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## 'First Five' recipient sues R&D exec, competitor over poaching



PHOTO | STEVE LASCHEVER

Henkel's North American headquarters is located in Rocky Hill, at One Henkel Way (shown above).

MATT PILON

German consumer products giant Henkel, which has its North American headquarters in Rocky Hill, has sued to stop a competitor from poaching a top research and development executive based in Connecticut, where the maker of Sunlight and All laundry detergents is expanding its footprint with the help of as much as \$25 million in state incentives.

Henkel, one of the newest recipients of state aid under Gov. Dannel Malloy's First Five Plus program, is suing New Jersey-

based Church & Dwight (C&D) — which owns competing laundry brands OxiClean and XTRA — and a former executive, Carlos Linares, accusing both of violating noncompete agreements and possibly being in possession of trade secrets.

Linares, a 30-year industry veteran and chemical engineer, was the chief technology officer of Wilton-based detergent maker Sun Products, which Henkel purchased in September for \$3.6 billion.

In the months following the acquisition, Linares accepted a new role as Henkel's senior vice president of research and development and regulatory affairs for its North American laundry and homecare division, which is moving to Stamford this year. He also negotiated a new benefits package and severance agreement, and in October, visited Henkel higher ups in Germany to learn more about their product pipeline and strategy, according to Henkel's complaint filed in Bridgeport federal court this month.

On Dec. 5, less than two months after getting his new title at Henkel, Linares resigned, notifying the company he accepted a job at C&D, which, court records reveal, also



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Carlos Linares, former senior VP of R&D and regulatory affairs at Henkel.

made a play in 2016 to acquire Sun Products.

Linares was to start work as C&D's global R&D head late last week, but Judge Warren Eginton temporarily blocked the hiring based on Henkel's claims that the new job violates a noncompete agreement barring him from performing similar work for a competitor one year after

leaving Henkel.

Attorneys for Linares deny that his noncompete would be violated. They say C&D has agreed to bar Linares for one year from engaging in any business lines that compete with Henkel. But Henkel said it's not satisfied with that proposed solution.

Meantime, Henkel also claims that the failed M&A discussions between Sun Products and C&D, held in April 2016, were restricted by a confidentiality agreement that forbade C&D from soliciting certain Sun Products employees for two years.

The company claims C&D has violated that agreement in trying to hire Linares, a move Henkel said could cause its business to suffer "irreparable harm."

C&D's attorneys have denied that allegation in court filings, arguing that Linares did not fall under the confidentiality agreement governing the ultimately unsuccessful talks, which took place less than two months before Henkel and Sun Products reached a deal.

A hearing on a temporary-injunction requested by Henkel is scheduled for February.

### Noncompetes spreading

The Henkel case is an example of a growing number of lawsuits involving noncompete contracts, which are common for corporate execs with access to trade secrets, but have also spread more deeply into other areas, including engineering and sales, according to The Wall Street Journal, which reported research in 2013 showing a 61 percent spike in published court rulings on noncompetes between 2002 and 2012.

The contract arrangements have also come under greater scrutiny and criticism.

Last year, for example, the Obama Administration called on states to ban noncompetes, especially for low-wage workers and those not privy to trade secrets, arguing that the contracts interfere with worker mobility.

Employers argue noncompetes — held by approximately 30 million U.S. workers — help protect intellectual property.

N. Kane Bennett, a partner at Middletown's Aeton Law Partners, who has represented both plaintiffs and defendants in noncompete lawsuits, said he's seen disputes involving employees making as little as \$50,000 a year.

In many cases, a departing employee doesn't have the financial resources to fight a noncompete lawsuit, he said. But that's not the case in the Henkel dispute, which pits two multi-billion-dollar companies against each other.

"You have two sides who have the resources to really get into the issue," said Bennett, who reviewed the Henkel case but is not involved in it. "Obviously you've got an employee here who's in demand."

Depending on how far the case proceeds, he predicted much will hinge on how the court interprets the wording and scope of Linares' noncompete contract.

He said C&D's proposed strategy of walling off Linares from competing business lines for one year could work, depending on what his specific role will be and other factors.

### Corporate secrets or family photos?

As part of its lawsuit, Henkel also alleges that Linares remains in possession of thumb drives that may contain proprietary information, which he could share with C&D — another claim Linares' attorneys deny.

Henkel said it hired a computer forensics analyst who found that Linares inserted thumb drives into his work computer immediately before and after submitting his resignation, as well as at unspecified times earlier in the year, according to court documents. Henkel is demanding access to those drives.

"Given his duties and responsibilities at Sun Products, as well as the voluminous confidential information and trade secrets he was exposed to, it would be impossible for Linares to work for C&D in virtually any capacity, but particularly as its head of R&D, without using plaintiff's confidential information to guide and direct his business decisions on how to best compete against his former employer," Henkel's complaint states.

Linares' attorneys deny he is in possession of any confidential information. In court filings, they said they hired their own computer forensics analyst to inspect three drives in Linares' possession, finding they contained only photos and videos from personal events like vacations, birthdays and concerts.

The attorneys charged that Henkel's demands to have Linares turn over various electronic devices amount to a "fishing expedition" and would constitute an "Orwellian intrusion."

During the months after its Sun Products acquisition, Henkel claims Linares was in periodic contact with C&D about a potential job.

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Henkel also alleges that Linares negotiated a benefits package with Henkel in bad faith because he did not disclose during the process that he was talking with C&D about a job. The result, Henkel claims, is it was "duped" into agreeing to a \$400,000 severance package for an executive who likely knew he would be leaving soon.

But Linares' attorneys say he was merely being prudent, not deceptive, in keeping his talks with C&D secret while negotiating his benefits agreement with Henkel. Insinuating that Linares did something nefarious is "absurd," attorneys wrote in court filings.

"Linares did not disclose to Plaintiffs that he was considering an offer from C&D for the same reason that virtually all employees do not tell their employers they are looking for alternative employment," his attorneys wrote in a filing last week.

Henkel's suit asks the court for damages and interest, and to bar C&D from hiring Linares until late April, 2018. Henkel also wants Linares barred from working for any other competitor for one year.

Both C&D and Henkel, which are publicly traded, declined to comment on the suit.

### Henkel's CT presence

Henkel, which has its corporate headquarters in Dusseldorf, Germany, operates three major business units worldwide (adhesives technology, beauty care and laundry and home care) and has been in Connecticut since it acquired adhesive maker Loctite in the late 1990s.

It relocated its North American headquarters from Pennsylvania to Rocky Hill in 2008, bringing approximately 80 jobs at the time, a number that has since grown to approximately 500, North American President Jerry Perkins said in a 2015 interview.

Its Sun Products acquisition last year appeared choreographed with the First Five deal that came just a few months later.

Now, Henkel's footprint in the state is set to expand to its largest ever. The company is moving its consumer goods headquarters from Arizona to Stamford. It's also relocating its Sun Products employees in Wilton to Stamford.

The Arizona relocations, which are slated to start as early as April, represent an approximately \$50 million investment, of which half or more will come from Henkel.

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