

COA Opinion: Litigating issues of first impression is not always sufficient to invoke the interest-of-justice exception to an award of attorney fees under the offer-of-judgment rule.

12. January 2011 By Layla Kuhl

In *Prime Financial Services, L.L.C. v. Vinton and Bank One, N.A.*, the Court of Appeals held that under MCR 2.405, the offer-of-judgment rule, the public interest in having sophisticated companies settle complicated financial transactions prevailed over the interest in having issues of first impression litigated and reversed the trial court's denial of attorney fees. Judge Beckering [dissented](#), stating that the trial court did not abuse its discretion in refusing to award attorney fees because this case involved several issues of first impression and important areas of law were furthered by this case not settling.

After plaintiff-appellee Prime Financial Services rejected defendant-appellant Bank One's counter-offer to settle, the jury returned a 1.18 million dollar verdict in favor of plaintiff. The Court of Appeals reversed and remanded concluding that the trial court should have granted defendant's motion for a directed verdict. Plaintiff moved for reconsideration, which the Court of Appeals denied. Plaintiff then applied for leave to appeal to the Michigan Supreme Court, which also was denied.

Following the entry of judgment, defendant moved for costs and attorney fees under MCR 2.405, the offer-of-judgment rule. The trial court granted defendant costs but denied its motion for attorney fees concluding that this case involved matters of first impression and the litigation further developed this area of law.

In reversing the trial court, the Court of Appeals majority acknowledged that this case involved matters of first impression, but decided that the interest in having this matter judicially decided did not override MCR 2.405's purpose of encouraging settlement.

The dissent also agreed that the case involved issues of first impression, but concluded that under *Luidens v. 63rd District Court*, 219 Mich. App. 24; 555 N.W.2d 709 (1996), attorney's fees should not be awarded in the interests of justice. In *Luidens*, the Court of Appeals panel stated "that a case involving a legal issue of first impression or a case involving an issue of public interest that should be litigated are examples of unusual circumstances in which it might be in the 'interest of justice' not to award attorney fees under MCR 2.405." *Id.* at 35.

This case may be of interest to the Michigan Supreme Court because the Court has not addressed the interest-of-justice exception and because the procedural history of this case complicates the decision to award attorney fees.