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Tales from the Dark Side: Insights from a Former Plaintiff's Attorney

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Results matter. A simple mantra, but true for all clients, whether plaintiff or defendant. In litigation, early decisions have late-game consequences, and different strategies should be employed to achieve the best possible result at trial. After spending a decade representing hundreds of plaintiffs, I have developed insights that are critical to my practice today.

As a plaintiff's attorney, it was frustrating when a defendant filed suit first, thereby robbing me of my routine plaintiff's litigation and trial strategy. By way of example, in certain cases, a potential recipient of a demand, can implement an early and aggressive strategy to flip the script on a would-be plaintiff. When a party receives a demand, the obvious next step is to respond. But there are other options. Instead of simply responding, the party receiving a demand could file a lawsuit first. By filing the lawsuit first, the recipient of the demand then takes the role of "plaintiff" in a situation where they appeared likely to be a defendant. Although this seems simple on its face, this strategy changes the entire landscape at trial. Now, the party receiving the demand, who almost was a defendant, instead is the plaintiff and is the first to talk to the jury during jury selection, the first to present an opening statement, the first to present evidence, and not only do they go first throughout most phases of the trial, but they also have the last word during closing. For this reason, when available and appropriate, a party who receives a demand should consider responding to a demand with a lawsuit of their own thereby becoming the plaintiff in a situation where they may have been a defendant with a counterclaim.

Ultimately, there is no one-size-fits-all strategy for any given client or situation. The strategy employed always has to be tailored to obtaining the best possible result or outcome for a client.

If you have any questions regarding litigation or trial strategy, please reach out to [Aaron C. Garnett](#) or another member of our [Trial team](#).