TAUBMAN CENTERS INC

FORM SC 14D9/A

(Amended Statement of Ownership: Solicitation)

Filed 08/05/03

Address	200 E LONG LAKE RD SUITE 300 P O BOX 200 BLOOMFIELD HILLS, MI 48303-0200
Telephone	2482586800
CIK	0000890319
Symbol	TCO
SIC Code	6798 - Real Estate Investment Trusts
Industry	Real Estate Operations
Sector	Services
Fiscal Year	12/31

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

SCHEDULE 14D-9/A
SOLICITATION/RECOMMENDATION STATEMENT UNDER
SECTION 14(D)(4) OF THE SECURITIES EXCHANGE ACT OF 1934
(AMENDMENT NO. 44)

TAUBMAN CENTERS, INC.
(Name of Subject Company)

TAUBMAN CENTERS, INC.
(Name of Person(s) Filing Statement)

COMMON STOCK, PAR VALUE $0.01 PER SHARE
(Title of Class of Securities)

876664103
(CUSIP Number of Class of Securities)

LISA A. PAYNE
TAUBMAN CENTERS, INC.
200 EAST LONG LAKE ROAD
SUITE 300, P.O. BOX 200
BLOOMFIELD HILLS, MICHIGAN 48303
(248) 258-6800

(Name, Address and Telephone Number of Person Authorized to Receive Notice and Communications on Behalf of the Person(s) Filing Statement)

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

This Amendment No. 44 amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9 initially filed with the Securities and Exchange Commission (the "Commission") on December 11, 2002 (as subsequently amended, the "Schedule 14D-9"), by Taubman Centers, Inc., a Michigan corporation (the "Company" or "Taubman Centers") relating to the tender offer made by Simon Property Acquisitions, Inc. ("Offeror"), a wholly owned subsidiary of Simon Property Group, Inc. ("Simon") and Westfield America, Inc. ("Westfield"), as set forth in a Tender Offer Statement filed by Simon on Schedule TO, dated December 5, 2002 (the "Schedule TO") and a Supplement to the Offer to Purchase as subsequently amended, dated January 15, 2003 filed by Simon on Schedule TO-T/A (Amendment No. 6) (the "Supplement"), to pay $20.00 net to the seller in cash, without interest thereon, for each Common Share, upon the terms and subject to the conditions set forth in the Schedule TO and the Supplement as subsequently amended. Unless otherwise indicated, all capitalized terms used but not defined herein shall have the meanings ascribed to them in the Schedule 14D-9.

ITEM 2. IDENTITY AND BACKGROUND OF FILING PERSON.

(B) TENDER OFFER OF THE PURCHASER

Item 2(b) of the Schedule 14D-9 is hereby amended and supplemented by adding the following:

On August 4, 2003, Simon and the Offeror announced that the Expiration Date of the Revised Offer has been extended to 12:00 midnight, New York City time, on August 29, 2003.

ITEM 8. ADDITIONAL INFORMATION TO BE FURNISHED

(A) LEGAL MATTERS

Item 8(a) of the Schedule 14D-9 is hereby amended and supplemented by adding the following:

The Michigan Attorney General has filed on behalf of the State of Michigan a Brief of Amicus Curiae, dated August 4, 2003 (the "Amicus Brief") in the United States Court of Appeals for the Sixth Circuit, in support of appellants and in support of reversal of the order issued by the United States District Court for the Eastern District on May 8, 2003. A copy of the Amicus Brief is filed herewith as Exhibit (a)(87).

ITEM 9. Exhibits.

Item 9 is hereby amended and supplemented by adding thereto the following:

Exhibit No.	Description
(a)(85)	Press release issued by the Company on August 4, 2003
(a)(86)	Press release issued by the State of Michigan Department of Attorney General on August 4, 2003

(a)(87) Brief of Amicus Curiae, filed on behalf of the State of Michigan, by the Michigan Attorney General, dated August 4, 2003 in the United States Court of Appeals for the Sixth Circuit

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: August 4, 2003

Taubman Centers, Inc.

By: /s/ Lisa A. Payne

Lisa A. Payne
Executive Vice President,
Chief Financial Officer

EXHIBIT INDEX

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TAUBMAN CENTERS COMMENTS ON SIMON PROPERTY GROUP'S APPROXIMATELY 37% TENDER OFFER STATUS

Bloomfield Hills, Mich., August 4, 2003 - Taubman Centers, Inc. (NYSE:TCO) today responded to Simon Property Group's (NYSE:SPG) announcement of the status of its unsolicited hostile cash tender offer made in conjunction with a subsidiary of Westfield America Trust (ASX:WFA) for Taubman Centers:

According to Simon's announcement on August 4, 2003, approximately 30 million (only 37%) of the approximately 81 million shares of Taubman Centers voting stock were tendered into the offer.

As we have previously stated, this amount is clearly insufficient to meet Simon's own minimum Tender Offer condition or to purchase the company since at least two-thirds of Taubman Centers' 81 million issued and outstanding voting shares - approximately 54 million voting shares
- must approve any sale transaction or amendment to the corporate charter. Taubman Centers' Board of Directors has unanimously determined that it is not prepared to recommend the sale of Taubman Centers at an inadequate price, and that it does not believe that maximum value will be realized by selling the company at this time.

Taubman Centers has increased its financial guidance twice since the Simon offer was made. Our collection of upscale regional mall assets cannot be replicated. They represent the most productive portfolio of regional malls in the United States and have always been and will always be highly coveted. The company has a strong track record, has delivered more than an 80% total return to shareholders (undisturbed) over the past five years ended November 12, 2002, and has also achieved a nearly 20% FFO per share growth rate for 2002, the highest among retail REITs.

(more)

Taubman Centers, Inc., a real estate investment trust, currently owns and/or manages 30 urban and suburban regional and super regional shopping centers in 13 states. In addition Stony Point Fashion Park (Richmond, Va.) is under construction and will open September 18, 2003, and Northlake Mall (Charlotte, N.C.) will begin construction later this year and will open fall 2005. Taubman Centers is headquartered in Bloomfield Hills, Mich.

This press release contains forward-looking statements within the meaning of the Securities Act of 1933 as amended. These statements reflect management's current views with respect to future events and financial performance. Actual results and events may differ materially from those expected because of various risks and uncertainties, including, but not limited to, changes in general economic and real estate conditions including further deterioration in consumer confidence, changes in the interest rate environment and availability of financing, and adverse changes in the retail industry. In addition, the company cannot be certain how any Court will understand or decide any particular issue. Other risks and uncertainties are discussed in the Company's filings with the Securities and Exchange Commission including its most recent Annual Report on Form 10-K. Notwithstanding any statement in this press release, Taubman Centers acknowledges that the safe harbor for forward-looking statements under Section 21E of the Securities Exchange Act of 1934, as amended, added by the Private Securities Litigation Reform Act of 1995, does not apply to forward-looking statements made in connection with a tender offer.

# # #

STATE OF MICHIGAN

DEPARTMENT OF ATTORNEY GENERAL

[LOGO] P.O. Box 30212
LANSING, Michigan 48909

MIKE COX
ATTORNEY GENERAL

CONTACT: Sage Eastman

August 4, 2003 517-373-8060

MICHIGAN AG JUMPS INTO TAUBMAN-SIMON LEGAL BATTLE

COX: MICHIGAN SHAREHOLDERS, WORKERS DESERVE PROTECTION FROM HOSTILE TAKEOVERS

LANSING, MI - To protect Michigan shareholders and Michigan jobs, Attorney General Mike Cox announced today that he is weighing into the legal question posed by the Taubman-Simon battle.

A ruling from federal U.S. District Court Judge Victoria Roberts stripped the Bloomfield Hills-based company of its ability to block a hostile takeover by the Simon Property Group, based out of Indianapolis. The 15-page brief filed by Cox states that Judge Roberts erroneously inferred a "deemed acquisition" concept not found in Michigan law.

The case, which is currently on appeal to the Sixth Circuit, heated up last week when the Indiana Attorney General filed a last-minute amicus brief on behalf of the Simon Property Group. Cox, responding immediately, put his legal team in action and will file the brief today, the deadline for all briefs.

"This entire debate is about an out-of-state corporate raider trying to manipulate Michigan law to attack the voting rights of Michigan shareholders," Cox said. "I am filing this brief with one simple message: Michigan workers and job-providers will not stand alone in this fight."

"The legal stakes are bigger than Taubman's and Simon's interests combined," Cox added. "Michigan law has long sought to protect the voting rights of shareholders and small businesses. Simon and their allies should not be allowed to turn the law on its head at the expense of shareholders." By entering the legal battle, Cox joined with a diverse group of Taubman supporters. From the Michigan Chamber of Commerce to the Teamsters, there has been a growing chorus calling for greater clarity and protection under the law.

"We appreciate the Attorney General joining those of us standing up for Michigan companies and Michigan jobs," said Bill Black, Director of Teamsters DRIVE.

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No. 03-1610

In The
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SIMON PROPERTY GROUP, INC., and
SIMON PROPERTY ACQUISITIONS, INC.,
Plaintiffs-Appellees,

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,
Defendants-Appellants.

Appeal from the United States District Court Eastern District of Michigan, Southern Division

BRIEF OF AMICUS CURIAE STATE OF MICHIGAN IN SUPPORT OF APPELLANTS AND IN SUPPORT OF REVERSAL

Michael A. Cox Attorney General

Thomas L. Casey Solicitor General Co-Counsel

Paul F. Novak Assistant Attorney General Consumer Protection Division P.O. Box 30213, Lansing, MI 48913 517/335-0855

Dated: August 4, 2003

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STATEMENT OF AMICUS CURIAE

This amicus curiae brief is respectfully submitted on behalf of the State of Michigan by the Attorney General of the State of Michigan.(1) The State of Michigan has an interest in this action because it involves the interpretation of a Michigan statute, not an Indiana statute, and the arguments of the Attorney General of the State of Indiana are wrong as a matter of law. The outcome of this appeal will significantly impact the rights of shareholders of publicly traded Michigan corporations.

Rule 29(a) of the Federal Rules of Appellate Procedure grants the State of Michigan the right to file an amicus curiae brief without the consent of the parties or leave of the Court. The State of Michigan has sought leave, under Federal Rules of Appellate Procedure Rule 29(e), to file this brief later than the time specified in Rule 29(e) to respond to the issues recently raised by the Indiana Attorney General (in its brief filed on July 28, 2003) concerning the statutory interpretation of the Michigan Control Share Acquisitions Act, Mich. Comp. Laws ss.ss.450.1790-.1799 ("MCSAA" or "Michigan Act").

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(1) The Michigan Attorney General files this amicus brief solely to express Michigan's opinion on the legal questions implicated in interpreting the MCSAA. The Attorney General expresses no view on the fact determinations rendered by the District Court.

ARGUMENT

The Michigan Control Share Acquisitions Act, Mich. Comp. Laws ss.ss. 450.1790-.1799, is clear and unambiguous. It regulates the voting rights of persons who acquire "control shares" in a "control share acquisition." SEE
ID. ss. 450.1790(2), .1791(1). The Michigan Act makes no distinction between acquisitions made by a single person or by two or more persons acting as a group.

The Indiana Attorney General argues that, in instances where a "control share acquisition" as defined under Michigan's statute has not occurred, such an acquisition can nonetheless be inferred by borrowing from "deemed acquisition" language set forth in SEC Rule 13d-5. But there is no language in the Michigan Act to suggest that it silently incorporates a "deemed acquisition" provision from the Federal securities reporting laws, or that the Michigan Act was intended to strip existing shareholders of the right to vote their previously-owned shares when they collectively voice their position on a corporate matter, such as a proposed takeover. The Michigan Act only applies to shares over which an acquiring person has acquired the ACTUAL power in fact to direct the vote. Accordingly, there is no justifiable basis for the INDIANA Attorney General's argument that the MICHIGAN Act should be read to silently incorporate a "deemed" acquisition provision from federal securities regulations.

I. THE FORMATION OF A GROUP IS NOT A CONTROL SHARE ACQUISITION UNDER THE MICHIGAN ACT

The definition of a "control share acquisition" under the MCSAA is an "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." Mich. Comp. Laws ss.450.1791(1). The Michigan Act by its terms applies only to an "acquisition" of either: 1) shares; or 2) the power to direct the voting of shares. Quite obviously, for there to be an "acquisition," something must be acquired. Where two shareholders merely "align" or "unite" in a "group," neither shareholder has "acquired" voting power over the other's shares. Each shareholder is still free to vote however he or she chooses. And the mere fact that the aligned shareholders have elected to express their collective views, either for or against a proposed tender offer (although it may be a reportable event for Williams Act purposes), does not mean that they have triggered the "acquisition" language set forth in Section 791(1) of the MCSAA.

The Indiana Attorney General argues that the Michigan Act should be read to incorporate a "deemed acquisition" concept from federal disclosure law because of an Official Comment to the Indiana Act. This argument should be rejected for several reasons.

First, the Indiana Attorney General's argument ignores basic Michigan principles of strict statutory construction. In a certified question directed by this

Court to the Michigan Supreme Court, the latter Court recently set forth the standards for statutory construction that govern interpretation of Michigan statutes:

A fundamental principle of statutory construction is that `a clear and unambiguous statute leaves no room for judicial construction or interpretation.' The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended. When a legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; the proper role of a court is simply to apply the terms of the statute to the circumstances in a particular case.

IN RE CERTIFIED QUESTION FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT; KENNETH HENES SPECIAL PROJECTS PROCUREMENT, MARKETING AND CONSULTING CORPORATION v. CONTINENTAL BIOMASS INDUSTRIES, INC., 468 Mich. 109, 113; 659 N.W.2d 597, 600 (2003)(citations omitted). What the Indiana Attorney General wants this Court to do is rewrite the Michigan Act to delete the requirement that there be an ACTUAL acquisition of shares or voting power and to allow the court to "deem" the occurrence of an acquisition that never happened. But Appellees' "deemed acquisition" language expressly stated in SEC Rule 13d-5 is not in the Michigan Act, and there is no judicial license to import it. Such an importation of additional substantive language would alter the definition of "acquisition" in the MCSAA and violate the Michigan strict statutory construction principle that the statute should "speak for itself."

Secondly, Michigan's reading of the word "acquisition" is buttressed by the further provision in the Michigan Act, which is absent from the Indiana statute,

clarifying that a transfer of voting power "without consideration" is excluded from the definition of a control share acquisition. The Act, therefore, could not be more clear that the transfer of voting power must be contractually enforceable in order to be an "acquisition," and that the mere formation of a "group" of shareholders in a nonbinding alignment does not rise to the level of a "control share acquisition" as defined in the Michigan statute.

The Michigan Legislature wisely chose to establish a bright line test for determining whether the Michigan Act has been triggered. There must be either an acquisition of shares or an acquisition of voting power. Otherwise, the Michigan Act would become a trap for the unwary, and the voting rights of the shareholders in Michigan corporations would be left to the uncertainties of a case-by-case judicial determination of whether shareholders were deemed to have acquired control shares by virtue of their having "acted together" or exercised their First Amendment rights to collectively express a view in favor of, or in opposition to, a proposed tender offer.

Thirdly, although the Michigan Attorney General generally extends deference to the Indiana Attorney General in questions of interpreting Indiana law, the Michigan Attorney General would respectfully submit that, even under Indiana law, Indiana's argument is a "stretch." The Indiana Comments, upon which the

Indiana Attorney General relies, say nothing about a "deemed" acquisition. Quite simply, the Official Comments to the Indiana act state that

[T]he acquisition of control shares may be "directly or indirectly, alone or as part of a group" - meaning that the legal form of the acquisition, 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. This is similar to the "group" - approach adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934. See Reg. 13d-5, 17 C.R.R. [sic] ss. 240.13d-5.

Official Comments to Ind. Code ss.23-1-42-1 (West 1989) (on file in Appellants' Addendum at A-13). Nothing in the final sentence of this comment says anything about a "deemed" acquisition in the Indiana act; nor does it make a comparison of a "deemed" acquisition provision in the Indiana act to a "deemed" acquisition provision in the federal regulation. It is one thing to compare the use of the term "group" under the Indiana act and in the federal regulation and note a similarity in the factors to consider when determining whether or not shareholders are acting as a group when one of them makes an acquisition. It is something else to suggest that this final sentence substantively alters the definition of "acquisition" under either Indiana or Michigan law to include a "deemed" acquisition provision expressly stated in the Federal regulation. Surely, if either the Michigan or Indiana Legislature had intended to incorporate into their statute the "deemed" acquisition

provision expressly stated in the federal regulation, they could have done so(2). This is especially true if, as the Indiana Attorney General now suggests, this was the mechanism that the Indiana Legislature set up to establish the "neutrality" and constitutionality of their statute.

Finally, this Court should also reject the "deemed acquisition" argument because it would undermine shareholder democracy in publicly held Michigan corporations. Shareholders would be prevented from aligning to replace management, call a special meeting, propose new directors, or oppose a coercive or inadequate tender offer. Shareholders also would be discouraged from communicating with one another for fear that they would be accused of having formed an alignment or group at the pain of losing the right to vote their stock.

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(2) The Indiana Attorney General argues that the failure to read a "deemed" acquisition provision into the Michigan Act would "eviscerate" the law. (Indiana Amicus Brief at p. 10.) By way of example, the Indiana Attorney General suggests that such a provision is necessary because, otherwise, "a determined bidder, management team or family [would be enabled] simply to acquire and hold just below the thresholds and then at the last instant join together to oppose or favor an acquisition of a company, as the case may be, depriving shareholders of the democracy that the Statutes are designed to provide." (ID.) To the extent that the Indiana Attorney General complains of shareholders joining together to support or oppose a proposed corporate action, this is not something to be shunned. It is a classic example of the EXERCISE OF their democratic rights. To the extent that the Indiana Attorney General complains of a "determined bidder" or group of bidders making a series of actual acquisitions as part of a plan or scheme to take over a company, those acquisitions should be a "control share acquisition" under the express terms of the Michigan Act. Mich. Comp. Laws ss.ss.450.1790(2), 450.1791(1).

This Court should not accept the District Court's judicial revision of the Act, which would lead to these harmful consequences.

II. THE MICHIGAN ACT IS CONSTITUTIONAL WITHOUT A "DEEMED" ACQUISITION PROVISION

The Indiana Attorney General also argues that the failure to incorporate, SUB SILENTIO, a deemed acquisition provision would create a risk that the MICHIGAN Act would be rendered unconstitutional under the Supreme Court's analysis of the Indiana control share acquisitions act in CTS CORP. V. DYNAMICS CORP. OF AMERICA, 481 U.S. 69 (1987). Essentially, the Indiana Attorney General argues that a finding of "neutrality" between management and hostile tender offerors was essential to the CTS Court's holding that the Indiana law did not violate the Constitution of the United States, and that a failure to read a "deemed" acquisition rule into the Michigan Act would destroy its constitutionality. This argument is both incorrect and illogical.(3)

The CTS Court made no mention whatsoever of a "deemed" acquisition provision in upholding the Indiana statute, and there is nothing in the CTS Court's

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(3) Even if this Court were to find that Michigan's control share statute was not "neutral" in its application towards different groups of investors, that finding alone may not justify a ruling that the statute is unconstitutional. "To say that Congress wanted to be neutral between bidder and target - a conclusion reached in many of the Court's opinions - is not to say that it also forbade the states to favor one of those sides." AMANDA ACQUISITION CORP. V. UNIVERSAL FOODS CORP., 877 F.2d 496, 503 (7th Cir. 1989)(citations omitted).

opinion that suggests that it relied on the incorporation of a "deemed" acquisition provision to justify sustaining the Indiana law. In fact, while the Indiana Attorney General relies heavily on a fleeting reference to SEC Rule 13d-5 in the Official Comments to the Indiana Act to support his opinion that the Indiana law incorporated Appellees' "deemed acquisition" rule, these comments (which themselves make no reference to any notion of "deemed" acquisition) were not even published in draft form until December 10, 1987, eight months AFTER the CTS opinion was issued. Thus, there is simply no basis to suggest that the Supreme Court's decision to uphold the Indiana statute was in any way based on an unstated "deemed" acquisition provision in that law.

Moreover, the Indiana Attorney General has it exactly backwards when it argues that it is necessary to impute a "deemed acquisition" provision into the Michigan Act to preserve the "neutrality" of the Michigan Act. Michigan's statute applies evenhandedly to "groups" of shareholders who support, as well as those that oppose, tender offers. If, on the other hand, a "deemed" acquisition provision were read into the Michigan Act, it would substantially tip the balance in favor of tender offerors in those corporations where some or all of the directors are themselves substantial shareholders because they will lose the right to vote their shares if, as directors, they collectively oppose the tender offer. Thus, under the Indiana Attorney General's proffered interpretation, a corporation cannot engage in

self defense against a would-be acquirer without converting all objecting directors into a single shareholder group. Such an interpretation would have the devastating consequence of promoting hostile and unfriendly takeovers of corporations and would render these corporations powerless to defend themselves. This certainly is not the law passed by the Michigan Legislature, nor should it be so rewritten by the Court.

CONCLUSION AND RELIEF SOUGHT

The Indiana Attorney General's opinion about the MICHIGAN Control Share Acquisitions Act is entitled to no weight and should be disregarded entirely.

By its terms, the Michigan Control Share Acquisitions Act is triggered only when an acquiring person ACQUIRES either 1) shares; or 2) the actual power in fact to direct the voting of another's shares. There was no justifiable basis under the rules of statutory construction for the district court to have written into the Act a "deemed" acquisition provision, and the lower court's opinion must be reversed.

Respectfully submitted,

Michael A. Cox Attorney General

Thomas L. Casey Solicitor General Co-Counsel of Record

Paul F. Novak Assistant Attorney General Consumer Protection Division P.O. Box 30213, Lansing, MI 48913 517/335-0855

Dated: August 4, 2003

CERTIFICATE OF SERVICE

I hereby certify that, on August 4, 2003, I served one copy of the Motion of Amicus Curiae State of Michigan for Leave to File Late Its Brief in Support of Appellants and in Support of Reversal and Brief of Amicus Curiae State of Michigan in Support of Appellants and in Support of Reversal on Carl H. von Ende, lead counsel for Plaintiffs-Appellees, and on Joseph Aviv, lead counsel for Defendants-Appellants, by first-class mail addressed as follows:

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