

DAIMLERCHRYSLER

NHTSA
WASHINGTON, DC 20590

DEC 15 A 11:54

OFFICE OF CHIEF
COUNSEL

DaimlerChrysler Corporation

Stephan J. Speth

Director

Vehicle Compliance & Safety Affairs

December 10, 2003

Ms. Jacqueline Glassman
Chief Counsel
National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

Re: Request for Confidential Treatment for Certain Documents Provided
as follow up to EA03-011 Technical Review meeting held on December 8,
2003 at DaimlerChrysler Corporation - Auburn Hills, MI.

Dear Ms. Glassman:

DaimlerChrysler Corporation has submitted information to the Office of Defects Investigation relating to NHTSA ODI Engineering Analysis EA-03-011 - DaimlerChrysler JA/LH/PR Ignition-Park Interlock System. In connection with that submission, DaimlerChrysler Corporation is submitting certain documents from a meeting held at DaimlerChrysler Corporation-Auburn Hills, between the ODI and DaimlerChrysler Corporation personnel, regarding this subject, to the Office of Chief Counsel and requesting that they be permanently protected from public release pursuant to 49 C.F.R. Part 512.

DaimlerChrysler Corporation has carefully reviewed its submission and has identified documents and test photographs containing confidential information, the disclosure of which would cause competitive harm. The following information is being submitted:

- A) Effort data developed using a test procedure for evaluating Ignition-park Interlock system override efforts.
- B) Written description of design changes implemented for the purpose of improving the Ignition-park interlock system in the above mentioned vehicle families.
- C) Graphical test data and pictorial renditions of these design changes and the components involved.

The justifications for confidential treatment are set forth below.

The documents contain highly sensitive information relating to DaimlerChrysler Corporation's attempts to identify and evaluate the forces required to override the Ignition-park interlock system in the subject vehicles. The disclosure of such information would permit DaimlerChrysler's competitors to duplicate DaimlerChrysler Corporation's

design, research, and remediation protocols without incurring the substantial expense associated with the development of their own protocols. This information, therefore, is commercially valuable, and its release would cause DaimlerChrysler Corporation substantial competitive harm.

In addition, the documents contain highly sensitive information about DaimlerChrysler Corporation's test results, analyses, and test protocols. The release of these documents would give a competitor the fruits of DaimlerChrysler Corporation's tests, test protocols, and test developmental strategies without having to incur the substantial costs associated with the development of their own analyses, test results, and test protocols, thereby enabling them to bring competitive products to market sooner and to improve their own development procedures at DaimlerChrysler Corporation's expense. Disclosure of this information would "eliminate much of the time and effort that would otherwise be required to bring to market a product competitive with DaimlerChrysler Corporation's products. This is clearly the type of competitive harm envisioned in Exemption 4 * * *." *Public Citizen Research Grp. v. FDA*, 185 F.3d 898, 908 (D.C. Cir. 1999) (*"Public Citizen II"*).

The documents also are exempt from disclosure under FOIA because they reveal competitively valuable design and performance factor information. A number of the documents set forth key design elements for the ignition-park interlock system, and others reveal the performance factors that DaimlerChrysler Corporation considers significant in developing and marketing products and in investigating and remedying potential problems. Like the other information in this submission, the design and standards information reflected in these documents is the product of DaimlerChrysler Corporation's years of experience in the industry and reflects substantial investments of time and money in its development. Thus, disclosure of the information would be a windfall to DaimlerChrysler's competitors, as well as to would-be suppliers, because it would enable them to incorporate design elements and to discover the performance standards that DaimlerChrysler Corporation deems significant without incurring the substantial time and expense necessary to develop their own designs and standards. As a result, DaimlerChrysler Corporation would suffer substantial competitive harm.

The design information also qualifies for trade secret status under Exemption 4 because it is "a secret, commercially valuable plan, formula, process or device that is used for the making * * * of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Public Citizen I*, 704 F.2d at 1288. The information comes within this definition because it "reveal[s] a manufacturer's design decisions and judgments about" ignition-park interlock system design and performance. *Center for Auto Safety*, 93 F. Supp. 2d at 15.

DaimlerChrysler Corporation is requesting confidentiality on a permanent basis for the submitted documents. DaimlerChrysler Corporation believes that the confidential information identified should be protected permanently, because DaimlerChrysler Corporation's interest in protecting the confidentiality of the identified documents will not expire at any fixed point in the future.

As detailed above, the information for which DaimlerChrysler Corporation seeks confidential treatment has significant competitive value and would be harmful to DaimlerChrysler Corporation's competitive position if released. Accordingly, it should be withheld under Exemption 4 of FOIA.

The certification required by your regulations is attached to this letter. If you need any clarifications or additional information, please contact Robert Norton, Senior Staff Counsel, at (248) 512-4184. If you receive a request for disclosure of these documents before you have completed your review of our claim for confidential treatment, DaimlerChrysler Corporation respectfully requests notification of the request and an opportunity to provide further justification for the confidential treatment of this information, if warranted.

Sincerely,




Stephan G. Speth

Certificate in Support of Request for Confidentiality

I, Stephan J. Speth, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

- (1) I am DaimlerChrysler Corporation's Director, Vehicle Certification, Compliance and Safety Affairs and I am authorized by DaimlerChrysler Corporation to execute documents on behalf of DaimlerChrysler Corporation;
- (2) The information contained in the indicated documents is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552 (b) (4).
- (3) I have personally inquired of the responsible DaimlerChrysler Corporation personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside DaimlerChrysler Corporation, except as to DaimlerChrysler suppliers with the understanding that such information be kept confidential.
- (4) Based upon such inquiries, to the best of my knowledge, information and belief the information for which DaimlerChrysler Corporation has claimed confidential treatment has never been released or become available outside DaimlerChrysler Corporation, except as stated in Paragraph 3; and
- (5) I make no representations beyond those contained in this certificate and in particular, I make no representations as to whether this information may become available outside DaimlerChrysler Corporation because of unauthorized or inadvertent disclosure; and
- (6) I certify under penalty of perjury that the foregoing is true and correct.

Executed on this tenth day of December, 2003.


Mr. Stephan J. Speth