HOGAN & HARTSON

2007 SC. 1

Hogan & Hartson LLP Columbia Square 555 Thirteenth Street, NW Washington, DC 20004 +1.202.637.5600 Tel +1.202.637.5910 Fax

www.hhlaw.com

R. Latane Montague Partner 202-637-6567 rlmontague@hhlaw.com

September 29, 2009

Via Federal Express

Mr. Kevin Vincent Chief Counsel National Highway Traffic Safety Administration (NCC-111), Room W41-227 1200 New Jersey Avenue, S.E. West Building Washington, D.C. 20590

RE: Request for Confidentiality Concerning Mercedes-Benz's Brake Line Technical Report

Dear Mr. Vincent:

This letter requests confidential treatment under 49 C.F.R. Part 512 for the brake line technical report dated September 28, 2009, submitted on behalf of Daimler AG and Mercedes-Benz USA, LLC ("Mercedes-Benz") to the National Highway Traffic Safety Administration's Office of Defects Investigation (ODI). Pursuant to 49 C.F.R. Part 512, this request attaches two complete versions of the submission, and a single public version of the submission with the confidential information redacted. These attachments are marked "CONFIDENTIAL BUSINESS INFORMATION" in accordance with 49 C.F.R. § 512.6(c).

The submission contains commercial information that has not been publicly disclosed and is voluntarily submitted to ODI in order to assist that office in better understanding the brake performance of certain Mercedes-Benz vehicles. The information contained in this submission is the kind of information that is customarily not released to the public by Mercedes-Benz. The submission therefore is entitled to confidential treatment under 49 C.F.R. § 512.15(d).

The information contained in the submission has not been publicly disclosed. Mercedes-Benz has taken measures to ensure that the information has not been disclosed or otherwise made available to any persons outside of Mercedes-Benz, its parents, suppliers, and affiliates. Insofar as is known by Mercedes-Benz, this information is not known outside Mercedes-Benz, except by

these related parties. 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 Mercedes-Benz and its parents and affiliates, nor does selective disclosure to advisers bound by obligations of confidentiality compromise such confidentiality.

The submission is also entitled to confidential treatment under <u>Critical Mass Energy Project v. Nuclear Regulatory Commission</u>, 975 F.2d 871 (D.C. Cir. 1992), because it is voluntarily submitted and not customarily released to the public. The <u>Critical Mass</u> basis for confidential treatment has been incorporated into the agency's regulations at 49 C.F.R. § 512.3(c)(2)(ii). The submission includes brake design and performance data that are unique to Mercedes-Benz vehicles, and describes testing that utilized Mercedes-Benz's proprietary engineering expertise. As such, the submission represents proprietary and confidential business information and is entitled to confidential treatment.

In the event that NHTSA views the brake line technical report as a required submission pursuant to 49 C.F.R. § 512.3(c)(2)(i), the report is still entitled to confidential treatment under National Parks and Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974), because it is propriety information the release of which is likely to cause competitive harm. Proprietary technological and performance data would provide competitors with important competitive information about Mercedes-Benz's products. With this information, competitors could adjust their own product plans and undercut Mercedes-Benz's market share, resulting in substantial competitive harm.

We request that confidentiality be granted indefinitely, or until such time as the information is no longer held confidential by the company. We would appreciate your notifying us of your decision regarding this confidentiality request.

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

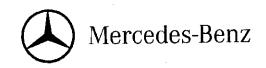
Sincerely,

R. Latane Montague

R Jotos Martas

Attachments:

Two complete versions of submission
One redacted version of submission
Certificate in Support of Request for Confidentiality



Mercedes-Benz USA, LLC

A Daimler Company

CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

- I, R. Thomas Brunner, pursuant to the provisions of 49 CFR 512, state as follows:
- I am the Department Manager of Product Compliance, Analysis, Safety and Emissions for Mercedes-Benz USA, LLC (MBUSA), and I am authorized to execute documents on behalf of MBUSA.
- I certify that the brake line technical report submitted to NHTSA on behalf of (2)MBUSA and Daimler AG concerning EA08-009 contains 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);
 - I hereby request that the technical report be protected indefinitely; **(3)**
- This certification is based on the information provided by the responsible (4)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 previously been released outside MBUSA;
- Based upon that information, to the best of my knowledge, information and (5)belief, the information for which MBUSA has claimed confidential treatment has never been released or become available outside MBUSA, except as hereinafter specified: portions of the information have been made available to our parent company, Daimler AG (previously DaimlerChrysler AG), and for the purpose of obtaining advice and assistance from counsel and other confidential advisers;
- I make no representations beyond those contained in this certificate and in (6) particular, I make no representations as to whether this information may become available outside of MBUSA 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 day of September, 2009.

REGINA CILA Public, State of New Jersey Commission Expires July 19, 2012

> Mercedes-Benz USA, LLC One Mercedes Drive P.O. Box 350 Montvale, NJ 07645 0350 Phone (201) 573-0600 Fax (201) 573-0117 www.MBUSA.com