

CL-11192951-8913



Benton, AR

RE: [REDACTED] Vs. BMW of North America, LLC
Auto-Line Arbitration Case [REDACTED]
2017 BMW X5
VIN 5UXKT0C36H [REDACTED]

BBB Auto Line
3033 Wilson Boulevard
Suite 600
Arlington, VA 22201

CC:
Arkansas Attorney General Leslie Rutledge
323 Center Street
Little Rock, AR 72201

CC:
Ms. Heidi King
National Highway Traffic Safety Administration
1200 New Jersey Avenue SE
West Building
Washington, DC 20590

CC:
Dr. W. Riley Garrott
Vehicle Research and Test Center
PO BOX B-37
East Liberty OH 43319

CC:
Mr. Bernhard Kuhnt
BMW of North America
300 Chestnut Ridge Road
Woodcliff Lake, NJ 07677-7731

Dear Ms. Khalifeh And Mr. John Meador,

Please find attached material to be presented during the arbitration hearing on March 25, 2019 at 1:30pm in Little Rock Arkansas.

I look forward to the meeting.

[REDACTED]

pr

TG
3-27-19
LO

EMW CLAIM LINE
CLAIMANT TO MANUFACTURER RESPONSE FORM

[REDACTED] vs. EMW OF NORTH AMERICA, LLC
CASE NO. [REDACTED]

This case arises from the lease of a 2017 BMW X5 (VIN 5UXKT0C36H0 [REDACTED]) by the customer [REDACTED]. The customer took possession of the vehicle on or about July 29, 2017, from BMW of Little Rock, Little Rock, Arkansas. At the time of delivery, the vehicle had 229 miles on the odometer.

The term of the lease is 36 months. The customer paid \$4,154.31 at the lease inception. Monthly lease payment is \$1,138.57.

The vehicle has been submitted for service to BMW of Little Rock on seven (7) occasions. The total days out-of-service listed on the customer's Claim Form are 33. EMW of North America, LLC, has not confirmed this number. The first problem "restraint system fault" has been corrected and no longer exists. The second problem, I-Drive Unit is intermittent and resets quickly. It does not substantially impair the use, value or safety of the vehicle.

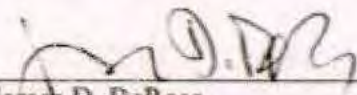
Based on the foregoing, the requirements under the Arkansas Lemon Law have not been met. The customer, by letter received by BMW of North America, LLC, on March 6, 2019 (copy attached), offered BMW of North America, LLC, a "last and final opportunity to repair the vehicle". The repair will be conducted at BMW of Little Rock on March 25 and 26, 2019, under the supervision of BMW Technical Service Engineer, Richard Opaluch. The BBB arbitration can follow the final repair opportunity.

This vehicle is covered by an express limited new car warranty which is good for four (4) years or 50,000 miles from the date of original delivery. A copy of the warranty with full information is attached. Based on the information presently available, the customer has more than 25,000 miles and 2 years of warranty coverage remaining on the vehicle.

For the foregoing reasons, it is respectfully requested that an award be entered in favor of BMW of North America, LLC, and that the arbitrator deny the relief sought by the customer.

Respectfully submitted,

LINDABURY, McCORMICK, ESTABROOK & COOPER

By: 
James D. DeRose
Regional Counsel for BMW of North America, LLC

DATED: March 15, 2019
Attachments

2019 MAR 26 A 9:24
RECEIVED
LINDABURY, McCORMICK, ESTABROOK & COOPER

BBB Auto Arbitration Meeting

March 25, 2019

1:30PM

BMW X5 40e Electric Plug-In Hybrid

VIN 5UXKT0C36H [REDACTED]



BMW NA

Vehicle Facts

\$73,170

MSRP
of Vehicle

45+

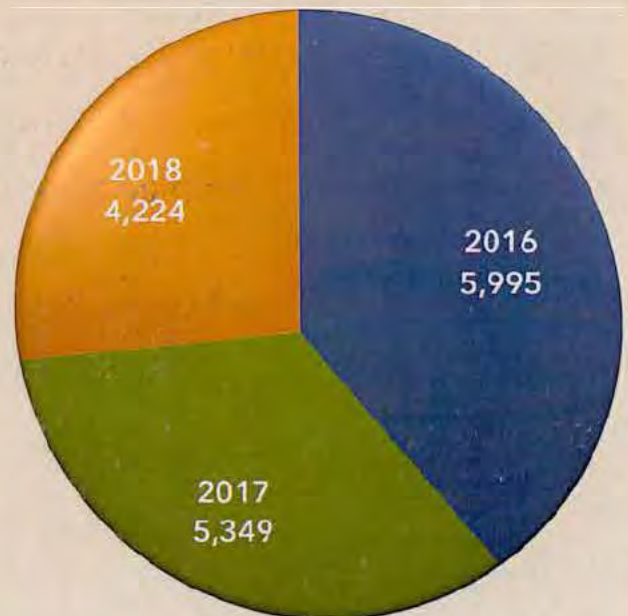
Days
Out of Service
(12% of the past 384 days)

5,890

Miles
at First Error

8

Repair Attempts
for
6 Non-Conformities



2016 to 2018 Sales Figures

InsideEVs Sales Scorecard

Arkansas Law:

According to **Arkansas New Motor Vehicle Quality Assurance Act** (Act 297 of 1993): **Four potential criteria show** the manufacturer has been given a reasonable opportunity to repair nonconformities that substantially impair the use, market value, and safety of your vehicle (**any one of which is significant enough to classify the vehicle as a "Lemon"**)



1)

There have been three unsuccessful repair attempts to repair the same nonconformity, **AND** the owner has provided the manufacturer with a final opportunity to cure the nonconformity, **AND** the manufacturer either fails to cure the nonconformity within 10 days of delivery or the repair attempt is unsuccessful; **OR**

unsuccessful

Repair attempt commenced on March 8th



2)

If the nonconformity is one that is likely to cause death or serious bodily injury, there has been one unsuccessful repair attempt, **AND** the owner has provided the manufacturer with a final opportunity to cure the nonconformity, **AND** the manufacturer either fails to cure the nonconformity within 10 days of delivery or the repair attempt is unsuccessful; **OR**

unsuccessful

Repair attempt commenced on March 8th



3)

The vehicle is out of service by reason of repair, or attempt to repair, any nonconformities for a cumulative total of at least 30 calendar days; **OR**

45+

Days Out of Service



4)

There have been five or more attempts to repair any nonconformities which together substantially impair the use and value of the motor vehicle to the owner.

8

Repair Attempts for 6 Non-Conformities

Definitions:

Substantial Impairment: To render the car unfit, unreliable, or unsafe for warranted or normal use or to significantly diminish the value of the car

LawInfo

Impairment of Market Value: Substantial loss in market value caused by a defect specific to a motor vehicle Council of Better Business Bureaus, Inc.

Serious Safety Hazard: as a life-threatening malfunction or nonconformity that substantially impedes a person's ability to control or operate a motor vehicle for ordinary use or intended purposes or creates a substantial risk of fire or explosion Council of Better Business Bureaus, Inc.

Sworn Affidavits:

Lisa L. Bunton (spouse): *"On Wednesday January 30th 2019, as the driver of the vehicle, I witnessed the BMW X5, listed above, have its center dash freeze and reboot. At no time during this event did I have my cellular phone connected to the vehicle*

Despite my awareness that this issue could potentially occur, I was beyond startled to see the vehicle dash rebooting while in motion and was unsure if the car had died while traveling down the road.

As a seasoned driver of many high-tech and complex vehicles, I have never seen a vehicle do this. I would consider these ongoing issues a huge safety concern" See sworn witness statement.

Rikki Turner: *"On Friday February 1st 2019, I witnessed the BMW X5 listed above, have its center dash freeze and reboot while traveling down the interstate at 70 mph.*

As an experienced driver, I have never seen a vehicle do this and I would consider the car unsafe for the road. As a passenger in the vehicle, I was concerned for our safety especially after learning from the driver that this has occurred several times in the past and had yet to be remedied by multiple repair attempts by BMW." See sworn witness statement.



Expert Opinions:

"At BMW the safety of our customers is a top priority" BMW Spokesman Hector

Arellano-Belloc

"If there's one thing drivers should know when getting into a car, it's that everything seems simple, but beneath the covers it's incredibly complex... 2000 signals are floating around the network at any time"

Eric Paton - Ford Motor Corporation Technical Specialist

For **safe and reliable operation**, every vehicle depends on a fully functioning electrical system... **Have your vehicle electrical system checked immediately if - Interior or dashboard lights do not illuminate properly!** Goodyear Tire & Rubber Company

Connectors fail and take a vehicle's electronic accessories down **mainly because of mistakes made during assembly** Delphi Automotive

Regarding dashboard displays, **Federal Guidelines advise that drivers should be able to complete tasks in a series of 1.5 or 2 second glances**, for a total of no more than 12 seconds. National Highway Traffic Safety

Administration (NHTSA) Visual-Manual Driver Distraction Guidelines

Driver distractions **takes more than 3,400 lives a year** on US roads... Automakers **should not include features that encourage drivers to take their eyes off the road** for any significant amount of time Consumer Reports

Visual-Manual NHTSA Driver Distraction Guidelines - Prohibit those displays that "Inherently interfere with a driver's ability to safely operation a vehicle" National Highway Traffic Safety Administration (NHTSA) Visual-Manual Driver

Distraction Guidelines



BMW Marketing Material

BMW Assist Safety, Convenience and Infotainment Services:

Because life is in motion

BMW Assist provides you with a suite of safety, security and convenience services that add peace of mind, confidence and convenience throughout your day.

BMW Assist intelligently integrates the driver, the vehicle and the environment as part of BMW's global ConnectedDrive initiative.

Combining GPS location technology with hands-free wireless communication

BMW Assist connects you to a response specialist for help with almost everything, from an emergency situation to directions and traffic information. BMW Of Palm Springs



The Virtual Co-Driver

After a crash, every second counts. For optimal response, the police must be alerted promptly and accurately, including the accident location. That's why BMW began offering vehicles with Automatic Collision Notification back in 2000. Now, more than 700,000 vehicles are in operation with this capability, representing a core BMW Assist service which has **already helped ensure rapid response in more than 25,000 cases to save valuable time which, in an extreme case, may mean the difference between life and death.**

Whether the driver uses the available services to enhance his safety and convenience, or simply wants to enjoy the raw fun of driving with an eye on the speedometer and tachometer, BMW Assist ramps up the intensity of the Ultimate Driving Machine® even further. BMW Group NA

BMW Marketing Material

BMW Assist Safety, Convenience and Infotainment Services

What is the BMW ConnectedDrive 'iDrive'?

BMW ConnectedDrive also comes with a full suite of safety features, including both blind spot detection and a visual display that guarantees you're always aware of lane changes, collision warnings, your current speed and more. BMW of Freeport



4 Exciting Features of the New 2017 BMW X5

The **2017 BMW X5 is loaded with technologies that enhance comfort, convenience, and safety of everyone in the cabin**. A **10.2-inch display screen** offers endless infotainment options and navigation, and can be upgraded with many of your favorite smartphone apps. BMW of Gwinnett Place

New 2017 BMW X5 at BMW of Oyster Bay

BMW has worked to create a **safe and secure experience during every drive in the X5**. **Standard safety features** include an electronic stability system, front airbags, and antilock brakes. **The BMW Assist eCall system delivers access to emergency services, including an SOS button and Enhanced Automatic Collision Notification**. Oyster Bay BMW

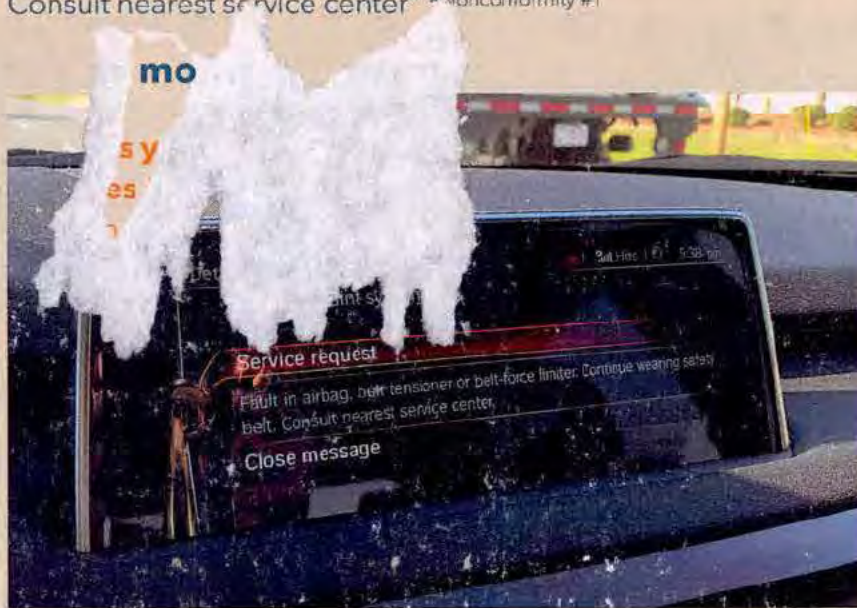
More innovations to assist the driver and underpin services: the BMW ConnectedDrive range for the new BMW X5.

A large range of BMW **ConnectedDrive driver assistance systems** and mobility services are available for the new BMW X5. **They improve active safety**, convenience and the infotainment experience and offer best-in-class standards of intelligent interaction between the driver, vehicle and external environment. BMW USA News

Vehicle Repair Attempts:

March 2, 2018 "Restraint System: Fault in airbag, belt tensioner or belt-force limiter. Continue wearing seat belt. Consult nearest service center" *Nonconformity #1

1
Day Out of
Service
(1 Cumulative Day)



March 26, 2018 "Restraint System: Fault in airbag, belt tensioner or belt-force limiter. Continue wearing seat belt. Consult nearest service center" *Nonconformity #1

5
Days Out of
Service
(6 Cumulative Days)

April 12, 2018 "Restraint System: Fault in airbag, belt tensioner or belt-force limiter. Continue wearing seat belt. Consult nearest service center" *Nonconformity #1

7
Days Out of
Service
(13 Cumulative Days)

**September 21,
2018**

1st Notice of Non-Conformity - Last and Final Repair Attempt demand sent via certified letter to Mr. Bernhard Kuhnt, CEO of BMW North America

Pages were destroyed during
the mail process, therefore
they will be omitted .

BBB Auto-Line Arbitration Meeting

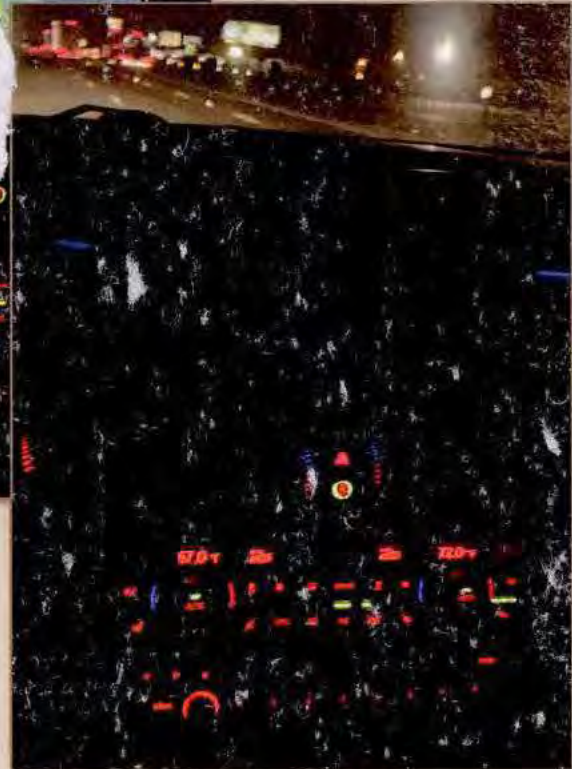
1:30PM

March 4th, 2019 2nd Notice of Non-Conformity, Fast and Final Repair Attempt demand sent via certified letter to Mr. Bernhard Kuhnt, CEO of BMW North America



~160 Miles

Thursday March 7th, 2019
Miles ~18,983



Friday March 8th, 2019

Vehicle returned to BMW of Little Rock for FASTA (Diagnostic Data) to be downloaded and submitted to Rich Opaluch

March 8, 2019

IDrive unit (Navigation, Radio, Telephone & System Information) unit locks up and randomly reboots *Nonconformity #3

12+
Days Out of
Service

(45+ Cumulative Days)

Repurchase Calculation:

Expenses (Down Payment, License Fees, Registration)

Down Payment & First Month Payment	7/29/17	\$4,154.31
Monthly Payments	8/29/2017	\$1,138.57
	09-29-2017	\$1,138.57
	10-31-2017	\$1,138.57
	11-29-2017	\$1,138.57
	12-29-2017	\$1,138.57
	01-30-2018	\$1,149.07
	03-01-2018	\$1,149.07
	03-29-2018	\$1,138.58
	05-01-2018	\$1,138.58
	05-30-2018	\$1,138.58
	07-31-2018	\$1,149.07
	08-29-2018	\$1,149.07
	10-01-2018	\$1,143.82
	10-30-2018	\$1,143.82
	11-29-2018	\$1,143.82
	12-31-2018	\$1,143.82
	01-29-2019	\$1,143.82
	02-28-2019	\$1,143.82
*Estimated March Payment	03-31-2019	\$1,143.82
*Estimated 2017 Registration Tax & Plate		\$1,000.00
*Estimated 2018 Registration Tax & Plate		\$1,000.00
Estimated Total:		\$27,865.92

Reasonable Allowance for Vehicle Use:

$$= \$68,739.00 \times ((5,890 \text{ [miles at 1st repair]} - 229 \text{ [starting miles]}) / 120,000 \text{ [miles]})$$

Estimated Total: \$3,242.76

Refund:

$$= \$27,865.92 \text{ [Expenses]} - \$3,242.76 \text{ [Reasonable Allowance]}$$

Estimated Refund: \$24,623.16

Summary Position:

"LEMON"

The vehicle meets all 4 criteria defined by Arkansas State Law (any 1 is sufficient)

- 1) **Final Repair** - Cure the Non-Conformity within 10 days of delivery (**FAILED**)
- 2) **Safety Issue** - Cure the Non-Conformity within 10 days of delivery (**FAILED**)
- 3) **30 Days** - Out of service for a cumulative total of at least 30 days (**FAILED**)
- 4) **Five Attempts** - Five or more attempts to repair any Non-Conformity (**FAILED**)

SUBSTANTIAL IMPAIRMENT

The vehicle meets all criteria for Substantial Impairment (Use, Value, & Safety). Numerous repair attempts have failed at repairing the non-conformities in a timely manner.

- 1) **Use** - Vehicle has been in the shop 8 times for 45+ days, nearly, unavailable for use, 12% the past year.
- 2) **Value** - Repeat component failure and related vehicle repair history reports indicate severe reliability issues.
- 3) **Safety** - Recognized Industry Experts, BMW Dealers, and BMW Marketing Material clearly promote the BMW iDrive / ConnectedDrive as a safety feature, stating the technology "comes with a full suite of safety features", improving "active safety" on a "10.2" display screen. Further NHTSA Driver Distraction Guidelines prohibit displays that "interfere" with driver's ability to safely operate a vehicle, setting forth guidelines that require on-board tasks be completed in less than 1.5 to 2 second glances.

CLOSING STATEMENT

As a once proud, repeat, BMW customer (taking delivery of our very first BMW 8 years ago, to the date, at the BMW Spartanburg Plant that manufactured this X5, I'm beyond disappointed that it's taken this amount of time and effort, and the expertise of a 3rd party arbitrator, to help convince BMW this vehicle is not reliable or safe to drive.

Having the main controls on the steering wheel, iDrive system, and Radio lockup (basic functions such as volume control are unusable) and for the system, which is sold as a tremendous safety feature saving "valuable" time which is the difference between life and death for nearly 25,000 drivers, be frozen for several minutes, while the iDrive system forces the hardware to reboot, is beyond comprehension.

This vehicle is a "lemon" and I respectfully ask that you help remove it from our roadways.



[REDACTED]
Benton, AR

Ms. Heidi King
NHTSA
1200 New Jersey Avenue SE
West Building
Washington, DC 20590