BOLHOUSE, BAAR & HOFSTEE, P.C.
ATTORNEYS AT LAW

Don't get Sloppy with Tooling Liens

Richard L. Bolhouse and Michael G. Lichterman

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Michigan has long been known as the automotive state. Indeed, our history with making automobiles goes back 100 years. There are many players involved in automobile manufacturing: original equipment manufacturers (OEMs) such as GM, Ford, Chrysler, Toyota, Honda, etc., and Tier 1 suppliers, large manufacturing entities that stamp out parts involved in the process of making an automobile, to name a few.

These stamped parts are made from what are known in the industry as *special tools*. Special tools are often designed and built by tool and die companies. Michigan, and especially West Michigan, is blessed to be home to numerous high-quality tool and die shops that turn out these special tools that are eventually shipped to Tier 1 suppliers, who use them to stamp out parts that go to the OEM to build the cars we drive.

The Michigan Special Tools Lien Act (the Lien Act), enacted in 2002 to protect our tool and die shops, received a great deal of attention during the most recent economic downturn. As most of us remember, some of our largest OEMs struggled financially, ultimately leading to several monumental bankruptcies. As the OEMs struggled financially and/or went into bankruptcy, huge shockwaves were sent downstream to Tier 1 suppliers and ultimately to many of our tool and die shops; the special tool builders. It was a very tough time in the industry. The financial repercussions of the downturn in the industry led to increased attention being paid to the Lien Act because Michigan's Lien Act provides special tool builders with a big hammer to help ensure they will be paid for the tools they design and build.

Fast forward to 2015. Michigan's economy has been chugging along at a decent clip. OEMs have posted large increases in sales, which, as expected, have filtered their way down to Tier 1 suppliers and special tool builders. However, with the apparent lower likelihood of non-payment, some special tool builders have become apathetic to the requirements of the Lien Act. In worst cases, they have ignored the requirements altogether.

The Lien Act requires various steps, including special stampings on the tool, appropriate UCC financing statements in various states, and other similar requirements. Failure to follow the Lien Act requirements to a T can result in a die maker losing its place in line when it comes to being paid for the tool, or worse yet, not being able to collect at all.

This proved itself true a few weeks ago. We received a call from a client who, thinking that he would have no trouble with the supplier for which he was building the special tool, did not strictly adhere to the Lien Act requirements. He called us to file Uniform Commercial Code (UCC) financing statements against the supplier and OEM because the supplier was getting behind in payments. Unfortunately, our client had shipped the special tools several months before calling us.

To be properly protected, the UCCs must be filed before the tools are shipped to the Tier 1 supplier. Although our client decided to have us go ahead and file the UCC financing statements, the failure to file the UCC statements prior to shipping the special tools will likely put him in a much worse bargaining position than he would have been in had he followed the correct steps. The cost of special tools can run into the hundreds of thousands of dollars, so being protected is extremely important.

Think of following the Lien Act requirements as valuable insurance. Should a business cancel its insurance policy because it has not had to file a claim in 2 years? No. Suppliers/customers can have bad times, even in a good economy. And, as became quite evident several years ago, a good economy can turn bad in a surprisingly short period of time.

We want to make sure our clients have all the protection the law provides. Give us a call to have the added peace of mind of knowing you are taking full advantage of the protections provided the Lien Act. We are happy to help!