

WORKOUTS AND FORBEARANCE AGREEMENTS

Presented by: M.J. DeVaney

**SEEMS LIKE A
LIFETIME AGO...**

Dow Breaks 14,000 Barrier

Wall Street Journal | Jul 19, 07

- The stock market swept aside sub-prime anxieties today to surge past the 14,000 mark.

Consumer Confidence Rises

Bloomberg | Jul 31, 07

Stocks Plunge as Credit Outlook Worsens

Bloomberg | **Aug 3, 07**

- The Dow plummeted late this afternoon, losing 2% to close at 13179.71.
- **Bear Stearns** lost big after S&P downgraded the subprime-laden bank from “stable” to “negative,” stirring more worries over the deeply troubled credit market. **Financial stocks followed expeditiously.**

Loan Giant Downgraded to 'Sell,' Faces Bankruptcy

Los Angeles Times | Aug 16, 07

- Loan giant **Countrywide** saw its shares plummet 13% yesterday after the company experienced trouble borrowing money in the market for short-term debt.

Stocks Dip on Mortgage Fears

Bloomberg | Sep 28, 07

- The markets dropped today on news that mortgage defaults last month climbed 30% from a year earlier, more evidence that foreclosures are on the rise.

Dow Breaks 14,000 for 2nd Time

Wall Street Journal | Oct 1, 07

Dow Dips on Monday Overreach

MarketWatch | Oct 2, 07

(Was 14,000 the high-water mark . . .
forever?)

Fed Pitches \$41B Into Market

Associated Press | Nov 1, 2007



2008

Bear Stearns CFO Will Step Down

Wall Street Journal | Jan 8, 08

- Add **Bear Stearns CEO Jimmy Cayne's** to the list of rolling heads in the subprime mortgage market collapse, reports the Wall Street Journal.

(5 months after the troubles first surfaced)

Merrill's \$15B Write-Down Nearly Doubles Estimate

New York Times | Jan 11, 08

- Merrill Lynch will announce \$15 billion in **losses** stemming from mortgage investments, twice its earlier forecast.

Fannie Mae Loses Billions in Q4

Wall Street Journal | Feb 27, 08

Freddie Mac Reports Record (For It)** \$2.45B Loss

Bloomberg | Feb 28, 08

** records are made to be broken

JP Morgan Buys **Bear Stearns** for \$2 a Share

Wall Street Journal | **Mar 16, 08**

Will **Lehman** Be the Crunch's Next
Victim? MarketWatch | **Mar 18, 08**

Big Fannie Mae Losses Prompt Fears of Failure

New York Times | May 6, 08

Mammoth Writedowns Hammer AIG

Wall Street Journal | May 9, 08

- **AIG** posted a record-breaking (for it)**
\$7.8 billion first-quarter loss yesterday.

** records are made to be broken

Recession Fears Overblown: Economists

Wall Street Journal | May 14, 08

- A growing number of economists are saying, cautiously, that the US might have pulled back from the brink of recession.
- Economists now say already in recession since 1st quarter 2008

Lehman, GM Drive Stocks Down

MarketWatch | Jun 3, 08

- Markets dropped sharply as rumors swirled that Lehman Brothers may face a liquidity problem and automakers reported weak May sales.

A Year In, Credit Crisis Lingers

New York Times | Jul 1, 08

- Despite assurances from some experts that the credit crisis would be short-lived, the forecast remains bleak after more than a year of frustrations.

(A year later, and the future remains bleak)

Financials Key Big Turnaround

Wall Street Journal | Jul 29, 08

- Investors, cheered by **Merrill Lynch's** attempt to regain its financial footing, plowed ahead today despite ugly news on housing prices and consumer confidence.

[An ***Indian Summer Day*** It Would Be]

Merrill Panic May Mark Bottom of Stock Market

New York Times | Aug 1, 08 (11,362.32)

CRISIS . . .



Feds Outline Fannie, Freddie Bailout

Wall Street Journal | Sep 7, 08

- Citing Fannie Mae and Freddie Mac as *“critical to turning the corner on housing,”* Treasury Secretary Henry Paulson this morning announced a bailout of the beleaguered mortgage companies that includes his agency’s purchasing preferred stock.

US Stocks Soar on Fannie/Freddie Takeover

Associated Press | Sep 8, 08

Lehman Crash Triggers Global Market Tumble

Bloomberg | Sep 15, 08

- Lehman Brothers' bankruptcy, along with news that mammoth insurer AIG is seeking a \$40 billion Federal Reserve loan, has sent European and Asian markets, US futures and the dollar sharply downward.

(This was a very bad day.)

Goodbye Cheap Money, Hello Recession

Washington Post | Sep 18, 08

- On paper, the credit crisis losses are probably “*the greatest destruction of financial wealth that the world has ever seen,*” writes Steven Pearlstein. But the biggest casualty of the last year is a fundamental recalibration about credit — *the era of cheap money is over.*

ONE WEEK IN OCTOBER =

Crisis Drains \$2T From Retirement Savings

Washington Post | Oct 8, 08

Iceland Shuts Stock Market,
Nationalizes No. 1 Bank

Associated Press | Oct 9, 08

Dow Falls 678 to Sub-9,000 Close

MarketWatch | Oct 9, 08

ONE WEEK IN OCTOBER =

(cont.)

It's a Good Time to Buy

New York Times | Oct 12, 08

Bernanke: Stage Set for Recovery

Wall Street Journal | Oct 14, 08

Federal Reserve Rate Cut

ULI's Industry Snapshot | Dec 19, 08

- The Federal Reserve Board decreased the Federal Funds Rate to a record low “target range” of 0 percent from its previous 1.0 percent rate. This is the lowest Federal Funds Rate ever!

2009

ULI Panel: More Grim News

GlobeSt.com | Jan 16, 09

- “We’re going to suffer the worst downturn since the great depression,” said Zandi, chief economist at Moody’s Economy.com.
- In 2008, the nation saw 1,400 commercial real estate transactions, down from 4,400 in 2007.

Loan Defaults Will Double in '09

GlobeSt.com | Feb 3, 09

ULI Speakers: Development Business To Contract

GlobeSt.com | Feb 6, 09

Commercial Mortgage Delinquencies Accelerating

GlobeSt.com | Feb 9, 09

TALF Lending to Hit \$1 Trillion – CMBS Included

American Banker | Feb 11, 09

Forecasts: CRE Industry Bleak as Credit Tightens

GlobeSt.com | Feb 19, 09

Private Equity Money Key to Capital Markets
Recovery

GlobeSt.com | Feb 19, 09

Analysts: We Haven't Hit Bottom Yet

Washington Post | Feb 21, 09

Distressed Retail Hits Across Many Markets

GlobeSt.com | Feb 23, 09

Fed Bank President Expresses CRE Concerns

GlobeSt.com | Feb 25, 09

- “Many banks are pretty heavily exposed to commercial real estate,” Lockhart said, citing a \$400 billion overhang in commercial real estate financing. “It is also a big part of the securitization market. So commercial real estate is one that concerns me.”

\$171B in Loans To Mature This Year

Real Estate Forum | Feb/Mar 09

TALF for CMBS: A Bridge to Better Days or A
Bridge to Nowhere

Commercial Real Estate Loans & Securities |
Feb 26, 09

Fannie Mae Draws \$15B After Whopping Loss
GlobeSt.com | Mar 1, 09

Dow Drops Below 7,000
Wall Street Journal | Mar 2, 09

ALG makes history with \$62 billion loss

Associated Press | Mar 2, 09

- ALG managed to lose \$62 billion in just 92 days. That's \$470,000 a minute. And it's more than Bill Gates' net worth.

ALG to get up to \$30B more in Fed aid

Associated Press | Mar 2, 09

SIGN OF THE APOCALYPSE # 2

Spitzer Is Back in DC – in Real Estate

Wall Street Journal | March 6, 2009



World Bank Says Global Economy Will Shrink in '09

New York Times | **Mar 9, 09**

- The World Bank predicted that the global economy would shrink in 2009 for the first time since World War II.
- The World Bank also warned that global trade would shrink for the first time since 1982; biggest decline since the 1930's.

Net Worth Below Zero, **Freddie Mac** Seeks \$31 Billion More

Associated Press | Mar 12, 09

- **\$50 Billion loss in 2008.**

On top of **FNMA** request for \$15 Billion, after IT **lost** almost **\$60 Billion** in 2008.

Bernanke Sees Start of Recovery in 2010

DealBook | Mar 13, 09

China's Leader Says He Is 'Worried'
Over U.S. Treasuries

New York Times | Mar 14, 09

Treasury Department to buy \$15 billion
in SBA securities

San Antonio Business Journal | Mar 16, 09

AIG Faces Growing Wrath Over Payouts

Wall Street Journal | Mar 16, 09

Panel: Credit Logjam Starts to Ease

GlobeSt.com | Mar 18, 09

- NEW YORK CITY - Some signs of life are beginning to assert themselves in the capital markets, which have been in a state of near-hibernation since at least the Wall Street meltdown of last September. However, it will take decisive – and effective – action by the Treasury Department to break the logjam.

Fed Announces \$1.2T Effort to Revive
Economy

Associated Press | Mar 18, 09

US Considers Broadening TALF Program
to Distressed Assets

Blumberg.com | Mar 19, 09

Experts Predict Multifamily Heaven in 2011

GlobeSt.com | Mar 19, 09

SAN DIEGO - “Looking ahead in multifamily:

- 2009 will not be a good year
- 2010 will begin to stabilize, and then the good news is that
- 2011 looks fantastic . . . heaven in 2011.”

Toxic Asset Plan Foresees Big Subsidies For Investors

The New York Times | Mar 20, 09

- Plan to be announced next week involves 3 separate approaches:
 - FDIC will set up special-purpose investment partnerships and lend about 85% of the money to buy up troubled assets.
 - Treasury will hire 4-5 investment management firms, matching private money that each firm puts up on a dollar-for-dollar basis w/ government money.
 - Treasury will expand lending through the TALF, a JV w/ the Federal Reserve.

Grubb & Ellis REIT Files \$3.3B Offering

GlobeSt.com | Mar 22, 09

Geithner Banks On Private Cash

Wall Street Journal | Mar 23, 09

Private Sector Key To \$1-Trillion Toxic
Asset Plan

GlobeSt.com | Mar 23, 09

Toxic-Asset Plan Sends Stocks Soaring

The Wall Street Journal | **Mar 24, 09**

- **Banks Might Unload Up to \$1 Trillion in Loans, Securities to Public-Private Partnerships; Dow Has Biggest Gain Since October**

Dissecting Bank Plan for a Way to Profit

The New York Times | **Mar 25, 09**

- Up and down Wall Street, **bankers and traders sharpened their pencils on Tuesday** as they began the complex financial calculus of the latest bank rescue plan. Their goal: to **find ways to profit from it.**

**FUNDS AND SERVICE ENTITIES
BEING ORGANIZED TO BUY OR
SERVICE ANYTHING
“DISTRESSED”**

Barker Pacific Targets \$300M for Troubled Assets

GlobeSt.com | Jan 4, 09

Fund Targets Distressed Student Housing

GlobeSt.com | Jan 9, 09

\$500M Phillips Edison Fund Targets
SoCal

GlobeSt.com | Feb 2, 09

GFI Buys Distressed Assets

GlobeSt.com | Feb 6, 09

RCG Closes \$600M Debt Fund

GlobeSt.com | Feb 9, 09

Staubach Spinoffs Team To Aid Distressed Retail

GlobeSt.com | **Mar 16, 09**

- SRS Real Estate Partners – formerly Staubach Retail Services – and Cypress Equities have joined together to form Managed Services, an allied company that offers real estate services targeted primarily to capital investors and lenders who find themselves with troubled or failed retail and mixed-use properties.

PROJECTS STOPPED MID-STREAM



Eighth Ave. Tower on Hold

GlobeSt.com | Jan 30, 09

Simon Puts Brakes on Development

GlobeSt.com | Jan 30, 09

- “The new development business is dead for a decade.”

Verge Condos Developer Seeks Additional Two Years

GlobeSt.com | Feb 1, 09

- Hoping to wait out the economy.

Wyndham Puts Desert Blue on Ice

GlobeSt.com | Feb 18, 09

- Wyndham Worldwide Corp.'s vacation ownership group is suspending construction on Desert Blue, a 19-story, 281-unit timeshare development across Interstate 15 from Caesars Palace and the Mirage. Much of the steel work for the building has been completed.

Blackstone's CEO: "Keep Away" From Real Estate

Crain's New York Business.com | Mar 10, 09

- “You should keep away from that for now; if it looks cheap it will be cheaper,” Mr. Schwarzman said in response to a question from a member of the audience Tuesday at the Japan Society.

CBRE's Horne Sees a Two-Year Recession

GlobeSt.com | Mar 11, 09

Harrah's Investors Tender \$5B In Bonds

GlobeSt.com | Mar 19, 09

- Speculation that tender offer is meant to keep current owners in control of the company if it files for bankruptcy.
- In January, it delayed the completion and opening of its 660-room addition to Caesars Palace indefinitely.

**DEFAULTS / FORECLOSURES /
BANKRUPTCIES / LITIGATION**

CMBS Defaults Head for Tipping Point

GlobeSt.com | Feb 5, 09

GE Takes Over 2,284-Unit Portfolio

GlobeSt.com | Feb 5, 09

- Less than three years after acquisition by Collins Group, a 2,284-unit class A portfolio has gone back to GE Capital following default on a \$148 million bridge loan.

Trump Entertainment Files Chapter 11

GlobeSt.com | Feb 17, 09

Wells Fargo Reclaims BayWalk Complex

GlobeSt.com | Feb 17, 09

Meruelo Maddux Faces \$266M in Loan Defaults

GlobeSt.com | Mar 12, 09

500 W. Monroe Owner Dodges Foreclosure

GlobeSt.com | Mar 12, 09

Station Casinos Likely to File Ch. 11 by Mid-April

GlobeSt.com | Mar 18, 09

MGM Mirage Repays \$300M, Gains 60-day Reprieve

GlobeSt.com | Mar 18, 09

Retail Vacancies Add To Rising CMBS Delinquencies

GlobeSt.com | Mar 19, 09

- NEW YORK CITY – The retail sector was the chief culprit behind a 13-basis-point increase in CMBS loan delinquencies during February, Fitch Ratings reports this week. Among 46 newly delinquent retail loans totaling \$277 million, says the ratings agency, are eight loans backed by now-dark, single-tenant properties.

Dubai World Sues Troubled MGM Mirage

GlobeSt.com | Mar 23, 09

General Growth Properties is struggling to avoid bankruptcy

San Antonio Business Journal | Mar 23, 09

CalPERS, CalSTRS Take BofA to Court

GlobeSt.com | Mar 25, 09

- NEW YORK CITY – The nation's two largest state public pension funds, California Public Employees Retirement System and California State Teachers Retirement System, filed a joint motion in federal court here seeking to be designated lead plaintiff in a suit against Bank of America stemming from its merger with Merrill Lynch. The motion was filed Monday in US District Court for the

Commercial Property Faces Crisis

Delinquency Rate at 1.8%, Near Peak of Last Recession; Parallels to S&L Debacle

The Wall Street Journal | **Mar 26, 09**

SF Leasing Down 30%, Class A Rents Down 25%

GlobeSt.com

http://www.globest.com/news/1387_1387/sanfrancisco/178008-1.html

NC sees first bank failure since 1993

Monday, April 13, 2009 - The Business Journal of the Greater Triad Area

Cape Fear Bank has become the 22nd bank in the U.S. to fail this year, and the first to fail in North Carolina since 1993.

North Carolina, Colorado Banks Shut as 2009 Failures Reach 23

April 10, 2009

http://www.bloomberg.com/apps/news?pid=20601087&sid=aR_08gAhn0A&refer=home

Seven US banks go belly up every month in 2009

March 29, 2009

www.economictimes.com

Terms and Phrases You've Heard,
Used, Or Wanted To Use
In the Past 18 months



10. The first rule of holes: “When you’re in one, stop digging.”
(Molly Ivins)

9. “If it seems too good to be true, it probably is.”

10. The first rule of holes: “When you’re in one, stop digging. *(Molly Ivins)*”

8. “Financially-engineered valuation”
(= trouble)

9. If it seems too good to be true, it probably is.

10. The first rule of holes: “When you’re in one,
stop digging. (*Molly Ivins*)

7. “Strength of sponsorship” (a 2009 key to getting \$)
8. “Financially-engineered valuation” (= trouble)
9. If it seems too good to be true, it probably is.
10. The first rule of holes: “When you’re in one, stop digging. (*Molly Ivins*)

6. “Catch a falling knife” – numerically, #3 most popular
7. “Strength of sponsorship” (a 2009 key to getting \$)
8. “Financially-engineered valuation” (= trouble)
9. If it seems too good to be true, it probably is.
10. The first rule of holes: “When you’re in one, stop digging. (*Molly Ivins*)

5. Last year we said, “Things can’t go on like this,” and they didn’t – they got worse. (*Will Rogers*)

4. “They don’t ring a bell at the bottom” – numerically, #2 most popular
5. Last year we said, “Things can’t go on like this,” and they didn’t – they got worse. (*Will Rogers*)

3. “In *wine* there is *wisdom*,
In *beer* there is *freedom*,
In *water* there is *bacteria*.” (Ben
Franklin) Drink up!

4. “They don’t ring a bell at the bottom” –
numerically, #2

5. Last year we said, “Things can’t go on like
this,” and they didn’t – they got worse. (Will
Rogers)

2. “*Interesting*” – numerically, #1 most popular, by a wide margin
3. “In *wine* there is *wisdom*,
In *beer* there is *freedom*,
In *water* there is *bacteria*.” Drink up! (*Ben Franklin*)
4. “They don’t ring a bell at the bottom” – numerically, #2
5. Last year we said, “Things can’t go on like this,” and they didn’t – they got worse. (*Will Rogers*)

1. “When you get to the end of your rope, tie a knot and hold on.”
(*FDR*)
2. “Interesting” – numerically, #1 by wide margin
3. “In *wine* there is *wisdom*,
In *beer* there is *freedom*,
In *water* there is *bacteria*.” Drink up! (*Ben Franklin*)
4. “They don’t ring a bell at the bottom” – numerically, #2
5. Last year we said, “Things can’t go on like this,” and they didn’t – they got worse. (*Will Rogers*)

ELEMENTS OF THE WORKOUT

THE REALITY



NEXSEN | PRUET

THE REALITY

- The Crisis
 - Can the security survive the loss of Tenants (especially anchors)?
- Poor Management & Leasing
- Age
 - Deferred Maintenance
- Withdrawing or Tapped out Equity Partners
- The Siege
 - Domino Effect

THE REALITY

- IRS Liens
- Ad Valorem Tax Liens
- Collapse of the Condo Market
- Collapse of the Second Home Market
- Collapse of the CMBS Market
 - Rigidity of Master Servicer/Special Servicer Obligations to Investor Parties
- Withdrawal of Life Companies

THE RECITALS

THE RECITALS

- The Parties
 - Borrower
 - Sureties
- The Related Parties
 - Intercreditor Agreements
 - Subordinated Debt
- The Default
 - Payment Default
 - Maintenance Default
 - Covenant Default (DSCR, LTV, Liquidity)

THE RECITALS

- Default in other loans from Lender
- Default in other loans from other Lenders
- Bankruptcy of Sureties
- IRS Liens
- Mechanics Liens
- Sales Crash

Elements of the Agreement

Elements of the Agreement

- Acknowledge Balance Due
 - Disputes on the increase regarding loan administration
 - Calculation of Debt

ACKNOWLEDGMENT OF DEFAULT

ACKNOWLEDGMENT OF DEFAULT

- The Modification
 - Interest Only
 - Principal Deferments
 - Conversion of Debt to Equity
 - Payment Holiday
 - Time to Sell
 - Time to Refinance
 - Time to find Equity Partners
- Principal Reduction
- Additional Collateral
- Additional Sureties
- Springing Guaranties



THE CONSIDERATION

THE CONSIDERATION

- Time
- Triggers
- Fees
- Forgiveness
 - Fees
 - Interest
 - Default Interest
- Targets for continued forbearance

The Lender's Step Up

The Lender's Step Up

- Document curing
- Cross Default Other Obligations
- Cross Collateralization
- The Lockbox
- Additional Remedies

The Waivers

1. Claims, Defenses, Setoffs

- Servicing, Administration, Construction Draws, Master Servicer, Special Servicer
- Lenders over reaching – Defenses or Claims v. Affiliates
- Known and Unknown Claims

2. The Automatic Stay

- Pre-default – Post Default
- Atrium – *Enforceable v. Borrower* but not versus Third Parties
- BABCPA
 - Single Asset

3. Waiver of 45-21.16 Notice of Hearing

- Beware the envelope of those entitled to notice

Acknowledgment of Notice

- Time
- Method
- Parties
- Counsel
- Acceleration
- Maturity

THE DENIAL



NEXSEN | PRUET

THE DENIAL

- Novation
- Cure
- Satisfaction
- Release
- Extension
- Estoppel
- As to
 - The Obligations
 - The Parties
 - The Sureties
 - The Collateral
 - The Remedies

THE PAYMENT

THE PAYMENT

- P & I
- Lockbox
- Taxes
 - Insurance
 - Utilities
- Liens

THE AUTHORITY

THE AUTHORITY

- UCC's to be filed
- Availability of financials from Accountants and Third Parties
- Books and Records
- Reports

WARRANTIES AND REPRESENTATIONS

WARRANTIES AND REPRESENTATIONS

- Standing
- Authority
- Approval
- Compliance with other obligations
- Bankruptcy
 - Insolvency
 - Receivership
- Fraud on Creditors
- Title to Collateral
- Compliance with Laws
- Environmental

THE PROHIBITION

THE PROHIBITION

- Payments to Principals
- Payments to Subordinated Creditors
- Capital Expenditures
- Sale of Assets



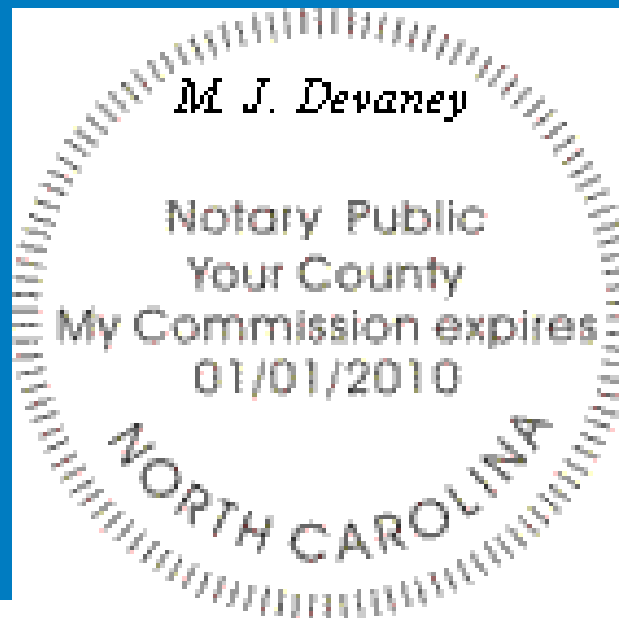
The Consent

The Consent

- Approval of Sureties
- Approval of other Creditors

THE ACKNOWLEDGMENT

Don't forget the Notary



THE HEARTBURN

THE HEARTBURN

- Subsequent Communications and Course of Dealing
- Lender liability claims not withstanding The Waivers
- The FDIC and the successor FDIC Bank