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The Top 15 Canada/US Deals of 2004

Scott Falk (Kirkland & Ellis) | Lorna Telfer (McCarthys) | Howard Chatzinoff (Weil, Gotshal) | Marie Giguère (Molson) | Robert Reese (Coors) | Clay Horner (Osler)

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The Top 15 Canada/US

By Marzena Czarnecka

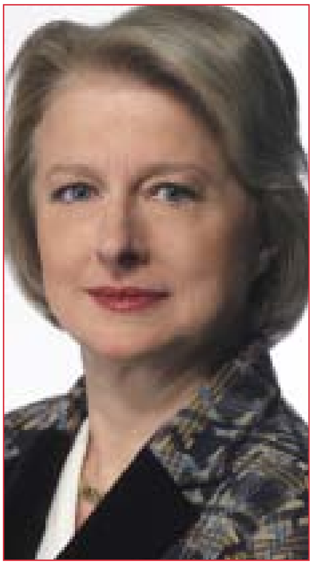
THE DEFINITION OF A CROSS-BORDER DEAL used to be simple. Company A was Canadian. Company B was American. One bought the other. But, 17 years after the *Free Trade Agreement (FTA)* and more than a decade after the *North American Free Trade Agreement (NAFTA)*, things are a little more complicated. And integrated.

"When someone asks how much of your practice is cross-border, you usually have to counter with what do you mean by cross-border?" Frank Allen, a senior corporate partner with Borden Ladner Gervais LLP (BLG) in Toronto, goes on to point out that "On most deals there are, at the very least, US shareholders." Norman Steinberg, co-chairman and a senior corporate partner in the Montreal office of Ogilvy Renault LLP, agrees with Allen. "It's very difficult to define what is and is not a cross-border deal these days."

The reason for the uncertainty is straightforward. As proponents hoped and opponents feared, the *FTA* and *NAFTA* have led to the *de facto* integration of the Canadian and US economies, including the capital markets. As explained by Neil Campbell, a senior competition partner at McMillan Binch LLP in Toronto, "The economic integration of Canada and the US is so advanced because we started out with so much two-way trade and investment before the *FTA* and *NAFTA*." The *FTA* and *NAFTA*, along with associated changes such as liberalization of the *Foreign Investment Review Act* in the early 1980s, "fostered" this integration, says Campbell, by "taking away a protectionist approach to investment and trade."

One result of this integration is that defining a cross-border deal is no longer an easy

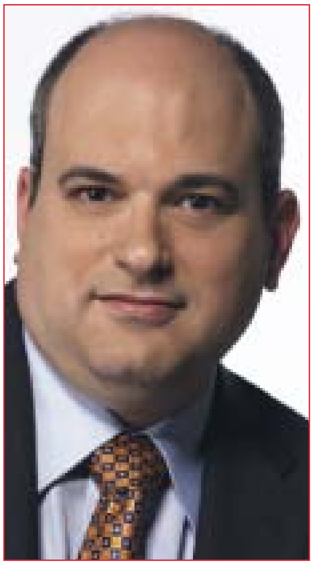
ON FOR MOLSON



Marie Giguère (Molson)

Lorna Telfer (McCarthys)

Howard Chatzinoff (Weil, Gotshal)



Jeff Nadler (Weil, Gotshal)

Cross-Border Deals of 2004

exercise. The creation of the Molson Coors Brewing Company is clearly a cross-border merger. The same goes for Jean Coutu's acquisition of the Eckerd pharmacies from JC Penny and Calgary-based EnCana Corp.'s acquisition of Denver-based Tom Brown Inc. But then it gets difficult.

Take the $6.2 billion spin-off by Montreal-based Alcan of Novelis, a new Canadian company, listed on the Toronto Stock Exchange (TSX) and New York Stock Exchange (NYSE), headquartered in the US, and financed through several complex US and Canadian transactions. A cross-border deal or a Canadian one? Or the restructuring of Air Canada. No *Chapter 11* proceedings, but US private equity players played a major role, not to mention all the lessors-cum-creditors.

Or the Petro-Canada share offering, the third largest financing in North America in 2004. A domestic deal at first blush with the federal government divesting its remaining stake in a former Crown corporation. But scratch the surface and you find US underwriter Merrill Lynch. And then the US$3.24 billion Moore Wallace Inc./RR Donnelly & Sons Co. merger. Essentially a US transaction, but with a definite "legacy" connection to Canada via Moore. Or, on a smaller scale, the acquisition of Montreal-based MAAX Inc. by a consortium that included Canada's largest pension funds and Boston-based JW Childs Equity Funding III. Cross-border?

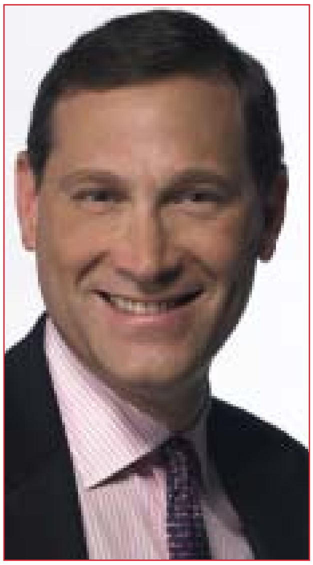
Depends who you ask. This lack of consensus is evident in the 15 transactions that made *Lexpert*'s top cross-border deals of 2004 list. Chosen on the basis of interviews with over 50

ON FOR COORS

Robert Reese (Coors)

Clay Horner (Osler)

Scott Falk (Kirkland & Ellis)



Fred Tanne (Kirkland & Ellis)

corporate lawyers in Canada and the US, the deals include eight (or six depending on your definition) traditional cross-border M&A transactions and seven more contentious ones, including a spin-off, a *CCAA* restructuring, asset flips and a trust reorganization.

All involved Canadian and US legal work, the ultimate criteria lawyers apply when defining a cross-border deal, although not in equal amounts. All reflect important trends in the interplay of the two economies. And, in the final analysis, almost all of them are step one plays setting the stage for future growth or consolidation and more aggressive competition in the North American and, frequently, global market.

1. Molson Coors at $6B

Once it was made clear that Toronto-based Manulife's $11 billion acquisition of Boston-based John Hancock was a 2003 transaction, there was no question as to what the number one cross-border deal of 2004 would be. Molson/Coors had it all. Money. Family discord. Vexed institutional shareholders. Disputed claims of continental market synergies. Rumours of competing bids in the wings. Complex tax structures. Executive compensation issues. Arguments over the absence of a control premium. Arguments over voting rights. Everything.

"It was a lifetime," says Lorna Telfer, a senior corporate partner with McCarthy Tétrault LLP in Montreal. "It was the kind of deal lawyers dream of." As long-time counsel, McCarthys represented Molsons in the transaction with a joint Montreal-Toronto team.

It was a complex transaction to begin with, combining two public, but essentially family controlled, companies in a cross-border "merger of equals." As explained by Telfer, the challenging legal mandate was "to find a structure which would let the clients do what they wanted to do." Essentially this meant continuing some of the unique aspects of each company's structure, e.g., two classes of shares, "without harming the companies but allowing them to go forward with their business." Then, there were the cross-border tax issues. "I've never spent so many hours with tax lawyers in my life," says Telfer.

Problems solved, the deal was announced. The Canadian Competition Bureau waved it through. Coors filed its preliminary proxy statement with the Securities and Exchange Commission (SEC). And then the fireworks began.

Not overly impressed with the merger to begin with, when Molson shareholders such as the Ontario Teachers' Pension Plan, Jarislowsky Fraser Ltd., and the Caisse de dépôt et placement du Québec learned that management was going to receive millions in payouts while they weren't going to get a change of control premium, and that option holders would receive voting rights, they went apoplectic. They quickly forced Molson to backpedal on both issues. They even got Molson to sweeten the deal. Twice. Dissent in the Molson family, notably on the part of Ian Molson who was trying to put together an alternative deal, created additional pressure.

Many commentators felt, particularly post-Enron et al, that Molson management stumbled on the executive payout and option holder voting issues. But Garth Girvan at McCarthys in Toronto, who along with Telfer in Montreal led the McCarthy team, disagrees. Strongly. "We have another deal right now where we're doing with option holders what we tried to do to Molson. We went to Teachers on the Molson deal and discussed it with them. We pointed out that exactly the same thing was done in 2002 when PanCanadian and Alberta Energy Company merged to form EnCana. We pointed out that they had voted in favour of that deal." But this time around the circumstances were different. "Essentially they told us we understand that, but we don't like the deal. We think the vote may be close and we don't want option holders to vote."

In the end, thanks in no small part to the additional money offered despite the reluctance on the part of Molson and Coors to offer a control premium, the vote wasn't close. "I never doubted the deal would get done," says Clay Horner. A corporate partner with Osler, Hoskin & Harcourt LLP in Toronto, Horner led the team at Osler which represented Coors in Canada. "My confidence had nothing to do with the legal issues. At the end of the day, transactions get done because of the business logic associated with them and the money." And, faced with increasingly competitive domestic markets in a globally consolidating industry, the deal made sense to both Coors and Molson.

The merger is also significant in the way Teachers and other institutional shareholders shaped the final result. "Shareholders are no longer willing to accept the advice of the Board," says Horner. "Shareholders are now prepared to go public with their objections, to negotiate and they are prepared to engage in brinkmanship." This is an important change in the Canadian marketplace.

As Girvan points out, "In the past we had hedge funds and arbitrages complaining about deals, which everyone took with a grain of salt because everyone knew it was in their interest to drive up the price. Now we have major blue chip investors talking to each other about every deal. I'd advise boards of directors to take this into account, even to the point of bringing some of them into the tent at an early stage." Bill Crane, the president of Georgeson Shareholder Communications, which worked for Coors in the US on the Molson/Coors merger, makes a similar point. "We now spend a good deal of our time advising clients prior to proxy solicitation to make certain changes to proposals that will make them more attractive to institutional shareholders."

Notwithstanding the pyrotechnics, as Lorna Telfer emphasizes, the important thing is that they arrived at "a practical, workable solution, although it took a ton of people with a ton of stamina to get it done." This comment relates to another important point. In every complex cross-border transaction, which by definition will involve large teams of lawyers acting for different parties on both sides of the border, it is imperative that someone is firmly in charge.

And, to prevent the inevitable cross-border tug of war over who does what, it is of considerable assistance if that "someone" is senior in-house corporate counsel. According to McCarthys and Osler, such was the case in the Molson/Coors merger. General counsel Marie Giguère effectively quarterbacked the transaction for Molsons and Robert Reese, her counterpart at Coors, drove the bus for the Americans.

The Molson/Coors merger received significant media attention in Canada. It also received considerable attention in the US. As Jeff Nadler, a partner in the New York office of Weil, Gotshal & Manges LLP, US counsel for Molsons, points out, "Canadians should not be mistaken, the transaction was not insignificant by US standards. It was considered an important transaction in the US as well." As Nadler notes, with the tax issues associated with cross-border deals, the exchangeable share mechanism and the general difficulties posed by an attempted merger of equals, "It was not an easy public transaction by US standards. It was a complicated deal."

2. Jean Coutu/Eckerd at US$2.4B

The Jean Coutu Group's acquisition of 1,549 Eckerd drug stores in the US from JC Penny quadrupled the size of the Quebec-based pharmacy and transformed it, overnight, into a major North American player.

Frank Allen at BLG attaches particular importance to the Coutu acquisition. "The Coutu deal is significant as it shows that in certain quarters of Corporate Canada, people are prepared to be bold and aggressive. To be blunt, Coutu is not going to carry the top half of the front page of the business section three days out of five, whereas Molson/Coors did. But I think the Coutu deal is more interesting in terms of a bold, aggressive move."

But it's not boldness alone which makes Coutu one of the most significant cross-border deals in 2004. As in Molson/Coors, there was nothing "cookie cutter" about the transaction. As explained by Yvon Martineau, one of Montreal's marquee corporate lawyers who led the Fasken Martineau DuMoulin LLP team in Canada for Coutu, "We were negotiating an acquisition in an auction process and at the same time working on a financing to complete the transaction. But the terms of the financing would be determined after the auction. We didn't know if we would buy the whole thing or part of it. As a result, we did not know what kind of financing would be needed."

And they pulled it off, financing the acquisition with US$1.7 billion of committed credit facilities, a US$1.2 billion notes offering, and a Canadian $582 million public offering in Canada and private placement in the US.

Given the continuing furor over cross-border Internet pharmacies and the fact that JC Penny put Eckerd in play because the stores were underperforming, the path ahead for Jean Coutu will not be easy. "It's a difficult market to be in," says Allen. "They have a strong track record. I wish them well."

3. EnCana/Tom Brown at US$2.7B

It took home the Cross-Border Deal of the Year award at the 2004 World Oil Awards in Houston. In Calgary it was the largest deal of the year by almost a factor of three. Yet according to most Canadian lawyers, the US$2.7 billion takeover of Denver-based Tom Brown Inc. by Calgary-based EnCana Corp. barely qualifies as an important cross-border transaction. Why?

Well, self-interest will intrude. Most of the legal work on the file was done by US counsel. The Calgary office of Blake, Cassels & Graydon LLP, one of the firms that does significant work for EnCana, acted as Canadian counsel. Macleod Dixon LLP, which usually acts as Brown's Canadian lawyers, was sidelined to the financing component of the transaction. US firms drove the deal.

The acquisition of Tom Brown is not "transformational" in the same sense as Coutu's purchase of Eckerd. And it certainly lacked the drama of the Molson/Coors merger. But by giving EnCana another 325 million cubic feet a day in natural gas production and 1.2 trillion cubic feet of proved reserves in the US, the acquisition constitutes a significant step in EnCana's strategy of positioning itself as an independent North American player, and not merely a potential acquisition target.

The acquisition was not just about bulking up and staying independent. EnCana is already the largest independent oil and gas producer in North America. It was about long-term survival and profitability. It illustrates the changing industry focus from mature conventional gas fields in the Western Canadian Sedimentary Basin (WCSB) to resource plays with more growth potential in deeper, multi-zone deposits.

4. Alcan's $6.3B Spin-off of Novelis

What happens when the world's second largest maker of primary aluminium spins off a $6.2 billion company which opens its first day of trading on the NYSE as the world's largest maker of flat-rolled aluminium products? That's what happened when shareholders of Montreal-based Alcan Inc. approved the spin-off of Novelis Inc. in December 2004.

In terms of brute size, it's one of the largest transactions Corporate Canada engineered in 2004. But it's a sleeper. As Norman Steinberg notes, "Most lawyers, even in Montreal and Toronto, have barely heard of the transaction." Steinberg led the Ogilvy Renault LLP team that spent much of 2004 assisting Alcan's legal department structure the spin-off.

Why the low profile? Well, Alcan was somewhat reticent about publicity during the deal, but the principal reason tongues didn't wag is because the majority of legal work was done by Alcan's in-house team and the Montreal office of Ogilvy Renault, cutting down significantly on the wolf pack factor.

As Steinberg points out, the deal's significance starts with its sheer size. Alcan is a major player in the global aluminium industry, having acquired Switzerland's Algroup and French-based Pechiney in 2002 and 2003, respectively. Novelis starts life as a world leader in its industry. The size of the new company dwarfs similar transactions by other major companies, including the Delphi Corp. spin-off by General Motors and the Visteon Corp. spin-off by Ford.

Equally important is the strategic vision underpinning the Novelis transaction. As explained by David McAusland, Executive Vice-President, Corporate Development and Chief Legal Officer at Alcan, the company is exiting the commodity rolled products business in the belief that "the transaction will create value for our shareholders and position Alcan for further growth in profitable markets." To this end, Alcan continually reassesses its portfolio of assets and companies to maximize shareholder return.

But was it cross-border? Yes, says Steinberg. Alcan is based in Montreal, Novelis is essentially a US company, independent of Alcan and headquartered in Atlanta, Georgia. Novelis will be governed by US law. Its markets, like those of Alcan, are global.

The cross-border nature of the spin-off, Steinberg argues, was seamless. "Novelis is listed on the Toronto and New York stock exchanges. Canadian and US law firms were involved as well as Canadian and US investment banks. In connection with its separation from Alcan, Novelis entered into senior secured credit facilities with both Canadian and US lenders providing for aggregate loans of up to US$1.8 billion."

5. Petro-Canada at C$3.2B

Petro-Canada almost didn't make this list. It's not that selling 49.4 million common shares at $64.50 and clearing $2.6 billion is unimpressive. That wasn't the problem. The problem was that most of the lawyers interviewed dismissed the third largest financing in North America in 2004 as "a plain vanilla transaction." They also took strong exception to calling it cross-border.

Peter Jewett at Torys LLP acknowledges that the financing, "Wasn't an unusual deal in terms of new and novel things being tried." Jewett led the Toronto-New York team at Torys for Petro-Canada in both Canada and the US. He is quick, however, to point out that "What was unusual for those involved was how fast it was done. Four weeks from beginning to end."

To do a $3.2 billion cross-border financing, in four weeks is impressive. When the federal government and the underwriters told Petro-Canada on September 7 that they wanted to close by September 29, they were bluffing. Petro-Canada and the lawyers at Torys, however, took them seriously. As recalled by Jewett, "We had met earlier and thought a fast timeline for closing would be in late October. We huddled with the company people and asked can we do this in three weeks? We mapped out what had to be done and said let's give it a shot. The government people could not believe we said that. They told us later they put the September 29 date on the table to indicate urgency. They assumed it could not be done."

Being faster than a speeding bullet doesn't negate the fact that the deal structure, as Frank Allen at BLG puts it, "wasn't a structure you'd put on a graduate student exam." But, as Peter Jewett counters, "If you're sitting at a table and everybody at the table has Canadian and US counsel, it sure looks cross-border to me. Plus, a major deal of that sort could not have been done in Canada alone."

And this is why Petro-Canada makes the cut. The financing illustrates perfectly the extent to which North American capital markets ignore the border. Even when the federal government is selling off shares in a former Crown corporation, if that share offering is in the billions, it's going to need US players.

Continued following chart

The 15 Top Canada/US Cross-Border Transactions of 2004

DEAL	PLAYERS
1. Molson/Coors Merger	
Coors	**In-house:** Robert Reese, Annita Menogan, Robert Witwer **Osler, Hoskin & Harcourt:** Clay Horner, Ward Sellers, Don Gilchrist, John Groenewegen, Scott Horner, John Leddy, Marguerite Goraczko, Victoria Graham, Colin Berryman, François Paradis, Firoz Ahmed, Steve Suarez, Elaine Marchand, Michelle Lally, Kevin Ackhurst, George Hendy, James Hassell, Patricia Ross, Evan Howard **Kirkland & Ellis:** Scott Falk, Steve Fraidin, Bob Hayward, John Jennings, Rob Kiburz, Jennifer Meschewski, Christian Nagler, Roger Rhoten, Adina Rosenthal, Fred Tanne, Chris Butler, Deneese Walia Levin, Bill Tymm **Simpson Thacher & Bartlett:** Casey Cogut, Maripat Alpuche, Andrew Smith, Greg Grogan, Paul Ezzeddin, Matthew Shaw, Steven Todrys, Katharine Moir, Noah Beck, Ken Edgar, Rachel Berry, Kevin Arquit, Arman Oruc, Brandi Rubin, Adeeb Fadil, Fagie Hartman, Robyn Rahbar, Krista McManus **Richards, Layton & Finger:** Charles Richards, Jr., Donald Bussard, Michael Allen
Coors Family Trusts	**In-house:** Darden Coors **Davis Graham & Stubbs:** Jennings Newcom, Jeffrey Brandel
Molson	**In-house:** Marie Giguère, Kelly Brown, Nathalie Delisle **McCarthy Tétrault:** Lorna Telfer, Garth Girvan, Sonia Struthers, Peter Goode, Patrick Boucher, Karl Tabbakh, Arman Kuyumjian, Stephanie Lee, Doug Cannon, Jerald Wortsman, Ylang Ha, Yves Bériault, Oliver Borgers, Yves Comtois, Gérald Tremblay, Q.C., François Giroux, Marc-André Landry, Éric Gosselin, Philippe Fortier, Roger Chouinard, Ormonde Benson, Henry Wiercinski, Thomas Davis **Weil, Gotshal & Manges:** Stuart Goldring, David Bower, Kimberly Blanchard, Abraham Reshtick, Max Goodman, Howard Chatzinoff, Jeffrey Nadler, Louis Gambino, Danielle Do, David Glick, Debra Pearlstein, Joseph Rafferty, Mary Jean Potenzone, Annemargaret Connolly, Jeffrey Osterman, Connie Ericson **Morris, Nichols, Arsht & Tunnell:** Frederick Alexander, James Honaker
Independent Committee of the Board of Directors of Molson	**Fasken Martineau DuMoulin:** Robert Paré, Gilles Leclerc, Gilles Carli, Paul Martel, Ronald McRobie, Réal Forest **Shearman & Sterling:** David Heleniak, Stephen Besen, Eliza Swann, Robin Smith, John Cannon III, Laurence Bambino, Patrick Valenti
CIBC Mellon Trust Company (trustee to Molson's public debtholders)	**Faskens:** Xeno Martis, Angela Onesi, Félix Gutierrez, Donald Milner
Eric Molson and Pentland Securities	**Davies Ward Phillips & Vineberg:** Sylvain Cossette, Neil Kravitz, Philippe Johnson, Alan Golden, Michael Vineberg, Robert Razienne
Family of Cynthia Molson Baxter	**Stikeman Elliott:** Pierre Raymond, Marc Barbeau, Frédéric Harvey
Family of Deirdre Molson Stevenson	**Fraser Milner Casgrain:** Paul Dingle
Aim Trimark Investments Ltd.	**Bennett Jones:** Alan Bell
2. Jean Coutu buys Eckerd from JC Penny	
Jean Coutu	**In-house:** Caroline Guay **Faskens:** Yvon Martineau, Peter Villani, Mireille Tremblay, Jean-Pierre Chamberland, Sébastien Hébert, Daniel Yelin, Marc Novello, Martin Racicot, Sylvie Bourdeau, Lori Seidman, Alain Ranger, Gilles Carli, Thomas Copeland, Philippe David, John Abraham, Belinda James **McDermott, Will & Emery:** Dennis White, Spencer Klein, Gregory Puff,

	Felise Feingold, Jeffrey Rothschild, Nathanael Davis, Mark Mihanovic, Christopher Brown, Hal Schwartz, Eric Reimer, Elliot Hinds, Scott Kaye, Christopher Donovan, Daniel Zucker, Laurie Marsh, Jon Dubrow, Joseph Winterscheid, Susan Cooke, Todd Garvelink, Andrew Liazos, Dawn Groman, Donald Frederico, Steve Kasten, John Dabney, Robert Nicholas, Marc Sorini **Stewart McKelvey Stirling Scales:** Charles Reagh, Lee Bell-Smith, Andrew McFarlane
JC Penny	**Jones Day:** Robert Estep, Lisa Durham, Gregory Kopel, Jason Krieser, Amy Nelson, Mark Robinson, Steven Stennett, Dennis Drapkin, Scott Frodyma, James Carey, Alan Miller, Michael Blais, Frederick Rerko, Michelle Brown, Martha Wach, Robert Jones, Phillip Proger, Betty Ungerman, David Cowling, Kirk Lyda
Notes underwriting and bank syndicate in Canada	**McCarthys:** Michel Deschamps, Richard O'Doherty, Benjamin Silver, Andrew Parker, Claude Desaulniers, Louis-Martin Dubé, Michael Polowin, Mylany David
Equity underwriting syndicate in Canada	**Stikeman Elliott:** André Roy, Anthony Penhale, Nicolas Vanasse, Véronique Faucher, Marie-Andrée Beaudry
Merrill Lynch, Deutsche Bank and National Bank of Canada	**Fried, Frank, Harris, Shriver & Jacobson:** Valerie Ford Jacob, Arthur Kaufman, Stuart Gelfond, Kenneth Blackman, John Boesa, Gregg Weiner, Meyer Last, Lisa Levy, Jonathan Lewis, Richard Schwartz, Edward Alterman, Emil Buchman, Joshua Wechsler, Pauline Wen, Frances Schreiber, Andrew Barkan, Kevin Bloss, Batya Goodman, Meredith Kurzban, Maria Mameli, Damian Ridealgh, Craig Brody, Carrie Kingsley, Robert Brown, Jeremy Feit, Brian Lichter, Amy Lu, Abraham Schwartz, Larry Welch, Pami Wexelman, Brenda Cooke, Beth McClain, James Munoz-Pfeffer, Carla Oliveira, Delphine Caramilli, Suna Chang, Stephanie Weissman, Deborah Yadegari
3. EnCana/Tom Brown	
EnCana	**In-house:** Patricia Smith-Grayton, Barry Gilchrist, Gary Molnar, Kerry Dyte **Blake, Cassels & Graydon:** Pat Finnerty, Dan Fournier, Rob Kwinter, Michael Piaskoski, Craig Spurn **Paul, Weiss, Rifkind, Wharton & Garrison:** Jeffrey Marell, Robert Schumer, Todd Finger, Michael Segal, Andrew Foley, Edwin Maynard, Peter Rothenberg, Gaines Gwathmey **Holland & Hart:** Davis O'Connor
Tom Brown	**In-house:** Bruce DeBoer **Vinson & Elkins:** Jeff Floyd, Tom Mason, Doug McWilliams, Steve Putman, Griff Aldrich **Macleod Dixon:** Kent Kufeldt, John Carleton
4. Alcan/Novelis	
Alcan	**In-house:** David McAusland, Pierre Chenard, Roy Millington, Josiane Turcotte, Julie Parent, Marie-Christine Dupont, Michael O'Connor, Hugh Berwick, Charles Aley, Gordon Becker, Mathieu Bergeron, Dan Hughes, Donald Seberger, Kate Anthony-Wilkinson, Richard Walker, Edouard de Vienne, Jerôme Gaschet, Jan Holtzhausser, Vanessa Jaeger, Cécile Lenglos-Le Corre, Nikolaus von Verschuer, Sabine Trautwein, Peter Ith, Michael Stanek, Mario Brigido **Ogilvy Renault:** Andrew Bleau, Niko Veilleux, Steve Malas, Nicolas Labrecque, Françoise Denault, Ella Plotkin, Adrienne Oliver, John Leopardi, Paul Carenza, Jules Charette, Norman Steinberg, Ruth Wahl, Karen Galpern, Thierry Dorval, Christine Dubé, Louise Laplante, Martin Rochette, Julie Paquet, Sophie Melchers, Jean Bertrand, Jane Bogaty, Mary Kelly, George Maughan, Warren Brazier, Richard King, Daniel Paul, Éric Gélinas, Catherine Nicholson, Nathalie Proulx, Marianne Plamondon, Tom Hesler, Rhonda Levy, Sophie Kilburn, Georgina Hunter, Renée Thériault, Frank Picciola, Dany Assaf **Sullivan & Cromwell:** Scott Miller, Sarah Payne, Peter Wiazowski, Olivier Karsenti, Xiaodong Yi, Michael Davidian, Adam McAnaney, Bruno Salama, Hubert Ployart, Carlotta D'Ercole, Willard Taylor, Jeffrey Hochberg, Ansgar Simon, Martin Hamilton, Joshua Mandell, Stuart Meiklejohn, Steven Holley, Konstantin Technau, Max Birke, Philipp Semmer, Benjamin Perry, Richard Vilanova, Olivier de Vilmorin, Eric Laut **Ernst & Young:** Steven Surdell, Eric Bretsen, Angelo Nikolakakis, Roger Ashton, Allan Lanthier **Blakes:** Jeremy Forgie **Macfarlanes:** Julian Howard, Jatinder Bains, William Sykes **Levy & Salomão Advogados:** Luiz Assis, Paulo Vaz, Ana Monguilod, Daniel Castro, Raquel McKenney, Daniel Pessoa, Beatriz Moraes **Homburger Rechtsanwälte:** Daniel Daeniker, Micha Fankhauser, Thiemo Sturny, Daniel Haeberli

	Nörr Stiefenhofer Lutz: Sebastian Bock, Holger Alfes, Martina Bauer, Florian Becker **Skrine:** Phua Pao Yii **Freshfields:** Andrew Renshaw, Matthew O'Regan, Jason Gudofsky, Gavin Bushell **Kim & Chang:** Kang-Seok Jeon **A&L Goodbody:** Michael Greene, James Dudley, Dominic Conlon, David Ridgway **Elvinger, Dessoy, Dennewald:** Catherine Dessoy **Van Olmen & Wynant:** Paul Soens **Ernst & Young:** Matteo Zapelli **Advocacia Waltenberg:** David Waltenberg **Jones Day:** Sally Crawford
Syndicate of banks in credit financing and initial purchasers in senior notes financing	**Weil, Gotshal & Manges:** David Lefkowitz, Daniel Dokos, Jonathan Bayer, Temi Ofuya, Randi Harari, Michael Bonafede, Soo-Jin Shim, Danek Freeman, Lester Szeto, Justin Levy, Junine Johnson, Annemargaret Connolly, John O'Loughlin, David Bower, Helyn Goldstein, Mary Jean Potenzone, Michael Kam, Anna Grant, Chayim Neubort, Lianne Pinchuk **Davies Ward:** Patricia Olasker, Ken Klassen, Greg Harnish, Nicholas Leblovic, Scott Hyman, Melanie Koszegi, John Zinn, Geoff Turner, Alexandria Pike, Don Stanbury, Maryse Bertrand, Olivier Désilets, Alain Roberge
5. Petro-Canada	
Petro-Canada	**In-house:** W.A. (Alf) Peneycad, Hugh Hooker **Torys:** Peter Jewett, Patrice Walch-Watson, Aaron Emes, John Toffoletto, Vanessa Kee, Lucia ten Kortenaar, Ron Nobrega, Jennifer Sandford, Andy Beck, Brad Cost, Dan Miller, Mayah Judovits, Peter Keenan, Gregg Benson, Jeff Gracer
Government of Canada	**Stikeman Elliott:** William Braithwaite, Mihkel Voore, John Ciardullo, Chris Nixon, Alyson Goldman **Shearman & Sterling:** Brice Voran, Christopher Cummings, Jennifer Mazin, Doug Nathanson, Larry Crouch, Eileen O'Pray **MacPherson Leslie & Tyerman:** Harold MacKay, Q.C.
CIBC World Markets, Merrill Lynch & Co. and RBC Capital Markets	**Fraser Milner:** Douglas Black, Q.C., David Spencer, Bill Gilliland, Craig Story, Bill Jenkins, Chima Nkemdirim, Irene Ludwig, John Reynolds, Heather Zordel, Lisa Nesbitt, Toby Allan, Suzanne Hathaway, Alex MacWilliam, Scott Bodie, Jehad Haymour **Paul, Weiss, Rifkind, Wharton & Garrison:** Edwin Maynard, Andrew Foley, Angus Tarpley, John Mercury, Michael Elliott, David Sicular, Annie Jeong, William O'Brien, Richard Elliott
6. Air Canada Restructuring: Part II	
Air Canada	**In-house:** John Baker, David Shapiro, Anna Maria Masciotra **Stikeman Elliott:** Marvin Yontef, Sean Dunphy, Patrick O'Kelly, Ashley Taylor, Elizabeth Breen, Ron Ferguson, Craig Mitchell, Brian Pukier, Mihkel Voore, David Weinberger, France Margaret Bélanger, Jean Marc Huot, William Rosenberg, Howard Rosenoff, Katherine Kay, Gary Nachshen, Robert Hogan **Willkie Farr & Gallagher:** Matthew Feldman, John Longmire, Brian O'Connor **Skadden, Arps:** Milton Strom, Phyllis Korff, Christopher Morgan, Riccardo Leofanti, Marc Gerber, Dominique Speekenbrink
Air Canada, Jazz Air Inc.and Zip Air Inc. (re: fleet restructuring)	**Bennett Jones:** Pat Brennan, Dave Lennox, Kenton Rein, Melissa Ross, Brendan Clark, Denise Bright, Neil Stevenson, Will Osler, Tim McInerney, Mark Bain, Stephen Bowman, Steven Lutz, Hugo Alves, Mitch Williams, Alex Finelli, Christina Iannone, Vivek Warrier, David Dorrans, Jason Roth, Greg Sim
Counsel for outside Directors	**Torys:** Jim Baillie, Q.C., Jim Tory, David Baird, Q.C., Jennifer Guerard, Alexandra Dostal, Andrew Gray
(re: a number of Air Canada claims)	**Goodmans:** Geoffrey Morawetz, David Bish, Adam Larry
Cerberus Capital Management	**Ogilvy Renault:** Derrick Tay, Ian Ness, Mark Convery, Adrienne Oliver, Rick Charney, Julie Paquette, Dany Assaf, Martin Rochette, Richard King, John Porter, Rick Sutin
CIBC	**In-house:** Jackie Moss, Jeff Roode, Bob Richardson **Blakes:** Jim Christie, Kevin McElcheran, Milly Chow, Linc Rogers, Amanda Kushnir, David Kee, Stephen Ashbourne, Dirk Rueter, Michael Burke, Markus Viirland, Aaron Palmer, Walied Soliman, Cal Goldman, Jack Quinn, Christopher Hersh, Christopher Van Loan, Allan Gelkopf, Robert Kreklewich, Jeff Lloyd
Deutsche Bank Securities Inc.	**Davies Ward:** Jay Swartz, Sylvain Cossette, Neil Kravitz, Sam Minzberg,

	George Addy, Hillel Rosen, Matthew Gottlieb
Ernst & Young, Inc. (court appointed monitor)	**Lenczner Slaght Royce Smith Griffin:** Peter Griffin, Peter Osborne, Monique Jilesen
Stonecrest Capital Inc. (collateral agent)	**Borden Ladner Gervais (BLG):** Joanne Foot, Howard Silverman, Carlyn Klebuc, Shane Pearlman
CIBC Mellon Trust Company (trustee to Air Canada's pension plans)	**BLG:** Sonia Mak, Eva Krasa, Andrew Harrison, Marty Sclisizzi, Barry Glaspell, Rob Dawkins, Bill Robertson, Arthur Fish, Brian Cohen
CIBC Mellon Trust Company & Nova Scotia Trust Company of New York (trustees for unsecured bondholders)	**BLG:** Robert Hutchison, Gus Karantzoulis, Jeff Dermer, Tanya Kozak
GE Capital Aviation Services, Inc. (and GE Engine Leasing, GE Aircraft Engines, ORIX Corp., Pegasus Aviation, debis Airfinance BV, Montrose & Co., LLC, Mitsubishi Corp., Babcock & Brown, Boeing Capital Corp., DaimlerChrysler, Lombard Aviation Capital/Royal Bank of Scotland, Osis International Leasing, BancaIntesa, Bank of New York, DVB, Finova Capital Corp., LB Kiel/HSH Nordbank, First Islamic Investment Bank, Credit Suisse/First Boston)	**In-house:** David Lloyd, Paul Cummiskey **Cassels Brock & Blackwell**: Donald Gray, Carlo Vairo, Marco Filice, Chris Besant, Bruce Leonard, Frank Spizzirri, Joe Bellissimo, Lydia Salvi, Erin Finlay, Norm Findlay, Paul Muchnik
GE Capital Aviation Services	**ThorntonGroutFinnigan:** Robert Thornton, Gregory Azeff
GE Corporate Financial Services (re: financing)	**Osler:** Scott Horner, Michael Hart, Nicole Cloutier, Richard Pratt, Joyce Bernasek, Laily Darvish, Elizabeth Shriver, Charles Zienius, Steve Golick, Martin Desrosiers, Robin Schwill, Ian McSweeney, Doug Rienzo, Josée Lefebvre, Shelley Munro, Jeremy Dacks
GATX Financial (lessors of some aircrafts of Air Canada)	**BLG:** Marc Duchesne, Craig Hill
Pratt & Whitney Canada (re: repudiation of exclusive overhaul and repair agreement with Air Canada)	**BLG:** Marc Duchesne, Isabelle Descharnais, Claudine Millette
Pratt & Whitney International (re: repudiation of the exclusive parts supply agreement with Air Canada)	**BLG:** Marc Duchesne, Roger Jaipargas, Matt Campbell
ITOCHU Airlease (re: lease of two aircrafts as part of restructuring)	**BLG:** Robert MacLellan
DaimlerChrysler Canada Inc. (aircraft lessor)	**BLG:** James Mathers, John Marshall
TROC International (an Air Canada fuel supplier)	**BLG:** Paul D'Angelo
SNC-Lavalin ProFac Inc. (unsecured creditor of Air Canada)	**BLG:** Roger Jaipargas
GTAA (re: litigation)	**Osler:** Rupert Chartrand, Natasha Macparland, Joey Steiner, Don Hanna, Don Ross
Instutional lenders and financial stakeholders in Air Canada aircraft (Bayerische Landesbank, Canada Life, Citibank Great-West Life, HSBC, Merrill Lynch, Mitsubishi Trust, Mizuho Bank, OMERS, Stojitz Corp., Sun Life, TD Bank, UFJ Bank Canada, together with Airbus International and affiliates thereof)	**McCarthys:** Barbara Boake, Sean Collins, Terry Dolan, James Gage, Larry Robinson, Sylvain Vauclair, Rachelle Moncur, Neil Peden, John Salmas, Alan Brown, Geoff Hall, Carolyn Ritchie, Michael Barrack, Malcolm Mercer, Rita Maxwell, Steven Rapkin, Barry Ryan, Harry Wiercinski, Stephen Furlan, Marc Lemieux, Michael Weizman, Richard Miner, Justin Lapedus, Catherine McKendry, James Morand, James Warnock, Lorne Salzman, Mary-Jeanne Phelan
Marubani Corp., Sojitz Corp., Diamond Lease, Tokyo Leasing and Pleiades Lease	**Fraser Milner:** Bill Jenkins, David Mann, Stephanie Campbell
Commissioner of Competition	**Fraser Milner:** Don Houston, Jeanne Pratt
The ad hoc unsecured creditors committee	**Macleod Dixon:** Howard Gorman, Steven Leitl, Kent Kufeldt, Chrysten Perry
Agent and syndicate of lenders (re: senior unsecured $300M revolving term credit facility)	**McMillan Binch:** Andy Kent, Alex MacFarlane, Waël Rostom
Bank of Nova Scotia and Royal Bank of Canada (lenders, bank service providers to Air Canada and institutional lenders)	**McMillan Binch:** Andy Kent, Jeff Gollob, Vern Kakoschke, Dan MacDonald, Paul Macdonald, Hilary Clarke, Vickie Wong, Jeff Rogers, Andrew McFarlane, Waël Rostom, Chris Bennett,Don Waters, Stephanie Donaher, Shahen Mirakian, Adam Maerov
National Trust Company (co-owner of a B767 aircraft)	**McMillan Binch:** Andy Kent, Andrew McFarlane, Chris Bennett
Various syndicates of financial institutions re: financing of eight A320 aircrafts	**McMillan Binch:** Andy Kent, Jeff Gollob, Peter Willis, Jeff Rogers, Andrew McFarlane, Hilary Clarke, Chris Bennett, Stephanie Donaher, Adam Maerov

Various financial institutions re: trades in claims and/or ACE shares	**McMillan Binch:** Andy Kent, Robert Scavone, Bruce Chapple, Waël Rostom, Don Waters, Stephanie Donaher, Stephanie Robinson, Adam Maerov
Consortium of equity funds as owners of several aircrafts	**McMillan Binch:** Stephen Rigby, Hilary Clarke, Brett Harrison
First Air re: claim against Air Canada	**McMillan Binch:** Dan MacDonald
Bank of Montreal, Bank of America, HSBC Bank Canada, Laurentian Bank of Canada and Bank of Tokyo-Mitsubishi (Canada)	**Fraser Milner:** Peter Murphy, Heidi Clark, Dan Dowdall, John Russo, Chris Woodbury, Russ Kowalyk, Bill Jenkins, Stephanie Campbell, David Mungovan, Colin Emslie, Allan Mass, Louis Dumont
American Express	**Fraser Milner:** Joe Marin, Jim Janetos, Kate Broer
MetLife	**Fraser Milner:** Ross Walker, Anita Joshi
AWAS (formerly Ansett Worldwide Aviation Services)	**Fraser Milner:** Peter Murphy, Barbara Grossman, John Russo, Heidi Clark
International Lease Finance Corp.	**Fraser Milner:** Peter Murphy, Heidi Clark, Barbara Grossman, Shayne Kukulowicz, Ross Walker
Atlantic Coast Airlines Holdings, Inc.	**Fraser Milner:** Peter Murphy
Triton Aviation	**Fraser Milner:** Laura Safran, David Mann
7. TD/Banknorth	
TD Bank Financial Group	**In-house:** Christopher Montague, Richard Neiman, Norie Campbell, Sandra Mundy, Sandra Caswell, Johnathon Brent **Osler:** Brian Levitt, Rob Yalden, Dana Easthope, Osman Aboubakr, Firoz Ahmed, Dean Gresdal, John Jason, Joyce Bernasek **Simpson Thacher & Bartlett:** Lee Meyerson, Charles Rappaport, Gary Mandel, Ken Edgar, Gary Rice, Ellen Patterson, Elizabeth Cooper
Banknorth Group, Inc.	**Wachtell, Lipton, Rosen & Katz:** Edward Herlihy, Lawrence Makow **Elias Matz Tiernan & Herrick:** Gerard Hawkins
Goldman Sachs (financial advisor to TD)	**Ogilvy Renault:** Richard Sutin, Terry Dobbin **Skadden, Arps, Slate, Meagher & Flom:** Fred White, III, David Ingles
8. Bain/SuperPages/Verizon	
Bain Capital	**Davies Ward:** Shawn McReynolds, Timothy Moran, Peter Hong, Christian Gauthier, Conrad Druzeta, Jennifer Pankratz, Siobhan Monaghan, Ian Crosbie, Raj Juneja, Nicholas Leblovic, Sonny Bhalla, Samatha Vaccaro, John Bodrug, Mark Katz **Hicks Morley Hamilton Stewart Storie:** Paul Jarvis, Paul Broad, Stephanie Kalinowski **Burnet, Duckworth & Palmer (BD&P):** Jay Ratzlaff, Robert Betteridge, Trish Fehr, Jeff Oke **Ropes & Gray:** Newcomb Stillwell, Howard Glazer, Philip Smith, Byung Choi, Jeffrey Doctoroff, Stephanie Dorn, Kraig Hitchcock, Chad Perry, Sunil Savkar, Ed Black, Johnny Chen, Weishi Li, Christopher Leich, Jennifer Harding
Verizon	**In-house:** Phillp Marx, John Thorne, David Wheeler **McMillan Binch:** Neil Campbell, Omar Wakil **O'Melveny & Myers:** Gregory Patti, James Moriarty, Jason Cohen
Canadian counsel to senior lending syndicate	**McCarthys:** Barry Ryan, Jim Morand, Susan Kennedy, Stephen Furlan, Marc Lemieux, Kevin Wright, Ira Cooper and Wendy Gwyn Phierry
JPMorgan Chase Bank, NA (lender to Advertising Directory Solutions Inc.)	**Fraser Milner:** Ross Walker, Dennis Wiebe, Anita Joshi, Graham Turner, Brian Carr, Bill Jenkins
9. Bain/Dollarama	
S. Rossy and Dollar AMA	**Davies Ward:** Richard Cherney, Sam Minzberg, Janet Ferrier, Hillel Rosen, Sébastien Roy, Sylvie Guillemette, Alan Shragie, Michael Kandev
Bain Capital and other affiliated entities	**Ropes & Gray:** Alfred Rose, Sean Doherty, Allyson Hawkes, Andrew Schader, Rebecca Ginzburg, Byung Choi, Sunil Savkar, Peggy Ho, Christopher Leich, Walter McCabe **Stikeman Elliott:** John Leopold, Peter Castiel, Sophie Lamonde, Frédéric Brassard, Michael Szlamkowicz, Robert Hogan, Marie-Andrée Beaudry, Marc Barbeau, Caroline Boutin, Pascal Hurtubise, Donna Benedek, Jennifer Legge, Valérie Mac-Seing, Paul Collins, Patrick Essiminy, Mireille Bergeron

Lenders	**Stewart McKelvey Stirling Scales:** C. Paul Smith, Charles Reagh, Lee Bell-Smith **Aikins, MacAulay & Thorvaldson:** Harley Boles **Weil, Gotshal & Manges:** Morgan Bale, Matthew Bloch, Peter Bove, Samson Frankel **Blakes:** Simon Finch, Yannick Beaudoin, Aimee Yee, Daniel Ferreira, Chris Van Loan
10. West Fraser buys Weldwood of Canada	
West Fraser	**Lang Michener:** Larry Hughes, Stephen Wortley, Barbara Collins, Cory Kent, Graham Matthews, Charlotte Morganti, David Ross, Evie Sheppard, Philippe Tardif, Rubina Jamal, Chris Lee, Steve Mathiesen, Larry Nelson, Sharon Wong, Peter Botz, Kalle Soomer, Q.C., Sandra Knowler, François Tougas, James Musgrove **Gibson, Dunn & Crutcher:** Stephanie Tsacoumis, John Hess, Daniel Plaine, Gracia Berg, Greg Gerdes, Art Pasternak, David Lee, John Herfort, Brian Lane, Sydney Smith, William Wargo **Davies Ward:** George Addy
International Paper	**In-house:** Barbara Smithers, Leonard Ciriello, Greg Jones, Chris Lemon **Blakes:** Gail Lilley, Kim Harle, Michael Raven, Brenda Mothersill, Delaney Fisher, Cal Goldman, Rob Kwinter, Navin Joneja, Paul Tamaki, Kevin Zimka, Pamela Hughes, Erica Young, Jeremy Forgie, Jonathan Kahn, Derek Rogers
Citigroup Global Markets Inc. and Goldman, Sachs & Co.	**Shearman & Sterling:** Christopher Cummings, David Wilson, Tania Garcia-Eaton
For Financial Advisors to West Fraser and counsel to underwriters for West Fraser offering	**BLG:** Neil de Gelder, Q.C., Fred Pletcher, Bruce Sinclair, Elinore Richardson, Robert Owen, Craig Godsoe, Christine Ferguson, Carleigh Whitman, Graeme Martindale
Lenders (led by TD Bank)	**Farris:** Herb Dodd, Maria McKenzie, Trevor Scott, Tanja Biegler
Competition Commissioner	**Dept. of Justice:** Duane Schippers **Bennett Jones:** Melanie Aitken
11. QLT/Atrix	
QLT	**In-house:** Janet Grove, William Newell, Jennifer Kaufman-Shaw, Sandra MacKay, Jennifer Breeze **Farris:** Hector MacKay-Dunn, Q.C., Trevor Scott, Erinn Broshko, Jason Sutherland, Charles Pearson **Latham & Watkins:** Ora Fisher, Nicholas O'Keefe, Joseph Yaffe, Laurence Stein, Karen Silverman, Alexandera Smith, Mark Fleisher, Christina Hall, Pardis Zomorodi, Joseph Sarret, Rick Brooks, Brian Lee
Atrix	**Morrison & Foerster:** Warren Troupe, Michael O'Bryan, Brian Caid, Raj Tanden, Patrick McCabe, Paul Borden, Stephen Smith, David Thatcher, Thomas Scholz, Panagiotis Bayz, Jacob Minas, Stuart Crenshaw, Bruce Cunningham, Joy MacIntyre **Stikeman Elliott:** John Anderson, Farhad Bayati, Shawn Neylan
Banc of America Securities (financial advisor to Atrix)	**Davis Polk & Wardwell:** John Butler, Peter Douglas, Joy Sayour, Richard Kent, Vladimir Shendelman, Michael Mollerus
12. Pengrowth reorganization	
Pengrowth	**In-house:** Charles Selby **Bennett Jones:** Brad Markel, Don Greenfield, Brent Kraus, Michael Klym, Alan Ross, Greg Johnson, Kerry Krochak, Cameron Danyluk **Vinson & Elkins:** Tom Mason, Barry Miller **Desjardins Ducharme Stein Monast:** Michel Rochefort
Computershare Trust Co. of Canada (trustee of Pengrowth Energy Trust)	**Blakes:** Pat Finnerty, Ross Bentley, Ron Mar
RBC Capital Markets	**Fraser Milner:** Bill Jenkins, Scott Bodie
13. Chevron Sale to Enerplus and Acclaim	
Enerplus	**In-house:** David McCoy **Blakes:** Brock Gibson, Mungo Hardwicke-Brown, Ron Deyholos, Chad Schneider, Chris Christopher, Ben Rogers, Ken Chicilo, Mark Lewis, Mike Munoz, Chris Orr, Ron Mar, Ed Gill, Dan Fournier, Kevin Fougere, Brian Facey, Marianne Smith, Brian Thiessen
Acclaim	**BD&P:** Brian Evans, Alicia Quesnel, Mark Houston, Jody Wivcharuk, Richard Smith, Richard Steele, Keith Miller, Barry Crump, Doug Mills, Stuart Money, Katherine Pybus,

	Jason Bilinsky, Danielle Parrotta, John Goetz, Neil Prendergast, Carolyn Wright
Paramount	**In-house:** Chuck Morin, Gail Yester, Anne Love, Debra Hawker **Heenan Blaikie:** Mitch Shier, Rod Ferguson, Brian Bidyk, Lloyd Symons, Dan Sears, Subrata Bhattacharjee, Robb Beeman, Kate Morisset, Jillian Frank
Chevron	**In-house:** Marcia Decter, Kevin Archibald, Bill Harvey, Barb Patching **Bennett Jones:** Rob Desbarats, Janice Buckingham, Jo'Anne Strekaf, John Gilmore, Christopher Brown, Andrew Lamb **Osler:** Don Watkins, Q.C., David Tetreault, Stan Ebel, Simon Thompson, Nancy Diep, Sasha Nowicki, Frank Turner, Andrée Blais **Pillsbury Winthrop:** Robert James
Enerplus (re: issuance of $301.8 million of subscription receipts to underwriters)	**Blakes:** Brock Gibson, Chad Schneider, Cam Proctor, Ron Mar, Ed Gill
Underwriters	**BD&P:** Allan Twa, Q.C., Jay Reid, James Kidd
Acclaim (re: issuance of $200.2 million of subscription receipts and $75 million of convertible unsecured subordinated debentures to underwriters)	**BD&P:** Bill Maslechko, Fred Davidson, Tom Mix, John Brussa, David Ross
Underwriters	**Stikeman Elliott:** Chris Nixon, Alyson Goldman
Acclaim (re: amending its credit facilities with syndicate of lenders)	**BD&P:** John Wilmot, Jay Ratzlaff
Lenders	**Macleod Dixon:** Rick Borden, Mike Wylie, Gary Rose
14. Bumble Bee/Connors **Connors Bros.**	**Torys:** Jamie Scarlett, Glen Johnson, Rena Shadowitz, Cornell Wright, Wendy Kennish, Shiraz Gheyara, Shauna Parr, Richard Willoughby, Mark Adkins, Craig Pell, Darren Baccus, Ilana Mantell, Maria Krasnikow, David Dell, Scott Kraag, Boris Nevelev, Rafal Nowak, Darien Leung, Corrado Cardarelli, Ron Nobrega, Andrew Shreeram, Tim Rorabeck, Ann Marie McGovern, Jeff Scheine, Pamela Petree, Peter Keenan, David Wawro, Jay Romagnoli, Chris Bordoni, Jay Holsten, Chistina Medland, Mitch Frazer, Danelle Parkinson, Joe Vicinanza, Eric Boehm, Charles Boulakia, Lou Ederer, Sophie Anger, Dennis Mahony, Jeff Gracer, David Steele, Gary Litke, Matt Nichols, Alana Tolhurst **Patterson Palmer:** John Laidlaw, Raymond Glennie, Q.C., Peter Forestell, Charles Whelly, Q.C., Athur Doyle, Cortney Luscombe, Michael Gillis
CIBC Wood Gundy Financial Products (bankers for Fund re: US tax matters)	**Cravath, Swaine & Moore:** Michael Schler
Connors Bros. and its Maine subsidiary, Stinson Seafood	**Jensen Baird Gardner & Henry:** Michael Quinlan, Ronald Epstein, Suzanne Scott, Michael Nelson
Bumble Bee and Centre Partners	**McCarthys:** Edward Kerwin, Graham Gow, Iain Morton, Ian Michael, Matthew Kelleher, Cibele Natasha Antunes, James Morand, Oliver Borgers, Lorraine Allard, Valerie De Souza, Paul Boniferro, Gordon Baird, Aimée Downey
Bumble Bee and Centre Partners (re: transaction and Fleet Capital Financing in the US)	**O'Melveny & Myers:** Mark Thierfelder, Jill Irvin, Tim Hofer, Marshall Phelps, Anupama Ahluwalia, Fred Bachman, Robert Gage, Brian Kim, Colleen Echeveste, Jessica Orlando, Robert Lowe, Jeff Held, Marshall Brozost, Rich Parker, David Beddow, Rebecca Farrington, Daniel Dunn, Chris Campbell
Fleet Capital (re: US senior debt facility)	**Sheppard, Mullin, Richter & Hampton:** Bill Scott, John Friedrichs, Brent Horstman, Anthony Callobre
Fleet Capital (re: Canadian and US senior debt facilities)	**Ogilvy Renault:** Kevin Morley, David Amato, Kruti Patel, Jennifer Stam, Carla Santos, Serge Levy, John Naccarato
Underwriters (re: Canadian public offering)	**Osler:** Mark DesLauriers, Katy Waugh, Patrick Donnelly, Judith Harris, Kim Wharram
15. BFI/IESI **BFI Canada Income Fund**	**In-house:** Bill Chyfetz **Torys:** Phil Brown, Richard Willoughby, Glen Johnson, Alexandra Kau, Mark Adkins, Darren Baccus, Craig Pell, Cornell Wright, Wendy Kennish, Richard Johnson, Margaret Walrath, Helgi Maki, Mark Irving, Zara Watkins, Brad Cost, Darien Leung, Maria

	Krasnikow, Corrado Cardarelli, Jeff Scheine, Gary Gartner, Pamela Petree, Gregg Larson, Ron Nobrega, Richard Wright, Andrea Shreeram, Jay Romagnoli, Jay Holsten, Christina Medland, Mitch Frazer, Nadine Côté, Peter Keenan, Jeff Gracer, Dennis Mahony, Barry Leon **Osler:** Daniel Kirby, Sean Love, Paul Morassutti **Goodman and Carr:** Steve Watson
IESI	**In-house:** Tom Fowler **McDermott Will & Emery:** Amy Leder, Jonathan Rochwarger, Wendy Cassity, Ran Dlugi, Daniel Zucker, Stephen Selbst
Thayer Capital (lead investor in IESI) and other IESI shareholders	**Simpson Thacher & Bartlett:** William Dougherty, Gary Mandel, Doug Bacon
IESI and Thayer Capital	**McCarthys:** Graham Gow, Jonathan Grant, Josh Arbuckle, Ian Michael, Ana Badour, Domenic Di Sisto, James Morand, Douglas Thomson, Anne-Marie Sheahan, Mira Gauvin, Sunil Kapur, Susan Neumayer, Lorraine Allard, Alexis Wiseman, Ryan Carrier, David Starkman, Paul Morrison, Oliver Borgers
CIBC (agent) and syndicate of lenders in connection with BFI's senior secured Canadian credit facilities	**Osler:** Michael Matheson, Dale Seymour
Underwriters of subscription receipt offering	**Stikeman Elliott:** Jeff Singer, Don Belovich, Chris Flood, Jill West, David Pickwoad, John Lorito **Cravath, Swaine & Moore:** Michael Schler, Justin Howell, James Colliton, Matthew Morreale
BFI's debentureholders	**Ogilvy Renault:** Martha McKinnon, Norman Lieff, Nicole Sigouin
IESI's US lending syndicate	**Bingham McCutchen:** Sandra Vrejan, Elizabeth Duffy, Jennifer Hoenig, Cynthia Barnett, Amy Kyle **Heenan Blaikie:** Paul Wickens

6. Air Canada Restructuring

It was our deal of the year in 2003. And here it is again, muscling its way onto this 2004 list. Granted, the Air Canada restructuring is not a classic cross-border corporate restructuring. To so qualify would require simultaneous proceedings under the *Canadian Companies' Creditors Arrangement Act* (*CCCA*) and *Chapter 11* of the *US Bankruptcy and Insolvency Code.*

As explained by Derrick Tay, who leads the insolvency and restructuring practice at Ogilvy Renault, "If a business is multi-jurisdictional, then you do a multi-jurisdictional restructuring. What you're looking at with Air Canada is basically a business in one jurisdiction, with creditors in more than one jurisdiction. This is not really cross-border restructuring."

Much like the Petro-Canada financing, the Air Canada restructuring graphically illustrates the integration of Canada/US capital markets.

Not in our books, for two reasons. First the sheer number of unhappy US creditors at the negotiation table. Second, the central role played by US financing, first GE Capital and then Cerberus Capital Management (Tay's client), in pulling Air Canada out of its nose-dive. The money that completed the restructuring came from the US, not Canada. Much like the Petro-Canada financing, the Air Canada restructuring graphically illustrates the integration of Canada/US capital markets.

7. TD/Banknorth at US$4B

Question. If one of Canada's largest banks drops US$4 billion on a US acquisition and nobody notices, does it qualify as a top cross-border deal? After Manulife Financial's US$11 billion acquisition of John Hancock, the bank plays are starting to look somewhat bland. As Peter Jewett at Torys comments, "Canadian banks have been investing in US operations for some time. Perhaps people are getting used to that. When Canadian banks make further investments in the US or sell in the US, it seems to come and go without much attention."

Why the lack of attention? Because the real action will take place later, when Ottawa gives the green light for domestic and then cross-border bank mergers. And for this reason TD's acquisition of a 51 per cent interest in US-based Banknorth for $4 billion makes our list. It is one more noteworthy step in the continuing *de facto* integration of cross-border financial markets and financial services. The other side of the coin is the growing role of US private equity in Canada, as described below.

8. Bain/SuperPages at US$2B

The acquisition by Boston-based Bain Capital of the SuperPages telephone directory business from Verizon Communications is but one illustration of the growing presence of US private equity funds in Canada. In many instances these funds, along with US asset-based lenders as in the Air Canada restructuring, are playing an increasingly important role in providing financing. Equally significant, they are functioning as acquirers in the Canadian market, as in this transaction and the Dollarama deal described below.

The US$1.985 billion acquisition of SuperPages by Bain is widely perceived as Part I of a quick flip, à la Kohlberg Kravis Roberts & Co.'s 2002-2004 involvement with the Yellow Pages directory business, previously a BCE asset. KKR partnered with the Ontario Teachers' Pension Fund to buy Yellow Pages in 2002, turned it into an income fund and then partially exited by means of an immensely successful, oversubscribed $1.5 billion IPO in 2003. The remaining stake was sold for even more money in 2004. Pundits expect Bain to do something similar with SuperPages. Perhaps on an even shorter timeline.

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(*Editor's Note*: as this issue of *Lexpert* went to press, Bain announced the sale of SuperPages, four months after acquiring the Western Canadian directories business, to Yellow Pages Group for $2.55 billion. Profit earned: $565 million. Nice work if you can get it.)

9. Bain/Dollarama at $1.05B

A billion plus for a chain of 340 stores that sells everything for a dollar? What were they thinking? Well, when "they" is Bain Capital they're thinking about considerable upside. And Bain wasn't alone in seeing potential in a Montreal-based dollar store chain. As a lawyer who acted for an unsuccessful bidder noted, off the record, "When Dollarama was put on the market every major player in the US came in to bid. There was an absolute feeding frenzy."

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Bain won the prize in a complex and imperfectly understood transaction. Dollarama was and remains a closely-held company. The founders and management of Dollarama, S. Rossy Inc. and Dollar A.M.A. Inc., retain an interest in the company. Bain is said to have paid C$1.05 billion for its interest.

As pointed out by Richard Cherney, who led the Davies Ward Phillips & Vineberg LLP team which acted for the Montreal vendors, the Bain/Dollarama transaction is important "because of the significant interest by a large number of US private equity players. What's also interesting about this transaction is that it shows that Canada, and in particular Quebec, are still very attractive for private equity funds. We have a lot of well-managed, closely-held, conservative businesses which are attractive investments." And we're happy to sell them.

10. West Fraser/Weldwood at $1.23B

And then buy them back, or parts of them at least, as the repatriation of Weldwood Canada from International Paper illustrates.

The $1.23 billion acquisition by British Columbia-based West Fraser Timber Company of Weldwood Canada Limited from Connecticut-based International Paper Company ranks as one of the more significant cross-border transactions in 2004. The acquisition turned West Fraser into the third largest lumber producer in North America, with aspirations of becoming larger still (the company is reportedly already eyeing additional deals).

Financing involved a $1 billion stand-by term facility, a $275 million public offering of subscription receipts, a US$300 million debt offering and a $150 million Canadian debt offering. Adding drama was a "knock-down, drag-out" contest with the Canadian Competition Bureau, which at one point threatened to derail the deal.

As explained by Larry Hughes, a senior corporate lawyer at Lang Michener LLP in Vancouver which represented West Fraser, "We had a deal with International Paper that if it did not close by the end of the year, all bets were off. We started to get anxious about the timeline. The Competition Bureau recognized this and used it to their advantage. We thought they were using their powers right on the border of fairness."

The deal sailed through the US antitrust review in the prescribed 30 days. The July to December timeline for the Canadian review "mystified" International Paper. "The Americans were quite surprised by it," says Hughes. "International Paper is a huge company. They run into competition issues all the time, but they were mystified by what was going on at the Bureau and why it was taking so long."

The deal closed with West Fraser having to give up two of its mills. The position taken by the Competition Bureau left commentators wondering whether the Bureau understands the relationship between domestic consolidation and cross-border/global competition and survival.

11. QLT/Atrix at $1.1B

Vancouver-based pharmaceutical QLT Inc. has long had global aspirations. The November 2004 acquisition of Colorado-based Atrix Laboratories takes QLT closer to its end-game goal.

The billion-plus stock and cash transaction (US$855 million) doesn't score many points for complexity. However, as pointed out by Hector MacKay-Dunn, Q.C., a corporate partner at Farris LLP who led the team acting for QLT, the significance of the deal to Vancouver and the biotech industry cannot be overstated. "The acquisition has a similar industry significance for biotechnology as the US$11 billion Manulife/John Hancock deal had for insurance," he says. "It's a billion dollar deal in an industry that doesn't have many of them. It's not one of the two biggest deals in biotech ever, but it's definitely one of the two largest in the industry last year."

The deal also heralds the development of "a definite North-South business axis in the West," says MacKay-Dunn. "We've seen it for years in oil and gas in the Calgary-Houston corridor. The same dynamic is becoming apparent in biotech. Executives do not mind being in Vancouver versus San Francisco or San Diego. The logistics in running multiple operations along this corridor seem to be manageable and biotechs within the corridor are obvious merger partners or acquisition targets."

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12. Pengrowth's $1B Reorganization

The reclassification of the outstanding trusts units of Pengrowth Energy Trust into Class A and Class B units, of which the latter could only be held by residents of Canada while the former had no such restrictions, was designed by a team at Bennett Jones LLP in Calgary. The purpose was to circumvent on again/off again federal tax policy and thus enable royalty trusts to continue to tap US and international investment.

The Pengrowth reclassification was to serve as a template for how royalty trusts would address the Department of Finance's requirement, tacitly ignored for years by all involved and then suddenly back in force in March 2004, that 51 per cent of the ownership of a royalty trust had to be in Canadian hands. Pengrowth was the first trust to present a solution to the requirement that it track who owned what and still keep US money coming in. A dozen similar reclassification deals were subsequently in the pipe and then in December 2004, Ottawa again backed down.

"I had the greatest marketing opportunity going and the government pulled the rug out from under me," laments Brad Markel, a corporate partner at Bennett Jones who led the team that created the new structure. Still, even though in the end the deal was all for naught, "It was a hell of a deal," says Perry Spitznagel, a senior corporate partner at the firm. "It was a novel response to frustrating government twitches."

The Pengrowth reclassification makes the cut for several reasons. First, the federal government's indecision is not over yet. It is anyone's guess as to how Ottawa will deal with the real issue: tax leakage. Second, it showcases a forward-looking trust, Pengrowth was the first trust to do a cross-border offering in 2002, and underlines the importance of addressing cross-border issues. It illustrates the key role tax plays in cross-border deals and policies. As Spitznagel points out, what the federal Department of Finance cared about was not who owned what. The issue was tax leakage.

Finally, Pengrowth flags future problems. First on the table, suggests Markel, is how a Canadian trust can own assets in the US, bring income back to Canada and how that income, some of which will flow back to the US, is to be taxed.

13. Chevron/Enerplus/Acclaim at $1.09B

In many ways the Calgary oil and gas market is like a closed ecosystem continually renewing itself. The market is driven by an impressive pool of entrepreneurial oil and gas executives, managerial and financing talent which generates a steady stream of junior exploration companies. These juniors have an average shelf-life of perhaps five years during which they build up reserves, attain the status of mid-sized producers and generally position themselves for a sale or some other form of consolidation, frequently with larger US-based oil and gas companies.

> The trusts are now firmly established as the new intermediates in the oil patch. It is the trusts who are the purchasers of the aging conventional oil and gas assets which are so well-suited for the royalty trust model.

The cycle then starts over again with the entrepreneurial oil and gas executives starting new juniors which often acquire non-core assets which the Americans divest from the mid-sized producers they acquired. As Grant Zawalsky at Burnet, Duckworth & Palmer LLP notes, "It's a constantly restarting and rebuilding process. I've been through two regenerations with some of my clients while others are now into their third go around."

In 2001/2002, assisted by the weak Canadian dollar, US majors went on a spending spree acquiring a large number of Calgary-based intermediate producers. This time around, however, the divestiture part of the cycle has been both slower in coming. As pointed out by Spitznagel at Bennett Jones, "People expect major divestitures as part of the post-merger digestion phase, but many of the companies are hanging on to their assets."

> "These two income fund deals are taking funds to a new level. A couple of years ago, people thought of these funds as a passive income vehicle. If you had a mature business throwing up good cash flow, but not a business seen as growing much, people thought, oh, income fund. Connors and BFI use the income fund as an acquisition vehicle. It's really quite a change."

And that makes the divestiture by ChevronTexaco of all of its Western Canadian conventional oil and gas assets big news. The ChevronTexaco divestiture is of a respectable size. At a billion plus. But it makes this list because of who the buyers are, Enerplus Resources Fund and Acclaim Energy Trust.

The trusts are now firmly established as the new intermediates in the oil patch. It is the trusts who are the purchasers of the aging conventional oil and gas assets which are so well-suited for the royalty trust model. Notably, Enerplus and Acclaim acted as a *de facto* consortium in the acquisition, an increasingly common strategy in the oil patch, flipping some properties purchased and spinning out a small portion of the assets to a junior exploration company.

And the cycle continues.

14. Connors/Bumble Bee Seafoods

This is how hot trusts are. Even the seafood industry is getting into them. The 2004 merger of New Brunswick-based Connors Brothers Income Fund and San Diego's Bumble Bee Holdings wasn't a big deal. US$385 million. But it is a trend-setter.

Mergers by income funds are still a new play. The acquisition gives Connors a majority (68.3 per cent) interest in the combined business. Private equity plays in Canada are making headlines and the deal leaves Centre Partners Management LLC, a US private equity fund, with the remaining 31.7 per cent stake in the merged company. Centre Partners had acquired Bumble Bee in May 2003.

On the financing side there's an equity financing and even an asset-based loan to make things interesting for the professional advisers involved. The asset-based transaction included an approximate US$190 million secondary equity offering by Connors, along with a US$90 million revolving line of credit in the US and a C$46.5 million revolver in Canada. And, of course, there were the endless cross-border tax issues requiring, among other things, the creation of two sets of loan documents and two separate bank groups that would enable the merged company to borrow in either US or Canadian dollars without increasing Connors' tax liability.

The combined business created North America's largest branded seafood company and Canada's largest consumer products income fund. The shape of things to come?

15. BFI Canada/IESI at $1.1B

From seafood to garbage. The acquisition by Toronto-based BFI Canada Income Fund of the larger Texas-based IESI Corporation followed on the heels of the Connors/Bumble Bee merger. It is the coming of age, if you like, of the income funds which are moving from the pure income harvester function for which they were designed, to a longer-term sustainable growth vehicle. Both deals are transformative cross-border mergers via a vehicle that has traditionally been domestic. And both involve a Canadian company driving the deal (although in the case of Connors one suspects that the US private equity partner's hands were firmly on the steering wheel).

The changing nature of income funds and the growing importance of US private equity in the Canadian market are both developments of significant cross-border importance. Of particular interest is the emergence of US private equity as acquirers.

As explained by Peter Jewett at Torys, "These two income fund deals are taking funds to a new level. A couple of years ago, people thought of these funds as a passive income vehicle. If you had a mature business throwing up good cash flow, but not a business seen as growing much, people thought, oh, income fund. Connors and BFI use the income fund as an acquisition vehicle. It's really quite a change." Torys acted for Connors and BFI on both sides of the border.

And as to why they're looking south, well, that's self-evident. The IESI acquisition gives BFI a beachhead in the US$42 billion waste management market. The Canadian market is less than 1/10th that size.

Summary

The Molson/Coors merger was not primarily about increasing market share in either Canada or the US. As Garth Girvan at McCarthys notes, the US is an extremely competitive, mature market. As is the Canadian market. "People want to drink either a globally recognized brand like Stella Artois, Heineken or Budweiser, a micro-brew, or a discount beer. Where does that leave Molson or Coors?"

So, what is it about? Girvan's question may be rhetorical, but there is an answer. Marketplaces are now regional, such as North America or Europe, and global. If most Canadian domestic mergers can be characterized as a prelude to cross-border consolidation, and with the occasional stubborn exception they can, cross-border deals like Molson/Coors are increasingly a response to, and preparation for, global consolidation and global competition.

The US acquisitions by Jean Coutu, EnCana, West Fraser, QLT, TD Bank, Connors Brothers and BFI are best seen in this light. With the possible exception of Jean Coutu, none of these transactions can be seen as end-game. TD Bank is positioning itself for domestic consolidation and responding to current and anticipated cross-border and international consolidation. Banknorth is planning more acquisitions and TD will continue to look at further opportunities. West Fraser, now the third largest producer in North America, is targeting new acquisitions. The Atrix acquisition is QLT's largest venture to date, but unlikely to be its last. EnCana is committed to a North American growth strategy.

The changing nature of income funds and the growing importance of US private equity in the Canadian market are both developments of significant cross-border importance. Of particular interest is the emergence of US private equity as acquirers.

Finally, as the financial press continues to focus on the "hollowing out" of Corporate Canada by US interests, it is worth noting the extent to which our list is comprised of Canadian companies acquiring US companies or an interest in US companies.

As noted by Clay Horner at Osler in Toronto, "Sure we have had a lot of consolidation in our economy. And we do have a lot of foreign ownership. But we also have a good number of Canadian companies that are credible on a North American basis and on a global basis. I don't go in for the wringing of hands that goes on whenever a Canadian company gets acquired by a US company. It's to be expected when you're sitting next door to a colossus."

It's hard to argue with Horner. If Canadian companies want to compete successfully they have to do so within the context of a North American and, increasingly, global market. This is now practically a truism. The real outstanding question is how Canadian law firms will respond.

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All that Glitters...

Strictly speaking none of the gold deals that grabbed business headlines throughout 2004 qualifies as a "deal of the year."

All but one tanked. Institutional and other shareholders played a major role in blocking deals. The one that managed to pass muster didn't cross this hurdle until February 2005 and, at press time, has still not closed. And, on its own, the $2.4 billion merger between Vancouver-based Wheaton River Minerals Ltd. and Toronto-based Goldcorp Inc. is not a cross-border deal.

Still, little illustrates the integration of the North American and global economies better than the 2004 gold industry soap opera, even though it is bookended by two domestic deals: the friendly domestic merger that wasn't between Wheaton River and Toronto-based IAMGOLD and the subsequent friendly domestic merger that will be between Wheaton River and Goldcorp.

Wheaton River's merger adventures started with what was supposed to be a piece of cake merger with IAMGOLD. It almost immediately escalated into two cross-border wars as Colorado-based Golden Star Resources and Idaho-based Coeur D'Alene Mines Corporation launched hostile bids for, respectively, IAMGOLD and Wheaton River. In the end, none of the proposed merges took place. IAMGOLD's post-jilting attempt to hitch up with South African gold producer Gold Fields Ltd. blew up as well, in the context of a hostile bid for Gold Fields by South Africa's Harmony Gold Mining Company Limited (at press, that deal too has reached a stalemate and it is impossible to predict if it will be consummated).

While IAMGOLD was left in the cold, Wheaton River attracted the attention of Goldcorp and, as the two announced their plans, Nevada-based Glamis Gold Ltd. launched a hostile bid for Goldcorp, valid only if Goldcorp ditched Wheaton River. Well, there wasn't nearly as much shareholder litigation this time. Still, if anyone wasn't paying attention during the Wheaton River/IAMGOLD round, the Glamis bid for Goldcorp underscored that no deal is a sure deal and second, that major players in all but the most tightly regulated industries are no longer domestic. They are continental and international.

As pointed out by Frank Allen at BLG, "For Canadian industries like mining and resources, the operative scale is perhaps international but certainly continental. It's not surprising interest from US, and then international suitors, was focused on Canadian gold assets." BLG represented several institutional shareholders in the Wheaton River and IAMGOLD litigation.

Wheaton River's domestic plays, the failed merger with IAMGOLD and the successful (we think) acquisition by Goldcorp, are probably preparations for the next step. The completed deal beefed up two mid-tier Canadian companies into the fifth-largest North American producer, catapulting it into the ranks of Barrick Gold, Placer Dome and KinRoss. Ian Telfer, CEO of Wheaton River and now the merged company, is already talking about new acquisitions.

As Jeffrey Barnes, a corporate partner in the Toronto office of Fraser Milner Casgrain LLP points out, mining is back, but its mid-level players are acutely aware they've got to get into the big leagues to survive. Fraser Milner represented, at various times during the gold wars, IAMGOLD and Goldcorp.

Despite the plethora of non-deals in 2004, consolidation in the industry will continue and in the next round Canada/US cross-border and international deals will dominate, shareholders willing.

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