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CL-10659252-6315



EASLEY SC [REDACTED]

Howard Harris, VP General Counsel

1.31.2017

& Ross Lucas, VP Southern Region

c/o BMW of North America, LLC

300 Chestnut Ridge Road
Woodcliff Lake, NJ - 07677q

FEB 14 2017

SUBJECT: AIRBAG RECALL E93 VIN: WBAWL13599P [REDACTED]

Gentlemen;

The content below was sent to Veronica Santillo on January 11 and remains without a response.

Please respond to this communication within fifteen (15) days form receipt, or before Feb 20th, failing which we will have to take all permitted actions; as we have lost the potential buyer for the unit-due to its unrepaired condition.

"Via email only.

veronica.santillo@bmwnaext.com

Dear Ms Santillo.

I trust your Holidays were pleasant and restful.

My wife is the registered owner of a 2009 BMW E93 series subject to a DOT safety recall. The VIN is Wbawl13599p [REDACTED]

Until last week this vehicle had always been operated in Texas ; in a warm and humid climate- the very conditions most susceptible to cause the airbag (or SRS) to fail in its most severe failure mode-including discharging metal shrapnel onto occupants. As a matter of record that discharge is aimed directly at their heads, including their faces.

As I am sure you are aware , selling a vehicle that is subject to a recall but is an un repaired state comes with liability for the seller and the OEM/distributor.

We have a potential buyer for the vehicle mentioned above.

As such, demand is hereby made that you promptly repair the unit per the applicable and outstanding safety campaign (as well as any anticipated future recalls in the vehicle*); failing which we may lose the sale and have no other alternative but to hold BMW accountable for our damages and losses.

As such, please respond to this communication at your earliest convenience and in no later later Jan 23rd; failing which we will have to notify NHTSA of your inability or unwillingness to perform the outstanding safety campaign ; as well as seek all other costs and damages we will incur (including possibly having to sell the vehicle at a reduced price because of its known defective condition).

RR
3/24/17
SMD

In the event you are unable or unwilling to repair the unit, within the imparted delay or any other reasonable delay, we will require that you disable the affected airbags; as (in this scenario) the severity of consequences of the supplemental restraint system failing, grossly outweighs the risks associated with operating the unit with solely the seat belts being operational. As I am sure you are aware, seat belts have been an adequate level of safety for decades and SRS systems have improved occupant safety. However, discharges of metal shrapnel to occupants' heads and faces have not been demonstrated to increase any occupants level of safety in a crash. Quite the contrary, they've measurably increased injury severity in all scenarios ... hence the DOT recall.

Of course, any refusal or unwillingness on your part to promptly repair or to disable the supplemental restraint system (SRS or airbag) affected by the safety campaign, will result in us preserving a right to all claims for damages against your company; for failure to mitigate the registered owners and operators' exposure.

To be clear: Should any occupant be injured by shrapnel or other SRS unwarranted discharges, as a result of your refusal to protect our safety by replacing or disengaging the airbags: we will let a jury of our peers and SC residents determine the adequacy of your conduct and degree of care for the owners of your products as well as the public that comes into contact with them; as well as the sense of urgency with which the corrective measures were implemented.

I trust that, as with your involvement with our 2003 330Ci DOT recalled model, which you promptly repaired, the required components can be promptly located (most likely from a stash of available airbags). Indeed, the 2012- onwards units are, upon information and belief, identical to ours and yet aren't affected by the recall. Therefore, upon information and belief, compliant, safe and tested airbags exist and have been in your possession for 6 years for the E90 to E93 series (as 2012 E90- 93 models began being built in the 2011 timeframe).

Trusting this is sufficient and satisfactory to have this issue promptly and satisfactorily resolved, I invite you to govern yourselves accordingly.

[REDACTED]
Easley SC
[REDACTED]

Tel. [REDACTED]

* I am informed (maybe erroneously?) that the current repair is a temporary one (the SRS being equipped with some sort of moisture absorbing material) and that another replacement (a permanent one) is "in the works"; with a 2019 targeted rollout date. You are formally notified that we would of course require prompt performance of any subsequent campaign as well; should my information concerning this 2-step airbag replacement schedule turn out to be accurate. "

I look forward to your response.

Res
[REDACTED]
[REDACTED]

Kathyn Thompson, General Counsel NHTSA, 1200 New Jersey Avenue, S.E., Washington, DC 20590, USA

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