ART OF THE DEAL

TURNING A FIGHT INTO A FRIENDLY TAKEOVER

By Marzena Czarnecka

It's the sweet spot for lawyers at the top of their career arc—a multi-party deal that swings around from hostile to friendly without so much as a bruised client or angry regulator in sight. A behind-the-scenes look at how it all came together in the Barrick Gold bid for Placer Dome, the biggest gold play in history.

Smug isn't the first word you'd use to describe Kevin Thomson, senior corporate partner and dealmaker extraordinaire with the Toronto office of Davies Ward Phillips & Vineberg LLP; loquacious is probably the last one. Thomson is ever-professional, quiet—downright reserved. Getting him to talk about his clients is more painful than a root canal without anesthesia: if you're lucky, he will admit he acts for them—but only if they've put out a press release to that effect. Getting him to brag about his deals—we've stopped trying.

Then came Barrick Gold Corp.'s play for rival Placer Dome Inc.

"You can't really complete a transaction of this size and scale and scope much more efficiently and quickly than it was done in this case," says Thomson. Smug? Let's just call it justifiably satisfied. Barrick founder and chairman Peter Munk is bursting with pride, and Barrick CEO Greg Wilkins is tickled pink: as the "number one" gold producer in the world, Barrick now has an "unparalleled opportunity" to kick some global mining ass.

What was so special about the deal? It was big: it combined two of the top four gold companies in the world into (by some measures, at least) the largest gold producer on the global stage. It had an enormous price tag: US$10.4 billion. It set records galore. It was, at the time, the largest hostile takeover bid in Canadian history. (At press time, as the Inco-Falconbridge et al. saga continues to unfold, it remains the largest completed Canadian hostile bid.) It was and remains the largest completed transaction in the world gold industry, even bigger than the South African mega-merger of

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AngloGold Limited and Ashanti Goldfields Limited into AngloGold Ashanti Limited. It was fast, going from hostile bid to friendly deal in the space of a mere 52 days. It was a successful deal in an industry that is becoming notorious for un-the "number one" gold producer in the world, Barrick now has an "unparalleled opportunity" to kick some global mining ass.

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It was *Canadian*: in an era of global consolidation that is shrinking Canada's share of head offices, it was an ambitious play by an ambitious Canadian company. And it was *global*: generously littered with global assets and a baker's dozen of regulatory jurisdictions, the deal increases the likelihood that there will be a Canadian survivor in the ongoing consolidation of the gold industry. (Make no mistake. This deal wasn't about making it in 2006, it was about surviving the final round of mining consolidation. "[The new] Barrick will be able to compete on the international stage more effectively than either Barrick or Placer could do independently," Wilkins noted early on in the bid process.)

But that's all vanilla, compared to the intricate strategic dance that went on under the surface of the deal. "It is a transaction that was widely followed by M&A practitioners in Canada and around the world," says Thomson. And it was brilliantly played. From Barrick's US$1.6 billion side-deal with Vancouver headquartered Goldcorp Inc. that partially financed the transaction, through to Placer Dome's determined response to the assault (prompting Barrick to put another US$1 billion and change on the table), the play for Placer Dome set new benchmarks for getting a deal done.

Which is why the lawyers, investment bankers, proxy solicitors, mail room clerks—and even the normally reticent Kevin Thomson—are keen to talk about it.

Long time coming. By the time Placer Dome management, directors and shareholders heard about the Barrick bid—initially pegged at US$9.2 billion—on October 31, 2005, Barrick had been working on the play for months, and considering it for years. "Barrick had been thinking about Placer Dome as an opportunity for quite a number of years," says Jamie Anderson, deputy chairman of RBC Capital Markets and a long-time Barrick advisor. "There were points in time when the opportunity was more or less attractive and when it was more or less practical to seriously pursue it."

And there were things Barrick had to do first. When Wilkins took over the CEO role in February 2003, he reversed Barrick's hedging strategy, restructured much of the company's operations, and essentially restored its market credibility. By mid-2005, aided in part by the rocketing price of gold, Barrick was on an upswing—new projects were on stream, its shares were up, and analysts were no longer as grumpy. Meanwhile, Placer Dome shares lost value. "Greg Wilkins said to me, I think the work we've been doing in the last two to three years in terms of restructuring Barrick, bringing new properties on stream... and creating value for shareholders, will become apparent this fall, and then we can move to the next strategic level," recalls Anderson.

Make no mistake. This deal wasn't about making it in 2006, it was about surviving the final round of mining consolidation.

Come fall, Greg Wilkins moved. Recalls Anderson, "He gave me a call and said, 'We are at the point where we think we are ready to pursue this opportunity, and we would like your views on it. We know you have known us very well as an investment banker for a number of years. From your point of view, is it practical...and how should we go about it.'"

Anderson and his colleagues at RBC Capital markets, notably Gary Sugar—another veteran Barrick advisor—set to work. "We came to the conclusion that, while a bid for Placer Dome wasn't a slam dunk, there were not that many viable competitors and Barrick was well-positioned competitively in the tactics of getting a deal done. They didn't need a

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Clay Horner, Osler

Paul Stein, Cassels Brock

Kevin Thomson, Davies

The Barrick/Placer Dome deal set records galore. It was, at the time, the largest hostile takeover bid in Canadian history. It was and remains the largest completed transaction in the world gold industry.

shareholder vote, and they didn't need any regulatory approvals of a material delaying nature." (In other words, as a Canadian company bidding for a Canadian company, they were not going to get mired in an Investment Canada review.)

Meanwhile, Barrick was making a very astute move; it took steps to turn one potential competitor into an ally. Goldcorp, while unlikely to gobble up all of Placer Dome, was likely to be interested in at least some of its assets and thus was a potential white knight partner. While the investment bankers at RBC Capital Markets were evaluating the deal, Wilkins was feeling out Goldcorp CEO Ian Telfer. Goldcorp was no stranger to ambitious acquisitions, most significantly its $2 billion buy-out of Vancouver's Wheaton River Minerals (in which Goldcorp also acquired Telfer) and US$420 million acquisition of Quebec-based Virginia Gold Mines. Telfer also made it clear the company was looking for more growth opportunities.

"We said, well, if we start this process and if we have Goldcorp as an ally—and Kevin Thomson and Greg Wilkins et al. did a very brilliant job of positioning Goldcorp as an ally but leaving control with Barrick—we have a good chance of success," recalls Anderson.

Enter the ally. Wilkins and Telfer started talking about sharing Placer Dome assets in August 2005. They both liked the idea. Barrick's board, reportedly, was a little more risk-averse. But by early October, Barrick and Goldcorp were earnestly working on a US$1.35 billion agreement (bumped up to US$1.48 billion when the deal with Placer Dome turned friendly, and closing at US$1.6 billion in May 2006) that their lawyers still view as a marvel.

"This is one of those transactions that only those two companies and only those two senior management teams could have achieved," says Paul Stein, a senior corporate partner and veteran mining lawyer with Toronto law firm Cassels Brock & Blackwell LLP, and long-time Goldcorp advisor. "There was a lot of good faith involved and there was a lot that had to be worked out, once Barrick was successful in its bid for Placer Dome, to close the transaction with Goldcorp."

Essentially, Goldcorp agreed to buy from Barrick about 13 per cent of the to-be-bought Placer Dome assets, notably Placer Dome's interests in the Campbell mine (adjacent to Goldcorp's own Red Lake mine) and the Porcupine and Musselwhite joint ventures in Ontario, as well as a half-interest in the La Coipa gold and silver mine in Chile, and a 40 per cent interest in the Pueblo Viejo project in the Dominican Republic. Of course, neither Barrick

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nor Goldcorp knew exactly what each was buying or selling.

"Barrick was selling to Goldcorp assets neither company really knew a lot about," says Stein. It was almost, he observes, as if Goldcorp was also a hostile bidder, "in the sense it was buying assets on which it had no due diligence. When we signed the agreement with Barrick, neither company was sure what the assets to be sold encompassed, or even what all the assets were, let alone the exact nature of all the liabilities involved."

The easy part was identifying which Placer Dome assets—in the main, those close to existing Goldcorp properties—would be of interest to Goldcorp. The harder part involved valuing those assets based solely on publicly available information. The killer part was selling the Barrick board on the deal. It required Cassels and Davies to craft a deal that left Barrick in control and allowed it to increase the bid price for Placer Dome, and thus the sale price to Goldcorp, while also permitting Goldcorp to jump if it found any new price too rich. And, because the cash Barrick expected from Goldcorp was essentially the cash part of the bid for Placer Dome, Barrick also needed a guarantee that Goldcorp would buy the assets at a reasonable price.

Confused? The lawyers weren't.

"We negotiated the basis upon which the price paid by Goldcorp would have to be increased," says Thomson. "If it increased its bid for Placer Dome, Barrick knew in advance what the implications would be for the Barrick and Goldcorp agreement. The wrinkle, of course, was that Goldcorp would not write a blank cheque to Barrick."

> "The tax bump can be worth millions of dollars, and whenever the tax bump is worth a lot of money, the tax lawyers take on a lot of prominence."

The complexity of the pricing did not end there. "If they increased the bid, we had a 48-hour period in which to decide if we were still in or not at the higher price," explains Mark Bennett, a Cassels corporate partner who worked with Stein in Goldcorp's corner. But even if Goldcorp was out, they were in—at the original price. "Barrick had a put option in the agreement, so they could put the asset to us at the original price. It was designed to give everybody flexibility in a hostile bidding process."

Notably, the companies did not determine how high Barrick—or Goldcorp—might be willing to go. But their advisors quickly zeroed in on another strategic advantage the Barrick-Goldcorp deal gave Barrick: the tax bump.

Enter the tax gods. More formally known as section 88(1)(d) of the *Income Tax Act*, the tax bump allows the buyer of shares of a public company to "bump up" from book value to fair market value the shares of subsidiary companies that hold the assets. "In this case, had Barrick completed the sale of the Placer Dome assets to Goldcorp without using the tax cost bump, a tax liability in excess of $100 million would have been triggered in Canada. Using the bump allowed Barrick to avoid that liability," Thomson explains.

That factor alone made the tax engineering work, led by Davies' Jeff Turner, a critical aspect of the transaction. "The tax bump can be worth millions of dollars, and whenever the tax bump is worth a lot of money, the tax lawyers take on a lot of prominence. That section is notoriously complicated and complex even by tax lawyer standards," says Doug Bryce, a key player on the Osler, Hoskin & Harcourt LLP team (led by Clay Horner), which did the heavy lifting for Placer Dome in the transaction.

Now, 88(1)(d) is no secret. It's used in deals all the time. Just not quite the way Barrick and its lawyers at Davies did it here: they made it part of the Barrick offer and thus turned tax planning into a bid weapon. "They sent us a letter in the first days after they launched the offer...the idea being, they put the board of directors on formal notice, saying the pricing of the Barrick bid is based on the assumption that they will be able to take advantage of the tax bump," recalls Bryce.

"Their letter was reasonably aggressive—'you should think carefully of consequences to you as a director should you deprive your shareholders of this bid'—and we did take it seriously," Bryce notes. "Each step we took in response to the Barrick bid had to be carefully considered from the tax point of view by the Placer Dome people. And it was pretty painful from our point of view: Barrick was the bad guy at this point!"

Continues Bryce: "They couldn't control what we did to make sure the tax bump would remain available, so they put the directors on notice that the value of the bid was based on the value of the bump and if we did anything to screw up their bump, they would walk away—their bid would disappear. That is not a thing a Placer Dome director would

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take lightly." Not when Barrick was offering a substantial premium to the shareholders—to the tune of a collective US$3 billion—and not unless, and until, Placer Dome had a compelling competing bid.

Happy Halloween. Reflecting on the pace of the deal—and Canadian hostile bids more generally—at a cross-border mergers and acquisitions conference in New York this spring, CIBC World Markets vice-chairman Paul Spafford noted; "Certainly, on Placer Dome, we could have used more time." And Spafford and CIBC World Markets—historic financial advisors to Placer Dome—were in the game within minutes of the target company getting word of the bid, as was Placer Dome's long-time company counsel, Osler.

But as is always the case for the target and its advisors, Placer Dome was playing a catch-up game. Barrick had spent several months planning its bid and analyzing the likelihood (or not) of a competing bid. As Placer Dome marshalled its defence, Barrick, via proxy solicitor Kingsdale Shareholder Services, was already working on Placer Dome investors.

"We start to work as soon as the information is mailed to the investors," says Wesley Hall, Kingsdale's president. "We contact the investors, institutional and retail, talk to them about the transaction, what they like, what they don't like, what terms cause them concern.... We were in daily conference calls with Barrick, telling them what Placer Dome investors were telling us about the transaction," he says. "We were also talking with the arbs and hedge funds, keeping track of who they were and having regular discussions with them. Obviously, there was a lot of trade in Placer Dome stock right after the transaction was announced." Fortunately for Barrick, the arbitrage players did not grab a meaningful piece of the deal. "When the majority of the stock is held in arb hands, we know it's going to be a question of how much can you pay—they're not really interested in long-term synergies," comments Hall.

Placer Dome knew it had to counter Barrick's message to its shareholders immediately. "We were engaged in the strategic process right away," says David Salmon, director of business development for Georgeson Shareholder Communications Inc., Placer Dome's proxy solicitor (Barrick's too, in other circumstances). "One of the first things we did was the stop letter—letting shareholders know they will be receiving material from Barrick and that they do not have to act. For retail shareholders [Placer Dome had a significant number] getting that sort of material can be daunting, and they may simply respond. We had to apprise them immediately that they did not have to act."

While Kingsdale and Georgeson messaged the shareholders, Jamie Anderson and Kevin Thomson (and Barrick's board and management, of course) were anxiously waiting for Placer Dome's first move, wondering if there was a hole in their strategy after all.

"It is really incumbent on the bidding company and its legal and financial advisors to ensure that all of the areas in which they can be attacked are minimized," says Thomson.

> The fact that Barrick was the only potential bidder that didn't have to worry about an Investment Canada review was an important part of its strategy.

"The art of the deal is...basically to minimize any weak spots—or to ensure you have no weak spots—so that the target company has very little ammunition to use against your bid to delay it."

Anderson agrees: "The art of these things is to be as thoroughly prepared as you possibly can and Barrick was. They have a phenomenal team and they mesh as a team extremely well. They've got the best team in the gold mining world, and indeed, in many corporations, period."

But targets can surprise you. And usually do: although the tide is turning somewhat, most unsolicited bids still fail—even (as with Harmony's bid for Goldfields) in the absence of a white knight.

Defensive manoeuvres. "The key strategy universally employed by target companies in hostile bids is to use every technique available to them to slow down the initial bidder to give the target company more time, to use strategies that are designed to entice others to come in and compete, and to do whatever the target company can do to ensure shares trade at a higher point than those used in the original bid," says Thomson.

Placer Dome did all that at breakneck speed. Its first move was to drag the Americans into it. In the November press release in which it informed Barrick, and the world, that it had struck a special committee to evaluate the bid, Placer Dome also announced that more than 40 per cent of its shares were in the hands of US shareholders. That meant "any

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exchange offer by Barrick will be subject to the US exchange offer rules and subject to review by the SEC," the release said.

"We deliberately made US rules apply to the bid," explains Bryce. "If we had not done that, the US rules would not have applied, because the law states that if the bidder has no actual knowledge to the contrary, it is allowed to rely on the assumption that the US rules do not apply."

And, like most target company strategies, this one was primarily about getting more time. "We did not have a specific objective in mind...but we did think that as the target, Placer Dome could only benefit from having another layer of regulatory scrutiny added to the process."

It also ensured the US lawyers retained by Vancouver-based Placer Dome and Toronto-based Barrick—Robert Spatt at Simpson Thacher & Bartlett LLP and Richard Hall at Cravath, Swaine and Moore LLP respectively—had something of note to do.

Otherwise, the play was indubitably a Canadian deal. Indeed, the fact that Barrick was the only potential bidder that didn't have to worry about an Investment Canada review was an important part of its strategy.

Of course, trade in Placer Dome shares was brisk following the bid announcement. The proxy solicitors on both sides had to keep on top of who was buying what, when; an added task for Georgeson was keeping tabs on that 40 per cent of US ownership. "It was a constant moving target that affected our communication strategies to shareholders and to the Street," notes Susie Monteiro, Georgeson's vice-president, proxy services.

At the same time, Barrick was minimizing delays related to other anti-trust and regulatory approvals. With Placer Dome assets, shares and shareholders scattered among several continents and stock exchanges, Barrick deployed a not-so-small legal army—co-ordinated by an in-house team led by Patrick Garver, executive vice-president and general counsel, and Sybil Veenman, vice-president, assistant general counsel and secretary—to move on all those regulatory approvals as quickly as possible. (It cleared most anti-trust hurdles in mid-December.)

"Patrick played a critical role in the numerous strategy sessions with Barrick's senior management surrounding the Goldcorp negotiations and the bid for Placer Dome," says Thomson. "He also was responsible for coordinating the work performed by Davies and a number of other law firms around the world and took on the role of dealing directly with a number of regulatory issues that surfaced during the bid. He was a key part of a tightly coordinated team of business people and legal and financial advisors that successfully got this deal to the end zone."

Placer Dome was mobilizing its own army. In addition to Spafford's team at CIBC World Markets, the company was drawing on investment bankers at Goldman, Sachs & Co. and Morgan Stanley & Co. Incorporated. Osler and US counsel Simpson Thacher were taking direction from Don Rose, executive vice-president, secretary and general counsel, and Geoffrey Gold, vice-president, assistant secretary and associate general counsel (now with Kinross Gold Corporation).

"We had such strong people working on our side," says Rose. "When you are involved with a company that is being taken over under those circumstances—in an unsolicited bid—it is a difficult situation. But having top quality people like Clay Horner and Doug Bryce, our US counsel, and our in-house people like Geoff Gold, it made a demanding situation go as smoothly as such situations can go."

Even before its special committee passed judgment on the bid, Placer Dome started the process of "parading" its assets, announcing new joint ventures and projects, and hiking reserve and production estimates. It also shopped for a white knight. Analysts and the media were speculating from the first day of the Barrick bid that "Placer Dome's glitter" would attract the attention of the industry's other major players: the recently merged AngloGold Ashanti, South African giant Gold Fields and Denver-based Newmont Mining Corp. On November 22nd, Placer Dome announced it had signed a confidentiality agreement with Newmont and invited the rival into its data room; on November 23, it rejected the Barrick offer.

Barrick was not phased. "It is a fool's game to walk into a transaction of this nature with the expectation that you will have no competition," says Thomson. "That would be a potentially fatal weakness. The Barrick bid strategy was premised on the basis they hoped there would be no competition, but they could never be assured there was no competition for Placer Dome."

And Newmont was not committed. It wasn't even that interested.

Unfortunately for Placer Dome's bargaining position, while admitting the company was poking around Placer Dome's data room, Newmont president Pierre Lassonde did not sound particularly enthusiastic about it: "Whether or not we are going to do something is far from evident when there is a good reason why it has never been done in the past three years," he told reporters on November 27. The assets were not that compatible and Newmont, Lassonde hinted, had other plans for its cash.

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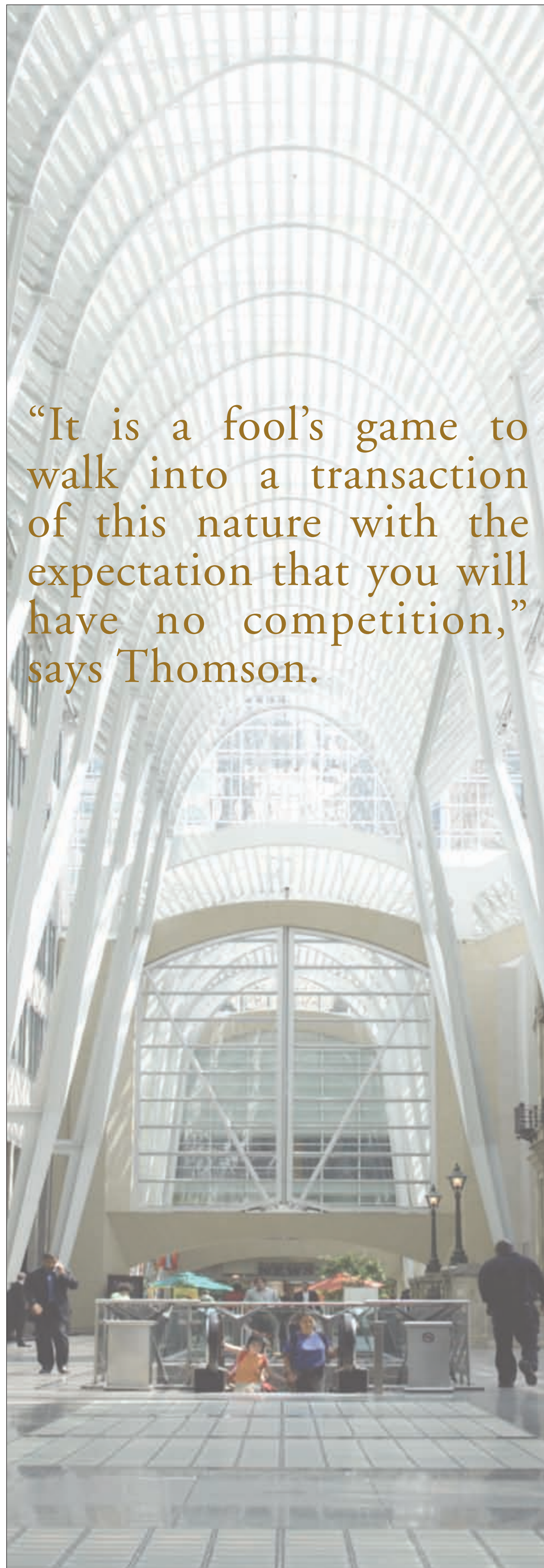

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Them's fighting words. But Placer Dome wasn't ready to embrace Barrick just yet. Placer Dome's official response to the bid could be summed up thus: an insultingly low price from a second-rate competitor. In the words of Placer Dome CEO and president Peter Tomsett: "It is an opportunistic offer that is inadequate on the basis of fundamental value and attempts to buy the company on the cheap at an inadequate premium."

Continued Tomsett, "It's easy to see why Barrick needs Placer Dome, but it's difficult to understand why Placer Dome should want Barrick. We have the industry's best long-term growth profile and the financial strength and operating expertise to turn that potential into significant and sustainable value for our shareholders."

Ouch. Countered Wilkins: "There is nothing that would lead us to conclude that there is any additional value in Placer Dome that was not fully understood by us and investors when our offer was announced or that will otherwise affect our offer." The post-bid asset parade was only "expected." In case Placer Dome didn't get the message, Wilkins made it more explicit: Barrick would not raise its bid "one iota." And yet, given the reputation of at least some Barrick personnel for outspokenness (and we do not mean just Peter Munk), Barrick's response was admirably calm.

"When the Placer Dome directors' circular first surfaced, it reflected a clear attempt by Placer Dome to discredit the Barrick price to get a higher bid," notes Thomson. "The Barrick board and management were very restrained in how they dealt with criticism of the bid in that circular. The reason they were so restrained was to continue to entertain the likelihood that Placer Dome's board and management would be prepared to have friendly discussions with Barrick."

Continues Thomson, "The fundamental bid strategy employed by Barrick was that they understood from the outset that it was critically important to operate so as to enhance to the greatest extent possible the likelihood that this transaction would be completed on a friendly basis with Placer Dome. There were numerous instances through the bid period where it was critically important for Barrick to remember that ultimate objective and to adopt bid strategies consistent with that objective."

Adds Anderson, "When you initiate an unsolicited bid, you have to set yourself up in a position so that the target company is prepared to stay with you under the right circumstances. We did not want an 'anybody but Barrick' scenario." (As per that other mining company saga: could Inco have worked any harder not to get into bed with Teck Cominco?)

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To keep the hostile bid as amicable as possible from day one, Peter Munk personally contacted Placer Dome chairman Robert Franklin before Barrick's hostile bid went public. "They met and talked for an hour and a half that morning," recalls Anderson. "Peter Munk really set the stage with Rob Franklin [for how the deal would be conducted]. Rob Franklin carried that approach.... It is a credit to him and the other Placer Dome people that they handled themselves extremely professionally and did not ever say, we will look for another bid at the expense of the shareholders."

Multiple lines of communication. "Our entire strategy was premised on getting one conversation with Placer Dome during which Barrick could put its best foot forward at a time when the Placer Dome board was receptive to the Barrick scenario," says Thomson. Munk's initial overture to Franklin was meant to create one line of communication that could lead to that conversation.

On another front, Wesley Hall's team at Kingsdale crafted a discrete communication channel between Barrick management and Placer Dome shareholders, one that would allow Barrick to measure shareholder receptivity to the bid, while David Salmon and Susie Monteiro at Georgeson were relaying Placer Dome's message to its shareholders, and "keeping a finger on the pulse of the arbitrage community." The lawyers and the bankers were another critical bridge. So, ironically, was the Inco-Falconbridge saga.

"As it happened fortuitously, Placer Dome's lead financial advisor was CIBC," says Anderson. "That was good news, because I had been working directly with CIBC's Paul Spafford for an extended period of time on the Inco-Falconbridge deal. We met frequently.... Greg Wilkins asked me, 'Can you trust this guy?' I said, 'I have been working with him on this file for two years now and every time he told me something, it was true and I could rely on it.' So we kind of filed away that information." And every once in a while, in-between official talks about Inco, Anderson would ask Spafford about Placer Dome. For 50 days, Spafford side-stepped him.

On the legal side, Osler and Davies were also hip-deep in Inco (the former for Inco, the latter for Xstrata), and informally touching base on Barrick-Placer Dome. Then, in December, when Barrick moved to strike down the Placer Dome shareholder rights plan (a.k.a., the poison pill), meetings between Osler and Davies lawyers became more frequent—and more comprehensive.

"It was part of Barrick's strategy to have a negotiated settlement to the rights plan," says Thomson. "We understood from the outset that negotiating on how the plan would cease to operate on the bid would provide Barrick with an effective means of opening a line of communication, which in this case was Kevin Thomson from Davies sitting across the table from Clay Horner from Osler talking about the rights plan, but also talking about other things. I was able to communicate to Placer Dome Barrick's intentions, and Clay Horner was able to communicate to me areas of concern to the Placer Dome board."

Then came the endgame, the good news that ruined everyone's Christmas. On December 19, Paul Spafford stopped side-stepping Jamie Anderson. "He called me and said, 'You wanted the call, well this is the call,'" says Anderson. "Greg Wilkins asked me, 'Do you trust this guy?' I said, 'Absolutely.'" Two days of intensive "back and forth" followed.

A friendly deal was close—but not close enough. As Greg Wilkins told the *National Post* in January 2006, "We started to get nervous about Placer's reaction to our discussions over the prior two days. The lawyers weren't signalling that it was time to talk about a support agreement. There was no particular rush. We got this sense that there was a little bit of distancing from us."

That was so, even though there was an extra billion bucks—Barrick had upped the ante to US$10.4 billion—on the table. So, on December 21, Wilkins went straight to Placer Dome's investment bankers. If he could get the bankers on board, he believed, he'd get the board.

"Greg met with Spafford and the team at CIBC and explained what he envisioned, because our offer, it was 80 per cent paper," says Anderson (and the 20 per cent that was cash would come from the sale to Goldcorp, after a successful deal with Placer Dome). It worked. On December 22, Barrick and Placer Dome entered into a friendly transaction and a signed support agreement, including a hefty break fee. The investment bankers heaved a sigh of relief (those big commissions are contingent on the success of a deal).

Everyone else took a deep breath and rolled up their sleeves.

The lawyers at Osler and Davies spent Christmas week drafting new documents, while the proxy solicitors at Kingsdale spent it re-telephoning all Placer Dome shareholders. "Before the 22nd, the message from Placer Dome was, do not tender to the Barrick bid," says Wesley Hall. "So then we had to go and talk to everyone and get as many shares tendered as quickly as possible."

Its competitors at Georgeson were doing the same—this time with the same message. "It was challenging," says David Salmon. "We were obviously able to get our initial message out

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successfully, and now we had to counter it. And we had to do it over Christmas, at a time where it was difficult to hold people's interest, and after they had already been inundated with so much paper and all the counter-messaging."

But by that point, everyone involved had given up sleep for coffee and adrenaline.

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"When you are in the middle of a transaction like this, you really don't sleep until the transaction is over. You really don't," says Thomson. "It is an enormously stressful type of transaction, especially if you are one of the group of people who are responsible for the success or failure of the transaction. You're constantly looking over your shoulder to make sure there are no weaknesses, to make sure that the corporate strategy that is being employed is consistent with the overall end game. You're constantly working with counsel around the world and in multiple time zones to ensure that the applications that have to be made are made, that everything is processed constantly, that there are no hiccups.

"From the start of October until January 5th, when Barrick mailed its extension document, which reflected the support agreement with Placer Dome, that entire period was basically a period without much sleep."

And the fat lady just kept singing. Once the deal turned "friendly," the nature of the work involved changed, the pace slowed, but the volume probably increased, says Carla Eisnor, a partner with the transactions group at PricewaterhouseCoopers LLP (PwC did not have a material role on the Barrick deal).

Accountants joined the army of lawyers and investment bankers to sift through a vast amount of financial data. One of their key tasks, notes Eisnor, was to "remove as much ambiguity as possible from the sale and purchase agreement."

For Barrick, that effort was happening on two fronts—after two months of being effectively a silent partner, Goldcorp was anxiously awaiting its slice of Placer Dome. As Barrick and Placer Dome danced in the fall of 2005, says Paul Stein, "We basically sat on the sidelines and cheered them on."

Adds Mark Bennett, "It was Barrick and its counsel who were in full control of the bid process.... We waited by the telephone to hear how it was going. We heard on the eve of it becoming friendly that it was friendly and the purchase price was going up a bit."

That apparently surprised no one: Goldcorp was in at the new price. Stein and Bennett and colleagues wrapped up a banking facility with which Goldcorp would pay for the Placer Dome assets (a Fasken Martineau DuMoulin LLP team led by John Torrey represented the bank syndicates). With the Placer Dome data room open, the lawyers prepared to turn the Barrick-Goldcorp agreement to buy and sell the unknown into something a little more quantifiable.

"We really went into full scale transaction mode in the New Year," says Stein. "The fall agreement between Barrick and Goldcorp was more of a road map to a proper sale and purchase agreement. It was speaking in terms of concepts, not particulars." Or, as Bennett puts it, "It was a $1.6 billion agreement to agree." And, five months later, agree they did, closing the deal on May 12, 2006.

Meanwhile, Kingsdale was still working on rounding up Placer Dome shares. By the time the Barrick offer formally expired on January 19, Barrick had 81 per cent of Placer Dome shares—more than the two thirds it required to complete the transaction, but a little short of the 100 per cent it was shooting for. A little extension—accompanied by a reminder that there appeared to be no other interested parties and no chance of upping the price—followed.

By February 6, Barrick had 94 per cent of the shares, and the transaction closed on March 15, with the remaining six per cent of shares going to Barrick via compulsory acquisition under the *Canada Business Corporations Act.* And Kevin Thomson went to catch some winks.

The rest is history. If there can be such a thing as a "textbook" way to run a hostile bid successfully, Barrick's play for Placer Dome is it. Except, of course, that it is full of non-textbook plays, such as the deal with Goldcorp and Greg Wilkins' personal pitch to Placer Dome's bankers. But then, that's why it's called the art of the deal—and not the blueprint for a deal.

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