



## Renault's Mea Culpa This Week: A Reminder Of What Can Happen When A Company Investigating A Whistleblower Claim Is Misled

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Earlier this year, following an internal investigation into allegations of industrial espionage, Renault SA ("Renault"), the giant French car maker, fired three senior employees with great public fanfare. But this week, after an inquiry by French officials reportedly found no evidence substantiating Renault's findings, Renault issued a public apology to these employees and conceded it had made a mistake. Based on published accounts, it appears that Renault might have been the victim of a hoax involving an unfounded whistleblower allegation designed to prompt the car maker to spend money pursuing a wayward internal investigation.

In light of the new financial incentives in the Dodd-Frank Wall Street Reform and Consumer Protection Act for whistleblowers to come forward and the growing pressure on corporate managers to respond promptly and decisively to allegations of wrongdoing, Renault's experience is a reminder that even well-intentioned companies can find themselves confronting undesirable consequences by rushing to judgment without thoroughly investigating a whistleblower's claim.

### The Renault Incident

In August 2010, Renault's management received an anonymous letter by mail accusing Michel Balthazard, the head of Renault's development projects, of having negotiated to receive a bribe. While acknowledging that that he or she "of course . . . ha[d] no proof," the letter's author wrote "if this is all wrong then I'm paranoid."<sup>1</sup> In response, Renault had its internal security team conduct an internal investigation, which reportedly uncovered information that Balthazard and two other employees had hidden bribery proceeds in three offshore bank accounts.<sup>2</sup> The three employees denied the allegations.

According to published accounts, Renault concluded its internal investigation in January 2011 and fired the three employees. Around the same time Renault publicly announced that these individuals had committed industrial espionage—an announcement that generated headlines in the international press. It appears that Renault also reportedly informed French law enforcement authorities that its electric car technology had been leaked to rival Chinese

<sup>1</sup> Sebastian Moffett & David Gauthiers-Villars, *In French Spy Case, Intrigue and Haste*, Wall St. J., March 8, 2011, available at <http://online.wsj.com/article/SB10001424052748703386704576186812796875974.html>.

<sup>2</sup> *Id.*

automakers as part of the bribery scheme,<sup>3</sup> filing a criminal complaint and prompting an official government inquiry. Two months later, however, French authorities announced that they had discredited the claims made in Renault's complaint, noting that the offshore accounts that allegedly had been used to store the bribery proceeds did not exist.<sup>4</sup>

Last week, in a turn of events that surprised the international press, French authorities took custody of an employee in the Renault security department that conducted the internal investigation into the bribery allegations. This employee was reportedly questioned about a roughly \$350,000 payment by Renault's security department to Michel Luc, an Algeria-based private investigator allegedly involved in providing Renault with information about the nonexistent foreign bank accounts. It appears that French authorities are now investigating whether the bribery allegations in the anonymous letter were part of a scheme to defraud Renault.<sup>5</sup>

In the wake of these developments, this week Renault retracted its allegations against the three terminated employees and publicly apologized to them. Renault's Chief Executive Officer agreed to return his 2010 bonus and accepted the resignation of Renault's Chief Operating Officer, who (along with other executives involved in the matter) will also return their 2010 bonuses.<sup>6</sup>

### Lessons From Renault's Experience

More than ever before, corporate executives in the United States are under pressure to move quickly in response to allegations of wrongdoing by whistleblowers. Much of this focus on speed is a result of the sweeping Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") whistleblower provisions that offer unprecedented financial rewards to virtually anyone who reports wrongdoing to federal regulators.<sup>7</sup> By offering bounties to people with information about corporate wrongdoing, Dodd-Frank incentivizes people to approach the government instead of simply reporting through internal corporate compliance hotlines. As a result, companies hoping to position themselves for leniency from government regulators by

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<sup>3</sup> *Id.*

<sup>4</sup> Laurence Frost, *Renault's Ghosn, Pelata Return Bonuses Over Bungled Spy Case*, Bloomberg Businessweek, March 14, 2011, available at <http://www.businessweek.com/news/2011-03-14/renault-s-ghosn-pelata-return-bonuses-over-bungled-spy-case.html>.

<sup>5</sup> David Gauthier-Villars, *Police Probe if Renault Was Victim in Spy Case*, Wall St. J., March 14, 2011, available at <http://online.wsj.com/article/SB10001424052748704027504576198924136741318.html>.

<sup>6</sup> Laurence Frost, *Renault's Ghosn, Pelata Return Bonuses Over Bungled Spy Case*, Bloomberg Businessweek, March 14, 2011, available at <http://www.businessweek.com/news/2011-03-14/renault-s-ghosn-pelata-return-bonuses-over-bungled-spy-case.html>.

<sup>7</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act §§ 748, 922.

identifying, remediating, and self-reporting wrongdoing now feel pressure to inform the government of any wrongdoing before a whistleblower. For companies hoping to beat potential whistleblowers to the government's door, this understandably creates a temptation to conduct quick internal inquiries into whistleblower complaints followed by prompt self-reporting to the authorities.

Although not in the Dodd-Frank context, the Renault situation demonstrates that moving too quickly in these situations can have dire consequences. Companies must resist the temptation to sacrifice thorough, robust, and carefully constructed internal investigations for the desire to come across as a responsible corporate citizen by taking decisive public action. While proceeding expeditiously is critical today, it should not be at the expense of robust investigations, even when doing so might slow down the process.

Among the measures that management should consider when confronted with an allegation by a whistleblower are:

- Circulating a document retention notice at the first signs of misconduct;
- Conducting interviews of relevant employees and providing such employees with *Upjohn* or corporate *Miranda* warnings at the outset;
- Reviewing electronic mail and other documentation from relevant employees;
- Retaining forensic consultants to examine bank records, complex financial documents, and electronic evidence but only after conducting proper diligence on these consultants; and
- Resisting the temptation to publicly announce the findings of the internal investigation.

## Conclusion

The Renault incident serves as a reminder of the importance of balancing the value of responding quickly to whistleblower allegations with the need to insure that any investigation into the allegation is sufficiently robust and complete. While going public with decisive action sometimes has benefits, the Renault incident highlights the perils of moving too quickly in announcing the findings of an investigation and accusing employees of wrongdoing. In short, conducting an incomplete investigation can be far worse than conducting no investigation at all.

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