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October 31, 2011

Mr. Otto G. Matheke, III
Senior Attorney
National Highway Traffic Safety Administration
1200 New Jersey Ave., SE, Room W41-227
Washington, DC 20590

Re: Request for Modification of Confidential Treatment of Business Information Submitted in PE10-031

Dear Mr. Matheke:

I am a Senior Staff Attorney with Chrysler Group LLC's Office of the General Counsel. I am following up on a September 30, 2011 letter your office received in which the letter writer seeks the modification of NHTSA's determination that 20 engineering drawings engineering submitted by my company should be accorded confidential treatment pursuant to 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act.

Today, under separate cover, Dave Dillon from our Regulatory Affairs office has provided you with additional facts and legal arguments further confirming the correctness of NHTSA's grant of our original request for confidentiality for these drawings. Mr. Dillon's letter responds to certain claims made by the petitioner that may be germane to the Part 512 determination review. There are, however, other blatant misstatements of fact and nonsensical claims made in the September 30, 2011 letter that are unrelated to Part 512 confidentiality, but require a response by my company. This letter is intended to address these meritless statements and claims:

- The petitioner claims that the drawings for which Chrysler Group sought confidentiality contain information that has been in the public domain for "25 years." In fact, Chrysler Group has never produced the drawings in litigation without a protective order, nor has it submitted these or similar documents to NHTSA without a request for confidentiality.

- The petitioner falsely refers to Dave Dillon as having been "deployed by the Chrysler Group as a defense witness in product litigation involving fire deaths and/or injuries in the 1993 thru 2004 Jeep Grand Cherokee." In a lawsuit pending in New Jersey, the defendant dealer is seeking to depose Mr. Dillon about submissions made by Chrysler Group to NHTSA in connection with this investigation so as to lay the groundwork for admissibility at trial. Mr. Dillon has not been named or used as a defense witness by Chrysler Group in the New Jersey lawsuit or any other litigation involving a Jeep Grand Cherokee.[1]

[1] *Kline v. Loman Auto Group et als.* is the New Jersey lawsuit. In endnote 4 of his letter, petitioner also states his belief that "the Kline death accident was an example of a highway accident statistic that was not originally included in the FARS data base." Petitioner, who is a named plaintiff's expert witness in *Kline*, is well-aware that the *Kline* accident is identified in the FARS data as a rear-end collision involving a fuel-fed fire where fire was listed as the Most Harmful Event. See FARS Case # 340080.

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- The petitioner has attached to his September 30, 2011 letter certain commercially confidential documents of Chrysler Group, Old Carco LLC or Old Carco's predecessor companies. The Process Standard attached at Tab 6 was produced subject to protective order in Gregory Thomas v. DaimlerChrysler Corporation. Petitioner urges the agency to ignore the protective order marking.[2] In fact, his production of this engineering standard to NHTSA for placement in the public docket likely violates the terms of the protective order. Neither Chrysler Group, Old Carco, nor Old Carco's predecessors have produced this document in litigation without a protective order covering its production.[3] Petitioner also attaches intercompany memoranda and meeting minutes under Tabs 2, 3, and 4 of his letter that have been produced in litigation, but only subject to protective order. It is unknown how the petitioner acquired these documents, but it should be apparent this is confidential business information.

- Contrary to petitioner's claims, Chrysler Group takes great precautions to maintain confidentiality of design documents and does not, in the ordinary course of business, allow outsiders access to confidential information except in three limited circumstances. First, with respect to some components, outside suppliers are provided engineering drawings relating to the components they are supplying. These suppliers agree not to publicly disclose any information from the engineering drawings and to maintain their confidentiality. Second, confidential documents are submitted to NHTSA with a request for confidential treatment in connection with investigations by the agency. Third, Chrysler Group produces engineering drawings in litigation pursuant to protective orders requiring counsel to maintain the confidentiality of the documents. Chrysler Group has a number of procedures in place to ensure the confidentiality of engineering drawings, as did Chrysler Corporation and DaimlerChrysler Corporation. The original drawings are kept in secure electronic storage and are removed only for engineering purposes. The secure electronic storage limits access to those who possess passwords. Access to electronic files is only by permission and with proper authorization on a "need to know" basis. Further, Chrysler Group employees are required to protect the confidentiality of commercially confidential information.

- Petitioner contends that because automobile employees routinely move around in the industry (to other manufacturers and suppliers), engineering drawings should not be accorded confidentiality. This reasoning would preclude confidential treatment of any engineering drawing related to a motor vehicle. Petitioner makes no claim that any former Chrysler employee actually shared the engineering drawings at issue with competitors. He cites no precedent for this fanciful contention and Chrysler Group is not aware of any case law, ruling or agency interpretation that Exemption 4 does not apply in industries in which employees change jobs to work for competitors or suppliers.

We believe the above claims by petitioner are frivolous and unrelated to an agency review of the confidentiality determination at issue. If the agency believes otherwise, we ask that this

[2] Petitioner's reasoning about why this document should not be deemed subject to protective order is typically abstruse. He appears to argue that because the document references a prior company's policy not to enter into formal confidentiality agreements with suppliers, this somehow renders the Process Standard itself non-confidential. This argument is nonsensical.

[3] Indeed, this document was produced *under protective order* in connection with the New Jersey case of *Kline v. Loman Auto Group et al.*, a case petitioner references several times in his letter and, as noted above, in which petitioner has been named by the plaintiff as an expert.

letter be considered in the agency's review of whether its original grant of confidentiality was appropriate.

Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

Alan L. DeGraw

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David D. Dillon
Sr. Manager
Product Investigations & Campaigns

October 31, 2011

Mr. Otto G. Matheke, III
Senior Attorney
National Highway Traffic Safety Administration
1200 New Jersey Ave., SE, Room W41-227
Washington, DC 20590

Re: Request for Modification of Confidential Treatment of Business Information Submitted in PE10-031

Dear Mr. Matheke:

This is in response to your October, 2011 letter regarding a petitioner's request that your office modify the agency's grant of confidential treatment for 20 engineering drawings submitted by Chrysler Group LLC ("Chrysler Group") in the above referenced investigation. These drawings relate to the fuel tank skid plate/brush guard assemblies available on 1993 through 2004 Jeep Grand Cherokee vehicles.

As you know, NHTSA granted our request for confidentiality because the 20 engineering drawings at issue fall within the class determination for "blueprints and engineering drawings." 49 C.F.R. Part 512, App. B(1). Moreover, we believed, and the agency agreed, that the engineering drawings contain the detailed design specifics for various components of two vehicles. We noted that if these drawings were placed in the public domain, competitors could use this design information to improve their own designs without incurring the time and expense associated with independent design efforts. As a result, Chrysler Group's competitors could bring to market their products much quicker and at less cost.

We welcome the opportunity to provide the agency with additional information that supports our claim—and NHTSA's determination—of confidentiality under Part 512 for these engineering drawings.

As I understand it, the petitioner's September 30, 2011 letter raises two arguments to support his contention that the drawings should no longer be subject to confidential treatment: 1) the mere *possibility* that the assemblies at issue can be reverse engineered defeats confidentiality; and/or 2) the fact that the subject vehicles at issue are no longer in production defeats confidentiality.

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Chrysler disagrees with these arguments, for the following reasons:

1. **Reverse Engineering**

The petitioner's primary argument is that because it is *possible* (and even *common*) for automotive components to be reverse engineered, and motor vehicle manufacturers routinely do so, drawings related thereto should not be accorded confidentiality. Under this reasoning, no automobile manufacturer could *ever* make a claim for confidentiality for engineering drawings related to any vehicle, since all components/vehicles—theoretically, at least—can be reverse engineered if sufficient time and expense are devoted to doing so. This simply misconstrues the standards used to determine whether information is subject to Exemption 4 of the Freedom of Information Act. The test for confidentiality, as set forth in *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981), focuses on the costs and difficulties of reverse engineering. If the cost and difficulty of reverse engineering are substantial, the material may be—indeed, must be—protected under FOIA Exemption 4. *See id.* ("If, on the other hand, competitors can acquire the information only at considerable cost, agency disclosure may well benefit the competitors at the expense of the submitter."). Thus, even if the petitioner's allegations about reverse engineering were true, they have no relevance to the confidentiality issue.

The 20 engineering drawings at issue contain a description of the skid plates and brush guards and identify materials used in the construction of these components, the exact dimensions of the components, the tolerances to which the components must be made, surface finish specifications, and heat treating or other processes to be applied to the components before final manufacturing and assembly. While a competitor could acquire the skid plates and/or brush guards, and attempt to copy them, the process would be expensive, time-consuming, and difficult. Moreover, reverse engineering alone would not reveal much of the most competitively valuable information in the drawings, such as specified dimensions, tolerances, surface finish specifications, and manufacturing process and quality control techniques. The difficulty, limitations and cost of "reverse engineering" explain exactly why Chrysler Group sought confidentiality for the documents under FOIA Exemption 4.

2. **Production Vehicle Obsolescence**

The fact that the drawings relate to vehicles that are now out of production also does not preclude confidential treatment. Petitioner overlooks the fact that, although the vehicles are no longer in production, they remain in use and, therefore, there is competition in the aftermarket for replacement parts for the vehicles. In fact, while both the 1993 through 1998 Jeep Grand Cherokee (ZJ) and the 1999 through 2004 Jeep Grand Cherokee (WJ) are out of production, there are presently an estimated 2,000,000 of these vehicles still on

the road, and replacement parts will continue to be sold for these vehicles for years to come. Chrysler Group's Mopar division continues to this day to sell replacement skid plates and/or brush guards for these off-road vehicles based upon the very designs depicted in the 20 engineering drawings at issue. As reported in Chrysler Group's October 15, 2010 IR response to PE10-031, Enclosure 5 (Mopar Monthly Sales), in the last five years alone almost 19,000 of these replacement skid plate and/or brush guard parts have been sold in the aftermarket through Mopar. The 20 engineering drawings could be used by other automobile manufacturers and/or those who manufacture aftermarket replacement parts for the 1993 through 2004 Jeep Grand Cherokee without compensating Chrysler Group for the design and development expenses related to the parts. Release of these skid plate and/or brush guard drawings in the public domain, therefore, would constitute a forced transfer of Chrysler Group's valuable intellectual property to other entities and could put Chrysler Group at a distinct competitive disadvantage in the aftermarket parts business segment.

The petitioner's September 30, 2011 letter also raises issues and allegations that are unrelated to a 49 C.F.R. Part 512, App. B(1) confidentiality determination. I understand that my company's Office of the General Counsel will be responding to these other issues under separate cover.

Once again, thank you for the opportunity to provide further support for our confidentiality claims. Please let me know if you require any additional information to further justify the confidential treatment of this information.

Sincerely,

For → David D. Dillon
Sr. Manager
Product Investigations & Campaigns

Cc: Alan L. Degraw
Senior Staff Attorney
Office of the General Counsel