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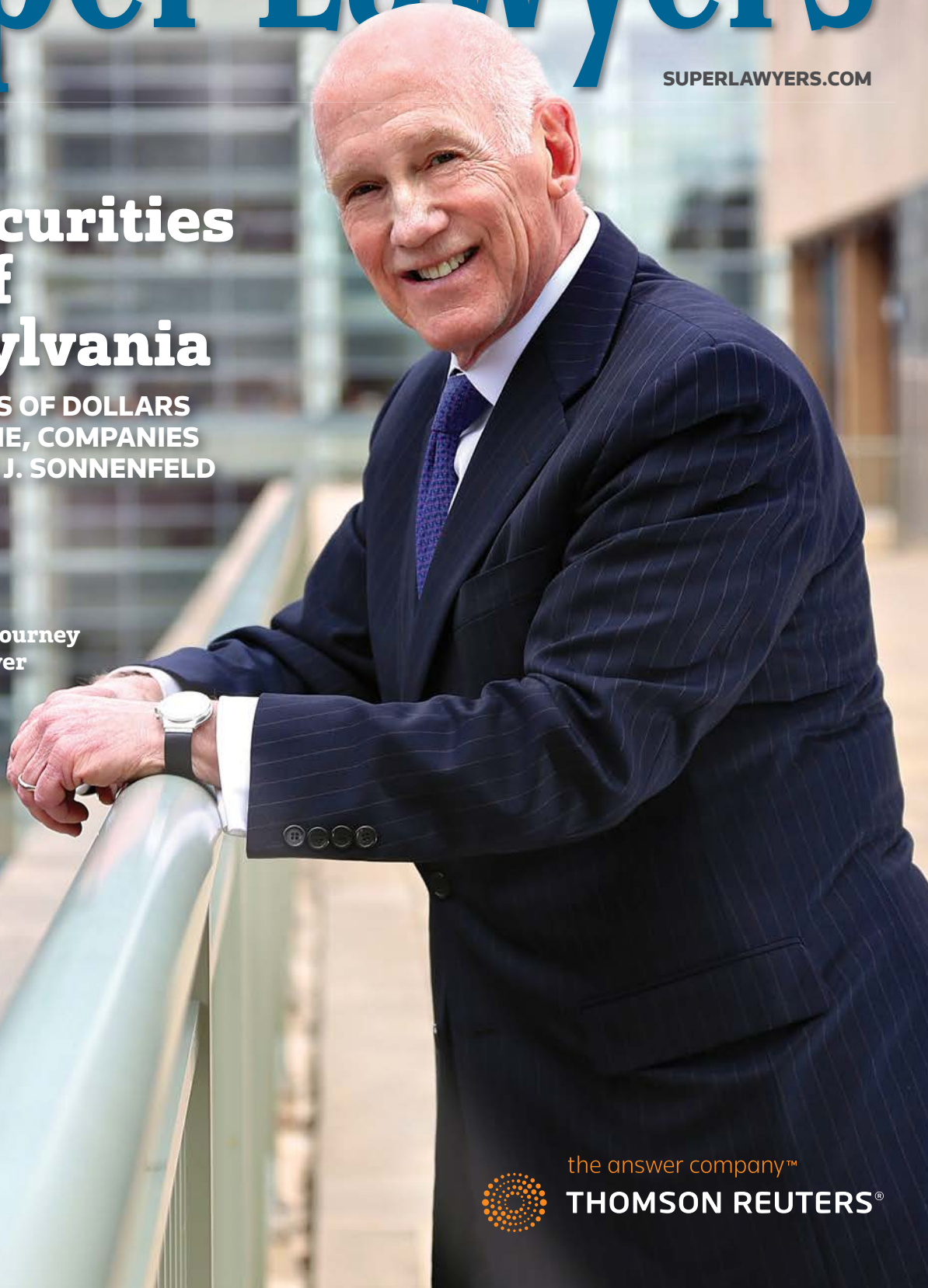
The Securities King of Pennsylvania

WHEN MILLIONS OF DOLLARS
ARE ON THE LINE, COMPANIES
TURN TO MARC J. SONNENFELD



BOBBIE PICHINI'S journey
from nurse to lawyer

An oral history of
five attorneys
who graduated
from law school
in the 1950s



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THE SECURITIES KING OF PENNSYLVANIA

**When millions of dollars are on the line,
companies turn to Marc J. Sonnenfeld**

BY NICK DIULIO PHOTOGRAPHY BY LUIGI CIUFFETELLI

It was mid-2010 and a California-based tech company's board of directors had just forced its CEO to step down. The move came in light of revelations that the man had been concealing a relationship with a subordinate for several months. But it wasn't the ouster that upset some of the company's shareholders—it was the \$40 million severance package he took with him.

Shortly after his departure, a shareholder sued the tech company, claiming the CEO's severance was extravagant and damaging to the company. And that's when Marc J. Sonnenfeld got involved.



MARC J. SONNENFELD

PARTNER, MORGAN, LEWIS & BOCKIUS; PHILADELPHIA
SECURITIES LITIGATION; BUSINESS LITIGATION

PENNSYLVANIA SUPER LAWYERS: 2004–2016; TOP 100:
2004–2016; TOP 100 PHILADELPHIA: 2005–2016; TOP 10: 2015

As the longest-tenured partner at Morgan, Lewis & Bockius in Philadelphia, Sonnenfeld has focused his 44-year legal career on defending intricate securities and shareholder litigation, as well as related regulatory and enforcement proceedings, for a wide variety of clients. He had been counseling the tech company since 2009 and was the obvious choice to defend the board in the impending securities litigation.

“Given the circumstances surrounding his dismissal, some regarded the severance package as not only too generous, but also wasteful and mismanaged,” says Sonnenfeld. “But there was more to it than that.”

To make his case before Delaware Chancery Court Vice Chancellor Donald F. Parsons Jr., Sonnenfeld filed briefs and crafted oral arguments showing that the board members had to make a practical business decision. If they terminated him with cause, the company wouldn’t have owed him anything—but it would have faced lengthy, expensive and highly publicized litigation that would have drawn resources and attention away from the company’s most pressing concern: finding a new CEO.

What’s more, Sonnenfeld argued the board had every right to terminate the CEO without cause; yes, the man had acted with impropriety and poor judgment when it came to the relationship, but that had no bearing on his overall performance.

“By every metric the company had done well under his tenure. He had a pretty good run as CEO. It’s not like he ran the company into the ground and was now leaving with \$40 million,” recalls Sonnenfeld. “The decision to make his dismissal not for cause

was a reasonable exercise of business judgment on the part of the board, and I argued that the court should defer to that.”

Parsons agreed, granting a motion in June 2012 to dismiss the suit.

“I was very pleased with that decision,” says Sonnenfeld with characteristic understatement.

What’s perhaps most remarkable about Sonnenfeld’s achievement is it was just one of three securities lawsuits he successfully defended for the company over a couple of years—he also litigated cases surrounding allegations of bribery of government contractors, as well as the company’s \$1.3 billion purchase of a technology manufacturing company. It was a remarkable stretch of time for a lawyer already seen as a giant in the world of securities litigation.

“Marc’s success is like a baseball player getting into the Hall of Fame,” says Dennis Suplee, a longtime friend and civil litigator at Schnader Harrison. “It’s not just one good day or one good week or one good year that gets you there. It’s playing the game at a certain level year after year, and Marc has done that as a lawyer time and time again. And he has the unimpeachable credibility to show for it.”

GROWING UP IN SUBURBAN PHILADELPHIA Sonnenfeld had some early exposure to securities law—one of his uncles was an attorney for the Securities and Exchange Commission in Washington, D.C.—but it wasn’t a career he considered at first.

After graduating from Cheltenham High School in 1964, Sonnenfeld attended Swarthmore College in Pennsylvania with thoughts of becoming an economist.

Then, during Christmas break of his sophomore year, everything changed.

“I don’t know why, but during that break I decided to go to City Hall and just watch trials,” recalls Sonnenfeld. “Something about it just fascinated me.”

In particular, Sonnenfeld recalls watching the case of Ronald Dessus, a man charged in the death of 79-year-old Lena Alexandroff inside her West Philadelphia home in 1966.

“That was a horrific crime, but the trial was so intriguing. His court-appointed counsel mounted an insanity defense and I sat there watching various people testify,” says Sonnenfeld. “That’s when I started thinking seriously about law.”

After earning his undergraduate degree in economics, Sonnenfeld went on to graduate from Harvard Law School in 1971. He spent the following year teaching political science at Wellesley College in Massachusetts, then served as a law clerk for Judge Joseph S. Lord III at the U.S. District Court for the Eastern District of Pennsylvania before eventually joining Morgan Lewis in 1974.

Sonnenfeld has been married to Ann Laupheimer Sonnenfeld, a partner at Blank Rome in Philadelphia whose practice focuses on insurance recovery and regulation, for the past 16 years. “It is during this time that my practice has flourished,” he says. “[Her] support made all of this possible.”

SONNENFELD HAS PLAYED A PIVOTAL ROLE in the fates of dozens of publicly held companies, predominantly in defending federal securities class action lawsuits in which shareholders claim the company made

1964

Graduated from Cheltenham High School in Philadelphia. Classmates included baseball legend Reggie Jackson and Yonatan Netanyahu, older brother of Israeli Prime Minister Benjamin Netanyahu

1968

Graduated from Swarthmore College with a degree in economics

1971

Graduated from Harvard Law School

1971-72

Taught political science at Wellesley College for one year. “I figured if I was going to spend any time doing something other than law, this was my chance. It was a great experience.”

1972-73

Clerked for Joseph Simon Lord, chief judge for the Eastern Pennsylvania District Court

false or misleading statements to prop up the stock price; or derivative lawsuits, where shareholders sue on behalf of the company and claim mismanagement.

In a recent case, Sonnenfeld defended a Kentucky-based manufacturing firm against a proposed securities class action.

According to Sonnenfeld, some of the corporation’s investors filed a complaint in 2013 alleging that senior executives had covered up accounting errors and theft to avoid a drop in stock prices. They claimed the company’s executives were lax in their oversight of various operations based in South America.

Sonnenfeld and his team argued the company’s CEO and CFO did not intentionally hide accounting errors; the errors had occurred without their knowledge.

“That’s the key. You can’t just make an allegation of deception. The plaintiff has to come up with a cogent and compelling argument showing something more than *just* the allegation,” says Sonnenfeld. “And part of our successful argument was that you can’t hold the CEO and CFO of a large public company responsible for something that happened several levels down at a subsidiary in Brazil.”

Getting to the heart of intentions is a critical skill in Sonnenfeld’s arsenal. Very few of his securities and derivatives cases actually go to trial—Sonnenfeld’s frequent first line of defense is to persuade a judge to dismiss the suit outright. Doing that requires combing through each complaint, and mountains of company filings, to get to the bottom of what actually occurred.

“One of the first questions I have is whether or not any false statements had been made,” says Sonnenfeld. “Plaintiffs

will often clutter complaints with a hodgepodge of statements from executives, but it’s our job to see if there was anything false. An *opinion* isn’t necessarily a false statement. A CEO might have an opinion that the company is going to do better and meet its quarterly projections, but that isn’t necessarily a material misrepresentation. That’s the first thing you need to figure out.”

In 2012, for example, Sonnenfeld successfully argued for the dismissal of a securities class action that accused an Indiana-based medical device company of downplaying alleged manufacturing difficulties.

“I often need to show a distinction between soft statements and hard statements. A soft statement is something like, ‘I think next year will be a good year.’ And how can you not be optimistic? It’s like Eisenhower on the morning of D-Day. I’m sure he wasn’t walking around saying, ‘You know, I don’t think this is going to work,’” says Sonnenfeld. “Companies need to project enthusiasm and optimism. You can’t walk around like Chicken Little telling everyone the sky is falling. But then again, if things don’t go well, people will say, ‘Oh, they were deceiving us!’ Making this distinction is critical in so many of these cases.”

SONNENFELD IS PARTICULARLY PROUD OF HIS ROLE in helping establish the Commerce Case Management Program—also known as the Commerce Court—for the Philadelphia Court of Common Pleas in 2000.

The idea was to create a separate division of court to exclusively handle complex commercial cases in Philadelphia (the venue


for about 60 percent of all commercial litigation in the state) and assign judges who are familiar with the unique and nuanced intricacies of disputes between businesses and shareholders.

“Most judges get a case like this once during their entire career,” says Sonnenfeld. “So why not make sure that the judges who hear these cases are judges who handle them all the time? We’re 16 years in and it’s been very popular for both the judges and the lawyers.”

It’s still the only commercial court in Pennsylvania with its own separate program, and, for his work in helping to develop and maintain it, Sonnenfeld was given a 2010 Wells Fargo Fidelity Award from the Philadelphia Bar Association.

“Marc was absolutely brilliant in his contributions to helping establish this court,” says Judge John W. Herron, who worked closely with Sonnenfeld and others to form the program. “He was thoughtful, extremely knowledgeable and superbly well prepared for the process of making this court a reality. It’s the same qualities he brings to his work as a lawyer.”

That work continues to challenge and stimulate Sonnenfeld, who says he is constantly excited by the vast and varied consequences of the cases he handles.

“These are often disputes that affect shareholders and maybe tens of thousands of employees. These aren’t just disagreements between two people,” says Sonnenfeld. “We’re talking about public companies with ramifications for countless individuals. That’s a very large responsibility.” 

1973-74

Spent one year working at a startup firm alongside many prominent Philadelphia attorneys, including longtime friend Bill Hangley

1974

Began working at Morgan Lewis

1978

Made partner at Morgan Lewis

Early 1980s

Argued his first derivative lawsuit

1997

Won a seminal appellate case in *Cuker v. Mikalauskas*

2000

Helped establish the Commerce Court for the Philadelphia Court of Common Pleas