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Engineering Co. Gets \$28M Award Over Luxury SUV Pact OK'd

By **Caroline Simson**

Law360 (December 14, 2021, 8:53 PM EST) -- Edag Engineering GmbH has won confirmation of a \$28.6 million arbitral award against electric vehicle startup Byton, a victory as the Swiss company scrambles to collect what it's owed amid findings that the startup may be trying to transfer its assets and operations to China.

U.S. District Court Edward M. Chen in California concluded on Monday that there was no reason not to enforce the award issued earlier this year by JAMS arbitrator and former San Francisco County Superior Court Judge William J. Cahill, saying it was well-reasoned and within the authority granted to Cahill by the parties' agreement.

The award includes some \$28.6 million in damages plus nearly \$1.6 million in interest and costs, totaling some \$30.22 million. It was issued to Edag Engineering after a payment dispute arose from its combined efforts with Byton to build an all-electric luxury SUV called the M-Byte.

On Monday, Judge Chen also authorized Edag to register his ruling in other district courts "based on the evidence of flight by Byton North America ... and moreover that BNA has fled its office address" in Santa Clara, California. In addition, Judge Chen noted that Byton's CEO is located in Hong Kong.

The order opens the door for Edag to begin targeting Byton assets in those districts. It comes just over a month after Cahill issued an injunction barring Byton from transferring or concealing any of its assets that could be used to pay the award.

In his order, Cahill pointed to reports out of China that the M-Byte was being road-tested there, as well as evidence produced by Edag that the test vehicle in question is the car that Edag designed.

Moreover, Byton had recently paid hundreds of thousands of dollars it owed to the software company storing intellectual property for the M-Byte on a cloud-based platform, meaning that it again had access to the material. That included data provided by Edag, Cahill wrote.

"On September 15, 2021, Edag also learned that Byton and a Chinese affiliate had been actively working to transfer the IP for the M-BYTE — possibly the only thing of value left at Byton North America — from a U.S.-based cloud storage facility to a China-only server," according to his Nov. 7 order. "If Byton is successful in moving its assets overseas there will be no assets in the United States that can be used to satisfy the €23.4 million judgment won in the arbitration."

Lewis & Llewellyn LLP partner Evangeline A.Z. Burbidge, representing Edag, told Law360 on Tuesday that they're satisfied with the ruling, which she called "absolutely the right outcome."

"Our client did its job, providing world-class service in the face of novel engineering challenges. We were pleased to help them receive

every penny they had earned, with interest," she added.

Counsel for Byton could not immediately be reached for comment.

In its petition to enforce the award against the Byton's North American arm filed earlier this year, Edag Engineering GmbH said that the M-Byte project had proven to be "too ambitious" and that the carmaker had accumulated millions of dollars worth of unpaid invoices on their contract by 2019.

Edag and Byton North America had begun working together on developing the M-Byte soon after Byton was founded in 2016, eventually inking a €50 million technology and license development agreement in 2017. Although the deal went smoothly at first, Edag said that by late 2018 it was starting to fall apart.

"Byton lacked institutional knowledge, a clear chain of command, and it did not have suppliers lined up, as a more established car manufacturer would," Edag alleged.

Although Byton executives promised that they would pay some €19 million in unpaid invoices owed by July 2019, the money never materialized, and Edag initiated arbitration before JAMS later that year.

Byton asserted a \$31 million cross-claim in the arbitration, accusing Edag of negligence and breach of contract over alleged engineering errors.

But Cahill rejected those counterclaims and instead issued the award favoring Edag.

Back in mid-2018, Edag touted the M-Byte in a press release as a "completely new electric car with extensive functionalities in automated and autonomous driving."

Features of the SUV promoted on Byton's website include a 48-inch high-resolution display and front rotating seats that "transform the Byton M-Byte into an immersive space where digital and physical experience converge to provide you with unforgettable moments."

According to reports, the M-Byte was publicly unveiled in 2018 and was expected to go on sale this year. But the company ran into problems amid the coronavirus pandemic last year, when it reportedly furloughed about half of its 450 employees at its North American headquarters in Santa Clara.

Edag Engineering is represented by Evangeline A.Z. Burbidge, Marc R. Lewis and Bradley E. Estes of Lewis & Llewellyn LLP.

Byton North America is represented by Keith A. Sipprelle of Van Etten Sipprelle LLP.

The case is Edag Engineering GmbH v. Byton North America Corp., case number 3:21-cv-04736, in the U.S. District Court for the Northern District of California.

--Editing by Jay Jackson Jr.