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HEHR INTERNATIONAL INC, 3333 CASITAS AVE LOS ANGELES, CA 90039

October 28, 2009

**VIA EMAIL AND U.S. MAIL**

O. Kevin Vincent, Chief Counsel  
Office of Chief Counsel  
United States Department of Transportation  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue SE  
West Building W41-227  
Washington, DC 20590  
Email: otto.matheke@dot.gov

Re: Request for Confidential Treatment for Certain Information Provided in Hehr International Inc.'s Response to NHTSA's Request for Information. Safety Recall 09V-318, Investigation EQ09-007

Dear Mr. Vincent:

In accordance with 49 C.F.R. Part 512, Hehr International Inc. ("Hehr") hereby submits this request for confidential treatment of the information described herein. The information for which Hehr seeks confidential treatment is part of Hehr's October 28, 2009 Response to NHTSA Regarding Safety Recall Investigation EQ09-007 ("Hehr's EQ09-007 Response"), a redacted copy of which Hehr has submitted to NHTSA (to the attention of Ms. Jennifer Timian, NVS-215).

Pursuant to the requirements set forth at 49 C.F.R. Part 512, Hehr has enclosed the following: (1) a complete copy of Hehr's EQ09-007 Response; (2) a redacted copy of Hehr's EQ09-007 Response; and (3) a copy of the select portions of Hehr's EQ09-007 Response for which Hehr requests confidential treatment. The pages containing the information that are the subject of this request for confidentiality are marked at the top with the following legend:

**ENTIRE PAGE CONFIDENTIAL COMMERCIAL/  
BUSINESS INFORMATION**

The specific information for which Hehr requests confidential treatment, and the bases for Hehr's request, is set forth below, as well as all other information required pursuant to 49 C.F.R. § 512.8.

**Section 512.8(a): Description of Information For Which Confidentiality is Requested.**

Hehr requests confidential treatment for the following items:

(1) The information provided in "Figure 1" on page 4 of Hehr's EQ09-007 Response. This confidential business information sets forth certain Hehr window models and the total number of these window models sold between 2001 and 2008.

(2) The information provided in "Figure 2" on page 9 of Hehr's EQ09-007 Response. This confidential business information consists of the names of Hehr customers, customer contact information, and quantity of windows sold by Hehr to each customer between 2001 and 2008.

**Section 512.8(b) and (c): Standards and Bases Applicable to This Confidentiality Request**

Hehr's confidentiality request should be evaluated in accordance with the following standards and bases:

A. The information for which confidential treatment is sought constitutes confidential commercial information for which public disclosure would be likely to cause substantial harm to Hehr's competitive position. [49 C.F.R. § 512.15(b)]

Hehr's customer list, its customer contact information and its sales volume and related information (*i.e.*, all information set forth at Figure 1 and Figure 2) constitute confidential commercial information, and public disclosure of this information would cause substantial harm to Hehr's competitive position.

The complete information provided in "Figure 1" and "Figure 2" of Hehr's EQ09-007 Response has never been disclosed to the public. Hehr has built relationships with its customers through the substantial effort of its fiduciary employees over the course of many years. The complete list of Hehr's customers and Hehr's sales and related information are valuable company assets, accessible only to Hehr's executives, salespersons and accountants. Each of these employees has a fiduciary obligation to protect Hehr's interests and is directly responsible for maintaining and developing Hehr's business. Neither Hehr's customer contact information nor related sales information are accessible by engineers or managerial employees that are not executives of the company. This limited accessibility reduces the risk of intentional or involuntary disclosure. Further, with regard to Hehr's customer list specifically, in addition to Hehr's business interests in keeping this information out of the hands of its competitors, Hehr's own customers typically expect that the identity of Hehr as their supplier be kept confidential. Any disclosure of this information would cause substantial financial harm to Hehr.

Hehr's specific sales statistics regarding the number of window models sold, combined with the number of windows sold to particular customers since 2001, also constitutes confidential business information. Hehr operates in a small but highly competitive market, manufacturing windows for transit buses and recreational vehicles. Hehr manufactures different models of windows to suit specific applications. Should this confidential commercial information provided to NHTSA by Hehr for the limited purpose of assisting in this investigation be made publicly available, competitors in the transit window market could then, and would be expected to, readily review Hehr's sales volume for a particular window model, contact customers who may purchase this model from Hehr, and gain a competitive position with a valued Hehr customer using information that Hehr works diligently to maintain as confidential. In addition, competitors in the recreational vehicle market could use Hehr's valuable model, customer and sales statistics to enter the transit bus window market and make direct contact with Hehr's customers. Competitors could exploit Hehr's model and sales volume statistics to purchase windows from Hehr in order to more precisely identify specific markets and opportunities and engineer similar windows to compete against Hehr. This, too, would cause substantial financial harm to Hehr.

B. Public disclosure of the information would be likely to impair NHTSA's ability to obtain necessary (or otherwise useful) information in the future; and the information was provided to NHTSA voluntarily and is not customarily released to the public by the person from whom it was obtained. [49 C.F.R. § 512.15(c)-(d)]

The information for which Hehr seeks confidentiality was provided to NHTSA voluntarily and is not customarily released to the public. This recall investigation relates to whether or not a specific component of the windows manufactured by Hehr for Daimler Buses North America ("Daimler Buses") contains a safety defect. If there is a defect, NHTSA requested, in Question No. 1 of its request for information to Hehr, that Hehr provide contact information for customers other than Daimler Buses who may have received the same or substantially similar windows from Hehr, and the quantity of windows sold to each of them. [See EQ09-007 Response.]

Hehr has concluded that there is no safety defect. Having reached this conclusion, per NHTSA's instructions, Hehr could have responded "No" to NHTSA's Question No. 1 (*i.e.*, no same or "substantially similar" windows that may contain the same safety defect sold to anyone other than Daimler Buses), and this would have completed Hehr's response. Rather than take this approach, however, Hehr, in the interest of providing NHTSA with as much information as possible, voluntarily and in good faith provided NHTSA with information concerning customers other than Daimler Buses who may have purchased potentially similar window models. Having voluntarily provided this information, however, Hehr did not, and does not, in any way intend to relinquish its customer list and other confidential commercial information to the public domain. If this information is not kept confidential, it would create a substantial risk of respondents in the future narrowly tailoring

their responses so as to provide limited information, foregoing volunteering information that may not be directly requested but that NHTSA may otherwise find potentially useful.

C. The information is otherwise entitled to protection, specifically Exemption 4 of the Freedom of Information Act (FOIA). [49 C.F.R. § 512.15(e); 5 U.S.C. § 552(b)]

FOIA Exemption 4 exempts from mandatory disclosure "trade secrets and commercial or financial information obtained from a person which is privileged or confidential." Information may be withheld under Exemption 4 if disclosure of the information is likely to have either of the following effects: "(1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." *National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). See also *Greenberg v. FDA*, 803 F.2d 1213, 1216 (D.C. Cir. 1986) (commercial information is deemed to be "confidential," for the purposes of FOIA, when disclosure would cause substantial harm to the competitive position of the person from whom the information was obtained); 49 C.F.R. 512.3(c)(2). For the reasons set forth in Sections A & B above, public disclosure of Hehr's customer list and related production and sales information is likely to cause both of these effects. The information should therefore be treated as confidential.

**Section 512.8(d): Indicate if any items of information fall within any of the class determinations included in appendix B to this Part**

None of the items of information for which confidentiality is sought fall within this category.

**Section 512.8(e): Indicate the time period for which confidential treatment is sought.**

Hehr's customer list, contact information, models and quantities of windows sold will continue to remain confidential in the foreseeable future. Hehr therefore requests confidential treatment for an indefinite period of time. If NHTSA requires that Hehr provide a finite time limit either at present or at some point in the future, Hehr will endeavor to do so. Going forward, should Hehr experience any changes to its business or circumstances that have an effect on the confidentiality of its information, Hehr will promptly amend and/or supplement this request accordingly.

**Section 512.8(f): State the name, address, and telephone number of the person to whom NHTSA's response and any inquiries should be directed.**

John Utick  
Executive Vice President  
Hehr International Inc.  
3333 Casitas Avenue  
Los Angeles, CA 90039-0160  
Telephone: 323-663-1261  
Facsimile: 323-666-2372

\* \* \* \*

Hehr appreciates your consideration of this request. Please contact me as soon as possible if you require any further information.

Respectfully submitted,



John Utick

HEHR INTERNATIONAL INC.  
CERTIFICATE IN SUPPORT OF  
REQUEST FOR CONFIDENTIALITY  
(49 CFR Part 512)

[RECALL INVESTIGATION EQ09-007]

I, John Utick, pursuant to the provisions of 49 CFR part 512, state as follows:

(1) I am the Executive Vice President of Hehr International Inc. ("Hehr"), and I am authorized by Hehr to execute this certificate on its behalf;

(2) I certify that the identity of Hehr's customers, the customer contact information, window models and the quantity of windows sold to each customer (hereinafter referenced as "customer information"), which is contained in Hehr's October 28, 2009 Letter to NHTSA regarding recall investigation EQ09-007, 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 the statute under which the information is being submitted);

(3) I hereby request that the customer information contained in the October 28, 2009 Letter be protected indefinitely;

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

(5) Based upon that information, to the best of my knowledge, information and belief, the information for which Hehr has claimed confidential treatment has never been released or become available outside Hehr;

(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 Hehr 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 28th day of October, 2009.

  
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For HEHR INTERNATIONAL INC.