from 2004 through 2007. [DUNAYER/
- Huge increase in high-yield and leveraged loan volumes (including 2nd lien). [DUNAYER/

Historical Global Corporate Default Summary



Source: S&P 2007 Global Default Study and Moody's research.

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Amount of debt expected to default in 2008 and 2009 is approximately \$300 billion, which will create the largest universe of defaulted debt in history [DUNAYER]



Recent Credit Trends (cont'd)

- Surging defaults will result in increased restructuring and reorganization. [ARRA]**
- Credit market tightness may result in less capital available for refinancings. [ARRA]**
- Capital structures with first/second liens if coupled with operating losses will create urgency for asset dispositions. [HULL]**
- Value maximization processes include market vetting and an orderly and predictable sales process. [DUNAYER]**
- The sales process requires funding and professional guidance. [HEATH]**

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Pre-Bankruptcy Sale Processes

- **Assembling the sales team. [GERBER]**
 - **Company personnel.**
 - **Investment bankers/brokers.**
 - **Lawyers.**
- **Getting the secured lenders on board. [GERBER]**
- **Vetting the marketplace for buyers. [GERBER]**
- **Identifying the stalking horse if necessary. [DUNAYER]**
 - **No-shop.**
 - **Breakup fees.**
- **Preparing for the Chapter 11 filing. [HEATH]**
 - **First day papers.**
 - **Sale procedures.**
 - **Sale documentation.**

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Chapter 11: Biting the Bullet

- **Fiduciary duties of the governance group. [HEATH]**
 - **Duty of care.**
 - **Duty of loyalty.**
 - **Business judgment test.**
- **The decision to file and Chapter selection. [GERBER]**
- **Out of court versus Chapter 11 or Chapter 7. [GERBER]**
- **Value maximization alternatives in Chapter 11. [HEATH]**
 - **Internal reorganization.**
 - **363 Sale process.**
 - **Plan Sales.**

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363 Sales Versus Plan Sales

•363 Sales. [HEATH]

- Bid procedures – stalking horse/qualified bids/breakup fee as part of plan...no collusion.
- The auction process.
- The sale hearing.
- The 363 title...free and clear...statutory mootness.
- Avoidance of the sub rosa plan issue.

•Plan sales. [GERBER]

- Bid procedures – stalking horse/qualified bids/breakup fee as part of plan...no collusion.
- Selection of buyer and implementation via plan.
- Confirmation hearing and ability to do more than sell free and clear without issue of sub rosa plan.
- The plan title...free and clear...equitable mootness.

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Credit Bidding: When All Else Fails...Do Second Liens Matter

•Allowed claims secured by an interest in property of the estate may credit bid in a 363 sale...unless the court for cause orders otherwise. [HEATH]

•Is there an allowed claim?

•Is there any cause not to permit credit bidding?

•Collusion to detriment of other secured creditors?

•No benefit to the estate?

•Anti-competitive issues?

•Secure creditor tip: have credit bid right agreed to and reserved in the sale procedures order. [GERBER]

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Getting Paid in the Bankruptcy Sales Process

- **Engagement approval by the Bankruptcy Court is the first step. [HEATH]**
- **Successful sale processes require professional assistance. [HEATH]**
- **Reasonable fees should be paid as part of the sales process. [GERBER]**
- **Carve- outs by the secured creditor(s) are commonly the best means to obtain assurance of payment when unencumbered assets are not available, and if the sale is for the benefit of the secured creditor there is a basis to negotiate the carve-out. [GERBER]**
- **Issues of payment of fees in the event of a credit bid should be contemplated and worked out in advance to avoid issues later in the case. [GERBER]**
- **Plan sales require payment as part of the confirmation requirements. [HEATH]**

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