#23949

APR 15 2002

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Gabrielle G. Gallegos
General Counsel
Indian Motorcycle Corporation
200 East Tenth Street
Gilroy, CA 95020

RE: Confidentiality Determination/PE01-039

Dear Ms. Gallegos:

This is in response to your letter dated January 14, 2002, in which you request confidential treatment for materials submitted in response to NHTSA's above-referenced Request for Information, dated November 21, 2001. Specifically, you request confidential treatment for the following materials: correspondence from two consumers, minutes from a September 13, 2000 meeting between Sway-A-Way, Inc. and Indian Motorcycle Corporation ("IMC"), engineering drawings and a warranty claims profile spreadsheet. IMC requests confidential treatment for these materials for an unspecified period of time.

We note that the aforementioned engineering drawings were not submitted to the agency. In addition, the above-referenced meeting minutes were not stamped "confidential" as required by the agency's regulations. Further, although the warranty claims profile spreadsheet attached to your response to NHTSA's Request for Information is marked confidential, you did not request confidential treatment for the spreadsheet in your letter.

Accordingly, your request for confidential treatment does not conform to the agency's regulations governing such requests, 49 CFR Part 512. In particular, the agency's regulations require submitters of information to "stamp or mark [the word] 'confidential,' or some other term which clearly indicates the presence of information claimed to be confidential, on the top of each page containing information claimed to be confidential" (49 CFR § 512.4(a)(1)) and submit to the Office of Chief Counsel information supporting the submitter's claim for confidential treatment (49 CFR § 512.4(b)(3)). This supporting information should, among other things, inform the agency of the period of time for which confidential treatment is being requested (49 CFR § 512.4(b)(3)(ix)). I have enclosed a copy of 49 CFR § 512, for your future reference.

To expedite review of your submission, I have decided to process your request for confidential treatment for this information. However, in the future, please comply fully with the agency's regulations.

You assert that the correspondence from consumers, meeting minutes, and warranty claims profile spreadsheet are confidential. I have decided to deny your request for confidential treatment of these materials. You have not demonstrated, and I am unable to find, based on the information that you submitted, that the affirmative use of this information could be used by competitors in a way that would cause IMC substantial competitive harm. Public Citizen Health Research Group v. Food and Drug Administration, 704 F.2d 1280 (D.C. Cir., 1983).

Please note, however, that the public release of consumer names, addresses and telephone numbers identified in the consumer correspondence and warranty claims profile spreadsheet are entitled to protection pursuant to Exemption 6 of the Freedom of information Act, 5 U.S.C. §552(b)(6), because their release would constitute a clearly unwarranted invasion of personal privacy to the persons who would be identified. Accordingly, the agency will protect these items of information.

If you disagree with this determination, you may request reconsideration. The request for reconsideration must be submitted with written justification and the certification required by 49 C.F.R. §512.4(e) 10 working days after your receipt of this letter. Such justification must show the particular competitive harm to your company from the disclosure of the information for which confidentiality has been denied (49 C.F.R. §512.4(b)(3)) and contain any legal arguments and citations upon which you rely. Should we receive no justification within the required period of time, the agency will be at liberty to place your submitted information in the public file.

Sincerely,

/S/

Heidi L. Coleman
Assistant Chief Counsel
for General Law

NHTSA
NCC-30:Bolden:61834:2/5/02:OCC23949
Revised:Bolden:3/12/02
NCC-30:sub/chron
NSA-12: Bob Young
U:\ncc30\conf\misc02\indianmotorcycle.tdb.doc

MOTORCYCLE

January 14, 2002

Mr. Bob Young
National Highway Traffic Safety Administration
Office of Defects Investigation
Medium & Heavy Duty Vehicle Division
400 Seventh St. S.W.
Room 5326 NSA-10
Washington, D.C. 20590

Re: PE01-039 – Rear Suspension Collapse

Dear Mr. Young:

Enclosed is Indian's response to the letter of November 21, 2001 from Division Chief Richard Boyd.

It is Indian's intention to fully comply with your request for information. If you require additional information or clarification of the information provided, please contact me at 408-846-7257 or email me at ggallegos@indianmotorcycle.com.

Indian regards the correspondence from consumers, meeting minutes, and Indian's engineering drawings as confidential, and has so marked these items. We will take the additional steps required by 49 CFR Part 512 to maintain the confidentiality of these documents, and will supply copies of these materials to the Office of the Chief Counsel.

Thank you for your consideration.

Sincerely,

Gabrielle G. Gallegos
General Counsel

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