

AUTOMOTIVE QUARTERLY



2nd Quarter, 2011 • Volume 2, Number 2

The Automotive Industry and the 2011 Natural Disasters.

Our sympathy, concern, and support continue to be delivered to Japan and its people in hopes that the healing and rebuilding process will be swift following the Japan earthquake and tsunami. Likewise, more recently, the tornados and flooding in the South have severely impacted people and businesses in Alabama, Tennessee, and the surrounding states. As part of the rebuilding process, the impact upon all automotive companies is beginning to be understood. The industry also is recognizing new concerns related to each OEM's dependence upon a supply chain to support production throughout the world.

As our clients learned during the automotive restructurings and liquidations over the last decade, supply chain mapping combined with financial reviews of suppliers are critical to protecting continuity of supply and production. The industry has renewed its collection of supply chain information to manage the short and long term impact of the natural disasters that have occurred in 2011. At the same time, Dickinson Wright PLLC has compiled a list of some of the unique legal issues it anticipates may affect the industry. We particularly want our clients to consider those issues as they work to protect production and find opportunities to maintain and increase their market share and business success.

1. Monitoring Incoming and Outgoing Materials in Connection with U.S. Customs and Border Protection Requirements and Environmental Laws. The U.S. Customs and Border Protection is monitoring incoming cargo, mail and persons arriving from Japan for radioactivity using a variety of monitors, detectors and secondary screeners. Entry into the U.S. will be denied for contaminated cargo and mail found to be impacted above safe levels. Dickinson Wright attorney **Sharon Newlon** is counseling automotive clients on what generally is considered "safe" while also monitoring publications for any new announcements that may impact screening requirements for incoming cargo.

Nevertheless, she is reminding clients that what may be acceptable for incoming cargo could differ from what levels trigger radiation portal monitors at landfill sites later. Accordingly, clients are best served by proactively addressing these potential issues now.

- 2. Tackling Employee Safety Concerns.** Each company should consider what actions, if any, it should take to ensure there are no safety issues with materials shipped from Japan. Dickinson Wright attorney **Reid Estes** is reminding clients of the importance to review current safety protocols for parts handling, to evaluate whether any additional safety measures or communications to employees are warranted to reassure the workforce, and to also be mindful of legal issues that might arise in connection with those measures and communications.
- 3. Considering Employee Pay and Benefit Issues.** Employers should evaluate what should be done with their workforce if production is idled due to a disruption in supply, especially in connection with pay and benefit issues. These issues are reminiscent of those encountered during the economic crisis, and Dickinson Wright attorney **David Deromedi** is again assisting clients with considering the many legal issues associated with determining whether and to what extent employees can be furloughed.
- 4. Evaluating Contractual Rights and Responsibilities.** While many company's initial efforts were focused on force majeure notices and communications with their investors, shareholders, and lenders, efforts are now shifting to additional rights and responsibilities. The contract law expert at Dickinson Wright, **Roger Cummings** is assisting clients with addressing issues such as whether customers are responsible for the additional manufacturing and transportation costs arising in connection with the natural disasters or, worse yet, the allocation of limited available supply for certain commodities, i.e., getting your fair

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share of a short supply. Particularly, if a supplier is claiming an inability to supply the full amount required (due to alleged shortages), the customer wants to get as much information as possible regarding the situation to make sure that it is not being treated unfairly or in violation of its rights under the UCC and applicable agreements. The point is to be proactive if someone is telling you they can't supply your requirements and to ask for information. You can be sure your competitors are doing the same.

5. Maintaining Donative Intent for Contributions to Aid Organizations. Many automotive clients are considering sizeable contributions to aid organizations supporting the recovery efforts in Japan and the South. Ensuring that the donor's intentions for the gift are maintained is generally a matter of state contract law. Dickinson Wright attorney **James Plemmons** reminds us that if you intend that the contribution be used for a specific purpose or specific area within Japan or the South, then an agreement with the aid organization that clearly and concisely documents that intent is important to ensure compliance.

6. Customs and International Trade. In an increasingly global marketplace, international trade has taken on greater importance for companies as they adjust manufacturing and service locations, supply chains and logistics and seek out new markets abroad especially in light of the recent events. These opportunities also present compliance challenges under customs laws, export control regulations and a host of other regulatory requirements, many of which carry severe criminal and civil penalties. **Bruce Thelen** works with Dickinson Wright clients in meeting the challenge of complying with these laws while maximizing benefits and opportunities in their business activities throughout the world.



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