Ready, Fire, Aim: ***L'Affaire Renault***

As reported in this morning's Wall Street Journal (WSJ), the CEO of the French car maker Renault apologized today on national television for the wrongful termination of three company officials for improper allegations of industrial espionage. In addition to this apology, he offered to meet the men and propose that they rejoin the company. They also would be offered compensation, "taking into account the serious hurt that they and their families have suffered,". Although *L'Affaire Renault* is not (at least not that we are aware) a case involving the Foreign Corrupt Practices Act (FCPA), it does present several very large Lessons Learned for any company which engages in a FCPA investigation and disciplines or terminates employees based upon the investigation.

In January, Renault fired three top officials for allegedly selling secret information regarding the company's electric car program. These allegations were based upon information which supposed came from an unknown informant. This information claimed that the three terminated officials had large Swiss bank accounts funded by monies which came from the sale of this information. This unknown informant was paid for his information, by two Renault security department employees and then allegedly onto another party, who eventually passed along some or all of the Renault payment to the informant.

If all of this sounds confusing, well it is. As reported in the Saturday Wall Street Journal, the inquiry began last August, with an anonymous letter to company officials, that one of the now terminated employees was overheard "negotiating a bribe". By December, the company's security department had "assembled elements pointing to the existence of bank accounts in Switzerland and Liechtenstein." The accused employees were terminated, in January, 2011. Today's WSJ reported that "state prosecutor Jean-Claude Marin on Monday said his investigation showed that the three didn't have bank accounts in those countries." What are some lessons a US company might learn from *L'Affaire Renault?*

Do Your Homework

First and foremost is that your investigation must be thorough. We have written several blogs on FCPA investigation: protocols and tools that can and should be used. In the protocol area, it is always best to thoroughly investigate any allegation, before firing employees or going public with accusations. In other words, if the key part of the allegation is that bribes were being funneled into a Swiss bank account, your company had better make certain this information is correct before you go make that public pronouncement. You should endeavor to make certain that your company CEO does not, as reported in the Wall Street Journal, make the statement made by the CEO of Renault when he "said publicly that the company had evidence against them" regarding the existence of these foreign bank accounts. Over two months after this public statement, Renault has discovered no such evidence. In the investigation tools area, there are several software products which can assist in any such investigations. In fact, we blogged on

Catelas, which uses interpretive software to analyze cyberspace relationships. Just think how that would have assisted in the Renault investigation.

See Howard Sklar's Blog on "Getting Advice"

If there are serious allegations made concerning your company's employees engaging in criminal conduct, a serious response is required. The first thing to do is hire some seriously good lawyers to handle the investigation. These lawyers need to have independence from the company so do not call your regular corporate counsel. Hire some seriously good investigative lawyers. Attorney Stephen Pearlman, quoted in the WSJ, noted that a company must approach any such allegations "with a real sense of balance" and not "over-react.

Outside counsel is also important because you will most probably have to deal with the government. If the investigation does reveal actionable conduct, your company will need legal counsel who is most probably an ex-DOJ prosecutor or ex-AUSA to get your company through that process. Even if there is a finding of no criminal activity, you will need very competent and very credible counsel to explain the investigation protocol and its results to the government. There is a very good list provided by my colleague **Howard Sklar** in his blog entitled "***Getting Advice***". He knows the folks he listed personally and tells you their strengths. It is a great resource and now would be an excellent time to use it.

Don't Pay Bounties To Unknown Persons for Unsubstantiated Rumors

A very troubling aspect of this case is the payment for the information. The payment itself was €250,000 or about $346,000. It is not clear as to the timing of this payment but apparently the payment was handled by two security department employees, who handed it over to a third person (not the informant) who resided in Algeria. This third party in Algeria now cannot be located and the WSJ reported that "an employee in the security unit refused to disclose to police or Renault who ultimately received the money…" Reuters has reported that French criminal justice officials are now investigating the two security department employees regarding who this anonymous source was and where the money went.

Many US companies are worried about the impact of the Dodd-Frank Whistleblower provisions. However a clear difference is that Dodd-Frank requires a substantiated securities violation, as in an admission by a company, settlement agreement or judicial finding, for payment of any bounty rewards. In *L'Affaire Renault,* the company apparently paid a bounty to an unknown source, for unsubstantiated information, which did not result in any criminal finding or even a civil wrong. Whatever your company does DO NOT PAY BOUNTIES TO PERSONS UNKNOWN.

While a lawyer in the corporate world I used to think the worst thing that could happen was for your CEO to be surprised or unprepared for some event. I may have to revise that advice to now say it should be that your CEO does not have to go on national television and try to explain how the company wrongfully fired three employees…