

ENFORCING A NON-COMPETE?
Be Careful What You Ask For
By Jeremy Slusher

You are an employer. You have your sales staff and upper-level management execute non-competition agreements. You just found out that a sales associate you recently terminated has started working for one of your competitors. You believe this is a violation of his non-compete agreement. You want to send the former employee and his or her new employer a letter threatening litigation. Wait!

Until recently, it was believed that pre-litigation demand letters were privileged and could not form the basis for most types of legal proceedings. However, at least one Florida court recently disagreed. In *Sci Funeral Services of Florida, Inc. v. Henry*, 839 So. 2d 702 (Fla. 3d DCA 2002), the Third District Court of Appeal decided a former employer could be found liable in tort for threatening to enforce a non-compete agreement against its former employee and his new employer when the term of that non-compete agreement had clearly expired. The Third District determined that by threatening his new employer, the former employer had tortiously interfered with the employee's present employment relationship.

What does this mean to you? It means you should consult with an attorney and confirm you have a viable claim before threatening litigation. As an added layer of protection, it may be a good idea to have an attorney review any non-compete agreements you presently have in place to determine whether any changes or corrections need to be made. Non-compete agreements can be a valuable and effective tool when implemented and enforced properly.