

Securities MVP: Morgan Lewis' Marc Sonnenfeld

By **Brian Mahoney**

Law360, New York (December 13, 2012, 7:43 PM ET) -- Morgan Lewis & Bockius LLP's Marc Sonnenfeld won the dismissal of four securities lawsuits against Hewlett-Packard Co. within the last year, making him a go-to attorney for the company and earning him a spot as a 2012 Law360 Securities MVP.

Sonnenfeld spent the last year traveling coast-to-coast to mount successful defenses in securities litigation arising from former CEO Mark Hurd's \$40 million severance package, the company's alleged bribery of government contractors and its \$1.3 billion purchase of Palm Inc.

Sonnenfeld has counseled HP since 2009, when it faced litigation over its acquisition of 3com Corp. He says the company sees him as an asset in securities cases because he and his team have a deep knowledge of their business, knowledge that builds over successive cases and helps ensure that HP is ready for any case that comes its way.

"I think it's advantageous for the company because there is a consistency, and we've climbed the learning curve," Sonnenfeld told Law360, when asked how Morgan Lewis became one of HP's top choices for outside counsel.

Mastering that learning curve can be difficult when advising a technology company like HP, which offers an assortment of products across the globe and is vulnerable to securities litigation arising from a wide range of alleged violations.

Sonnenfeld's first challenge was seeking dismissal of a shareholder derivative suit in California federal court accusing HP and 11 of its current and former officers over the company's alleged use of bribery to win federal contract awards.

In that case, Sonnenfeld and his Morgan Lewis team convinced U.S. District Judge Edward J. Davila that plaintiffs Saginaw Police and Fire Pension Fund failed to make a demand on the board or show why a demand would have been futile. Judge Davila tossed the suit on March 21.

Meanwhile, Sonnenfeld had been vigorously defending HP in Delaware Chancery Court over allegations that its board members harmed the company by giving former CEO Mark Hurd a \$40 million severance package and not having a successor ready in waiting.

Hurd had been fired by HP's board after details of his romantic involvement with a subordinate surfaced, so Sonnenfeld had to craft a defense in briefs and at oral argument that admitted Hurd's impropriety while still showing that the board acted reasonably in allowing Hurd to leave with the severance package.

"The way I did that was to show that even though the board could have terminated Hurd for cause, it was a reasonable exercise of business judgment not to do so," Sonnenfeld told Law360, saying that Hurd generated positive financial results for the company before the allegations of impropriety surfaced.

Sonnenfeld's argument won out when Delaware Chancery Court Judge Donald F. Parsons ruled on the case in June.

Judge Parsons agreed with Sonnenfeld that HP had many possible reasons to compensate Hurd at the time of his departure, and the amount he received was not necessarily out of line with what might be expected, dismissing the suit brought by HP shareholder Lawrence Zucker.

Sonnenfeld then used the legal capital gained from that decision to win a similar dismissal in September in consolidated shareholder derivative litigation over Hurd's severance package in California federal court.

In that decision, Judge Davila relied heavily on the Zucker decision that Sonnenfeld had won just a few months prior.

"At least some portion of Hurd's severance could represent 'reasonable' compensation for his successful past performance," wrote Judge Davila, citing the Zucker decision.

Sonnenfeld also clinched a September victory in a securities case arising from HP's alleged failure to implement webOS on its computers and mobile devices after its \$1.3 billion purchase of Palm Inc.

In that case, Sonnenfeld and his team convinced a judge that HP executives' statements about the company's plans for the webOS platform were protected by the safe harbor provisions of the Private Securities Litigation Reform Act.

Sonnenfeld attributed his impressive wins to his involved and in-depth knowledge of the complex facts surrounding all the cases, adding that Morgan Lewis' deep bench of skilled litigators throughout the country also helped assure the victories.

"I've got a very good team of lawyers working with me and without that team I couldn't do this," Sonnenfeld said. "It's a team of lawyers in multiple offices of the firm; we're uniquely positioned because of our geographic footprint."

Sonnenfeld's willingness to go the extra mile for HP is more impressive given his other significant 2012 victories.

This year, Sonnenfeld secured dismissal of securities class action accusing orthopedic reconstructive device company Zimmer Holdings Inc. of downplaying the significance of alleged defects in its products, Morgan Lewis said.

Sonnenfeld then successfully fended off a Seventh Circuit Appeal, with a three-judge panel affirming the dismissal in May, according to the firm.

“The oral argument of an appeal is formal and structured,” Sonnenfeld told Law360. “You really need to have a very good command of the facts and where the facts appear in the record.”

Sonnenfeld even traveled to the Marshall Islands in 2012 to defend shareholder derivative action against a Greek shipping company in the Marshall Island's High Court of the Republic.

Like so many of his cases throughout his 40 year career, Sonnenfeld won.

---Additional reporting by Greg Ryan and Juan Carlos Rodriguez. Editing by Rebecca Flanagan.

All Content © 2003-2012, Portfolio Media, Inc.