



Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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October 17, 2017

Rep. Brandt Iden
Michigan House of Representatives
N-995 House Office Building
P.O. Box 30014
Lansing, MI 48909

RE: HB 4471 to enact the Uniform Commercial Real Estate Receivership Act

Dear Rep. Iden,

Thank you for sponsoring HB 4471 to enact the Uniform Commercial Real Estate Receivership Act (UCRERA) in Michigan.

UCRERA was drafted to help clarify and standardize the law of receivership. Although courts in every state have the receivership remedy available, the circumstances under which a receiver is appointed and the powers held by a receiver vary widely from state to state (and sometimes even from court to court). UCRERA provides sound, predictable procedures that will help make the commercial lending markets more efficient while leaving individual judges enough leeway to tailor their orders to the circumstances of a particular case.

Kay Standridge Kress from the Detroit office of Pepper Hamilton, LLC is particularly knowledgeable about UCRERA. She served the drafting committee as an advisor from the American Bar Association and contributed greatly to the final act. Ms. Kress should be an excellent local resource to answer any questions that arise at legislative hearings.

Our office has reviewed HB 4471, and we intend to count it as an enactment of UCRERA if enacted in its current form. On behalf of the Uniform Law Commission, many thanks for your support of this important legislation.

Best regards,

Benjamin Orzeske
Chief Counsel
Uniform Law Commission

Kay Standridge Kress is a corporate restructuring and bankruptcy partner in the Detroit Office of Pepper Hamilton LLP.

Ms. Kress concentrates her practice in corporate restructuring insolvency and bankruptcy matters, and has more than 31 years of experience in representing debtors, creditors' committee, secured creditors, trustees and individual creditors and parties in interest, both as lead counsel and as co-counsel in out-of-court workouts and in bankruptcy courts in the Eastern District of Michigan, the Western District of Michigan, the District of Delaware, the Southern District of New York and in other bankruptcy court in the United States. Ms. Kress has extensive experience representing secured creditors in federal receivership actions.

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Ms. Kress is a Fellow in the American College of Bankruptcy, and is named in *The Best Lawyers in America* and was selected for inclusion on the 2014 *Michigan Super Lawyers, Who's Who Legal: Insolvency & Restructuring* for 2014 and Top Lawyers list in *DBusiness* magazine. She is currently chair of the Bankruptcy Court Structure and Insolvency Process Committee of the American Bar Association's Business Law Section. She is former chair of the Business Bankruptcy Committee, co-chair of the Programs and Publications Subcommittee, former chair of Secured Creditors Subcommittee and former editor-in chief of the e-newsletter of the Business Bankruptcy Committee of the ABA. Ms. Kress is a founding member of the Michigan Chapter of IWIRC; past chair of the Debtor/Creditor section of the Detroit Metropolitan Bar Association, a member of the American Bankruptcy Institute; board member of Matrix Human Services; and legal advisor to Omega Phi Alpha, National Service Sorority. Ms. Kress was the American Bar Association Business Law Advisor to the Uniform Law drafting committee for the Uniform Commercial Real Estate Receivership Act.

Ms. Kress has co-authored Chapter 83 "Creditors Committees," *Colliers Bankruptcy Practice Guide*, and is published in the *Business Law Today* and a chapter "Alternatives to Bankruptcy Under Federal and State Law," in *Navigating Today's Environment*. She also has authored articles for *Michigan Business Law Journal*, American Bar Association Newsletter, Young Lawyers Division and the *American Bankruptcy Institute Journal*. She has been a moderator and has spoken on a variety of topics, including federal receiverships, locally and nationally, and current developments in Bankruptcy claims.

Ms. Kress received her J.D., *cum laude*, from Wayne State University Law School in 1986, where she was a member of Order of the Coif and the recipient of the Bronze Key Certificates for Academic Achievement in 1983 and 1984. She received her B.A., *cum laude*, from Bowling Green State University in 1978.

Ms. Kress is admitted to practice in Michigan and before the U.S. District Courts for the Eastern and Western Districts of Michigan, the U.S. District Court for the Northern District of Illinois, and the U.S. Court of appeals for the Sixth Circuit. She is a member of the American, Michigan, and Detroit Bar Associations.



Scott H. Hogan

Shareholder

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Scott Hogan practices in the areas of real estate, business law, receiverships, and bankruptcy. Specifically, this includes:

- **Real Estate:** Handles sales, purchases, leases, condominiums, evictions, easements and all related real estate litigation.
- **Business Law:** Establishes new entities, assists with sales and purchases of companies, contracts, collections and litigation.
- **Receivership:** Represents receivers in state and federal courts, assists with asset sales, fraud investigations, asset recovery and all other aspects of receiverships.
- **Bankruptcy:** Represents trustees, creditors, and debtors in all aspects of bankruptcy.

Prior to joining Foster Swift, Scott was a shareholder with Tolley VandenBosch Korolewicz & Brengle, P.C., when it joined with Foster Swift.

Through the years, Scott's expertise in the bankruptcy and creditor rights area has been recognized by legal leaders and peers. He is listed in *Best Lawyer in America* as well as *Michigan Super Lawyers* in the areas of Bankruptcy and Creditor/Debtors rights. Also, he was selected to author the Bankruptcy Chapter in *Michigan Basic Practice Handbook* published by the Institute for Continuing Legal Education. Additionally, he is a member of the American Bankruptcy Institute.

Scott is also very involved in the community as a member of the Grand Rapids Bar Association, where he currently serves on the Pro Bono Committee and the Federal Bar Association for the Western District of Michigan. He previously served as the president of the Forest Hills Park Association and a member of the Board of Managers for the Southeast YMCA.

PRACTICE AREAS

Financial Institution Law
Bankruptcy & Restructuring
Entity Selection, Organization & Planning
Real Estate Law
Public Finance - Bond
Municipal Law
Finance, Real Estate & Bankruptcy Law
Foreclosure
Startup Entrepreneurial Emerging Development (S.E.E.D)

EDUCATION

Vanderbilt University Law School, J.D., 1988, Order of the Coif
Michigan State University, B.A., 1983, with Honors

BAR AND COURT ADMISSIONS

Michigan
U.S. District Court for the Eastern District of Michigan
U.S. District Court for the Western District of Michigan
U.S. Sixth Circuit Court of Appeals

HONORS & RECOGNITIONS

BV® Distinguished™
Martindale-Hubbell

REPRESENTATIVE MATTERS

- Assisted receiver in sales of car washes, mobile home parks, and other assets.
- Assisted receiver in a major embezzlement case at a title company. Recovered assets and made almost 100 percent distribution to creditors.
- Represented a construction company in a roof collapse matter where the case against our client was dismissed.
- Represented the purchaser of six commercial buildings in a total \$15 million transaction.
- Regularly represents bankruptcy trustees in collection of preferences and fraudulent conveyances.
- Assisted municipality with multi-million dollar bond issuance to fund water and sewer improvements.
- Prepared and assisted in numerous installment purchase agreements for municipalities.

SPEAKING ENGAGEMENTS

USDA Rural Development Bond Projects, Macomb County
Treasurer's Association Meeting, May 16, 2017

PUBLICATIONS

What Happens When a Landowner Encroaches Upon Public Property?, *Foster Swift Finance, Real Estate & Bankruptcy News*, June 8, 2017

Receivers in Divorce Cases, *Michigan Bar Journal*, July 2015

Zoning and the Fifth Amendment: When do Zoning Regulations "Go Too Far"?, *Foster Swift Finance, Real Estate and Bankruptcy News*, March 6, 2015

Michigan Receivership Rules Get a Tune-Up, *Foster Swift Finance, Real Estate & Bankruptcy News*, August 26, 2014

Receivers and New Michigan Court Rule, *Finance, Real Estate & Bankruptcy News*, May 30, 2014

Security Agreements and Domain Names: Is your debtor's most valuable property secured?, *Foster Swift Business & Corporate Law Report*, March 27, 2014

Bankruptcy Chapter, *Michigan Basic Practice Handbook*

Best Lawyers in America®
2007-2018 (Bankruptcy and
Creditor-Debtor Rights/ Insolvency
and Reorganization Law; Litigation-
Bankruptcy)

2012 *Best Lawyers*® Bankruptcy
Litigation "Lawyer of the Year" in
Grand Rapids

Michigan *Super Lawyers* 2013-2014
(Bankruptcy: Business)



MEMBERSHIPS & AFFILIATIONS

Legal Affiliations:

- Grand Rapids Bar Association
- State Bar of Michigan

Industry & Professional Associations:

- American Bankruptcy Institute
- Turnaround Management Association

Daniel J. Yeomans
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President

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Qualification Summary

An excellent background in Court Appointed Receivership, business management, real estate brokerage, with more than 700 receivership projects and 30,000 hours directly engaged in distressed business management over a 20+ year career. Daniel Yeomans has been appointed in 42 counties in Michigan and the Federal District Court, Eastern and Western District of Michigan.

Professional Experience

1993 to Present

Amicus Management, Inc.

Daniel Yeomans is President of Amicus Management, Inc. and he has personally handled nearly 700 cases during the past 24 years as a court-appointed receiver, broker, and advisor in loan workouts. He provides supervision to project managers, accountants, security teams, and numerous sub-contractors to assume management control according to the Order Appointing Receiver. He actively participates in the on-going business management and reports financial information and significant matters to the Court and interested parties. Dan has sold more than \$750 million in distressed commercial real estate and REO assets including: hotels, retail centers, office buildings, marinas, multi-family, industrial, and condominium developments. The art and science of effectively negotiating through a turnaround, workout, or receivership has many nuances and hidden obstacles where experience makes a difference in the recovery. Dan has dedicated his entire career to this industry with more than 30,000 hours of hands-on management, negotiation, and communication to Plaintiffs, Defendants, and Courts.

Selected Assignments

Receiver, Five Hotels in Michigan

Currently appointed as Receiver for five hotel entities in three separate counties where all properties were simultaneously secured while maintaining uninterrupted operations. The Defendant filed Chapter 11 Bankruptcy on this \$13 million debt; however, Amicus immediately filed a motion under section 543 of the U.S. Bankruptcy Code to request excusal from turnover of the estate to the Debtor in Possession. The Bankruptcy Judge issued an Order allowing Amicus Management to remain in control of the estate.

Receiver, Detroit Cold Rolling Mill Assets

Dan was appointed Receiver for a construction lien claim in Wayne County Circuit Court for the former McLouth Steel mill located in Gibraltar, Michigan. Detroit Cold Rolling, Inc. was a 600,000 square feet cold rolling mill that had more than \$30

million in new investment but closed in 2003. The property was encumbered with construction liens, environmental concerns, and governmental challenges along with numerous title issues. Dan and the receiver's attorneys worked with the creditor committee to secure a "stalking horse bidder" and a Bid Procedures Order. The parties worked to complete an extensive survey, complete a land split, and resolve other claims. The bidding process attracted worldwide interest. A \$20 million dollar sale price to a foreign party more than doubled the \$8.5 million opening bid. Funds were disbursed to lien claimants within 90 days of the sale.

Receiver, Cyberco Holdings, Inc., Grand Rapids, Michigan

Receivers frequently coordinate efforts with the US Attorney, Attorney General, and the FBI in fraud cases where assets need to be managed and sold. One example of this work was the Barton Watson/Cyberco case in 2004 where Dan served as receiver for a \$175 million scam that was profiled on the television program American Greed shown on CNBC. Ultimately, Dan filed 19 entities into Chapter 7 Bankruptcy and provided substantial assets to the bankruptcy estate including \$700,000 cash, the location of \$1.0 million, numerous vehicles, and other personal property that auctioned for more than \$1 million. Of special interest was a wine collection valued in excess of \$115,000, and over \$200,000 of assets held by corporate officers. This bankruptcy remains an active case.

Receiver, Two Hotels in Northern Michigan.

Approximately \$12.5 million loan workout in a State Court Receivership consisting of two operating hotels. A full service luxury hotel included 71 rooms with fine dining and lounge. The limited service property was a franchise with 86 rooms and pool area. As Receiver, Dan negotiated real estate leases, franchise agreement, established credit, and maintained all payables and payroll to advance the hotels into a marketable position.

Education

Western Michigan University, MBA

Master of Business Administration, Concentration in Finance

Loyola University, New Orleans, LA

BBA Degree: Finance Major

Licenses, Professional Memberships and Designations

Real Estate Broker, State of Michigan
Certified Commercial Investment Member (CCIM) Designation #9176
National Association of Federal Equity Receivers (NAFER)
Association of Certified Fraud Examiners
American Bankruptcy Institute
Risk Management Association

Contributing Author

In 2013, Dan Yeomans was included with Patrick Mears and John T. Gregg as a co-author to *Receiverships in Michigan* published by The Institute of Continuing Legal Education.

Judge Christopher P. Yates was appointed to the Kent County Circuit Court on April 22, 2008. He has served in both the Criminal/Civil Division and the Family Division of that court. On March 1, 2012, he was assigned to run the specialized business docket for the court. Judge Yates received a BA from Kalamazoo College in 1983, and a JD and MBA from the University of Illinois in 1987. As an attorney, Judge Yates served as a law clerk to Chief Judge James P. Churchill of the U.S. District Court for the Eastern District of Michigan and to Judge Ralph B. Guy, Jr., of the U.S. Court of Appeals for the Sixth Circuit. Judge Yates also has worked as a federal prosecutor in Detroit, as an attorney-advisor in the Office of Legal Counsel at the U.S. Department of Justice in Washington, D.C., as Chief Federal Public Defender for the Western District of Michigan, and as a partner in two private law firms.

