

NOMINATION OF
ERIC SUMMERGRAD
FOR THE FEDERAL BAR ASSOCIATION'S
1988 YOUNGER FEDERAL LAWYER AWARD

We are pleased to nominate Eric Summergrad, Assistant General Counsel, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. for a 1988 Younger Federal Lawyer Award. Mr. Summergrad was born November 23, 1953, and has served at the Securities and Exchange Commission for over four years.

He is a graduate of Oberlin College (B.A. with Highest Honors in Government 1975) and the New York University Law School (J.D. 1978), where he was Research Editor of the Law Review. Prior to joining the Commission in April 1984, Mr. Summergrad was associated with the Washington, D.C. law firm of Arnold & Porter. He has served the Commission continuously in its Office of the General Counsel, specializing in appellate litigation. He began his service with the Commission as a Special Counsel, was promoted to Senior Special Counsel in September 1985, and in March 1987, he was promoted to his present position of Assistant General Counsel, supervising a team of lawyers.

Mr. Summergrad is a vigorous and innovative leader in the SEC's amicus curiae program, seeking to persuade courts in private litigation to the views of the SEC on leading edge issues in securities and corporate law. We single out for special mention the important work he has done in the mergers and acquisitions area of the law. Today, takeovers and attempted takeovers are an integral part of our country's business climate.

In a highly important case, the U.S. Supreme Court was recently persuaded by an SEC amicus brief, principally authored by Mr. Summergrad and lawyers he supervises, to reject the positions of both the petitioner and respondent and, instead, to adopt the positions set forth in the SEC's brief. Indeed, the court's opinion substantially tracks that brief. That decision, Basic, Inc. v. Levinson, sets forth the standards for determining when preliminary merger negotiations become "material" in the context of the antifraud provisions of the securities laws and when and how they must or need not be disclosed. The decision resolves a conflict in circuits in a manner that resoundingly vindicates positions earlier espoused by the Commission, which had sparked controversy. The importance of the case may be illustrated by the large number of articles in legal and securities industry publications about the decision and continuing legal education programs devoted to analyzing it.

Mr. Summergrad also has assumed primary responsibility for presenting the Commission's views to the courts on a number of other issues arising out of contests for corporate control. He supervised the filing of amicus briefs in the Ninth and Fourth Circuits (and at the request of the Fourth Circuit, presented oral argument) setting forth the Commission's position that the Williams Act (the federal statute governing tender offers) does not require a tender offeror to have financing arrangements in place before commencing a tender offer. Both courts adopted the Commission's views, and quoted extensively from its briefs.

Newmont Mining Co. v. Pickens (9th Cir.); IU International v. Neox (4th Cir.). Mr. Summergrad is leading the charge, as the primary author of several Commission briefs, in urging in various federal courts the unconstitutionality of state takeover laws, so far in Delaware, New York, and Wisconsin, as violative of the Commerce Clause and preempted by the federal laws governing tender offers. R.P. Acquisition Corp. v. Staley Continental, Inc. (D. Del.); Salant Acquisition Corp. v. Manhattan Industries (S.D. N.Y.); and RTE Corp. v. Mark IV Industries, Inc. (E.D. Wis.). The results are mixed (a win, a loss, and a court not reaching the issue); the SEC's program continues.

For this recommendation, we have focused on a group of cases handled by Mr. Summergrad in the takeover area of the law. But he has been a successful advocate for the agency in a wide range of trial and appellate cases, both where the SEC is a party or amicus, including insider trading, unregistered stock and regulation of stock brokers.

One other case warrants special mention. Mr. Summergrad was a principal architect of the Commission's amicus brief to the Texas Supreme Court in the celebrated Pennzoil v. Texaco litigation. The SEC's brief argued, contrary to the ruling by the Texas intermediate appellate court, that Pennzoil had violated an SEC rule by entering into an arrangement to purchase Getty Oil stock outside Pennzoil's tender offer. Texaco's position was that this meant that the contract by Pennzoil to buy

Getty Oil, a contract with which the Texas trial court had found that Texaco had tortiously interfered, was void.

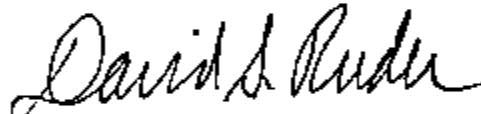
The impact on the stock market on news of the SEC's position was stunning. Texaco's stock increased and Pennzoil's decreased in value an aggregate of one billion dollars. The impact on the courts is imponderable. The Texas Supreme Court, exercising certiorari-type jurisdiction, declined review; and Texaco's petition for certiorari in the U.S. Supreme Court was withdrawn after the bankruptcy court approved the Texaco-Pennzoil settlement. The SEC's brief, however, was calculated to, and in fact did, have a potent effect; it instructed the securities industry and bar as to the SEC's position on purchasing stock outside of a tender offer, rendering impotent, as a practical matter, the contrary view of the intermediate Texas appellate court.

Mr. Summergrad produces extremely high quality work on complex and difficult issues under tight time deadlines, frequently putting in uncompensated hours on evenings and weekends. His superb writing skills, analytic ability and legal acumen, as well as his diligence and thoroughness, are highly regarded throughout the Commission as well as in the courts. He sets the highest standards for himself and those working with him, and insists that the final work product for which he is responsible always be first-rate. He is also an excellent oral advocate, as demonstrated by his unblemished record of success in appellate cases he has argued.

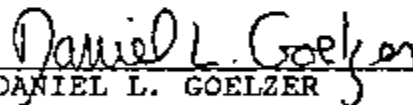
He is a teacher and mentor. Mr. Summergard always is willing to discuss and explain approaches to legal issues that younger, less experienced lawyers may find elusive. Thus, the lawyers he supervises consistently report that the opportunity to work with him is exciting and intellectually rewarding.

His supervisors have recognized his abilities. In addition to his promotions, Mr. Summergrad has earned an outstanding rating in every evaluation category in every rating period; he has also been granted special cash awards.

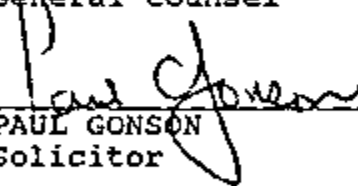
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