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Engineering Co. Says It Won \$28M From Electric Carmaker

By **Caroline Simson**

Law360 (June 24, 2021, 6:06 PM EDT) -- A Swiss engineering company that's worked with automakers like BMW and GM has won some \$28 million in arbitration against electric vehicle startup Byton, after a payment dispute arose from their combined efforts to build an all-electric luxury SUV called the M-Byte.

In a petition to enforce the award against the carmaker's North American arm filed Wednesday in California federal court, automotive engineering services provider Edag Engineering GmbH said that the M-Byte project had proven to be "too ambitious" and that the carmaker had accumulated millions of dollars worth of unpaid invoices on their contract by 2019.

Edag and Byton North America Corp. had begun working together on developing the M-Byte soon after Byton was founded in 2016, eventually inking a €50 million technology and license development agreement in 2017. Although the deal went smoothly at first, Edag said that by late 2018 it was starting to fall apart.

"Byton lacked institutional knowledge, a clear chain of command, and it did not have suppliers lined up, as a more

established car manufacturer would," Edag told the court.

Although Byton executives promised that they would pay some €19 million in unpaid invoices owed by July 2019, the money never materialized, and Edag initiated arbitration before Judicial Arbitration and Mediation Services later that year.

Byton asserted a \$31 million crossclaim in the arbitration, accusing Edag of negligence and breach of contract over alleged engineering errors.

A JAMS sole arbitrator, former San Francisco County Superior Court Judge William J. Cahill, rejected those counterclaims in an award earlier this month and instead concluded that Byton was on the hook to Edag for some €23.45 million (roughly \$28 million), plus interest and nearly \$90,000 in costs.

Counsel and representatives for the companies did not immediately respond to requests for comment Thursday.

Back in mid-2018, Edag touted the M-Byte in a press release as a "completely new electric car with extensive functionalities in automated and autonomous driving."

Features of the SUV promoted on Byton's website include a 48-inch high-resolution display and front rotating seats that "transform the Byton M-Byte into an immersive space where digital and physical experience converge to provide you with unforgettable moments."

According to reports, the M-Byte was publicly unveiled in 2018 and was expected to go on sale this year. But the company ran into problems amid the coronavirus pandemic last year, when it reportedly furloughed about half of its 450 employees at its North American headquarters in Santa Clara, California.

Although Byton's website says the M-Byte is "close to series production" and offers consumers the option of reserving the vehicle once it's available, it does not provide a projected availability date and says only that the "M-Byte is not yet

available for sale."

Byton did receive a financial boost earlier this year when it signed a cooperation framework with the Taiwanese multinational electronics manufacturer Foxconn Technology Group and the Nanjing Development Zone in China "to jointly accelerate production of Byton's 1st model M-Byte by the first quarter of 2022," the companies said. Foxconn reportedly agreed to invest some \$200 million in Byton as part of the deal.

Edag Engineering is represented by Evangeline A.Z. Burbidge, Marc R. Lewis and Bradley E. Estes of Lewis & Llewellyn LLP.

Counsel information for Byton North America wasn't immediately available Thursday.

The case is Edag Engineering GmbH v. Byton North America Corp., case number 3:21-cv-04736, in the U.S. District Court for the Northern District of California.

--Editing by Breda Lund.