

North Carolina Business Court Ruling Regarding Fees May Impact Class Action Claims



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North Carolina Business Court Judge Louis Bledsoe III has held that the named plaintiff must pay any defendant's costs incurred after the plaintiff rejected the defendant's offer of judgment. This decision brings to an end more than three years of class action litigation in *Gay v People's Bank* (Lincoln County, 13 CVS 383). The plaintiff in the suit challenged overdraft fees charged by Peoples Bank. Peoples Bank responded that the fees were authorized by the account agreements signed by plaintiff. The Business Court agreed with the bank and granted [summary judgment](#) in its favor. That judgment was affirmed by the North Carolina Court of Appeals.

The bank, in order to resolve the case earlier, made the plaintiff an offer of judgment under Rule 68 of the North Carolina Rules of Civil Procedure. Rule 68 is a risk-shifting rule that penalizes a party who rejects a reasonable settlement offer by requiring them to pay litigation costs incurred after the offer if the eventual judgment is not as favorable as the offer. The plaintiff argued that he should not be required to pay the litigation costs for a number of reasons, all of which the Business Court addressed and rejected.

Although the amount of the costs awarded is modest (less than \$6,000), the ruling is significant for two reasons. For lawyers, it interprets Rule 68 of the North Carolina Rules of Civil Procedure on a previously unsettled point of law—and in a way that differs from the Federal Rules of Civil Procedure. For litigants, it makes clear that plaintiffs who lose their cases on summary judgment must pay costs incurred by defendants after making offers of judgment.

The decision by the North Carolina Business Court will be particularly important to litigants in class action cases. The defense of class action lawsuits is expensive. Ordinarily the plaintiffs who bring the lawsuits don't care about that

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because all of the defense costs are paid by the defendants. Now that it is clear that at least some of those costs may be shifted to the plaintiffs, the pursuit of class action claims will require more careful analysis.