

Add 70 10808712

[REDACTED] Lynnfield MA [REDACTED]

[REDACTED] 1/25/16

Deary

January 6, 2016

David Duncan, Vice President
MINI of the Americas
BMW Group
200 Chestnut Ridge Road Bldg. 150
Woodcliff Lake, NJ 07675

RE: Defective Power Steering Pump MINI Cooper 02-05
Recall EA11-005 NHTSA

Dear Vice President Duncan:

I am writing to you under the provisions of Massachusetts General Laws, Chapter 93A, Section 9, the Massachusetts Consumer Protection Act. I am writing to request relief as outlined in that statute.

As you are aware from our email and telephone communications, my vehicle, a 2005 Mini Cooper S Convertible, was diagnosed at Mini of Peabody, Andover Street, Peabody MA, as needing a power steering pump. I was given an estimate of \$1,600 for the repair. I was never informed by that dealer that the pump had been the subject of a recall. However, as a result of what I have researched and learned about this pump, I believe the cost for my repairs should be covered by BMW.

My vehicle experiences continuous running of the power steering pump while the vehicle's engine is in the "OFF" position. I have learned (from your own admission through your communications with the National Highway Traffic Safety Administration (NHTSA)) that this problem is caused by problems with the MOSFET electronics you installed in the vehicle upon manufacture.

NHTSA received 339 consumer complaints about the power steering pumps. Some MINI vehicles' power steering pumps had MOSFET electronics and some had EEPRON electronics. Both electronics performed the same function. The EEPRON electronics were found unsafe; cars with EEPRON electronics had been involved in accidents or fires. The MOSFET electronics were found not to be a safety issue per se; in vehicles with these electronics, the steering pump would continually run and kill the battery. NHTSA is concerned only with safety issues so the MOSFET electronics were not the focus of NHTSA's attention. NHTSA'S investigation lead to safety recall # EA11-005. In document INRL-EA11005-48680P, NHTSA requested that BMW describe all assessments, analyses, tests, test results, studies, surveys, simulations, investigations, inquiries and/or evaluations (collectively, "actions") that relate to or may relate to the alleged defect in the subject vehicles that have been conducted, are being conducted, are planned or are being planned by, or for BMW. BMW filed a response to NHTSA's information request. On page 12 of BMW's response to the NHTSA information request, dated September 16, 2011, BMW states that BMW has made modifications to the power steering pump to resolve the issue in the EEPRON and MOSFET electronics.

The EEPROM design was changed in February 2005. The safety recall was for vehicles produced from 2002 through February 2005.

However, the defect still exists in all of the vehicles manufactured with the MOSFET electronics that were not covered by the recall. The defective MOSFET electronics were withdrawn from production/service in July 2005. My vehicle, produced in May 2005, has the defective MOSFET electronics. BMW was aware of this as evidenced by its replacement of the MOSFET electronics in July of 2005. I contend that while the NHTSA recall, EA11-005, did not extend to defective MOSFET electronics, BMW was made aware as a result of the recall (although they most likely had known sooner) that the MOSFET electronics were defective.

In BMW's response to NHTSA's questions 7 – 11 INRL-EA11005-48680P, page 21, BMW acknowledges:

“Due to certain problems in the MOSFET electronics, this could lead to a:

- * Continuous running of the power steering pump; including after switching off the engine.
- * Loss of power steering assist during the driving cycle; the pump would not switch on during the driving cycle, nor at the start of the next driving cycle.”

In BMW's response, above, BMW is identifying a part it manufactured that is defective. While it may not be a safety issue where my vehicle is concerned, you have provided me and other consumers with a defective product/part and have dealt unfairly with and attempted to deceive consumers by failing to inform them of this defect and its resultant problems, your responsibility for the problems, and the costly repairs they will experience because of the defective MOSFET electronics in their vehicle. Your complying with the specific (but not comprehensive) demands of the recall suggest that you did so because “SAFETY” was at issue, and the government was at your back, so to speak. While you were forced to address your potential liability for injury or death based on the parameters of the recall, you ignored the fact that other BMW vehicles still carry equally defective electronics. This failure on the part of BMW to take responsibility and to inform its purchasers of the faulty MOSFET electronics is unfair, fraudulent and deceptive, and willfully so. It is made even more willful because of BMW's response to NHTSA's questions 7 – 11 INRL-EA11005-48680P, page 21, where BMW acknowledged the problems in the MOSFET electronics.

“Due to certain problems in the MOSFET electronics, this could lead to a:

- * Continuous running of the power steering pump; including after switching off the engine.
- * Loss of power steering assist during the driving cycle; the pump would not switch on during the driving cycle, nor at the start of the next driving cycle.”

[REDACTED]
[REDACTED] Lynnfield MA [REDACTED] [REDACTED]

I believe that BMW's acts or practices are declared unlawful by Section 2 of Chapter 93A, which declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce unlawful. I have suffered loss of the use of my vehicle; I have also been advised of the *estimated* cost of repair of the vehicle in the amount of One Thousand Six Hundred (\$1,600) Dollars.

I have contacted BMW repeatedly to no avail. When I contacted the Safety, Engineering and ITF department, I was told by Department Head Sam Campbell's office on December 15, 2015, that my vehicle was not included in the recall and that good will would not be provided in my case. I was also told by Liz from Vice President David Duncan's office on December 22, 2015, that since my vehicle has 103,000 miles, it is not covered under the warranty and it was not part of the recall. Liz called me again on January 4, 2016, on behalf of Vice President Duncan, and explained that she was calling to explain to me again that my vehicle was not covered. She asked if the dealership offered me any good will. I explained that it did not. She suggested I take my car somewhere else to get it repaired as it may be less expensive. I was also told directly by Vice President David Duncan on December 21, 2015, that my vehicle was not covered under the warranty or the recall.

This letter serves as my request for the following relief: The actual cost of repair of my vehicle should the cost exceed the \$1,600 estimate, or repair of my vehicle (replacement of the steering pump and any other related repairs) by BMW Peabody (Mini of Peabody, Andover Street, Peabody MA) to be provided within 14 days of our resolution of this matter at no cost to myself. Under the provisions of Section 9 Chapter 93A, I am providing you with the opportunity to make a written offer of settlement of this claim within 30 days. If you fail to make a good faith offer of settlement in response to this request, and I institute legal action, a court may award me double or triple damages, attorney's fees and costs if the court finds in my favor.

Please respond in writing at the address written above, or via email [REDACTED] I look forward to hearing from you.

Regards,
[REDACTED]
[REDACTED]

Attachments: EA11005-48680P

cc: Ludwig Willisch, CEO of the Americas
Sam Campbell, Dept. Head Safety Engineering and ITS
Scott Yon, NHTSA Office of Defects Investigation

**BMW Response
to
NHTSA EA11-005
16 Sep 2011
(Including Responses to Questions 7 – 11)**

Permanent loss of power steering assist

- Due to a "checksum" error in the EEPROM electronics, this could prevent the power steering pump from functioning at the start of the driving cycle. The power steering pump would not switch on during the driving cycle.
- Due to certain problems in the MOSFET electronics, this could lead to a:
 - o Continuous running of the power steering pump; including after switching off the engine.
 - o Loss of power steering assist during the driving cycle; the pump would not switch on during the driving cycle, nor at the start of the next driving cycle.
- An interruption of the power supply could lead to a loss of power steering assist. The power steering pump would not switch on during the driving cycle and also would not switch on at the start of the driving cycle. This could occur as a result of water ingress to the pump's power supply cable leading to a failure of the pump.

Temporary loss of power steering assist

- If the power steering pump cooling fan stopped working, then power steering assistance will be reduced, eventually leading to a shut-down of the pump, as designed, in order to protect itself from overheating. Specifically, when internal pump temperatures reach 100°C, power steering assist starts to decrease; at 115°C, power steering assist stops. After cooling down, power steering assist would restart dependent upon the corresponding temperature level.
- An under-voltage condition in the vehicle (low battery) could result in degradation of power steering assist.

Question 11(d):

We believe the issue that is the subject of this information request does not represent an unreasonable risk to motor vehicle safety; rather, it is a quality / customer satisfaction issue for the reasons set forth below:

Driving Test Analyses Indicate Effect is Characterized as Not-Safety-Related

Driving scenarios involving typical driver operation in the subject vehicles were performed and assessed for a typical driver. Driving scenarios such as constant/continuous circular driving, accessing/entering a circular drive, close turns on country roads, long-drawn-out curves on highways, etc. were conducted. In all cases, it was determined that the vehicle was controllable if a loss of power steering assist occurred to a typical driver. This was documented in response to Question 8 on CD No. 2.

**BMW Response
to
NHTSA EA11-005
16 Sep 2011**

(Including Responses to Questions 7 – 11)

- 8. For MY 2002-2005, describe all assessments, analyses, tests, test results, studies, surveys, simulations, investigations, inquiries and/or evaluations (collectively, "actions") that relate to, or may relate to, the alleged defect in the subject vehicles that have been conducted, are being conducted, are planned, or are being planned by, or for, BMW. For each such action, provide the following information:**
- a. Action title or identifier;**
 - b. The actual or planned start date;**
 - c. The actual or expected end date;**
 - d. Brief summary of the subject and objective of the action;**
 - e. Engineering group(s)/supplier(s) responsible for designing and for conducting the action; and,**
 - f. A brief summary of the findings and/or conclusions resulting from the action.**

For each action identified, provide copies of all documents related to the action, regardless of whether the documents are in interim, draft, or final form. Organize the documents chronologically by action.

Response:

The sources of, and the data/information collection dates pertaining to, this information is as noted in the attachments.

Attachment "CONF-TA-1.pdf" in folder "Q8" on CD No. 2 provides a summary of the "actions" and provides the information requested in Questions 8(a) through 8(f).

All of the other attachments contained in folder "Q8" on CD No. 2, and in folder "Q8" on CD No. 1 (Rev.1), and as discussed in Attachment "CONF-TA-1.pdf", consist of the pertinent test and analyses documentation, and account for the "actions" conducted.

- 9. For MY 2002-2005, describe all modifications or changes made by, or planned to be made within the next 120 days by, or on behalf of, BMW in the design, integrated circuit component design, control software, material composition, manufacture, quality control, supply, or installation of the subject component, from the start of production to the date BMW receives this request, which relate to, or may relate to, the alleged defect in the subject vehicles. For each such modification or change, provide the following information (each response should be in an individual and separate column):**
- a. The date or approximate date on which the modification or change was incorporated into vehicle production;**
 - b. A detailed description of the modification or change;**
 - c. The reason(s) for the modification or change;**
 - d. The part number(s) (service and engineering) of the original component;**
 - e. The part number(s) (service and engineering) of the modified component;**
 - f. Whether the original unmodified component was withdrawn from production and/or sale, and if so, when;**
 - g. When the modified component was made available as a service component; and,**
 - h. Whether the modified component can be interchanged with earlier production components.**

**BMW Response
to
NHTSA EA11-005
16 Sep 2011
(Including Responses to Questions 7 – 11)**

Response:

The source of this information is our various technical development departments and is current as of 30 June 2011.

Outlined below are the modifications to the power steering pump that were implemented in order to resolve the issue that is the subject of this Information Request.

Modification #1: EEPROM Redesign.

- a. Available in vehicle production February 2005.
- b. Engineering release EFW89S, replacement of EEPROM by ROM164 with small EEPROM (redesign – ECU (Electronic Control Unit)).
- c. Permanent loss of power steering assist at vehicle ignition start.
- d. 6769759 / 6769757
- e. 6769759 / 6769961
- f. Yes; withdrawn from production/service February 2005.
- g. Available in service March 2005.
- h. Parts are compatible.

Refer to the following attachments in sub-folder "MOD-1" in folder "Q9" on CD No. 2:

CONF-6769757 AI2.pdf
CONF-6769961 AI1.pdf
CONF-6769961 AI2.pdf
CONF-Lebenslauf PP 4_11_10.xls
CONF-Lebenslauf PP 4_11_10_EN.xls

Modification #2: MOSFET Production Process Optimization.

- a. Available in vehicle production July 2005 to June 2006.
- b. MOSFET production process optimization.
- c. Permanent loss of power steering assist, or continuous running of power steering pump, caused by contamination in the steering control module.
- d. 6769759 / 6769961
- e. 6769963 / 6769961
- f. Yes, withdrawn from production/service July 2005.
- g. Available in service July 2005.
- h. Parts are compatible.

Refer to the following attachment in sub-folder "MOD-2" in folder "Q9" on CD No. 2:

CONF-SQA warranty landscape_ZFLS_pump_20101026.pdf