

**Hypothetical Six:**  
**Litigating Consumer Protection Act and Non- Solicitation Claims**  
**(Meg Nelson)**

Winner of Hypo 2 vs. Winner of Hypo 3

Amy Lawyer gets a call from an occasional tennis partner of hers, Bill Brilliant, who is very upset because he has just been served with a complaint by his former employer, Hi-Tech. Bill recently left Hi-Tech to work for Ultra-Tech, one of its competitors. Hi-Tech claims that Bill has breached a non-competition and non-solicitation agreement that Bill signed on the day he began work at Hi-Tech. Bill tells Amy he had not known that he would have to sign any such agreements but that since he had already given up his former job and moved his family to New Hampshire to take the job with Hi-Tech, went ahead and signed the agreements. Bill explains that Hi Tech is known in the industry for being very aggressive in preventing former employees from working for either direct or indirect competitors and feels its action against him is just part of this very aggressive litigation strategy.

Amy agrees to represent Bill and files an answer including a counter-claim for damages under New Hampshire's Consumer Protection Act, RSA 358-A. Larry Litigator, representing Hi-Tech, moves to dismiss the Counter-Claim.

What are the top five arguments to be made in support of a motion to dismiss the CPA Counterclaim?

1. **Not in trade or commerce (also acceptable private contract not covered):** Remedies under the CPA are not available when the transaction is strictly private in nature. Employment contract is not "conduct in the course of trade or commerce."
2. **Scope of CPA language:** CPA is narrower than its broad language suggests
3. **NH follows Mass law:** New Hampshire often follows or looks to Massachusetts law for guidance in interpreting the CPA and Massachusetts has long held that the Massachusetts CPA is not applicable to employment disputes.
4. **Abusive litigation not covered by CPA:** New Hampshire has not recognized abusive litigation tactics in a particular case as violative of the CPA.
5. **Abusive litigation claim does not belong to Bill (also acceptable Abusive litigation claims belongs to Ultra-Tech):** Abusive litigation strategy as part of a broader business plan could give rise to a cause of action but those claims would belong to Bill's current employer, Ultra-Tech.