



U.S. Department
of Transportation
National Highway
Traffic Safety
Administration

DOT Auto Safety Hotline
Vehicle Owner's Questionnaire
To Report Vehicle Safety Defects
1-888-DASH-2-DOT
(1-888-327-4236)
INTERNET: www.nhtsa.dot.gov/hotline

FOR AGENCY USE ONLY 100148

Date Received

07-MAY-2009

Repository ☐Reference No.
10267931**OWNER INFORMATION (Type or Print)**

Name

Address

City

BOSTON

State

MA

Zip Code

Daytime Telephone Number

E-mail Address

Evening Telephone Number

Do you authorize NHTSA to provide a copy of this report to the manufacturer of your vehicle? ☐ YES ☒ NO
In the absence of an authorization, NHTSA WILL NOT provide your name or address to the vehicle manufacturer.
Signature of Owner _____ Date 1 / 1 / 2009

VEHICLE INFORMATION

17 digit Vehicle Identification Number Located at bottom of windshield on driver's side

WPOCA29894S

Make

PORSCHE

Model

BOXSTER

Model Year

2004

Date Purchased

6/04

Dealer's Name and Telephone Number

Herb Chambers Porsche 617-278-9300

Engine:

No: Cylinders

Fuel Type:

Original Owner

☒

Dealer's City

Boston

State

MA

Zip Code

02134

Transmission Type

☐ Antilock Brakes

Powertrain

Multiple Failure:

Incident Date(s)

02-MAY-2009

☐ Cruise Control**FAILED COMPONENT(S)/PART(S) INFORMATION**

Vehicle Component Code: 060000 ENGINE AND ENGINE COOLING

CATASTROPHIC ENGINE FAILURE BECAUSE
of a sheered off bolt of the intermediate shaft

Failure Mileage

20000

Failure Speed

20,468
2-5 mph**ADDITIONAL ITEMS TO BE COMPLETED WHEN REPORTING A TIRE FAILURE**

Tire Make

Tire Model (Name or Number)

Tire Size (Example P215/65R15)

DOT No. (Example: DOTM19ABC036)

☐ Original Equipment☐ Prior Repair

Failure Location:

Tire Component Code

Tire Failure Type:

ADDITIONAL ITEMS TO BE COMPLETED WHEN REPORTING A CHILD SEAT FAILURE

Make:

Date Manufactured:

Model No./Name:

Seat Type:

Installation System:

Child Seat Component Code:

Failed Part:

APPLICABLE INCIDENT INFORMATION

(Please describe in detail the incident(s), failure(s), crash(es), and injury(ies).)

Crash

☐ Yes ☒ No

Fire

☐ Yes ☒ No

Number of Persons Injured

0

Number of Deaths

0

Reported to Police

N

Narrative Description of Incident(s), Crash(es), and Injury(ies).

Please describe (1) events leading up to the failure, (2) failure and its consequences, and (3) what was done to correct the failure; i.e., parts repaired or replaced (and if old part is available).

TL*THE CONTACT OWNS A 2004 PORSCHE BOXSTER. WHEN ACCELERATING FROM A STOP LIGHT AT 2 MPH, THE VEHICLE STALLED. THE VEHICLE WAS TOWED TO A DEALER AND THEY STATED THAT THE ~~THE~~ FAILED, WHICH CAUSED THE ENGINE TO FAIL. IT WOULD COST \$16,000 TO REPLACE THE VEHICLE. THE MANUFACTURER STATED THAT THEY WERE NOT RESPONSIBLE FOR THE FAILURE BECAUSE THE VEHICLE EXCEEDED ITS WARRANTY. THE FAILURE AND CURRENT MILEAGES WERE 20,000.

IMS (Intermediate shaft)
Fortunately, I was stopped at a light in traffic and only beginning to accelerate when the bolt sheered off inside of the engine. Earlier in the day I was on the highway traveling at 70-75 mph. Had the bolt failed. They said it could have caused a serious accident as the engine would have seized.

Include, if available: Police/Fire Department Report, Photos, and Repair Invoice.

ATTACH ADDITIONAL SHEETS IF NECESSARY

The Privacy Act of 1974-Public Law 93-579 This information is requested pursuant to authority vested in the National Highway Traffic Safety Act and subsequent amendments. You are under no obligation to respond to this questionnaire. Your response may be used to assist the NHTSA in determining whether a Manufacturer should take appropriate action to correct a safety defect. If the NHTSA proceeds with administrative enforcement or litigation against a manufacturer, your response, or a statistical summary thereof, may be used in support of the agency's action.

** See attached
extra pages*

[REDACTED]
Boston, MA [REDACTED]
[REDACTED]
[REDACTED] C)

May 12, 2009

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Detlev von Platen, CEO
Porsche Cars North America, Inc.
980 Hammond Dr., Ste. 1000
Atlanta, GA 30328
United States

RE: Re: 2004 Boxster Engine Failure

Dear Mr. von Platen:

This letter is a demand for relief pursuant to Massachusetts General Laws Chapter 93A, § 9 for violations of that statute, other Massachusetts laws and common law, and the Federal Trade Commission Act, 15 U.S.C.A. §§ 41-58.

On May 3, 2009, my 2004 Boxster with 20,468 miles was towed to Herb Chambers Porsche of Boston, Massachusetts ("Chambers"). The car experienced catastrophic engine failure. The cause was the Intermediate Shaft ("IMS") bolt, which broke causing a chain of events leading to engine failure. Chambers diagnosed the problem immediately as IMS failure based on my re-telling of what happened and their prior experience with this exact issue with other Boxster vehicles. Chambers did not even have to remove the transmission or any other engine parts to diagnose the cause. This is only one piece of powerful evidence that Chambers had seen this issue before and that Porsche was well aware of it. The subsequent removal of the transmission verified the diagnosis.

Further evidence that IMS failure has been experienced by numerous other Porsche owners and known by Porsche is admissions by a number of Porsche technicians who said they have replaced or rebuilt many of these engines due to IMS failure.

In addition, the Internet is replete with stories of other Porsche owners experiencing the same failure with low mileage Porsche Boxsters and other models. Here are a few examples:

"The garage that looked at mine claimed to have 4 996s and a couple of Boxsters in that week with the failed engines and that was no different than a normal week."

"Purchased 2005 Boxster S brand new. Never had any major issues until about 2 years with 20k miles. That's when vehicle had complete engine failure/balance shaft broke apart."

"I have been 'shafted' by the so-called intermediate shaft bolt and subsequent catastrophic engine failure. I bought a one-owner 2003 C4S Coupe in April this year with 32,800 miles . . . Less than four months and 4,000 miles later, I had a catastrophic engine failure."

"I had an intermediate shaft failure in a 2005 C2S. The car had 10,000 miles on it."

"There was a recent Porsche event that 11 Boxsters participated in. One had an IMS failure during the event and two of the other Boxsters participating had previously had their engines replaced due to IMS failures."

It is clear that the countless IMS failures are well known to Porsche and that it has known about such failures for years. Your dealers no doubt have a long documented history of engine failures due to IMS failure, which history will be readily available in a litigation discovery process.

The IMS failures are clearly "safety defects" within the definition set forth in U.S.C.A., Title 49, Chapter 30101 et seq. (the National Traffic and Motor Vehicle Safety Act) ("the National Safety Act") which provides in pertinent part:

Section 30102(a)(2) and (a)(8)

(a)(2) "defect" includes "any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment."

(a)(8) motor vehicle safety means the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.

The Department of Transportation's National Highway Traffic and Safety Administration ("NHTSA") in its Motor Vehicle Safety Defects and Recalls brochure defines a safety defect as a problem that exists in a motor vehicle or item of motor vehicle equipment that:

- o Poses a risk to motor vehicle safety, and
- o May exist in a group of vehicles of the same design or manufacture, or items of equipment of the same type and manufacture.

As you very well know, the NHTSA is a Federal agency given the authority by the National Safety Act to issue vehicle safety standards and to require manufacturers to recall vehicles that have safety related defects or do not meet Federal safety standards.

An example of a defect considered safety related is "Critical vehicle components that break, fall apart, or separate from the vehicle, causing potential loss of vehicle control or injury to persons inside or outside the vehicle." See NHTSA Motor Vehicle Safety Defects and Recalls brochure. This definition clearly encompasses catastrophic engine failure caused by a defective IMS bolt.

The Safety Act requires that if a safety defect is discovered, the manufacturer must notify the National Highway Traffic and Safety Administration ("NHTSA"), as well as vehicle or equipment owners, dealers, and distributors. The manufacturer is then required to remedy the problem at no charge to the owner, irrespective of whether the vehicle is under the manufacturer's original warranty.

Similar to the National Safety Act, the Massachusetts Attorney General has promulgated regulations, 940 CMR 5:03 (5), which require manufacturers to give prompt written notice of any defect. The Massachusetts Attorney General defines the term "defect" essentially the same as the National Safety Act. 940 CMR 5:03 (5) provides in pertinent part:

It is an unfair or deceptive act or practice for manufacturer to fail to give prompt written notice of **any defect** in motor vehicles.....

Under both Federal and state law and based upon the foregoing, the engine failure I experienced is certainly a safety defect which Porsche previously had a duty to report to NHTSA and the Massachusetts Attorney General, which it failed to do in violation of the National Safety Act and the Massachusetts Attorney General Regulations. Porsche's conduct therefore constitutes unfair and deceptive business practices in violation of Federal and State laws as set forth above (a) by failing to notify NHTSA; (b) by failing to recall the cars with the IMS defect; (c) and by not taking full responsibility to fix the defect at its own cost. As a result of such unfair and deceptive acts and practices, I have suffered damages which, between the diagnostic tests that Porsche is demanding I pay for and the cost of a new or rebuilt engine, could exceed \$20,000. Porsche's conduct has significant legal consequences under not only Massachusetts law, Chapter 93A, but such conduct also constitutes a breach of the implied warranty of merchantability. A breach of warranty under Massachusetts law is in and of itself an unfair and deceptive act or practice within the meaning of Section 2 of Chapter 93A. 940 CMR Section 3:08 (2). Hannon v. Original Gunite Aquateck Pools, Inc., 385 Mass. 813, 821 (1982). Porsche breached both the implied warranty of merchantability under M.G.L. c. 106, Section 2-314 and the implied warranty of fitness for a particular purpose under Section 2-315 by virtue of the defective IMS which occurred at extremely low mileage. It is certainly reasonable for a consumer to expect a Porsche engine to last more than 20,468 miles before catastrophic engine failure occurs. Back v. Wickes Corp., 375 Mass. 633, 639-641.

In addition, like the National Safety Act scheme, even though the warranty period for the Boxster recently expired, Massachusetts law provides that a manufacturer of a vehicle has a duty to design an engine with reasonable care to eliminate avoidable problems. Uloth v. City Tank Corp., 376 Mass. 874, 878 (1078). Furthermore, manufacturers may not exclude or limit the operation of M.G.L. c. 106, by contract, or disclaim the implied warranty of merchantability. Back v. Wickes Corp., 375 Mass. 633, 639, 641 (1978). Porsche's conduct in designing an engine that failed well before 50,000 miles, and its failure to report the design defect is a breach of its duty to consumers and constitutes negligence, and a breach of the warranties of implied merchantability and fitness, each of which violate Massachusetts General Laws, Chapter 93A.

In the current case, the 2004 Boxster had only 20,468 miles. It was beyond the warranty period by just over 10 months. The car was faithfully maintained by Chambers since the day it left the dealership. The car was always garaged except when on the road. I have been a Porsche customer for more than nine years, and intended to trade or sell this vehicle and buy a new one. Engine failure at 20,000 is inconceivable for any car, especially a luxury car such as a Porsche. I am sorely disappointed by Porsche's position in this matter, demanding that I pay upwards of \$5,000 before Porsche will even consider how to handle the resolution of this matter. Given its legal obligations, I find this stonewalling position willful, in bad faith, and overall

Detlev von Platen, CEO
Porsche Cars North America, Inc.
May 12, 2009
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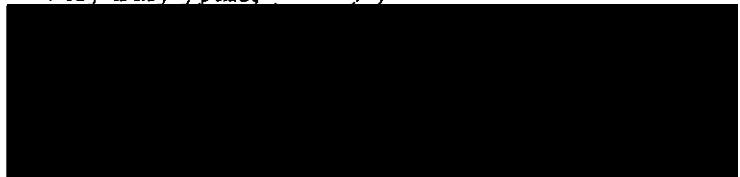
unconscionable. Chapter 93A was promulgated to prevent exactly this kind of treatment of consumers by large powerful corporations.

Chapter 93A, Section 9(3) provides that "at least 30 days prior to filing of any such action, a written demand for relief, identifying the claimant and reasonably describing the unfair or deceptive act or practice relied upon and the injury suffered, shall be mailed or delivered to any prospective respondent." Failure to respond to this demand letter with a reasonable settle offer may serve as an independent basis for finding a violation of the statute.

Section 9(3) further provides that if the Court finds for the claimant, "recovery shall be in the amount of actual damages . . . or up to three but not less than two times such amount if the Court finds that the use or employment of the act or practice was a willful and knowing violation of said Section 2 or that the refusal to grant relief upon demand was made in bad faith with knowledge or reason to know that the act or practice complained of violates said Section 2." Section 9(4) provides that if the Court finds for the plaintiff, it "shall, in addition to other relief provided for in the Section and irrespective of the amount in controversy, . . . award reasonably attorneys' fees and costs incurred in connection with said action."

Under Chapter 93A, you are provided with the opportunity to make a reasonable settlement offer within thirty (30) days of receipt of this letter. If you fail to do so, I will pursue this matter to the fullest extent of the law.

Very truly yours, 



cc: Massachusetts Attorney General's Office (via U.S. Mail)
Michael Fernandes, General Manager of Herb Chambers Porsche (via email and U.S. Mail)
Frank Miscioscia, Service Manager of Herb Chambers Porsche (via email and U.S. Mail)
Jessie Khaitman, Porsche Specialist (via email and U.S. Mail)