

EV NEWSLETTER VOL.1 NO.1

Welcome Message from Co-Chairs of EV Advisory Board

On behalf of DW's EV Initiative, welcome to the first edition of DW's monthly EV Newsletter. Approximately two years ago, DW established its EV initiative, an interdisciplinary approach to counseling our clients regarding the challenges and opportunities inherent in the existential transformation of the automotive industry from internal combustion engines to battery-powered electric vehicles and autonomous vehicles. In this and future editions, we will strive to update the reader on material developments regarding the progress and timing of this transformation, discuss some of the myriad legal issues inherent in the transformation, and from time to time, highlight our lawyers' roles in helping our clients navigate these largely uncharted waters. The scope and complexity of the transformation are daunting, impacting not just those within the conventional automotive supply chain but less directly, and potentially significantly, government entities, private equity, and lenders and will involve virtually every legal discipline to a greater or lesser degree.

—Robert Weiss | Of Counsel
—Theodore B. Sylwestrzak | Member

GM and Microvast to develop Battery Separator Technology

GM and Microvast recently announced a collaboration to develop a new separator technology using intellectual property contributions from both companies, including a coating technology developed in GM's Research & Development labs in Warren, Michigan. The Department of Energy selected GM and Microvast to receive a \$200 million grant as part of President Biden's Bipartisan Infrastructure Law. The companies collectively intend to invest another \$300 million to support the new project. According to a press release by Microvast, a NASDAQ listed company, the facility is expected to create hundreds of jobs. The separator is a thin film between a cathode and an anode in lithium-ion batteries, preventing a thermal runaway and creating high amount of heat resistance (~300°C), which will improve the battery's overall safety, fast-charging, and battery life-cycle. The current technology involves using polyethylene (PE) and polypropylene (PP) based separators in lithium-ion batteries, which melt at approximately 135°C and 165°C, respectively, according to Microvast's press release.

DW's Take

Separator technology has proven to be a critical aspect of developing safe, reliable lithium-ion vehicle batteries. Collaborative relationships, such as the relationship between GM and Microvast, allow each party to take advantage of the technological strengths and knowledge of the other party while addressing gaps in their own technological capabilities and knowledge. However, such collaborative relationships typically rely on highly complex and sophisticated agreements. One of the more important aspects of any technology-collaboration agreement

is the division of intellectual property rights, including existing intellectual property owned by each party before the formation of the relationship and intellectual property developed, jointly or separately, during the relationship. The division may take the form of ownership rights, licensing, cross-licensing, or some combination of each. Since bargaining power of the parties may be uneven, a party risks giving away, either intentionally or unintentionally, valuable intellectual property or even the right to exploit its technology with other third-party partners or collaborators. It is paramount that any party to such a collaborative relationship have a comprehensive and strategic business plan that incorporates an intellectual property strategy defining the protection and use of its intellectual property assets using utility patents, design patents, trademarks, trade secrets, trade dress, and/or copyrights.

UAW's Gains and Losses

Victory in Ohio: The UAW union scored a major victory in early December 2022 when employees at the Ultium EV battery manufacturing plant in Ohio voted to be represented by the UAW. Ultium is a joint venture between General Motors and LG Energy Solution. The Ultium employees were nearly unanimous in their decision to elect UAW representation. In a representation election conducted by the National Labor Relations Board (NLRB), it was reported that 710 employees voted in favor of the union, while only 16 voted against UAW representation.

Buoyed by this success, and the expected proliferation of EV battery plants in the coming months, battery producers can expect to be high-priority targets for UAW organizing. UAW president Ray Curry released a statement signaling this priority: "As the auto industry transitions to electric vehicles, new workers entering the auto sector at plants like Ultium are thinking about their value and worth. This vote shows that they want to be part of maintaining the high standards and wages the UAW members have built in the auto industry." (<https://uaw.org/uaw-statement-ultium-organizing-victory/>.)

Loss in Illinois: Further motivating the UAW's likely push to organize EV operations are job losses in the traditional auto sector resulting, in whole or in part, from increasing manufacturer focus on EV production. Most recently, Stellantis announced the decision to indefinitely idle its Belvidere, Illinois, assembly plant effective February 28, 2023. The Belvidere plant has been in near-continuous operation since 1965, most recently as the assembly plant for the Jeep Cherokee SUV. The Belvidere plant has seen steady declines in employment over the last several years, from over 5000 employees to approximately 1350 today. Explaining its decision to idle the plant and lay off its employees, Stellantis cited "increasing cost related to the electrification of the automotive market." The job losses from the closure of the Belvidere plant go beyond the 1350 Stellantis employees. Hundreds of UAW-represented employees working for the numerous companies in the area supplying parts to Stellantis will also be impacted.

The UAW responded quite forcefully to Stellantis' decision to idle the Belvidere plant. The UAW reaction was direct in a published statement: "We are all deeply angered by Stellantis' decision to idle the Belvidere Assembly plant without a plan for future product." (<https://uaw.org/uaw-statement-stellantis-decision-idle-belvidere-assembly/>.) The UAW statement also took aim at Stellantis' reliance on additional costs associated with electrification as a perceived justification for closing the plant: "The transition to electrification also creates opportunities for new products. Companies like Stellantis receive billions in government incentives to transition to clean energy. It is an insult to all taxpayers that they are not investing that money back into our communities."

Pressure from the UAW, as well as pressure and incentives from state and local authorities, may provide some hope for the future of the Belvidere plant as a part of Stellantis' EV manufacturing strategy. Stellantis left open the possibility that the Belvidere plant could be repurposed in the future. Given the outcry from the UAW and the generous incentives available under the Illinois Reimagining Electric Vehicles Act (REV Act), perhaps the Belvidere plant will transition from a casualty of automotive electrification to a beneficiary.

DW's Take

While both GM and Stellantis are "legacy" automakers with long-standing UAW relationships, all EV manufacturers and suppliers should take notice of these developments. As EV manufacturing continues to reduce overall production and jobs in the traditional automotive sector, the UAW can be expected to focus on organizing employees in the EV market, including employees of companies not traditionally organized by the UAW or other labor unions. Understanding employers' legal rights and obligations under the NLRB and developing an effective communication strategy consistent with those obligations is an essential first step for employers who may find themselves targets of union organizing.

To learn more about Intellectual Property topics discussed in this newsletter, please contact Scott McBain and Joseph Pytel in our Troy office. To learn more about the employee and labor relations issues discussed in this newsletter, please contact William Thacker in our Ann Arbor office. To learn more about our EV practice, visit our website at <https://www.dickinson-wright.com/practice-areas/electric-vehicles?tab=0>.



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