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Business Law Section e-Newsletter

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July 18, 2016

From the Desk of Chair Douglas L. Toering

Does Michigan law empower court-appointed receivers to sue on behalf of a company against the company's former directors and officers for breach of fiduciary duty? No court had squarely addressed this issue since the Michigan Business Corporation Act was passed. But according to a recent case, the answer is now "yes." *Coppola v. Manning* (/opinions/content_search_detail/EjournalID=84714), unpublished opinion per curiam of the Michigan Court of Appeals, issued November 17, 2015 (Docket No. 323994), 2015 WL 7288050; lv den Michigan Supreme Court, Docket Number 152908 (June 28, 2016).



Greg Coppola was appointed to serve as the receiver for ReCellular, Inc., an Ann Arbor area company, pursuant to MCL § 600.2926. The stipulated order appointing Mr. Coppola gave him the general power to "initiate, prosecute, defend, compromise, intervene in, or become party to such legal actions or proceedings as the Receiver deems appropriate to carry out his duties." After he took over, Coppola inspected the company's books and records. He determined that the former directors and officers had committed breaches of fiduciary duty, which caused the financial decline that led to his appointment. He thus determined that his duties as a receiver mandated that he file suit, and he did so.

The Washtenaw County Circuit Court dismissed the suit pursuant to MCR 2.116(C)(7) and (8). The trial court held, among other things, that Coppola lacked standing under the Michigan Business Corporation Act and that officers and directors could not be sued by the company, a receiver, or creditors.

On November 17, 2015, the Michigan Court of Appeals reversed. The court stated: "Given a receiver's general authority to sue set forth in MCR 2.622(E)(1) and Coppola's specific authority, as set forth in the court's order, to initiate lawsuits that he deems appropriate

to carry out his duties, it follows that Coppola had authority to initiate the current lawsuit to enforce ReCellular's claims for breach of fiduciary duty against its officers and directors." Moreover, as a receiver, "Coppola had both the authority and obligation to initiate lawsuits for the protection and preservation of ReCellular's assets, including any cause of action it may hold against its former directors and officers."

The court concluded: "In sum, as receiver, Coppola had standing to pursue lawsuits on behalf of ReCellular for the purpose of protecting the receivership estate and, because ReCellular could pursue a claim against defendants for breach of the duties under MCL 450.1541a, it follows that Coppola may pursue such a claim in his role as receiver." The defendants appealed to the Michigan Supreme Court, which on June 28, 2016, issued a one-page order denying leave.

Although *Coppola v. Manning* is unpublished and is therefore not binding precedent, corporate directors and officers should nevertheless be aware that they can potentially be sued by a receiver for breaches of fiduciary duty.

Thank you to Sara K. MacWilliams, who was one of the attorneys representing the receiver, for her contribution to this newsletter.

If you would like to become involved in the Debtor/Creditor Rights Committee, feel free to contact the co-chairs, [Judy B. Calton \(mailto: jcalton@honigman.com\)](mailto:jcalton@honigman.com) and [Judith Greenstone Miller \(mailto: jmiller@jaffelaw.com\)](mailto:jmiller@jaffelaw.com). Or if the Commercial Litigation Committee interests you, please contact yours truly.

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Section Events

Debtor-Creditor Rights Committee Meeting

([http://connect.michbar.org/businesslaw/events/eventdescription?](http://connect.michbar.org/businesslaw/events/eventdescription?CalendarEventKey=e4c40bd1-017c-4a9c-af02-ccaaad137d6d&Home=/businesslaw/events/recentcommunityeventsdashboard)

CalendarEventKey=e4c40bd1-017c-4a9c-af02-

ccaaad137d6d&Home=/businesslaw/events/recentcommunityeventsdashboard)

August 17; Southfield

Business Law Institute, Annual Meeting, & Award Presentation

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October 7; Grand Rapids

Regulation of Securities Committee Meeting

(<http://connect.michbar.org/businesslaw/events/eventdescription?>

CalendarEventKey=a44a6906-067d-40c9-9b75-

f9f92b7ec700&Home=/businesslaw/events/recentcommunityeventsdashboard)

October 11; Southfield

Business Boot Camp 1—West Michigan

(<http://connect.michbar.org/businesslaw/events/eventdescription?>

CalendarEventKey=5010c051-6df1-4d48-9185-

79bdb6f01f26&Home=/businesslaw/events/recentcommunityeventsdashboard)

November 3–4; Grand Rapids

Council Meeting (<http://connect.michbar.org/businesslaw/events/eventdescription?>

CalendarEventKey=6d644896-2f7c-47a1-ad7b-

ef4a45c93496&Home=/businesslaw/events/recentcommunityeventsdashboard)

December 3; Southfield

Business Boot Camp 1—Metro Detroit

(<http://connect.michbar.org/businesslaw/events/eventdescription?>

CalendarEventKey=aa70b016-f3be-4372-bdb5-

f95cc3c78eea&Home=%2fbusinesslaw%2fevents%2frecentcommunityeventsdashboard)

January 30–31; Plymouth