

# DAIMLERCHRYSLER

NHTSA  
WASHINGTON, DC 20590

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OFFICE OF CHIEF  
COUNSEL

DaimlerChrysler Corporation

Stephan J. Speth

Director

Vehicle Compliance & Safety Affairs

December 15, 2006

Mr. Anthony M. Cooke  
Chief Counsel  
National Highway Traffic Safety Administration  
400 Seventh Street, S.W. Rm. 5219  
Washington, DC 20590

Re: Request for Confidential Treatment of Information Provided in PE06-046

Dear Mr. Cooke:

DaimlerChrysler Corporation ("DCC") is submitting information to the NHTSA Office of Defects Investigation in connection with the above referenced Information Request. Based on a careful review of the submission, DCC has determined that some of the information (as set forth more fully below) in the attached CD-ROM discs would cause DCC to suffer substantial competitive harm if disclosed and therefore should be accorded confidential treatment under this agency's regulations at 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4).<sup>1</sup> Therefore, DCC is submitting the information, together with this request for confidential treatment, to the Office of Chief Counsel.

As required by Part 512, DCC is submitting certificates executed by responsible DCC and Vitro Automotive personnel. The information required by Part 512 is set forth below.

## **A. Description of the Information (49 C.F.R. § 512.8(a))**

The information for which confidential treatment is being sought consists of a series of documents created by a confidential internal investigative procedure called "TAG" in Enclosure 8. TAG is a confidential process that DCC developed to resolve issues quickly. The PDF documents have the Bates page numbers of DCC-PE06-046-000012 - 000120. Within the TAG documents there are also 2 videos, Test Result Video 1 & 2; 2 pictures, A Datum Broken and Washer; and there are 4 Excel spreadsheets, CTO Tras PT-44, WDSS Claims LOP, PT Qtr Glass, and PT-44 CTO. These files do not contain Bates page numbers. Confidential treatment is also sought for documents showing DCC's analysis of testing data in Enclosure 8, Scope Determination Documents. The PDF files have Bates page numbers of DCC-PE06-046-000004

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<sup>1</sup> DCC has taken steps to assure that the CD's are free of any errors or defects that would prevent NHTSA from opening each file on the disc. If, however, the agency is unable to open any of the files, DCC respectfully requests that the agency inform DCC of the issue, so that DCC may take steps to supply NHTSA's Office of Chief Counsel with a disc that is fully functional.

- 000011. This folder also contains 3 Excel spreadsheets, PT Rear Quarter Glass Survey Data Log, Proving Grounds Data Summary and Wind Tunnel Test Data. A document containing DCC's operational procedures is in Enclosure 7 with Bates page number DCC-PE06-046-000001-000003. An Excel spreadsheet change notice showing the design changes that took place with the subject component is in Enclosure 5.

The table attached to this letter will more fully describe the documents.

**B. Confidentiality Standard (49 C.F.R. § 512.8(b))**

This submission is subject to the substantial competitive harm standard set forth in 49 C.F.R. § 512.15(b) for information that a submitter is required to provide to the agency.

**C. Justification for Confidential Treatment (49 C.F.R. § 512.8(c))**

This agency's regulations and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), protect the confidentiality of information that would be likely to cause substantial competitive harm to the submitter if disclosed. *See, e.g.* 49 C.F.R. § 512.15(b); *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). FOIA Exemption 4 was enacted to prevent disclosures that would "eliminate much of the time and effort that would otherwise be required to bring to market a product competitive with the [submitter's] product." *Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999).

In addition, FOIA Exemption 4 was enacted to prevent open records requirements from providing windfalls to competitors when private submitters have provided commercial or financial information to the government: "Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under FOIA. If those competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA's principle aim of promoting openness in government." *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981).

Among the competitively-significant disclosures that FOIA Exemption 4 was enacted to prevent were disclosures that would reveal a firm's "operational strengths and weaknesses" to competitors. *See Nat'l Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976). The information at issue here should be protected under these standards.<sup>2</sup>

Competitors could determine how DCC uses its capabilities to investigate and analyze issues with its TAG system and use this information to improve their own investigative capabilities. This would save these DCC competitors the considerable time and money that DCC spent in developing these procedures and it would enable them to compete more effectively with DCC.

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<sup>2</sup> As noted above, DCC is providing a table that identifies the confidential information on the enclosed discs, and specifies that location of the information (by folder name and Bates page numbers). The table also briefly states the basis for the confidentiality claims.

The release of these documents would give competitors an unfair advantage over DCC. This is the type of unfair advantage that Exemption 4 was enacted to protect against.

Testing procedures, set-ups and the analysis of test data is also confidential and would cause substantial competitive harm if disclosed. Competitors could discover how DCC sets up tests, the procedures it uses to test and how the test data is analyzed. NHTSA has recognized that design and developmental testing information should be protected under Exemption 4 because it reveals the scope, nature, and results of a submitter's proprietary and developmental testing, as well as the submitter's design and performance standards, design philosophies, and the reasons for various design choices. Such information could enable a competitor to develop and upgrade its own testing protocols, improve its design decisions, and gain insights into DCC's operational capacities.

Operational procedures should also be accorded confidential treatment because competitors could more effectively compete with DCC. Substantial competitive harm would happen with the disclosure of this document because it could relieve competitors of the costs and burdens of independently reviewing their own procedures and therefore enabling them to bring products competitive with DCC's products to market more quickly and at less cost. Competitors would also be able to determine the operational strengths and weaknesses of DCC.

The change notice spreadsheet reveals information about designs and design and manufacturing processes, reasons for changes in a product, as well as DCC lead-time and operational-capacity information. This information could enable DCC's competitors to improve their own designs and manufacturing processes, and compete more effectively against DCC which would cause substantial competitive harm to DCC.

**D. Class Determination (49 C.F.R. § 512.8(d))**

The information for which confidential treatment is being sought does not fit within a class determination.

**E. Duration for Which Confidential Treatment is Sought (49 C.F.R. § 512.8(e))**

Since DCC anticipates that the information will retain its competitive value indefinitely, DCC requests that the information be accorded confidential treatment permanently.

**F. Contact Information (49 C.F.R. § 512.8(f))**

Please direct all inquiries and responses to the undersigned at:

800 Chrysler Drive, CIMS 482-00-91  
Auburn Hills, MI 48326  
248-512-4188  
SS6@dcx.com

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If you receive a request for disclosure of the information for which confidential treatment is being sought before you have completed your review of our request, DCC respectfully requests notification of the request(s) and an opportunity to provide further justification for the confidential treatment of this information, if warranted.

Sincerely,

A handwritten signature in black ink, appearing to read "Speth", written over the printed name.

Stephan J. Speth

cc: Thomas Cooper

Attachment and Enclosures

## 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 its behalf;
- (2) I certify that the information contained in the attached 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 hereby request that the information contained in the indicated documents be protected on a permanent basis;
- (4) This certification is based on the information provided by 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;
- (5) Based upon that information, 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 to certain contractors of DaimlerChrysler Corporation with the understanding that such information must be maintained in strict confidence;
- (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 DaimlerChrysler Corporation 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 15<sup>th</sup> day of December, 2006

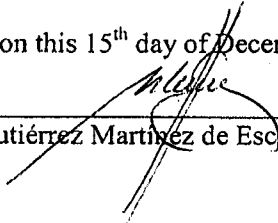
\_\_\_\_\_  
Stephan J. Speth

## Certificate in Support of Request for Confidentiality

I, Miguel Gutiérrez Martínez de Escobar pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

- (1) I am attorney in fact of Vitro Automotriz, S.A. de C.V. ("Vitro") and I am authorized by Vitro to execute documents on its behalf;
- (2) I certify that the information contained in the attached 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 hereby request that the information contained in the indicated documents be protected on a permanent basis;
- (4) This certification is based on the information provided by the responsible Vitro 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 Vitro;
- (5) Based upon that information, to the best of my knowledge, information and belief, the information for which Vitro has claimed confidential treatment has never been released or become available outside Vitro, S.A. de C.V., except to DaimlerChrysler and certain contractors of Vitro and/or DaimlerChrysler with the understanding that such information must be maintained in strict confidence;
- (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 Vitro 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 15<sup>th</sup> day of December, 2006

  
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Miguel Gutiérrez Martínez de Escobar

**ATTACHMENT TO REQUEST FOR CONFIDENTIAL  
TREATMENT OF CERTAIN DOCUMENTS SUBMITTED IN  
CONNECTION WITH PE06-046 WITHIN ENCLOSURES 5, 7 & 8  
CONFIDENTIAL**

QUESTION # SOURCE	ENCLOSURE	FILE/DOCUMENT NAME	DOCUMENT DESCRIPTION	BATES PAGE #	CONFIDENTIALITY JUSTIFICATION
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	TAG 10738	Copy of Web Page for TAG 10738 (Internal Investigative Procedures)	DCC-PE06-046-000079 - 000082	Confidential on the grounds that document sets forth DCC internal investigative procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	CONFIDENTIAL TEST RESULT VIDEO 1	Video clip of loose stud in embossment (Internal Investigative Procedures and Testing Data)	N/A Video	Confidential on the grounds that document sets forth DCC internal investigative procedures and processes and testing procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	CONFIDENTIAL TEST RESULT VIDEO 2	Video clip of loose stud in embossment (Internal Investigative Procedures and Testing Data)	N/A Video	Confidential on the grounds that document sets forth DCC internal investigative procedures and processes and testing procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	CONFIDENTIAL A DATUM BROKEN	Picture of broken embossment (Internal Investigative Procedures)	N/A Picture	Confidential on the grounds that document sets forth DCC internal investigative procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	CONFIDENTIAL WASHER	Picture of containment proposal (Internal Investigative	N/A Picture	Confidential on the grounds that document sets forth DCC internal investigative

QUESTION # SOURCE	ENCLOSURE	FILE/DOCUMENT NAME	DOCUMENT DESCRIPTION	BATES PAGE #	CONFIDENTIALITY JUSTIFICATION
			Procedures)		procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	QTR GLASS STUDS	Photos showing variation in studs used (Internal Investigative Procedures)	DCC-PE06- 046- 000076- 000077	Confidential on the grounds that document sets forth DCC internal investigative procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	TAP TEST RESULTS	Validation of washer containment (Internal Investigative Procedures and Test Data)	DCC-PE06- 046- 000087- 000088	Confidential on the grounds that document sets forth DCC internal investigative procedures and processes and testing results.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	RT8323AV2430501	CAG report (Internal Investigative Procedures)	DCC-PE06- 046-000078	Confidential on the grounds that document sets forth DCC internal investigative procedures and processes.
8 VITRO	8 – CONFIDENTIAL/ TAG Documents/ Supplier Documents	CTO TRAS PT-44	Process capability of detailed part (Internal Investigative Procedures)	N/A Excel Spreadsheet (Translated version located in Translated folder)	Confidential on the grounds that document sets forth Vitro internal investigative procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	TAP RCA	Root Cause Summary (Internal Investigative Procedures)	DCC-PE06- 046- 000083- 000086	Confidential on the grounds that document sets forth DCC internal investigative procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	QTR GLASS PROCESS TAP	10 car torque measurement sampling study (Internal	Translated – DCC-PE06- 046- 000012-	Confidential on the grounds that document sets forth DCC internal



QUESTION # SOURCE	ENCLOSURE	FILE/DOCUMENT NAME	DOCUMENT DESCRIPTION	BATES PAGE #	CONFIDENTIALITY JUSTIFICATION
			Investigative Procedures)	000014 Spanish-DCC-PE06-046-000073-000075	investigative procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	TEMP CHAMBER TEST PICTURES W-WASHERT	Shaker testing validation of containment (Internal Investigative Procedures and Test Data)	DCC-PE06-046-000089-000101	Confidential on the grounds that document sets forth DCC internal investigative procedures and processes and testing data.
8 VITRO	8 – CONFIDENTIAL/ TAG Documents/ Supplier Documents	STUD MEASUREMENTS	Description of added in-process part qualification (Internal Investigative Procedures)	DCC-PE06-046-000120	Confidential on the grounds that document sets forth Vitro internal investigative procedures and processes.
8 VITRO	8 – CONFIDENTIAL/ TAG Documents/ Supplier Documents (also a duplicate Spanish copy in DCC Documents)	PT44 CTO MEDIDAS NOMINALES	Design sections of uninstalled part (Internal Investigative Procedures and Designs)	Translated – DCC-PE06-046-000102-000107 Spanish – DCC-PE06-046-000108-000113	Confidential on the grounds that document sets forth Vitro internal investigative procedures and processes as well as designs of the subject component.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	PT44 QTR DATUMS NOMINAL HEIG	Assessment of part sampling at TAP (Internal Investigative Procedures)	DCC-PE06-046-000015	Confidential on the grounds that document sets forth DCC internal investigative procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	QNAS FOR REAR QUARTER GLASS	Summary of known complaints (Internal Investigative	DCC-PE06-046-000070-000072	Confidential on the grounds that document sets forth DCC internal investigative

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			Procedures)		procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	FULL QNAS 233030	Detailed QNAS (Internal Investigative Procedures)	DCC-PE06- 046- 000019- 000066	Confidential on the grounds that document sets forth DCC internal investigative procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	EWT CONTROL LIMIT VIOLATION	LOP MIS control charts (Internal Investigative Procedures)	DCC-PE06- 046-000018	Confidential on the grounds that document sets forth DCC internal investigative procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	WDSS CLAIMS LOP 233030	Claim Narratives (Internal Investigative Procedures)	N/A Excel Spreadsheet	Confidential on the grounds that document sets forth DCC internal investigative procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	PT QTR GLASS	Claim Narrative Summary (Internal Investigative Procedures)	N/A Excel Spreadsheet	Confidential on the grounds that document sets forth DCC internal investigative procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	C-1000 FOR 233030	Labor Op C/1000 (Internal Investigative Procedures)	DCC-PE06- 046- 000016- 000017	Confidential on the grounds that document sets forth DCC internal investigative procedures and processes.
8 DCC	8 – CONFIDENTIAL/ TAG Documents/ DCC Documents	PER P0901-S05-01	Summary of trial run PER of containment fix (Internal Investigative Procedures)	DCC-PE06- 046- 000067- 000069	Confidential on the grounds that document sets forth DCC internal investigative procedures and

QUESTION # SOURCE	ENCLOSURE	FILE/DOCUMENT NAME	DOCUMENT DESCRIPTION	BATES PAGE #	CONFIDENTIALITY JUSTIFICATION
					processes.
8 VITRO	8 – CONFIDENTIAL/ TAG Documents/ Supplier Documents	QTR GLASS X-Y TEST ON SEPT. 1 <sup>ST</sup>	Quality Control Process – Pull out test (Internal Investigative Procedures and Test Data)	DCC-PE06- 046- 000114- 000119	Confidential on the grounds that document sets forth Vitro internal investigative procedures and processes and testing data.
8 VITRO	8 – CONFIDENTIAL/ TAG Documents/ Supplier Documents	PT-44 CTO	Analysis and Part Measurement Study (Internal Investigative Procedures and Design Information)	N/A Excel Spreadsheet	Confidential on the grounds that document sets forth Vitro internal investigative procedures and processes and design information.
8 DCC	8 – CONFIDENTIAL/ Scope Determination Documents	PROCEDURE FOR QUARTER GLASS TESTING	Procedure for suspect period survey (Testing Analysis)	DCC-PE06- 046- 000007- 000011	Confidential on the grounds documents set forth information on analysis of testing results.
8 DCC	8 – CONFIDENTIAL/ Scope Determination Documents	PT REAR QUARTER GLASS SURVEY DATA LOG	Results of suspect period survey (Testing Analysis)	N/A Excel Spreadsheet	Confidential on the grounds documents set forth information on analysis of testing results.
8 DCC	8 – CONFIDENTIAL/ Scope Determination Documents/ CPG Testing	PROVING GROUNDS DATA SUMMARY	Testing in support of survey procedure (Testing Analysis)	N/A Excel Spreadsheet	Confidential on the grounds documents set forth information on analysis of testing results.
8 DCC	8 – CONFIDENTIAL/ Scope Determination Documents/ CPG Testing	PROVING GROUNDS EVENT SUMMARY	Testing in support of survey procedure (Testing Analysis)	DCC-PE06- 046-000004	Confidential on the grounds documents set forth information on analysis of testing results.
8 DCC	8 – CONFIDENTIAL/ Scope Determination	WIND TUNNEL TEST DATA	Testing in support of survey procedure	N/A Excel Spreadsheet	Confidential on the grounds documents set forth information on analysis of testing

QUESTION # SOURCE	ENCLOSURE	FILE/DOCUMENT NAME	DOCUMENT DESCRIPTION	BATES PAGE #	CONFIDENTIALITY JUSTIFICATION
	Documents/ CPG Testing		(Testing Analysis)		results.
8 DCC	8 – CONFIDENTIAL/ Scope Determination Documents/ Wind Tunnel Testing	WIND TUNNEL TEST SUMMARY	Testing in support of survey procedure (Testing Analysis)	DCC-PE06-046-000005	Confidential on the grounds documents set forth information on analysis of testing results.
8 DCC	8 – CONFIDENTIAL/ Scope Determination Documents/ Wind Tunnel Testing	CONFIDENTIAL SET UP PHOTO 1.JPG THRU SET UP PHOTO 8	Testing in support of survey procedure (Testing Analysis)	N/A Pictures	Confidential on the grounds documents set forth information on analysis of testing results.
8 DCC	8 – CONFIDENTIAL/ Scope Determination Documents	2006 PT QUARTER GLASS SURFACE AREA DATA	Surface area calculations (Testing Analysis)	DCC-PE06-046-000006	Confidential on the grounds documents set forth information on analysis of testing results.
11 DCC	7 – Assembly Process - CONFIDENTIAL	2006 PT REAR QUARTER GLASS AMPS	Assembly process of glass to vehicle (DCC Operational Procedures)	DCC-PE06-046-000001-000003	Confidential on the grounds document sets forth information on DCC Operational Procedures and competitors could improve their own operations without the time and expense necessary and therefore compete more effectively against DCC.
9 DCC	5 – Change History - CONFIDENTIAL	CHANGE HISTORY – 2006 MY PT REAR QUARTER GLASS	Design Change Notice (Design Processes)	N/A Excel Spreadsheet	Confidential on the grounds that document sets forth information on DCC design and manufacturing process changes, timing of changes and the process of the changes and competitors could

QUESTION # SOURCE	ENCLOSURE	FILE/DOCUMENT NAME	DOCUMENT DESCRIPTION	BATES PAGE #	CONFIDENTIALITY JUSTIFICATION
					learn about DCC design processes to improve their own processes to more effectively compete.