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Bounty Hunting for Part Suppliers

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Recent headlines trumpeted the award of \$24 million to a former Hyundai employee for informing NHTSA of previously undisclosed vehicle safety defects. It followed NHTSA's imposition of a \$81 million civil penalty on Hyundai for that reporting failure. The bounty was awarded under the Motor Vehicle Safety Whistleblower Act of 2015 ("2015 Act"). It is only one of several awards paid under the Act.

Although the particular award was against a vehicle manufacturer, the Act also applies to suppliers. Thus, this Alert reviews the Act for suppliers' consideration in connection with suppliers' overall safety and compliance program.

Who is a Whistleblower?

In broad overview, the NHTSA Whistleblower Act, applies if: (1) an employee or contractor of a "Part Supplier," (defined as "a manufacturer of motor vehicle equipment") or motor vehicle manufacturer ; (2) voluntarily provides "original" information to NHTSA; regarding (3) a safety defect, or non-compliance with or other violation of NHTSA notice or reporting requirements; (4) resulting in a government penalty of \$1 million or more.

As noted, bounties are available only to providers of "original" information. In general, information is original if the whistleblower's information is based on personal knowledge or analysis, is not otherwise known to the government and is not derived from other litigation, government investigation or the media.

How large a bounty can be recovered?

The whistleblower is generally entitled to an award of between 10% and 30% of NHTSA's recovery from the offending supplier or vehicle manufacturer, with the exact award determined by the Secretary of Transportation. Although the Secretary has

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substantial discretion, the statute identifies a non-exhaustive list of relevant factors: (i) whether the whistleblower first attempted to address the problem internally; (ii) the importance of the whistleblower's information to the penalty against the violator; and (iii) how helpful the whistleblower was in the underlying enforcement action.

How effective has the Act been?

The 2015 Act is relatively new and there have been only a few bounties paid under that statute. (There are no doubt whistleblower complaints that have not yet resulted in a bounty, but there is no way of knowing how many). But analogous statutes have resulted in rewards as high as \$300 million. These analogous statutes have been in place as far back as the Civil War. As a result, there is both an enormous body of case law and regulations and a large and sophisticated plaintiffs' bar that is ready, willing and able to assist potential whistleblowers. It is easy to foresee that the number of whistleblowers and awards will increase over time, in part because of the widespread attention the Hyundai award has attracted.

What should Suppliers do?

Of course, the ultimate purpose of the 2015 Act is not to give whistleblowers bounties, but to further incentivize motor vehicle manufacturers and parts suppliers to proactively comply with their safety obligations. In other words, the 2015 Act is one on many, and far from the most important, reason that a supplier should have a robust safety compliance program. We routinely assist clients with compliance audits and recommend and help implement enhanced procedures. We also provide cost effective training to mitigate safety compliance risk as well as related warranty, recall and similar risks. Contact the authors of this Alert or your Butzel Attorney for further assistance.

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