

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

IN RE MERCEDES-BENZ : MASTER NO. 99-4311  
ANTI-TRUST LITIGATION :  
:

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ORDER

Upon the joint application of all parties in this matter,  
and all parties by their counsel having subscribed to the Amended  
Stipulated Protective Order (the "Protective Order"), and for  
good cause shown

It is this day of <sup>74</sup>26 March 2001

ORDERED that the Protective Order attached to this Order is  
hereby adopted and incorporated by reference as the Order of this  
Court, except as expressly modified by this Order, and it is  
further

ORDERED that the provision at paragraph 8 of the Protective  
Order specifying reference of disputes regarding the status of  
discovery material to the U.S. Magistrate is vacated, and it is  
further

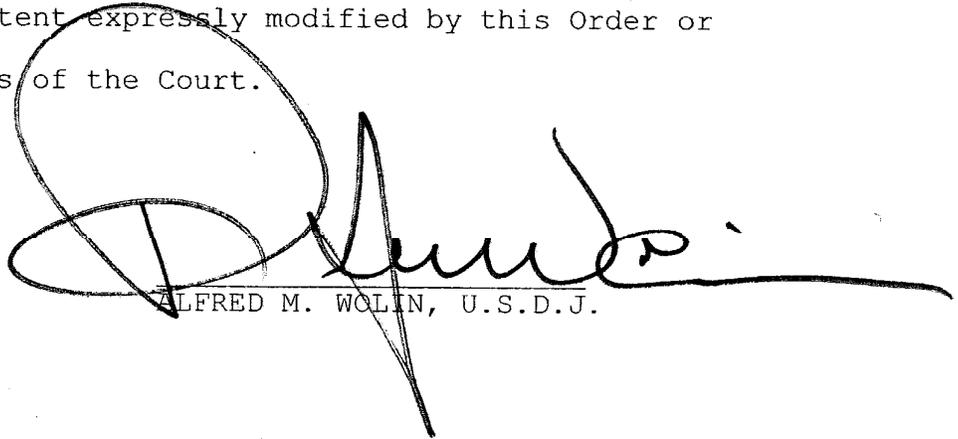
ORDERED that disputes regarding the status of discovery  
material under the Protective Order and all other disputes  
arising out of the operation of the Protective Order shall be  
referred to Special Master Shrager, and it is further

ORDERED that, notwithstanding the provisions of paragraph 14  
of the Protective Order, the Court may further modify the  
Protective Order on its own motion in any manner that may be

consistent with due process of law, and it is further

ORDERED that the Court shall not be bound by any provision in the Protective Order, including without limitation, that the Court shall not be bound with respect to (a) whether material designated confidential is properly or should remain so designated, and (b) whether material submitted under seal pursuant to the Protective Order should properly be or remain under seal, and it is further

ORDERED that the terms of the Protective Order shall control except to the extent expressly modified by this Order or subsequent Orders of the Court.

A handwritten signature in black ink, appearing to read 'Alfred M. Wolin', is written over the typed name. The signature is stylized with a large, circular flourish on the left side and a long horizontal stroke extending to the right.

ALFRED M. WOLIN, U.S.D.J.

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IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF NEW JERSEY

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IN RE MERCEDES-BENZ ANTITRUST	:	Master File No. 99-4311 (AMW)
LITIGATION	:	
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This Document Relates To	:	
ALL ACTIONS	:	
.. .. .	:	

**AMENDED STIPULATED PROTECTIVE ORDER**

IT IS HEREBY ORDERED that the following procedures shall be adopted with respect to documents and other information produced and/or disclosed in this action. This Order shall apply to any and all actions filed in or transferred to this Court that have been or may be consolidated in or coordinated with the above-titled action:

1. No discovery material designated as "Confidential" hereunder or any copy, image, excerpt or summary thereof shall be delivered or disclosed to any person except as hereafter provided. Nor shall the contents of any such discovery material be revealed except to

persons authorized hereunder and except as so provided. This Order applies only to information furnished by parties and non-parties that is not otherwise publicly available.

2. Discovery material designated as “Confidential” shall be used or disseminated only for the purpose of prosecuting or defending this action, including appeals, and not for any other litigation or any other purpose whatsoever, unless that information has become publicly available without a breach of the terms of this Order.

3. The term “discovery material” shall mean all information, tangible items, and documents produced by a party or non-party respondent to discovery (including, where applicable, its present and former officers, directors, employees, and agents) in this litigation and the contents thereof, all interrogatory responses and responses to requests for admissions and the contents thereof, deposition testimony and transcripts or videos thereof. For purposes of this order, “discovery material” shall also include any affidavit, motion, memorandum, pleading, image or other material filed with the Court which contains confidential information. This Order shall govern the handling of all such discovery material.

4. Any discovery material considered in good faith by any party or non-party to contain a trade secret or other confidential research, development, proprietary or commercial information may be marked or otherwise designated “Confidential” in a readily visible or noticeable manner, but not so as to obscure the text or image of the material. In the case of documents, interrogatory responses and responses to requests for admissions, this shall be done by affixing a stamp or designation on each page containing confidential information, or on each such specific interrogatory response, prior to production or service of the discovery material, except that when only certain documents are selected for copying pursuant to a discovery request, the disclosing party shall be required to mark only the documents selected by the other party for copying. A cover letter can be used to designate computerized data as “Confidential,” but must specifically designate the portion of the data that is reasonably subject to such designation. Further, an entity producing discovery material may designate discovery material that it believes in good faith to be confidential or proprietary and which was produced prior to the entry of this

Stipulated Protective Order, by identifying to those receiving these materials the document identification numbers of such materials within thirty days from the date of the entry of this Stipulated Protective Order. Those who received discovery materials so designated shall mark all copies "Confidential" as provided above. Information contained in other documents produced but not selected for copying may not be disclosed. In the case of deposition testimony, the procedures outlined in paragraph 10 of this Order shall be followed.

5. All documents and materials filed with the Court, including, inter alia, any transcripts of depositions, exhibits, answers to interrogatories, briefs, memoranda, affidavits, and pleadings which comprise or contain designated material or information taken therefrom, shall be filed in sealed envelopes or other appropriately sealed containers on which shall be endorsed the title of this action, an indication of the nature of the contents of such sealed envelope or other container, the identity of the party filing the materials, the word "CONFIDENTIAL" and a statement substantially in the following form: "This document is filed under seal pursuant to the Protective Order of the Court, dated \_\_\_\_\_, 2000." The first page of any documents filed with the Court, which documents comprise or contain designated material or information taken therefrom, shall bear a notice in substance the same as that on the envelope.

6. Discovery materials designated "Confidential" shall not be disclosed to any person other than:

a. The Court and necessary court personnel (including Special Master, mediators and court reporters at depositions), provided that any such discovery material filed with the Clerk of the court shall be sealed, pursuant to paragraph 5 above, subject to release only by order of the Court or by agreement of the parties;

b. Counsel (including other attorneys, staff and copying or imaging services) of record for the parties herein;

c. Expert witnesses and consultants (and their regular employees) employed by counsel to assist in the conduct of this litigation to the extent such disclosure is reasonably necessary in connection with this lawsuit, except that materials designated

c. Expert witnesses and consultants (and their regular employees) employed by counsel to assist in the conduct of this litigation to the extent such disclosure is reasonably necessary in connection with this lawsuit, except that materials designated "Confidential" may not be disclosed to any expert witness or consultants who are officers or employees of a manufacturing competitor of MBUSA or a competitor of any New York Region MB Dealer (the determination of who is a "competitor" to be made in good faith by parties' counsel);

d. The named plaintiffs; the named defendants; and the present and former officers, directors and employees of defendants who are involved in the discovery proceedings or preparation of this action for trial;

e. Persons who are actual or potential witnesses or deponents in this action (and their counsel), except that materials designated "Confidential" may not be disclosed to any actual or potential witness or deponents who are officers or employees of a manufacturing competitor of MBUSA or a competitor of any New York Region MB Dealer (the determination of who is a "competitor" to be made in good faith by parties' counsel), unless the persons authored, received, or otherwise had access to the "Confidential" material, without the producing entity's prior agreement or further Order of this Court; provided, however, that such person shall not be allowed to retain copies of confidential information or make notes of their contents.

f. Such other persons as may be hereafter authorized in writing by the party or non-party respondents to discovery which designated the information as confidential; and

g. Such persons as may be hereafter authorized by further order of the Court or pursuant to subpoena issued by a governmental or private entity. The party receiving such subpoena shall notify all other parties of same within five (5) days of its receipt.

This Order shall not limit the right of the respective parties or non-party respondents to discovery to disclose their own confidential discovery material to any persons or entities of their own choosing. Such disclosure shall not waive the protection of this Order.

annexed hereto as Attachment A. The intentional, improper use of confidential material may be punishable by contempt of court.

If disclosure is made to a person who is a business competitor of a producing entity (after obtaining the requisite approval from the producing entity or the Court), that person shall not use such information in that person's business.

With respect to persons listed in paragraphs 6(d), counsel seeking to disclose confidential information to such persons may not do so unless they have first shown this Order to the person and advised the person that he/she is bound by it. With respect to persons listed in paragraph 6(e), counsel seeking to disclose confidential information to such persons may not do so unless counsel first ask such persons to sign the form annexed hereto as Attachment A, and if they do not sign that form, show this order to the person and advise the person that he/she is bound by it.

Any deponent who is to be questioned concerning confidential discovery material, as well as the deponent's counsel if the deponent is not represented by counsel of record, must be furnished with a copy of this Order and the deposing party will also inform the deponent and counsel that they are bound by the terms of the Order, are required to maintain the confidentiality of any confidential discovery material shown to them at the deposition, and cannot use such information for any purpose other than the instant litigation.

8. A party shall not be obligated to challenge the propriety of the designation of any discovery material as "Confidential" at the time such designation is made, and failure to do so shall not preclude a subsequent challenge thereof. Any party or non-party respondent to discovery may at any time move for modification of this Protective Order or relief from any provision of this Order with respect to specific confidential discovery material. If a party challenges a "Confidential" designation as to any discovery material, it shall first notify in writing the attorneys of record for the party or non-party producing the discovery material, and explain in writing the need to change or eliminate the classification. The designating party shall respond within five (5) business days by explaining in writing the basis for the classification. Counsel for

the parties shall confer within five (5) business days of the receipt of the explanation or within such time as the parties mutually agree to confer. If the status of the challenged material cannot be resolved during the conference, the party making the designation shall have five (5) business days from the conference to initiate a conference call with the U.S. Magistrate Judge requesting the Court to make a ruling that the challenged material should be subject to the protection invoked. The designating party shall have the burden of establishing that the matter to which continued protection under this Order is sought merits such protection. The challenged material will be treated as "Confidential" as described in this Order pending the Court's ruling.

No disclosure of any "Confidential" material or information may be made to any person not authorized by the terms of this Protective Order to receive such material or information, and no "Confidential" material or information may be used for any purpose not authorized by the terms of this Protective Order, in the absence of prior written authorization by the party or non-party providing such material or information or of an Order of the Court. Nothing herein is intended to shift the burden of persuasion as it otherwise exists with respect to the treating of evidence as confidential.

9. Inadvertent production of information that a party or non-party later claims should not have been produced because of privilege, including but not limited to the attorney-client privilege or work product doctrine ("Inadvertently Produced Privileged Document"), will not be deemed to automatically waive any privilege. Upon discovery by a party or non-party that it has produced an Inadvertently Produced Privileged Document, the producing party or non-party shall promptly notify all other parties of such production. A party or non-party may request the return of any Inadvertently Produced Privileged Document by identifying the information inadvertently produced and stating the basis for withholding such information from production. The possessing party shall, within three business days, inform the requesting party if the document will be returned. If the possessing party refuses to return the document, the requesting party may then move the Court for an order compelling return of the

material. The material will be treated as confidential pursuant to this Order and will not be disclosed pending resolution of such a motion.

10. Any deposition testimony, whether oral or written, may be designated as "Confidential" by a party or non-party respondent to discovery by advising the court reporter, and videographer, on the record at the time such testimony is given, or by notifying counsel of record for all parties in writing within seven (7) days after receipt of the transcript that designated portions of the transcript are confidential. If such designation is made at the time of the deposition, the reporter shall then separately transcribe those portions of the testimony which have been so designated and shall appropriately mark the face of the separate transcript with the language referred to in paragraph 4 of this Order and seal it in a separate envelope.

Whenever "Confidential" information is to be discussed or disclosed in a deposition, either party may exclude from the room during such testimony any person who is not authorized to receive such information under this Order. The failure of such other persons to comply with a request of this type shall constitute substantial justification for counsel to advise the deponent that he or she need not answer the question. Every deposition shall be treated as "Confidential" for a period of seven (7) days after receipt of the transcript by all counsel. Any court reporter who reports or transcribes testimony shall also agree not to disclose any confidential discovery material except as provided for under the terms of this Order by signing a certification in the form attached hereto as Exhibit A.

11. The inadvertent or unintentional disclosure by a party or a non-party respondent to discovery supplying confidential information, regardless of whether such information was designated as confidential, shall be treated in the same manner as privileged material under Section 9 above.

12. Nothing in this Order shall prohibit disclosure of a document produced by MBUSA and designated "Confidential" to a person identified in such document as its author, addressee, or person who is designated on the original document to receive a copy, and nothing in this Order shall prohibit disclosure of a document designated "Confidential" to a person

identified in discovery material as having previously reviewed that designated document; provided, however, that, in either instance, said person shall not be allowed to retain the copy of the designated discovery material shown to such person during the course of this litigation.

13. The parties and their counsel shall make every effort not to overuse the “Confidential” designation and apply such designation of any document that is clearly not confidential or that has already been disclosed in other litigation without such designation. All documents designated hereunder as “Confidential” shall be treated as confidential, unless the confidential status of a particular document is objected to, and the Court has ruled that the document is not confidential.

14. The provisions of this Protective Order may be modified upon written agreement of the parties and non-party respondents to discovery or upon application to this Court for good cause shown.

15. The entry of this Protective Order is not intended and should not be construed in any way to waive any of the privileges and rights of either of the parties or non-party respondents to discovery regarding any of the documents covered by the Order, including rights under the Federal Rules of Civil Procedure and the local U.S. District Court rules governing discovery.

16. Prior to trial, a party desiring to introduce any confidential document will approach the bench for a ruling on how the document is to be treated. During trial, the parties will utilize such procedure as the Court may designate in the final pretrial order.

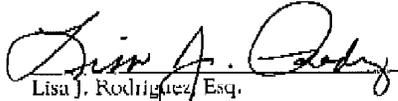
17. Confidentiality is to be maintained, and the terms of this Protective Order shall continue to be binding, both during and after disposition of this case, including any appeals. The terms of this Order shall survive any settlement, discontinuance, dismissal, severance, judgment or other disposition of this lawsuit, and this Court shall continue to retain jurisdiction to enforce the terms of this Order. On conclusion of the litigation, including all appeals, all confidential discovery material and copies thereof shall promptly be returned to the entity who provided such material or be destroyed if so directed in writing by such party and a certificate of

destruction is provided. If the entity who provided confidential discovery material requests, within ten (10) days after conclusion of the litigation, including all appeals, that any confidential material be returned rather than destroyed, such material shall be returned to the providing entity and not destroyed, with shipping costs for returning the material to be paid by the providing party. The pretrial pleadings and record may be retained in conformity with this Order.

18. This Stipulated Protective Order may be executed in counterparts, and will be binding when it has been executed by the last signatory hereto to execute a counterpart. A facsimile signature shall be deemed to constitute an original signature for purposes of this Stipulated Protective Order.

**STIPULATED AND AGREED:**

Dated: December 15, 2000

 1/16/01  
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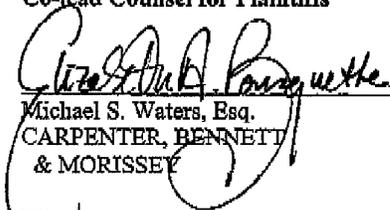
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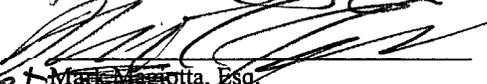
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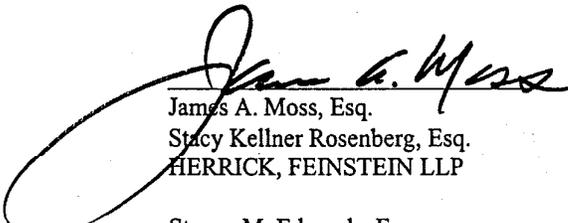
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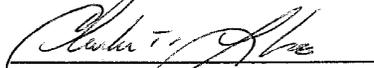
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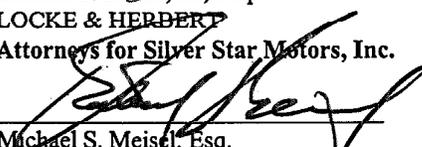
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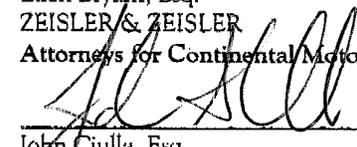
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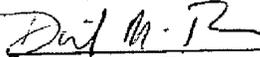
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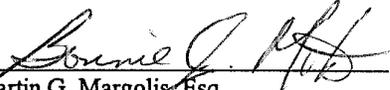
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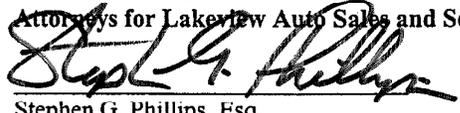
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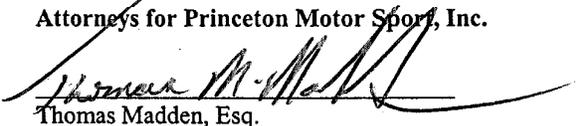
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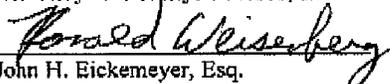
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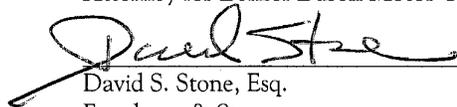
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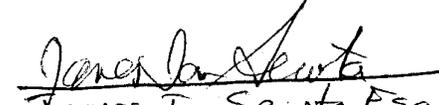
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SO ORDERED:

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Alfred M. Wolin, United States District Judge

Dated: \_\_\_\_\_, 2001

EXHIBIT "A"

CERTIFICATION

I, \_\_\_\_\_, hereby certify that I have read and understand the contents of the Stipulated Protective Order in the case styled *In Re Mercedes-Benz Antitrust Litigation* pending in the United States District Court of New Jersey, Newark, New Jersey.

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

This is to certify that the undersigned will abide by all terms and conditions of the Protective Order signed by Magistrate Judge Susan Davis on the \_\_\_\_ day of \_\_\_\_\_, 2000, with regard to confidentiality of discovery material in re: *Mercedes-Benz Antitrust Litigation* pending in the United States District Court of New Jersey, Newark, New Jersey.

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_