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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
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SCHEDULE TO/A  
TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)  
OF THE SECURITIES EXCHANGE ACT OF 1934

(Amendment No. 9)

Taubman Centers, Inc.

(Name of Subject Company (Issuer))

Simon Property Acquisitions, Inc.

Simon Property Group, Inc.

Westfield America, Inc.

(Names of Filing Persons (Offerors))

COMMON STOCK, PAR VALUE \$.01 PER SHARE

(Title of Class of Securities)

876664103

(CUSIP Number of Class of Securities)

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(Name, Address and Telephone Numbers of Person  
Authorized to Receive Notices and Communications on Behalf of Filing Persons)  
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CALCULATION OF  
FILING FEE  
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Transaction Valuation\*

Amount of Filing Fee\*\*

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\$1,243,725,540

\$248,745.11  
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\* Estimated for purposes of calculating the amount of the filing fee only. Calculated by multiplying \$20.00, the per share tender offer price, by 62,186,277 shares of Common Stock, consisting of (i) 52,207,756 outstanding shares of Common Stock, (ii) 2,269 shares of Common Stock issuable upon conversion of 31,767,066 outstanding shares of Series B Non-Participating Convertible Preferred Stock, (iii) 7,097,979 shares of Common Stock issuable upon conversion of outstanding partnership units of The Taubman Realty Group, Limited Partnership ("TRG") and (iv) 2,878,273 shares of Common Stock issuable upon conversion of outstanding options (each of which entitles the holder thereof to purchase one partnership unit of TRG which, in turn, is convertible into one share of Common Stock), based on the Registrant's Preliminary Proxy Statement on Schedule 14A filed on December 20, 2002, the Registrant's Schedule 14D-9 filed on December 11, 2002 and the Registrant's Quarterly Report on Form 10-Q for the period ended September 30, 2002.

\*\* The amount of the filing fee calculated in accordance with Regulation 240.0-11 of the Securities Exchange Act of 1934, as amended, equals 1/50th of one percent of the value of the transaction.

[X] Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid	\$248,745.11	Filing Party:	Simon Property Group, Inc.; Simon Property
Form or Registration	Schedule TO (File No. 005-42862),		Acquisition, Inc.; Westfield America, Inc.
No.	Amendment No. 1 to the Schedule TO	Date Filed	December 5, 2002, December 16, 2002 and
	and Amendment No. 5 to the		January 15, 2002
	Schedule TO		

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates.

third-party tender offer subject to Rule 14d-1.

issuer tender offer subject to Rule 13e-4.

going-private transaction subject to Rule 13e-3.

amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

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## SCHEDULE TO

This Amendment No. 9 amends and supplements the Tender Offer Statement on Schedule TO originally filed with the Securities and Exchange Commission (the "Commission") on December 5, 2002, as amended and supplemented by Amendment No. 1 thereto filed with the Commission on December 16, 2002, by Amendment No. 2 thereto filed with the Commission on December 27, 2002, by Amendment No. 3 thereto filed with the Commission on December 30, 2002, by Amendment No. 4 thereto filed with the Commission on December 31, 2002, by Amendment No. 5 thereto filed with the Commission on January 15, 2003, by Amendment No. 6 thereto filed with the Commission on January 15, 2003, by Amendment No. 7 thereto filed with the Commission on January 16, 2003 and by Amendment No. 8 thereto filed with the Commission on January 22, 2002 (as amended and supplemented, the "Schedule TO") relating to the offer by Simon Property Acquisitions, Inc., a Delaware corporation (the "Purchaser") and wholly owned subsidiary of Simon Property Group, Inc., a Delaware corporation ("SPG Inc."), to purchase all of the outstanding shares of common stock, par value \$.01 per share (the "Shares"), of Taubman Centers, Inc. (the "Company") at a purchase price of \$20.00 per Share, net to the seller in cash, without interest thereon, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated December 5, 2002 (the "Offer to Purchase"), and the Supplement to the Offer to Purchase, dated January 15, 2003 (the "Supplement"), and in the related revised Letter of Transmittal (which, together with any supplements or amendments, collectively constitute the "Offer"). This Amendment No. 9 to the Schedule TO is being filed on behalf of the Purchaser, SPG Inc. and Westfield America, Inc. ("WEA").

Capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Offer to Purchase, the Supplement and the Schedule TO, as applicable.

The item numbers and responses thereto below are in accordance with the requirements of Schedule TO.

### Item 11. ADDITIONAL INFORMATION.

On January 22, 2003, the United States District Court for the Eastern District of Michigan (the "Court") issued an opinion and order (the "Order") denying in part, and granting in part, the motion of the Company and the other defendants to dismiss Count I of the Complaint filed by SPG Inc. and the Purchaser in the Court on December 5, 2002 (the "Complaint"). In the Order, the Court held that the issuance of the Series B Preferred Stock by the Company to the Taubman family was not a "control share acquisition" under the Michigan Control Share Acquisition Act (the "Act"). However, the Court also ruled that the Taubman family's purported blocking position may be challenged by SPG Inc. at a hearing on March 21, 2003 on the grounds that the family's "group" voting power was obtained without shareholder approval under the Act. The Court held that SPG Inc. had pled sufficient facts from which it could infer that Robert Taubman and the Taubman family had acted in concert with other shareholders of the Company to acquire 33.6% of the voting power in the Company, and that such an acquisition could constitute a "control share acquisition" under the Act. Therefore, the Court denied the Company's motion to dismiss SPG Inc.'s claim that Robert Taubman, the Taubman Family and those persons who entered into Voting Agreements with Robert Taubman constituted a group and that their aggregation of shares was a "control share acquisition." At the March 21 hearing, SPG Inc. will also be allowed to press its claim that the Taubman family's Series B Preferred Stock was improperly acquired in breach of fiduciary duties owed to the Company's public shareholders.

Following the Court's ruling, the entire 33.6% voting control the family purports to wield is subject to being legally invalidated.

The Court did not address the substance of the remaining claims of the Complaint, including claims that issuance of the Series B Preferred Stock, and use of the Series B Preferred Stock to thwart SPG's tender offer, constitutes a breach of the fiduciary duties of the Company's board of directors and the Taubman family. The Court has scheduled a hearing on that motion for March 21, 2003.

Item 12. EXHIBITS.

- (a)(5)(O) Opinion and Order issued on January 22, 2003 by the United States District Court for the Eastern District of Michigan in the matter of Simon Property Group, Inc. and Simon Property Acquisitions, Inc. v. Taubman Centers, Inc., A. Alfred Taubman, Robert S. Taubman, Lisa A. Payne, Graham T. Allison, Peter Karmanos, Jr., William S. Taubman, Allan J. Bloostein, Jerome A. Chazen and S. Parker Gilbert.
- (a)(5)(P) Press Release issued by Simon Property Group, Inc., dated January 22, 2003.

SIGNATURE

After due inquiry and to the best of their knowledge and belief, the undersigned hereby certify as of January 23, 2003 that the information set forth in this statement is true, complete and correct.

SIMON PROPERTY GROUP, INC.

By: /s/ James M. Barkley

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Name: James M. Barkley  
Title: Secretary and General Counsel

SIMON PROPERTY ACQUISITIONS, INC.

By: /s/ James M. Barkley

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Name: James M. Barkley  
Title: Secretary and Treasurer

After due inquiry and to the best of their knowledge and belief, the undersigned hereby certifies as of January 23, 2003 that the information set forth in this statement is true, complete and correct.

WESTFIELD AMERICA, INC.

By: /s/ Peter R. Schwartz

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Name: Peter R. Schwartz

Title: Senior Executive Vice President

EXHIBIT INDEX

EXHIBIT NO.  
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DESCRIPTION  
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|-----------|--|
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| (a)(5)(P) | Press Release issued by Simon Property Group, Inc., dated January 22, 2003.  |

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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SIMON PROPERTY GROUP, INC., AND SIMON PROPERTY  
ACQUISITIONS, INC.,

PLAINTIFF(S),

CASE NUMBER: 02-74799  
HONORABLE VICTORIA A. ROBERTS

v.

TAUBMAN CENTERS, INC., A. ALFRED TAUBMAN, ROBERT S.  
TAUBMAN, LISA A. PAYNE, GRAHAM T. ALLISON, PETER KARMANOS,  
JR., WILLIAM S. TAUBMAN, ALLAN J. BLOOSTEIN, JEROME A.  
CHAZEN, AND S. PARKER GILBERT,

DEFENDANT(S).

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ORDER

I. INTRODUCTION

This matter is before the Court on Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief can be Granted under the Control Share Acquisition Act. Defendants request dismissal of Count I of Plaintiffs' five-count complaint. In Count 1, Plaintiffs seek a declaration that certain stock acquired by Defendants does not have voting rights and request injunctive relief to prohibit Defendants from voting this stock.(1)

For the reasons stated below, the Court GRANTS in part and DENIES in part, Defendants' Motion.

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1 Plaintiffs amended their complaint after Defendants' motion was filed. Defendants have not supplemented their motion in light of the amendments. The remaining counts are as follows: Count II seeks a declaration that certain stock acquired by Defendants does not have any voting rights and requests injunctive relief to prohibit Defendants from voting the stock; Count III seeks a declaration that Defendant may not vote certain stock such that it would foreclose Plaintiffs' tender offer and disenfranchise the public shareholders and that the Meeting Delay Amendment be deemed null and void; Counts IV and V allege a breach of fiduciary duty by certain Defendants.

II. BACKGROUND

Plaintiffs Simon Property Group, Inc and Simon Property Acquisitions, Inc. filed this action against Taubman Centers, Inc. (TCI), A. Alfred Taubman and members of the TCI Board of Directors - Robert Taubman, Lisa Payne, Graham Allison, Peter Karmanos, Jr., William Taubman, Allan J. Bloostein, Jerome Chazen and S. Parker Gilbert (hereinafter collectively referred to as "the Board").

TCI is a publicly traded real estate investment trust. TCI's sole asset is a partnership interest in the Taubman Realty Group Limited Partnership (TRG), a real estate company. Other partners of TRG include A. Alfred Taubman (via the A. Alfred Taubman Revocable Trust and other entities), Robert Taubman, William Taubman and other Taubman family members (collectively, the "Taubman Family") as well as other investors. TCI conducts its operations through TRG, which manages TCI's properties and business affairs.

In 1998, TCI announced that it had acquired former TRG partner General Motors Pension Trusts' partnership interest in TRG and, thereby, obtained a controlling interest in TRG. Subsequently, the TCI Board of Directors issued a new series of voting preferred stock called the "Series B Preferred Stock" (Series B) to limited partners of TRG, including the Taubman Family.(2) As a result, the Taubman Family acquired voting rights equal to a 30% ownership interest in TRG, which increased their voting power in TCI by the same amount.(3) Plaintiffs contend that this was acquisition of a "control share" which by statute, required a resolution of all disinterested shareholders to give those shares voting rights. MCL 450.1790.(4)

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2 The limited partners received one share of the Series B stock for each TRG unit held by the partners.

3 Plaintiffs assert that the Taubman Family only has an economic interest of 1% in contrast to their now 30% voting interest. Prior to the issuance of



Series B Stock, Plaintiffs state that the Taubman Family only had a 1% voting interest. Currently, TCI has an approximate (voting) interest of 62%, and 8% is owned by other investors.

4 The Michigan Control Share Acquisition Act defines "control shares" as:

[S]hares that, except for this chapter, would have voting power with respect to shares of an issuing public corporation that, when added to all other shares of the Issuing public corporation owned by a person or in respect to which that person may exercise or direct the exercise of voting power, would entitle that person, immediately after acquisition of the shares, directly or indirectly, alone or as part of a group, to exercise or direct the exercise of the voting power of the issuing public corporation in the election of directors within any of the following ranges of voting power:

- (a) 1/5 or more but less than 1/3 of all voting power.
- (b) 1/3 or more but less than a majority of all voting power.
- (c) A majority of all voting power.

MCL 450.1790(2).

Neither TCI nor the Taubman Family ever sought or obtained a resolution of the shareholders approving voting rights for the Series B stock.

In October 2002, Robert Taubman rejected two offers from Plaintiffs to purchase the outstanding common stock of TCI. On November 13, 2002, Plaintiffs publicly disclosed these offers and, on the same day, the Board announced its earlier decision to reject the offers. On December 6, 2002, Plaintiffs commenced a tender offer(5) for all outstanding common stock of TCI, which the Board again rejected and recommended that the shareholders also reject.

Plaintiffs contend that the Taubman Family's position is depriving public shareholders of the economic benefits of their premium offer by precluding Plaintiffs from even presenting their tender offer to shareholders. The current Articles of Incorporation prohibit any outside party from acquiring more than 9.9% of TCI's voting power (the "Excess Share Provision"). Therefore, in order for Plaintiffs to make their offer, this provision must be modified or eliminated. However, a two-thirds shareholder vote is required to do so.

The Taubman Family's opposition has resulted in its alliance with other stockholders to block any sale of TCI by acquiring greater than 1/3rd voting power, Robert Taubman and the Taubman Family have rallied to obtain 33.6% of the voting power of TCI. Taubman Family members exercised stock options and Robert Taubman solicited voting agreements from other shareholders to grant him the sole and absolute right to vote their shares of common and Series B stock, by irrevocable proxy, for the admitted purpose of preventing an unsolicited takeover of the company.(6) Consequently, Robert Taubman and the Taubman Family now have the power to defeat any sale or extraordinary transaction which would require a two-thirds vote.

Plaintiffs bring this action alleging, among other things, that the Taubman Family's 1998 acquisition of Series B stock was a "control share acquisition" as defined by Chapter 7B of the Michigan Business Corporation Act, MCL 450.1790,(7) et seq (commonly referred to as the "Control Share Acquisition Act," hereinafter the "Control Share Act" or "Act"). Under the Act, unless a company's articles of incorporation or bylaws state that the Act does not apply, "control shares" acquired in a "control share acquisition"(8) only have voting

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- 5 A tender offer is a device by which one corporation seeks to acquire control of another by offering to buy a substantial portion of its shares tendered for sale at a stipulated price. 6A Fletcher Cyclopedia of Private Corp.ss. 2841.10.
- 6 See Schedule 13D filed by Robert Taubman with the Securities and Exchange Commission (SEC), attached as Pl Exh A, dated November 14, 2002.
- 7 Chapter 7B of the Michigan Business Corporation Act is officially known as the "Stacey, Bennett, and Randall shareholder equity act." MCL 450.1970(1).
- 8 The Act defines a "control share acquisition" as "the acquisition, directly or indirectly, by any person of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares." MCL 450.1791(1).

rights that are conferred by a resolution approved by a majority of the shareholders entitled to vote (excluding the acquiring person).  
MCL ss.ss.450.1794, 450.1798.

Because the issuance of Series B stock was never submitted to a shareholder vote, Plaintiffs contend that, under the Act, the Series B stock does not have any voting rights. Plaintiffs, alternatively, argue that Robert Taubman and the Taubman Family's recent acquisition of a controlling block of shares was accomplished via the formation of a group and that the shares so acquired also constitute a "control share acquisition" that is subject to a shareholder vote.

Defendants, however, assert that the Series B transaction was not a control share acquisition and, therefore, did not require a shareholder vote to confer voting rights. Defendants also deny that Robert Taubman and the Taubman Family's accumulation of shares constitutes a group or a "control share acquisition" within the meaning of the Act.

If Plaintiffs are correct on either theory, the Taubman Family would no longer have a controlling number of votes (unless a shareholder vote conferred voting rights) and would no longer be an obstacle to Plaintiffs' efforts to gain control of TCI.

### III. STANDARD OF REVIEW

Defendant brings this motion pursuant to Fed. R. Civ. P. 12(b)(6). When reviewing a Rule 12(b)(6) Motion, the trial court "must construe the complaint liberally in the plaintiff's favor and accept as true all factual allegations and permissible inferences therein." *Gazette v. City of Pontiac*, 41 F.3d 1061, 1064 (6th Cir. 1994); see also *Miller v. Currie*, 50 F.3d 373, 377 (6th Cir. 1995). Because a Rule 12(b)(6) motion rests upon the pleadings rather than the evidence, "[i]t is not the function of the court [in ruling on such a motion] to weigh evidence or evaluate the credibility of the witnesses." *Miller*, 50 F.3d at 377. The court should deny a Rule 12(b)(6) motion "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [the] claim which would entitle [the plaintiff] to relief." *Gazette*, 41 F.3d at 1064, quoting *Conley v. Gibson*, 355 US 41, 45-46 (1957); see also *Miller*, 50 F.3d at 377; *Vemco, Inc. v. Camardella*, 23 F.3d 129, 132 (6th Cir. 1994). While this standard is decidedly liberal, it requires more than the bare assertion of legal conclusions. In *re DeLorean Motor Co.*, 991 F.2d 1236, 1240 (6th Cir. 1993). Rather, the complaint must contain either direct or inferential

allegations respecting all the material elements to sustain a recovery under some viable legal theory. DeLorean, 991 F.2d at 1240.

#### IV. ANALYSIS

Chapter 7B of the Michigan Business Corporation Act, MCL 450.1790, et seq (commonly referred to as the "Control Share Acquisition Act") has been defined as an anti-takeover statute which "regulates the accumulation of significant voting power in Michigan corporations by acquirers." Atlantis Group, Inc v. Alizac Partners, No. 1:90-CV-937, 1001 US Dist Lexis 12106 at \*10 (WD Mich Aug 27, 1991). Shares acquired by an individual or group that results in voting power that falls within any one of three ranges are called "control shares":

(2) As used in this chapter, "control shares" means shares that . . . would have voting power with respect to shares of an issuing public corporation that, when added to all other shares of the issuing public corporation owned by a person or in respect to which that person may exercise or direct the exercise of voting power, would entitle that person, immediately after acquisition of the shares, directly or indirectly, alone or as part of a group, to exercise or direct the exercise of the voting power of the issuing public corporation In the election of directors within any of the following ranges of voting power:

- (a) 1/5 or more but less than 1/3 of all voting power.
- (b) 1/3 or more but less than a majority of all voting power.
- (c) A majority of all voting power.

MCL 450.1790(2). Such transactions are called "control share acquisitions" which are defined as "the acquisition, directly or indirectly, by any person of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares." MCL 450.1791(1). A person or group is not entitled to vote "control shares" unless subsequently empowered to do so by a majority vote of remaining disinterested shareholders. MCL 450.1798, 450.1794.

In this case, the parties raise two issues: 1) whether the Series B stock issued by the TCI Board in 1998 to the Taubman Family was a "control share acquisition," and 2) whether an acquisition of shares which gave Robert Taubman and the Taubman Family, collectively, 33.6% of the voting power in TCI/TRG, was a "group" acquisition governed by the "control share acquisition" statute.

Defendants make a persuasive argument in favor of the Court adopting Indiana's interpretation of the language at issue. However, Plaintiffs have pled sufficient facts from which the Court could infer that Robert Taubman and

the Taubman Family acted in concert with many other shareholders to acquire a 33.6% controlling block of shares which constituted a "control share acquisition."

A. SERIES B STOCK

Michigan's general principals of statutory construction are well settled. Statutory interpretation is a question of law, *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 739 (2002). A court must first look to the specific language of the statute. *Title Office, Inc v Van Buren County Treasurer*, 249 Mich App 322, 330 (2002). A court's obligation is to "ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute." *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312 (2002). "[S]tatutory words must [also] be considered in light of the general purpose sought to be accomplished." *People v. Smith*, 423 Mich 427, 441 (1985). "The legislature is presumed to have intended the meaning it plainly expressed" and, if the language is unambiguous, a court is not at liberty to look outside the statute to further construe the same. *Title Office*, 249 Mich App at 330; *Koontz*, 466 Mich at 312; *Pohutski v City of Allen Park*, 485 Mich 675, 683 (2002). A court must presume that "every word has some meaning and . . . avoid any construction that would render any part of a statute surplusage or nugatory," *Title Office*, 249 Mich App at 330-331. "As far as possible, effect should be given to every phrase, clause and word." *Id* at 331. Undefined terms should be given their "plain and ordinary meanings," which may be determined by dictionary definitions. *Koontz*, 466 Mich at 312.

There are few Michigan cases interpreting Michigan's Control Share Acquisition Act, generally, and none interpreting the language at issue in this case. At issue in this case is the Act's definition of a "control share acquisition," in the context of the phrase "issued and outstanding." Defendants contend that this phrase only applies to shares already issued to and/or held by shareholders. Defendants urge the Court to find that newly issued shares directly from the corporation, such as the Series B shares issued here, are exempted because such shares were not previously issued to, or held by, shareholders.

There is support for Defendants' interpretation. Indiana's Official Comments state:

Because "control share acquisition" is defined as the acquisition of already "issued and outstanding" control shares, a person's acquisition from the corporation itself of shares that were previously not issued or outstanding (such as newly authorized shares, or treasury shares being reissued) will not constitute a "control share acquisition," even if the acquisition puts that person over one of the [Ind Code ss.] 23-1-42-1's three thresholds of voting power. However, that person's

acquisition of the same number of shares in a public offering (rather than directly from the corporation) would constitute a "control share acquisition," since the shares will already have been "issued" (to an underwriter) before being acquired by that person.

Ind Code ss.23-1-42-2, Official Comments. The Indiana Supreme Court in *Young v General Acceptance Corp*, 770 NE 2d 298, 301 (Ind 2002), also recently upheld a lower court's underlying finding that newly issued shares (which were not part of the common stock that was issued and outstanding) were not subject to the control share statute.

Based solely upon the affidavit of one of the attorneys who drafted the Act and presented it to the Legislature, Plaintiffs dispute whether Michigan intended that the exemption proposed by Defendants be read into the statute and whether Michigan actually adopted the language of the Indiana statute and the official comments. Plaintiffs' argument is unpersuasive and is directly contrary to Michigan law.

Michigan courts have rejected post-enactment statements of members of the legislature regarding their intentions in enacting a bill as evidence to be used in interpreting a statute. *Board of Education of Presque Isle Township School District No. 8 v Presque Isle County Board of Education*, 364 Mich 605, 612 (1961); *Michigan United Conservation Clubs v National Trappers Assoc*, 949 F2d 202, 209 (6th Cir 1991). The statements of an attorney whose participation was limited to drafting the language for consideration by members of the legislature is, likewise, rejected.

Michigan courts have, however, relied upon the Official Comments to Indiana's analogous statutes for guidance in interpreting the Michigan Act. See *Atlantis Group, Inc v Alizac Partners*, No. 1:90-CV-937, 1991 US Dist Lexis 12106 at \*19 (WD Mich Aug 27, 1991); *Heenan v Page*, No. 90-020150-CZ, unpub. slip op at 9 (Wayne County Circuit Sept 6, 1991); *Atlantis Group, Inc v Alizac Partners*, No. 1:90-CV-937, unpub. slip op. at 10 n.6 (WD Mich Dec 5, 1991). The Control Share Act was modeled after the Indiana statute and adopts that language virtually in its entirety.

Where the Michigan legislature adopted the statutory language of New York in enacting a Michigan statute, the Michigan Supreme Court stated that "[b]y borrowing New York's statute in its entirety, the Legislature indicated that it was motivated by the same purpose that underlay the New York statute." *People v Stoudemire*, 429 Mich 262, 271 (1987). The Court further stated that it is appropriate for a court "to infer legislative intent from the purpose of similar statutes." *Id* at 272. Therefore, under *Stoudemire*, it is appropriate for this Court to infer that it was the Michigan Legislature's intent to adopt the language of the analogous control share statutes and the stated underlying purpose and intent of the Indiana legislature.

The Court is not persuaded by the holding in *Business Aviation of South Dakota, Inc v Medivest, Inc*, 882 P2d 662 (UT 1994), relied upon by Plaintiffs. In *Business Aviation*, defendants argued that the phrase "issued and outstanding" did not include newly issued shares. 882 P2d at 665. Interpreting language identical to Michigan's definition of a "control share acquisition," the court declined to read such an exclusion into the Utah Act, reasoning that it would "improperly allow a board of directors to defeat any challenge to their control of the corporation by giving its members controlling voting power in the form of additional shares of stock whenever shareholders seek the election of a new board of directors." *Id.*

The holding in *Business Aviation* cannot be reconciled with Indiana's interpretation of the same language. Indiana has taken a contrary position and, as stated above, it is reasonable for this Court to infer that Michigan has adopted Indiana's interpretation. Moreover, it is significant to note that, within one year of the Utah Supreme Court's ruling in *Business Aviation*, the Utah legislature amended its statute to provide that an acquisition of shares, "pursuant to a direct issue by or transfer from the issuing public corporation of its own shares," does not constitute a control share acquisition." Utah Code ss.61-8-3(4)(e).

In light of Indiana's Official Comments as to the meaning of the phrase "issued and outstanding," the Court finds that the issuance of Series B stock to Defendants in 1998 was not a "control share acquisition" within the meaning of the Michigan Control Share Acquisition Act,

#### B. PLAINTIFFS' GROUP THEORY

Plaintiffs argue that even if the statute is to be interpreted as Defendants claim, Robert Taubman and the Taubman Family's recent acquisition of a 33.6% controlling block of shares constitutes a "control share acquisition" because of the recent formation of a group by Robert Taubman and the Taubman Family with respect to the voting of the Series B and other shares. An interpretation of the "issued and outstanding" language is not necessary, says Plaintiffs, because it is undisputed that all of the shares at issue were "issued and outstanding" at the time the group was formed.

Defendants deny that Robert Taubman's recent acquisition of shares was accomplished via a group. Defendants assert that the Schedule 13D filed by Robert Taubman and others with the Securities and Exchange Commission (SEC) does not refer to an acquisition by Robert Taubman or that he has a right to vote any of the Taubman Family's Interest. Rather, each member of the Taubman Family specifically disclaims beneficial ownership of any shares of common stock, Series B stock and units held by any other member of the Taubman Family. Pl Exh A, Item 4. Citing *Atlantis Group, Inc v Alizac Partners*, No. 1:90-CV-937, slip

op. at 10 (WD Mich Dec 5, 1991), Defendants argue that the Taubman Family's disclosure of their intention to vote consistently is not the same as an acquisition under the Act. Moreover, even if the 13D stated that Robert Taubman was entitled to vote all of the Taubman Family's interests, Defendants contend that such an acquisition would not be a "control share acquisition" because the Act expressly excluded from the definition of such an acquisition those shares obtained "by gift . . . or otherwise without consideration." MCL 450.1791(4)(c).

Neither the Michigan Act nor the Indiana statute expressly defines "group." However, the Official Comments to Indiana's statute regarding the definition of "control share acquisition" states:

As noted in the Official Comment to [Ind Code ss.] 23-1-42-1, the key is not simply whether a single person acquires actual record ownership of a sufficient percentage of shares with voting power in the election of directors: Any transaction or codes of transactions under which a person, or a group of persons acting together, acquires the substantive practical ability to vote or direct the exercise of voting power within the ranges specified in [Ind Code ss.] 23-1-42-1 - directly or indirectly, individually or collectively - will constitute a "control share acquisition" under the Chapter, whatever the form of the transactions or the formal ownership of the shares.

Ind Code ss. 23-1-42-2, Official Comments. Likewise, the Comments to Indiana's statute regarding the definition of "control shares" states that:

[T]he legal form of the acquisition, or whether the acquisition is made by one person or by two or more persons acting cooperatively or in concert, will not affect application of the Chapter.

Ind Code ss. 23-1-42-1, Official Comments. The Comment further states that such an approach is similar to that adopted in Section 13(d) of the Securities and Exchange Act (SEA), 15 USC ss. 78 et seq. *Id.*; See also *Atlantis*, 1991 US Dist Lexis 12106 at \*19 (relying upon Indiana Official Comments to ss. 23-1-42-1 to determine existence of group).

Under Section 13(d), "a court evaluating an allegation of the existence of a group must determine whether there is sufficient direct or circumstantial evidence to support the inference of a formal or informal understanding between [the defendants]' for the purpose of acquiring, holding, or disposing of securities." *Hallwood Realty Partners v Gotham Partners, LP*, 286 F3d 613, 617 (2002), quoting *Wellman v Dickinson*, 682 F.2d 355, 363 (2d Cir 1982); See also *Morales v Quintel Entertainment, Inc.*, 249 F3d 115, 124 (2nd Cir 2001).

One indicator of the existence of a group is "representations and insinuations to third parties by members of the group that the members together



'control' a block of shares, even though those shares are on the record of the company as owned by individual group members." *Breaud v Amato*, 667 So2d 1337, 1343 (5th Cir 1995). Another indicator is "action taken by the group to affect the corporate direction of the company." *Id* at 1344.

The Court finds that Plaintiffs have pled sufficient facts to survive this part of Defendants' Motion to Dismiss, facts from which this Court could infer that Robert Taubman, the Taubman Family and the shareholders who gave Robert Taubman the "sole and absolute right" to vote their shares, via Voting Agreements, constituted a group and, therefore, the collective shares constituted a "control share acquisition" subject to the Control Share Act. Plaintiffs pled that the Taubman Family exercised options and that several Taubman family friends made purchases and subsequently transferred voting power of those shares to Robert Taubman. First Amended Complaint, P. 29. Plaintiffs also allege that Robert Taubman entered into Voting Agreements with various shareholders, which gave him and the Taubman Family a 33.6% controlling block, for the purpose of preventing a takeover of the company. *Id* at P. 30. Per Plaintiffs, this series of transactions constitutes the formation of a group and the accumulation of shares constitute a "control share acquisition." *Id* at P. P. 31, 67

In support of these assertions, Plaintiffs' Complaint refers to and quotes from the Schedule 13D filed by Robert Taubman and various other signatories with the SEC on November 14, 2002. In a section entitled "Purpose of the Transaction," the Schedule 13D states:

Certain of the Reporting Persons have executed the Voting Agreements described in Item 5, granting the sole and absolute right to vote their shares on any and all matters that come before the shareholders of the Company to Robert S. Taubman . . . . Robert S. Taubman together with the Taubman Family controls 33.6% of the vote of the capital stock of the Company . . . . The Reporting Persons have entered into the Voting Agreements for the purposes of preventing an unsolicited takeover of the Company.

Pl Exh A, Item 4.

Plaintiffs' allegations, which must be presumed true, along with the statements in the Schedule 13D, are sufficient to satisfy Plaintiffs' burden.<sup>(9)</sup> Plaintiffs have alleged and Defendants' own statements indicate that Robert Taubman entered into the Voting Agreements that, with his own holdings and those

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9 Documents attached to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiffs complaint and are central to the plaintiff's claim. *Niemen v NLO, Inc*, 108 F3d 1546, 1555 (6th Cir 1097), quoting *Venture Assocs Corp v Zenith Data Sys Corp*, 987 F2d 429, 431 (7th Cir. 1993). Therefore, the Court's consideration of the Schedule 13D is appropriate in this 12(b)(6) motion.

of the Taubman Family, gave Robert Taubman and the Taubman Family a controlling block of shares over one of the threshold amounts set forth in MCL 450.1790(2). The express purpose of giving voting power to Robert Taubman, as stated in the Schedule 13D, was to prevent a takeover by Plaintiffs. The statements in the Schedule 13D will only be one factor for the Court (or trier of fact) to consider in ultimately deciding the issue. At this stage, however, Plaintiffs' allegations and the Schedule 13D are sufficient to create an inference that the parties were acting together to empower Robert Taubman and the Taubman Family with a controlling block of shares.

Defendants claim that the shares acquired by Robert Taubman via the voting agreements were merely "gifts" which are expressly excluded from the definition of a control share acquisition, per MCL 450.1791(4)(c). This argument is belied by the clear and unambiguous statement of the purpose of entering the agreements that is set forth in the Schedule 13D.

Plaintiffs' Complaint includes allegations from which this Court could infer that Robert Taubman, the Taubman Family and those persons who entered into Voting Agreements with Robert Taubman constituted a group and that their aggregation of shares was a "control share acquisition." Therefore, Defendants' Motion to Dismiss in this regard, is denied.

V. CONCLUSION

The Michigan Control Share Acquisition Act does not pertain to a direct issue from the corporation of its own shares. In this regard, Defendants' motion is GRANTED.

However, the Court finds that Plaintiffs have sufficiently pled that a group was formed and that the shares acquired by the group constituted a "control share acquisition" within the meaning of the Michigan Control Share Acquisition Act. In this regard, Defendants' motion is DENIED.

IT IS SO ORDERED.

/s/Victoria A. Roberts  
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Victoria A. Roberts  
United States District Judge

Dated: January 22, 2003

[SIMON PROPERTY GROUP INC. LOGO]

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MICHIGAN FEDERAL COURT UPHOLDS SIMON'S RIGHT TO CHALLENGE  
 TAUBMAN FAMILY'S VOTING RIGHTS

VOTING RIGHTS OF SERIES B PREFERRED STOCK REMAIN  
 SUBJECT TO LEGAL CHALLENGE

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INDIANAPOLIS, January 22, 2003 - Simon Property Group, Inc. (NYSE: SPG) announced today that a Michigan federal court has ruled that Simon has a viable legal claim that the Taubman family's one-third voting position in Taubman Centers, Inc. (NYSE: TCO) was obtained without a shareholder vote in violation of Michigan law.

Judge Victoria Roberts in the United States District Court of the Eastern District of Michigan ruled that the Taubman family's claimed blocking position in the company may be challenged by SPG at a hearing on March 21, 2003 on the grounds that the family's "group" voting power was obtained without shareholder approval under the Michigan Control Share Acquisitions Act (also known as the "shareholder equity act"). At the March 21 hearing, SPG will also be allowed to press its claim that the Taubman's family's Series B Preferred Stock was improperly acquired in breach of fiduciary duties owed to the company's public shareholders.

In her written ruling issued today, Judge Roberts stated that while the 1998 issuance of preferred stock to the Taubman family was in technical compliance with the Michigan statute, SPG has alleged sufficient facts "from which the Court could infer that Robert Taubman and the Taubman Family acted in concert with many other shareholders to acquire a 33.6% controlling block of shares which constituted a `control share acquisition.'" Therefore, the court denied Taubman's motion to dismiss SPG's claim that "Robert Taubman, the Taubman Family and those persons who entered into Voting Agreements with Robert Taubman constituted a group and that their aggregation of shares was a `control share acquisition.'" "

Following the court's ruling, the entire 33.6% voting control the family purports to wield is subject to being legally invalidated.

SPG and Westfield America, Inc., the U.S. subsidiary of Westfield America Trust (ASX: WFA), issued the following joint statement in response to the court's decision:

"SPG and Westfield are pleased that the Michigan court's ruling allows SPG to proceed with its challenge to the validity of the voting rights the Taubman family claims to hold in the company. If, as SPG has requested, those rights are invalidated, then the public shareholders who own approximately 99% of TCO will be able to accept the \$20 per share all cash offer for their shares, representing a 50% cash premium, free from the Taubman family's purported blocking position."

As previously announced, the tender offer and withdrawal rights will expire at 12:00 midnight, New York City time, February 14, 2003. The complete terms and conditions of the offer are set forth in the Offer to Purchase and the Letter of Transmittal, which are on file with the SEC and available from the information agent, MacKenzie Partners, Inc. at (800) 322-2885 Toll-Free or at (212)-929 5500 (collect). Merrill Lynch & Co. is acting as financial advisor to SPG and Westfield America, Inc. and is the Dealer Manager for the Offer. Willkie Farr & Gallagher is acting as legal advisor to SPG and Skadden, Arps, Slate, Meagher & Flom LLP is acting as legal advisor to Westfield America, Inc. Simpson Thacher & Bartlett is acting as legal advisor to Merrill Lynch & Co.

## About Simon Property Group

Headquartered in Indianapolis, Indiana, Simon Property Group is a real estate investment trust engaged in the ownership and management of income-producing properties, primarily regional malls and community shopping centers. Through its subsidiary partnerships, it currently owns or has an interest in 243 properties containing an aggregate of 183 million square feet of gross leasable area in 36 states, as well as eight assets in Europe and Canada and ownership interests in other real estate assets. Additional Simon Property Group information is

available at <http://about.simon.com/corpinfo/index.html>.

About Westfield America, Inc.

Westfield America, Inc. is a United States subsidiary of Westfield America Trust (ASX: WFA), the second-largest property trust listed on the Australian Stock Exchange. WFA owns a majority interest in the Westfield America portfolio of 63 centres, branded as Westfield Shoppingtowns. Westfield Shoppingtowns are home to more than 8,400 specialty stores and encompass 64 million square feet in the states of California, Colorado, Connecticut, Florida, Illinois, Indiana, Maryland, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio and Washington.

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## Important Information

This news release is for informational purposes only and is not an offer to buy or the solicitation of an offer to sell any TCO shares, and is not a solicitation of a proxy. Simon Property Group and Simon Property Acquisitions, Inc., a wholly owned subsidiary of Simon Property Group, filed a tender offer statement on Schedule TO with the Securities and Exchange Commission on December 5, 2002 (as amended), with respect to the offer to purchase all outstanding shares of TCO common stock. Investors and security holders are urged to read this tender offer statement as amended, the preliminary proxy statement filed December 16, 2002 (as amended), and any other proxy statement relating to the tender offer because they will contain important information. Each such proxy statement will be filed with the Securities and Exchange Commission. Investors and security holders may obtain a free copy of the tender offer statement, each such proxy statement and other documents filed by SPG with the Commission at the Commission's web site at: <http://www.sec.gov>. The tender offer statement, any proxy statement and any related materials may also be obtained for free by directing such requests to MacKenzie Partners, Inc. at (800) 322-2885 Toll-Free or at (212)-929-5500 (collect) or via email to [proxy@mackenziepartners.com](mailto:proxy@mackenziepartners.com).

## Forward-looking statements

This release contains some forward-looking statements as defined by the federal securities laws which are based on our current expectations and assumptions, which are subject to a number of risks and uncertainties that could cause actual results to differ materially from those anticipated, projected or implied. We undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise.