

# DAIMLERCHRYSLER

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DaimlerChrysler Corporation

Stephan J. Speth

Director

Vehicle Compliance & Safety Affairs

September 14, 2005

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

**Re: Request for Confidential Treatment for Certain Documents Provided  
In Response to EA 04-025**

Dear Ms. Glassman:

In connection with the Office of Defects Investigation EA04-025, DaimlerChrysler is voluntarily submitting a model via the enclosed executable (.exe) file to the Office of Chief Counsel and requesting that it be permanently protected from public release pursuant to 49 C.F.R. Part 512.

DaimlerChrysler has carefully reviewed its submission and has identified the executable file contains confidential information, the disclosure of which, would cause competitive harm. The justifications for confidential treatment are set forth below.

### **Evaluation and Remediation Protocols**

The file contains highly sensitive information relating to DaimlerChrysler's attempts to identify, evaluate, and remedy potential problems relating to the operation of automatic transmission shift mechanisms. The file reveals DaimlerChrysler's processes for identifying and addressing potential shift mechanism operation issues and development of the automatic transmission system. The disclosure of such information would permit DaimlerChrysler's competitors to duplicate DaimlerChrysler'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 substantial competitive harm.<sup>1</sup>

<sup>1</sup> See *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 52 (D.C. Cir. 1981) (In determining whether information should be withheld pursuant to Exemption 4, consideration should be given to "whether release of the requested information, given its commercial value to competitors, and the cost of acquiring it through other means, will cause substantial competitive harm to the business that submitted it"); *Public Citizen Health Research Grp. v. FDA*, 997 F. Supp. 58, 63 (D.D.C. 1998) (finding competitive harm based on the fact that disclosure would allow competitors "to follow in [the submitters'] footsteps, and thereby get a competitive product to the market sooner than otherwise"), *aff'd in part & rev'd in part*, 185 F.3d 898 (D.C. Cir. 1999). "Valuable intellectual property," such as this information, is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4). *Occidental Petroleum Corp. v. SEC*, 873 F.2d 326, 341 (D.C. Cir. 1989).

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The certification required by the applicable regulations is attached to this letter. If you need any clarifications or additional information, please contact me at (248) 512-4188. If you receive a request for disclosure of these documents before you have completed your review of our claim for confidential treatment, DaimlerChrysler respectfully requests notification of the request and an opportunity to provide further justification for the confidential treatment of this information, if warranted.

Sincerely,



Stephen J. Speth

cc: Kathleen C. DeMeter

Attachment and Enclosure

**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 to execute documents on behalf of DaimlerChrysler.
- (2) The information contained in the indicated documents is confidential and proprietary data and is being submitted with the claim that is entitled to confidential treatment under 5 U.S.C. 552 (b) (4).
- (3) I have personally inquired of the responsible DaimlerChrysler 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, 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 has claimed confidential treatment has never been released or become available outside DaimlerChrysler, 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 because of unauthorized or inadvertent disclosure; and
- (6) I certify under penalty of perjury that the foregoing is true and correct.

Executed on this 14<sup>th</sup> day of September, 2005.

  
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Mr. Stephan J. Speth