



Dealmakers

OF THE YEAR

THE YEAR-END DEALMAKING UPTICK NOTWITHSTANDING, much of 2003 was characterized by the same caution and uncertainty that haunted 2002. Potential acquirors and would-be targets circled each other nervously, then backed away amid worries about valuations. Capital markets lawyers spent much of the year in an all-too-familiar holding pattern.

For the big names, look to bankruptcy court. The giant Chapter 11 filings of 2002 made stars of bankruptcy practitioners in 2003. Alan Kornberg of Paul, Weiss, Rifkind, Wharton & Garrison advocated forcefully on behalf of California regulators in Pacific Gas and Electric Company's case. Skadden, Arps, Slate, Meagher & Flom's

John Butler, Jr., guided three clients, including Kmart Corporation, out of Chapter 11. Kirkland & Ellis's James Sprayregen juggled the filings of clients Conseco, Inc., and UAL Corp. And Weil, Gotshal & Manges's Marcia Goldstein handled the biggest case of them all, that of WorldCom, Inc.

Elsewhere, innovation paid off. Cravath, Swaine & Moore's Kris Heinzelman learned the hard way how to use a debt offering to finance a hostile takeover—in Australia. Sullivan & Cromwell's

Scott Miller took U.S.-style hostile takeover techniques to France. And from London, Debevoise & Plimpton's James Scoville figured out how to take a Chinese insurer, once state-owned, public in New York and Hong Kong—while dodging SARS.

The year also rewarded determination. When wildfires grounded air travel, White & Case's Neil Rust drove closing documents from Los Angeles to Sacramento. **And soccer dad James McKenzie, Jr., of Morgan, Lewis & Bockius trained for a triathlon while handling a complicated initial public offering. Talk about going the extra mile.**

In a year when risk-taking was in short supply, creativity and doggedness stood out.



Photographs by Paul Godwin

Endurance

CONTEST

FOR JAMES MCKENZIE, JR., 2003 WAS A YEAR AT the races. As a partner in Morgan, Lewis & Bockius's Philadelphia office, McKenzie spent six months orchestrating the initial public offering of American Financial Realty Trust, racing to meet a deadline for the IPO. In his spare time, he trained for a speed triathlon. At \$800 million, the American Financial deal was the year's largest IPO of a real estate investment trust. On June 30 American Financial debuted on the New York Stock Exchange, less than a year after it had been formed as a REIT specializing in buying and leasing commercial bank branches and office space.

When McKenzie, 44, began working with American Financial in late 2002, it was something of a new beginning. He had just returned to Morgan, Lewis—where he'd worked in the firm's business and finance department from 1987 to 2000—after working for three years as general counsel at Verticalnet, Inc., a business-to-business dot-com. Before rejoining the firm, says McKenzie, he had two goals: cleaning out his basement and participating in a triathlon.

He'd managed to finish the basement part. But shortly after his return, McKenzie put his triathlon training on hold. He met with American Financial general counsel Edward Matey, Jr., himself a former Morgan, Lewis partner. (Morgan, Lewis had previously handled real estate, tax, and human resources work for American Financial.) Matey mentioned that his company was planning to go public, and McKenzie, who'd worked on IPOs for Verticalnet and Entercom Communications Corp., among others, jumped at the challenge. "Even though at the time I had no REIT experience," McKenzie says, "I had had a lot of IPO experience, and I had had a lot of experience with explosive, fast growth [companies]." He asked Justin Chairman, a senior associate and REIT specialist, to give him a tutorial on REITs: "I grabbed Justin, and I said, 'We're going to pitch this REIT.'"

McKenzie got the work, but the deal did not fly at the speed of the late nineties. Because American Financial had a long pipeline of real estate deals in the works, for which it needed the proceeds from the IPO, it had set the end of June as the drop-dead date for its offering. A contract to purchase 158 buildings from Bank of America Corporation was set for June 30.

And so the American Financial deal began to resemble a relay race, with different departments at Morgan, Lewis working on their own segments of the deal, before passing the baton, which usually took the form of several cubic feet of paper. Only this race went in circles, with little progress for weeks at a time. Partner Eric Stern handled real estate matters for the pending acquisitions from Bank of America. Partner Michael Pedrick handled additional financing for that acquisition. Chairman labored over the IPO prospectus, and McKenzie tended to securities, accounting, and corporate governance issues. The Securities and Exchange Commission, in the midst of creating new accounting guidelines for REITs, had a number of questions related to the valuation of

some of American Financial's acquisitions. The questions created a back-and-forth among the SEC, American Financial, and its underwriters. "It was like *Groundhog Day*, because every day we were back at the printers, talking to the SEC," recalls McKenzie.

Simultaneously, McKenzie worked with American Financial to craft its corporate structure. "[McKenzie] was receptive to our advice to take corporate governance issues very seriously," says underwriter's counsel Daniel LeBey of Hunton & Williams. McKenzie helped the board interview director candidates and create the company's charters. He also attended many board meetings. "He's got a great demeanor, and he works well with the board," says American Financial CEO and founder Nicholas Schorsch. In the spring, McKenzie, who coaches one of his four children's soccer teams, handled questions about the deal from the sidelines during practice.

But being a coach—at home and at work—was not enough. McKenzie revisited the idea of participating in a triathlon. "After we got the first SEC filing done, I said, 'I'll do it.'" He began swimming in the mornings before work. "It was a great stress reliever," he says.

As the American Financial deal approached its closing date, the race to the finish line seemed only to intensify. Another REIT, Maguire Properties, Inc., had also filed to go public. (That offering was handled by Martha Jordan of Latham & Watkins's Los Angeles office.) "Their timing was almost lockstep with ours, and they were raising almost the same amount of money," says McKenzie. But the equities markets were still shaky, and it was unclear whether they could support two sizable REIT offerings. "We wanted to be first; to get out first," says McKenzie. The deals wound up pricing on the same day.

With one race over, McKenzie began to devote more time to the triathlon. He borrowed a racing bicycle from James Mirage, American Financial's vice president—corporate acquisitions, and ran and biked on the banks of the Schuylkill River. Race day was August 2 on Brigantine Island, New Jersey: In a quarter-mile swim, four-mile run, and 11-mile bike ride, McKenzie finished 192nd out of 463 participants.

But in another competition, McKenzie placed first. All told, he handled three IPOs in the 2003 calendar year. This put him, according to IPO Vital Signs, as the lead issuer-side counsel for IPO deals of the year. This year the competition is likely to heat up, with the market for new issues improving. One client, Immunicon Corporation, has already filed to go public. McKenzie also says he plans to train for two triathlons this summer. Another year at the races looms.

American
Financial Realty's
IPO was no sprint,
a triathlete finds.



Morgan Lewis

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