

Simply Because You Have Been Sued Doesn't Mean That You Should Sue Back – At Least Not Immediately

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Many employers are shocked when they find out they have been sued by a former employee, and that shock frequently turns to anger. Employers often tell their lawyers that there's no merit to the employees' allegations, and they say they want to countersue for "malicious prosecution." A high profile case that was recently filed in New York state court – *Facebook Inc. et al. v. DLA Piper LLP (USA) et al.*, (Case No. 653183/2014) – provides a brief learning lesson for employers who believe that the best defense to a lawsuit is a "malicious prosecution" offense. In the case, the plaintiff – Facebook – sued the law firm that represented businessman Paul Ceglia in a breach of contract lawsuit that Ceglia brought against Facebook which was dismissed in March 2014. While laws vary from state to state, a judgment in the defendant's favor is generally required before the defendant can sue for malicious prosecution. In other words, simply because an employer has been sued by, say, a former employee does not mean that the time is ripe for the employer to sue the employee back in the same lawsuit. Before an employer can sue the employee for malicious prosecution, the employer must first have prevailed in the lawsuit that the employee brought against it. Only then will a malicious prosecution claim be ripe for adjudication.

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