

## Michigan Supreme Court Clarifies Statute of Limitations for Shareholder/ Member Oppression Claims

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When does the statute of limitations start running on claims for minority shareholder/member oppression under Michigan law?

In its recent decision in ***Frank v. Linkner***, a unanimous Michigan Supreme Court answered that question. It held that the statute of limitations accrues “when defendants’ actions allegedly interfered with the interests of a plaintiff as a member” and not necessarily “when a plaintiff incurs a calculable financial injury.”

### **Frank v. Linkner**

*Frank* stems from former employees of ePrize acquiring common membership shares in the company. The employees alleged that the LLC manager verbally promised not to dilute or subordinate their shares in the company. In 2007, ePrize entered into loans with various investors and provided those investors with ownership units in exchange for the loans. In March 2009, ePrize amended its operating agreement to provide the investors distribution priority over the employees. In August 2012, ePrize sold substantially all of its assets and, in accordance with the amended operating agreement, ePrize’s investors received nearly \$100 million in net proceeds. The employees received nothing for their common shares. In April 2013, the former employees brought a claim of member oppression against the managers of ePrize. The trial court dismissed the claims as untimely under the three-year statute of limitations of **MCL 450.4515** (the Michigan minority member oppression statute).

The Michigan Court of Appeals reversed. The court held that the Plaintiffs’ claims did not accrue until August 2012, when ePrize sold substantially all of its assets, rather than March 2009, when the ePrize operating agreement was amended. The Court of Appeals reasoned that plaintiffs had “suffered no harm resulting in damages from defendants’ alleged wrongdoing until the sale and distributions were made in 2012.” The court also held that the three-year limitation period in MCL 450.4515 is a statute of limitations, not a statute of repose.

The Michigan Supreme Court affirmed in part and reversed in part. The Court agreed that MCL 450.4515 was a statute of limitations, not a statute of repose. However, the Court held that a claim for membership oppression “accrues at the time the wrong upon which the claim is based,” and that “[o]nce a plaintiff proves that a manager engaged in an action or series of actions that substantially interfered with his or her interests as a member, the ‘harm’ has been incurred, and therefore the claim has accrued.” The Supreme Court clarified that “[t]he Court of Appeals erred by focusing on the availability of monetary damages.”

Applying this principle to the facts of the case, the Supreme Court held that Plaintiffs’ claims accrued in March 2009, when the ePrize operating agreement was amended, and not in August 2012, when the assets of ePrize were distributed. As a result, the court held that the Plaintiffs’ claims for money damages were barred by the statute of limitations, unless it is determined on remand that plaintiffs are entitled to tolling under Michigan’s fraudulent concealment statute (MCL 600.5855).

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If you have questions about corporate litigation or shareholder/member oppression claims, please reach out to a Miller Canfield attorney.

Robert Murkowski  
+1.313.496.8423  
[murkowski@millercanfield.com](mailto:murkowski@millercanfield.com)