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March 12, 2004

## BY HAND DELIVERY

Ms. Jackie Glassman, Esq.  
Office of Chief Counsel  
(NCC-110), Room 5219  
National Highway Traffic Safety Administration  
400 Seventh Street, S.W.  
Washington, D.C. 20590

**RE: Request for Confidentiality Concerning MBUSA's Response to  
Information Request in PE 03-058**

Dear Ms. Glassman:

This letter requests confidential treatment under 49 C.F.R. Part 512 of my attached March 12, 2004 letter, sent on behalf of Mercedes-Benz USA, LLC ("MBUSA") to the National Highway Traffic Safety Administration's Office of Defects Investigation in response to an information request in PE 03-058.

Pursuant to 49 C.F.R. Part 512, as amended, 68 Fed. Reg. 44,209 (July 28, 2003), this request attaches two complete versions of the response to Mr. Jeffrey L. Quandt, with confidential material marked in brackets [ ], and a single public version of the response with the confidential information redacted. The confidential version contains two compact discs as enclosures, one of these is marked "CONFIDENTIAL." The public version of the letter includes a single non-confidential compact disk. Pursuant to the requirements of Part 512, the attached response letter has not been submitted in any form directly to Mr. Quandt.

The text marked confidential in the March 12, 2004 submission and the related confidential compact disk contain consumer complaint information, which is considered confidential business information as defined by 49 C.F.R. § 512.3(c). Consumer complaint information should be evaluated pursuant to the standards set

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forth at 49 C.F.R. § 512.15(b) for information likely to cause substantial harm to the competitive position of the submitter, and 49 C.F.R. § 512.15(c) where public disclosure would be likely to impair the Agency's ability to obtain necessary information in the future.

Disclosure of this consumer complaint information is both likely to cause substantial competitive harm, and is likely to impair the Agency's ability to collect this information in the future. The Agency's recent Part 512 rulemaking recognized that "release of consumer complaint information is likely to cause substantial competitive harm" because it is likely to "be used by competing manufacturers to make cross-company comparisons" based on "raw, unverified perceptions of vehicle owners." 68 Fed. Reg. 44,225.

The rulemaking also found that the disclosure is likely to "discourage companies from actively pursuing or will restrict their ability to receive consumer feedback." 68 Fed. Reg. 44,224. The Agency concluded that "the disclosure of this information is likely to discourage manufacturers' proactive efforts to obtain the data or to expend sums to establish systems to receive more information" and thus consequentially, such disclosure could impair the effectiveness of the Agency's early warning system. *Id.* The Agency's conclusions regarding the disclosure of consumer complaint information in that rulemaking are equally applicable to information that has been submitted to the Agency in a defect investigation. Disclosure in the investigation context is no less competitively harmful, and is similarly likely to reduce the availability of this type of information to the Agency in the future. Thus, the consumer complaint information in the attached letter should be kept confidential by the Agency pursuant to the standards set forth at 49 C.F.R. § 512.15.

The information contained in the response has not been publicly disclosed. MBUSA has taken measures to ensure that the information contained in the submission has not been disclosed or otherwise made available to any persons outside of MBUSA, its parents and affiliates. Insofar as is known by MBUSA, this information is not known outside MBUSA, except by parents and affiliates. The information has also been disclosed as necessary for the purpose of obtaining advice and assistance from counsel and other confidential advisers. Such disclosures do not compromise the confidential nature of the information because of the close business relationship between MBUSA and its parents or affiliates, nor does

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selective disclosure to advisers bound by obligations of confidentiality compromise such confidentiality. Insofar as is known by MBUSA, this information has never appeared publicly.

We request that confidentiality be granted for the material marked confidential in the March 12, 2004 submission indefinitely, until such time as the information is no longer held confidential by the company, and would appreciate your notifying us of your decision when practicable.

Thank you for your consideration of this request. Please forward your response to this request to my attention.

Sincerely,



Patrick M. Rahe

**CERTIFICATE IN SUPPORT OF  
REQUEST FOR CONFIDENTIALITY**

I, Gary H. Bowne, pursuant to the provisions of 49 CFR 512, state as follows:

(1) I am the Manager of the Product Compliance and Analysis Department for Mercedes-Benz USA, LLC (MBUSA), and I am authorized by DaimlerChrysler Aktiengesellschaft (DCAG) to execute documents on behalf of DCAG;

(2) I certify that the information contained in the March 12, 2004 letter from MBUSA's outside counsel, Patrick M. Rahe in response to the ODI information request in PE03-058 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) as incorporated by reference in and modified by section 609 of Title 6 of the Motor Vehicle Information and Cost Savings Act;

(3) I hereby request that the information marked confidential in the March 12, 2004 letter be protected indefinitely;


(4) This certification is based on the information provided by the responsible MBUSA 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 of MBUSA;

(5) Based upon that information, to the best of my knowledge, information and belief, the information for which MBUSA has claimed confidential treatment has never been released or become available outside MBUSA, except as hereinafter specified: the information has been made available to our parent company DCAG, and as necessary for the purpose of obtaining advice and assistance from counsel and other confidential advisers;

(6) 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 of MBUSA or DCAG because of unauthorized or inadvertent disclosure except as stated in Paragraph 5; and

(7) I certify under penalty of perjury that the foregoing is true and correct.  
Executed on this the 11th day of March, 2004.

  
Gary H. Bowne

  
Subscribed and affirmed before me this 11th day of March, 2004

REGINA CILA  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES JUNE 30, 2007

**Matheke, Otto**

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**From:** Montague, R. Latane [RLMontague@HHLAW.com]  
**Sent:** Wednesday, April 21, 2004 5:08 PM  
**To:** Matheke, Otto  
**Cc:** Reher, Patrick M.  
**Subject:** Waiver of Requests for Confidentiality in PE 03-058

Otto,

As we discussed, I have confirmed with our clients that, in this case, they wish to waive certain portions of their prior requests for confidentiality dated March 29 and April 13, 2004, which were submitted to the Office of Defects Investigation in PE 03-058. The portions of those requests which are hereby waived are as follows:

**March 29, 2004 Request**

The request for confidentiality regarding the warranty claims total and rate data bracketed on pages 5, 9 and 11 of the March 12, 2004 letter to Jeffrey L. Quandt is hereby waived.

The request for confidentiality regarding the customer complaint data bracketed pages 9 and 11 of the March 12, 2004 letter to Jeffrey L. Quandt is hereby waived.

**April 13, 2004 Request**

The request for confidentiality regarding the warranty claims rates for certain failure subcategories categories, which is bracketed on page 2 of the April 13, 2004 letter to Jeffrey L. Quandt is hereby waived.

Please do not hesitate to contact me with any questions about this issue.

*R. Latane Montague  
Hogan & Hartson LLP  
555 Thirteenth Street, NW  
Washington, DC 20004  
(202) 637-6567*

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4/22/2004