



# MANTESE HONIGMAN, PC BUSINESS LAW ATTORNEYS

## **Shareholders Prove Oppression in 11 Day Precedential Trial, Recover \$2,100,000 & Secure Appointment of a Director**

Franks v Franks, No. 13-809-CBB (St. Joseph County, June 12, 2023).

Plaintiff-owners of 50% of the non-voting shares of a manufacturing company in the heat-transfer industry, prevailed in their claim of shareholder oppression. Defendants were officers and directors who made a low offer to redeem Plaintiffs' shares and then followed this up by refusing to pay dividends, though the company had ample funds.

A Zoom bench trial was conducted over 11 days. Under cross-examination by Plaintiffs' co-lead counsel, Gerard Mantese, the company CEO and Board Chair admitted that even he believed that the low share redemption offer made to Plaintiffs was a bad idea. Mr. Mantese further elicited during cross-examination that the company made a redemption offer that: (1) was lower than the price at which a corporate insider was paid; (2) had no valuation to support it; and (3) was tendered without the CEO/Chair ever inquiring of his fellow Board members how they had arrived at such a low share price. Under cross-examination by Plaintiffs' co-lead counsel, Ian Williamson, the company's financial consultant admitted that the Defendants' redemption price to Plaintiffs was "pulled out of thin air," and had nothing to support it, and that the goal of the Defendants (all fiduciaries) was simply to acquire Plaintiffs' shares at the lowest price possible. All these actions were taken as the company was blocking payment of dividends to Plaintiffs.

After trial, the Court found that "the management team and Board acted in bad faith to withhold payment of dividends," and that, "The Defendants are not permitted to afford themselves protection under the business judgment rule when they have acted in bad faith." The Court ordered four of the individual Defendants and the company to pay damages to Plaintiffs in the form of a dividend totaling \$2,100,000, including interest. The Court also ordered the appointment of an independent outside Director to the Board.

Prior to trial, the case generated the appellate decision of *Franks v Franks*, 330 Mich App 69 (2019), where the Court of Appeals held that the business judgment rule defense is inapplicable where oppression is shown, and it involves intentional misconduct. Here, intentional shareholder oppression is precisely what the Trial Court found.

This is a unique case where the Court awarded damages rather than a buyout. With this remedy, Plaintiffs kept their equity intact for themselves and their families and obtained a 7-figure damages award and hundreds of thousands of dollars in additional dividends after suit was filed, while Defendants remained under continual scrutiny by the minority shareholders, and under the watch of an independent director. Defendants were represented by three of the State's largest law firms.



Gerard V. Mantese



Ian Williamson



Douglas Toering

**Type of action:** Shareholder oppression

**Injuries alleged:** Deprivation of dividends

**Name of case:** *Franks v Franks*

**Court / Case No. / Date:** St. Joseph County / 13-809-CBB / June 12, 2023

**Tried before:** Judge T.J. Ackert

**Judgment amount:** \$2,100,000

**Most helpful expert:** Thomas Frazee, CPA

**Attorneys for Plaintiffs:** Gerard V. Mantese, Ian Williamson, Douglas Toering

Mantese Honigman, PC handles complex business litigation including shareholder and LLC member disputes (business divorces); class actions; business transactional matters; and real estate matters. Mantese Honigman, PC has four offices: Metro Detroit, Grand Rapids, St. Louis, and New York City.



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