

**PE03-058**

**HOGAN&HARTSON**

**3/12/04**

**FOR MERCEDES-BENZ  
ATTACHMENT B & C (B PART 3  
OF 3)**

**PART 3 OF 3**



**CT System**

**Service of Process Transmittal Form**  
Plantation, Florida

10/24/2003

Via Federal Express (2nd Day)

TO: Tracey L. Matur V.P. & Gen. Cal.  
Mercedes-Benz USA, LLC  
One Mercedes Drive  
PO Box 380  
Montvale, NJ 07645-0380

Phone: (201) 573-2225 ext

WJL OCT 24 2003

**RE: PROCESS SERVED IN FLORIDA**

**FOR Mercedes-Benz USA, LLC Dornasello State: De**

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

1. TITLE OF ACTION: [REDACTED] et al vs Mercedes-Benz USA, LLC, DR.
2. DOCUMENT(S) SERVED: Summons, Complaint, Interrogatories, Request for Production, Requests for Admission, Exhibit
3. COURT: Dade County Circuit Court, FL  
Case Number CI-03-CI-2305
4. NATURE OF ACTION: Breach of Written Warranty; failure to cure or repair defects on certain 2002 Mercedes M-Class manufactured by DR.; seeking damages and rescission of acceptance
5. ON WHOM PROCESS WAS SERVED: CT Corporation System, Plantation, Florida
6. DATE AND HOUR OF SERVICE: By Process server on 10/24/2003 at 02:00
7. APPEARANCE OR ANSWER DUE: Within 20 days
8. ATTORNEY(S): Alex D. Weisberg  
(312) 578-0438  
120 West Madison Street  
10th Floor  
Chicago, IL 60602
9. REMARKS: Trial by jury demanded.

STATE: CT Corporation System  
FOR: Anna Bouffier /DM  
ADDRESS: 1200 South Pine Island Road  
Plantation, FL 33324  
SCP WB 0000001514

Information contained on this transmittal form is provided for CT Corporation System's record keeping purposes only and is provided solely for reference for the recipient. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information that can be obtained from the documents themselves. The recipient is responsible for interpreting the documents and for taking the appropriate action.

IN THE CIRCUIT COURT IN AND FOR  
OSCEOLA COUNTY, FLORIDA

CASE NO.

013-CI-2305

Plaintiffs,

v.

MERCEDES-BENZ USA, LLC,

Defendant.

PLEASE SERVE:

Mercedes-Benz USA, LLC.  
c/o CT Corporation System  
1200 South Pine Island Road  
Plantation, Florida 33324

DATE: 10-24-03

TIME: 2:00 PM

ERIC DEAL

S.P.S. #336

SUMMONS

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons, a copy of the complaint or petition in this action, interrogatories, requests for production and requests for admission on defendant MERCEDES-BENZ USA, LLC.

Each defendant is required to serve written defenses to the complaint or petition on Alex D Weisberg, plaintiff's attorney, whose address is 120 West Madison Street, 10<sup>th</sup> Floor, Chicago, IL, 60602, within 20 days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED on 10/12/03

If you are a person with a disability who needs an accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Court Administration at Two Courthouse Square, Suite 1100, Kissimmee, Florida 34741. Telephone: (407) 343-7421 within two (2) working days of your receipt of this (described notice). If you are hearing or voice impaired, call 1-800-955-8771.

ALEX D. WEISBERG  
KROHN & MOSS, LTD.  
120 West Madison Street, 10<sup>th</sup> Floor  
Chicago, IL 60602  
(312) 578-9428, x227  
FBN: 0566551



IN THE CIRCUIT COURT IN AND FOR  
OSCEOLA COUNTY, FLORIDA

CASE NO.

0103-CF-2306

[REDACTED]  
Plaintiffs,

v.

MERCEDES-BENZ U.S.A., LLC,

Defendant.



**COMPLAINT AND DISCOVERY REQUESTS**

NOW COME the Plaintiffs, [REDACTED], by and through their attorneys, KROHN & MOSS, LTD., and for their complaint against Defendant, MERCEDES-BENZ U.S.A., L.L.C. allege and affirmatively state as follows:

**PARTIES**

1 Plaintiffs, [REDACTED] ("Plaintiffs"), are individuals who were at all times relevant hereto residing in the State of Florida.

2 Defendant, MERCEDES-BENZ U.S.A., L.L.C. ("Manufacturer"), is a foreign corporation authorized to do business in the State of Florida, County of Osceola, and is engaged in the manufacture, sale, and distribution of motor vehicles and related equipment and services. Manufacturer is also in the business of marketing, supplying and selling written warranties to the public at large through a system of authorized dealerships, including MERCEDES-BENZ OF ORLANDO ("Seller"). Manufacturer does business in all counties of the State of Florida.

including Osceola County, and maintains offices in or near the County of Osceola, State of Florida.

### **BACKGROUND**

3. On or about June 15, 2002, Plaintiffs purchased from Seller a 2002 Mercedes M-Class ("M-Class"), manufactured by Manufacturer, Vehicle Identification No. 4JGAB54E02A [REDACTED], for valuable consideration (See copy of Plaintiffs' Retail Installment Contract attached hereto as Exhibit "A").

4. The price of the M-Class, including registration charges, document fees and sales tax, and including other collateral charges, such as bank and finance charges, totaled at least \$50,371.60.

5. Plaintiffs aver that as a result of the ineffective repair attempts made by Manufacturer, through its authorized dealership network, the M-Class cannot be utilized for personal, family and household use as intended by Plaintiffs at the time of acquisition.

6. In consideration for the purchase of the M-Class, Manufacturer issued and supplied to Plaintiffs its written warranty, which included four (4) year or fifty thousand (50,000) mile bumper to bumper coverage, as well as other warranties fully outlined in the Manufacturer's New Car Warranty booklet (See Copy of Warranty Booklet, attached hereto as Exhibit "B").

7. On or about June 15, 2002, Plaintiffs took possession of the M-Class and shortly thereafter experienced the various defects listed below that substantially impair the use, value and/or safety of the M-Class.

8. The defects described below violate Manufacturer's warranty issued to Plaintiffs, as well as the implied warranty of merchantability.

9. Plaintiffs delivered the M-Class to Manufacturer, through its authorized dealership network, on numerous occasions.

10. Plaintiffs aver that the M-Class has been subject to repair on at least five (5) occasions for the same defect, and that the defect remains uncorrected.

11. Plaintiffs brought the M-Class to Seller and/or an authorized service dealer of Manufacturer for various defects, including but not limited to the following:

- a. Defective engine as evidenced by no crank, vehicle stalling, lack of acceleration, illumination of warning lights;
- b. Defective fenders;
- c. Defective doors;
- d. Defective interior; and
- e. Any additional defects as contained on repair orders by Defendant's authorized dealerships.

12. Plaintiffs provided Manufacturer, through its authorized dealership network, sufficient opportunities to repair the M-Class.

13. After a reasonable number of attempts to cure the defects in Plaintiffs' M-Class, Manufacturer was unable and/or has failed to repair the defects, as provided in Manufacturer's warranty.

14. Plaintiffs justifiably lost confidence in the M-Class's safety and reliability, and said defects have substantially impaired the value of the M-Class to Plaintiffs.

15. Said defects could not have reasonably been discovered by Plaintiffs prior to Plaintiffs' acceptance of the M-Class.

16. As a result of these defects, Plaintiffs revoked their acceptance of the M-Class in writing.

17. At the time of revocation, the M-Class was in substantially the same condition as at delivery except for damage caused by its own defects and ordinary wear and tear.

18. Defendant refused Plaintiffs' demand for revocation and has refused to provide Plaintiffs with the remedies to which Plaintiffs are entitled upon revocation.

19. The M-Class remains in a defective and unmerchantable condition, and continues to exhibit the above mentioned defects that substantially impair its use, value and/or safety.

20. Plaintiffs have been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton and negligent failure to comply with the provisions of its express warranty and its failure to provide Plaintiffs with a merchantable M-Class.

**COUNT I**  
**BREACH OF WRITTEN WARRANTY**  
**PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT**  
**MANUFACTURER**

21. Plaintiffs re-allege and incorporate by reference as though fully set forth herein, paragraphs 1-20 of this complaint.

22. Plaintiffs are purchasers of a consumer product who received the M-Class during the duration of a written warranty period applicable to the M-Class and who are entitled by the terms of the written warranty to enforce against Manufacturer the obligations of said warranty.

23. Manufacturer is a person engaged in the business of making a consumer product directly available to Plaintiffs.

24. Seller is an authorized dealership/agent of Manufacturer designated to perform repairs on vehicles under Manufacturer's automobile warranties.

25. The Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., Section 2301, et. seq. ("Warranty Act") is applicable to Plaintiffs' Complaint in that the M-Class was manufactured,

sold and purchased after July 4, 1975, and costs in excess of ten dollars (\$10.00).

26. Plaintiffs' purchase of the M-Class was accompanied by a written factory warranty for any defects in material or workmanship, comprising an undertaking in writing in connection with the purchase of the M-Class to repair or replace defective parts, or take other remedial action free of charge to Plaintiffs with respect to the M-Class in the event that the M-Class failed to meet the specifications set forth in Manufacturer's warranty.

27. Manufacturer's warranty was the basis of the bargain of the contract between the Plaintiffs and Manufacturer for the sale of the M-Class to Plaintiffs.

28. Said purchase of Plaintiffs' M-Class was induced by, and Plaintiffs relied upon, Manufacturer's written warranty.

29. Plaintiffs have met all of their obligations and preconditions as provided in Manufacturer's written warranty.

30. As a direct and proximate result of Manufacturer's failure to comply with its written warranty, Plaintiffs have suffered damages and, in accordance with 15 U.S.C. '2310(d)(1), Plaintiffs are entitled to bring suit for such damages and other legal and equitable relief.

31. Plaintiffs aver that upon successfully prevailing upon the Magnuson-Moss Warranty Act claim herein, all attorneys' fees are recoverable and are demanded against Manufacturer.

WHEREFORE, Plaintiffs pray for judgment against Manufacturer as follows:

- a. Return of all monies paid, satisfaction of all liens, diminution in value of the vehicle, and all incidental and consequential damages incurred;
- b. All reasonable attorneys' fees, witness fees and all court costs and other



- fees incurred; and
- c. Such other and further relief that the Court deems just and appropriate.

**COUNT II**  
**BREACH OF IMPLIED WARRANTY**  
**PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT**  
**MANUFACTURER**

32. Plaintiffs re-allege and incorporate by reference as though fully set forth herein, paragraphs 1-20 of this complaint.

33. The M-Class purchased by Plaintiffs was subject to an implied warranty of merchantability as defined in 15 U.S.C. '2301(7) running from the Manufacturer to the intended consumer, Plaintiffs herein.

34. Manufacturer is a supplier of consumer goods as a person engaged in the business of making a consumer product directly available to Plaintiffs.

35. Manufacturer is prohibited from disclaiming or modifying any implied warranty when making a written warranty to the consumer or when Manufacturer has entered into a contract in writing within ninety (90) days of a purchase to perform services relating to the maintenance or repair of a motor vehicle.

36. Pursuant to 15 U.S.C. '2308, Plaintiff's M-Class was impliedly warranted to be substantially free of defects in both material and workmanship, and thereby fit for the ordinary purpose for which the M-Class was intended.

37. The M-Class was warranted to pass without objection in the trade under the contract description, and was required to conform to the descriptions of the M-Class contained in the contracts and labels.

38. The above described defects in the M-Class render the M-Class unmerchantable

and thereby not fit for the ordinary and essential purpose for which the M-Class was intended and as represented by Manufacturer.

39. As a result of the breaches of implied warranty by Manufacturer, Plaintiffs are without the reasonable value of the M-Class.

40. As a result of the breaches of implied warranty by Manufacturer, Plaintiffs have suffered and continue to suffer various damages.

WHEREFORE, Plaintiffs pray for judgment against Manufacturer as follows:

- a. Return of all monies paid, satisfaction of all liens, diminution in value of the vehicle, and all incidental and consequential damages incurred;
- b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
- c. Such other and further relief that the Court deems just and appropriate.

***PLAINTIFFS DEMAND A TRIAL BY JURY***

ALEX D. WEISBERG  
KROHN & MOSS, LTD.  
ATTORNEYS FOR PLAINTIFFS  
120 West Madison Street, 10<sup>th</sup> Floor  
Chicago, Illinois 60602  
(312) 578-9428  
(312) 896-5969 fax

By: \_\_\_\_\_

  
Alex D. Weisberg, Esq.  
FBN: 0566551

**EXHIBIT A**

1. **THEORY**

**EXHIBIT B**



**Mercedes-Benz**

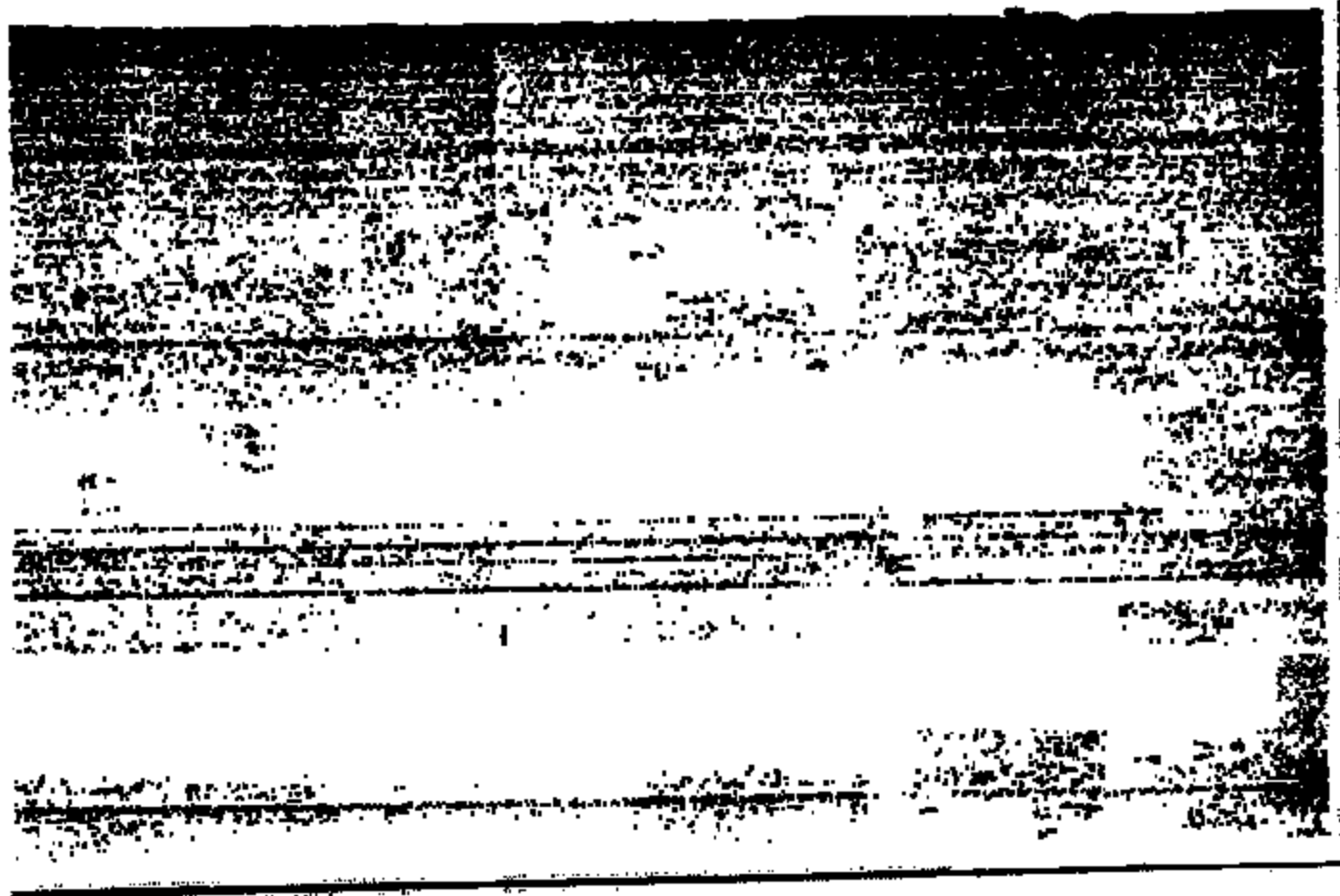
## **Service and Warranty Information**

### **2002 - Passenger Cars**

# **QUICK REFERENCE TO WARRANTY COVERAGE**

(Complete warranty coverage starts on page 11)

<b>BASIC WARRANTY</b>	4 Year/50,000 Miles
<b>WHEEL ALIGNMENT AND BALANCE</b>	1 Year/1,000 Miles
<b>EMISSION PERFORMANCE/CONTROL (Federal)</b>	3 Year/50,000 Miles
<b>EMISSION PERFORMANCE/CONTROL (Federal)</b>	5 Year/50,000 Miles (Limited Coverage - please refer to text)
<b>EMISSION PERFORMANCE (California, Maine, Massachusetts, Vermont)</b>	3 Year/50,000 Miles
<b>EMISSION CONTROL (California, Maine, Massachusetts, Vermont)</b>	7 Year/70,000 Miles (Limited Coverage - please refer to text)
<b>Years in Service</b>	1 2 3 4 5 6 7 8

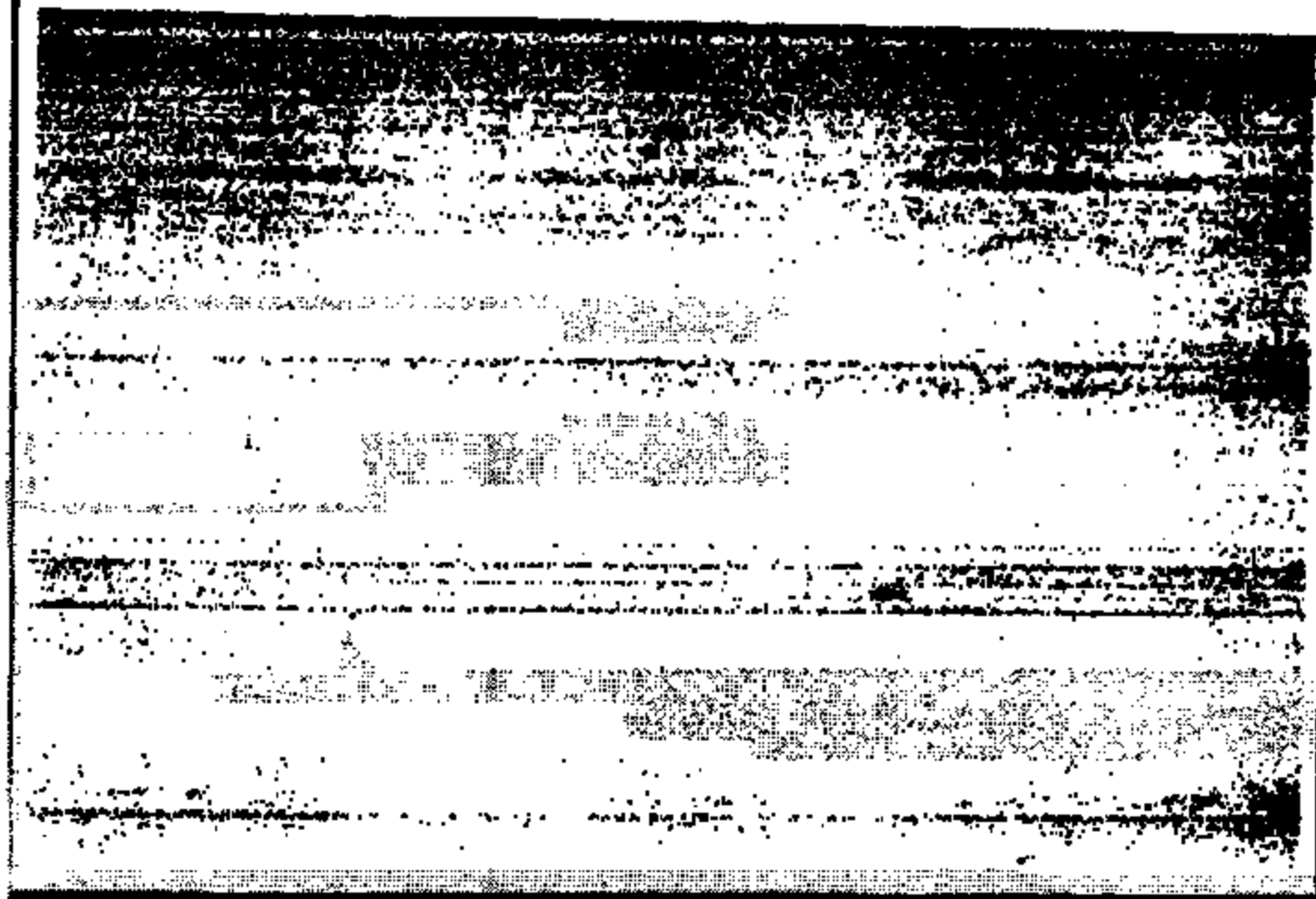


**Dear Mercedes-Benz Owner:**

**As an authorized Mercedes-Benz Dealer, we are dedicated  
to providing you with unparalleled Commitment to Excellence  
in Sales and Service.**

**We will always do everything possible to live up to this commitment.**

**Mercedes-Benz Dealer's Signature and Stamp**





# MERCEDES-BENZ CENTER INFORMATION

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, ZIP Code: \_\_\_\_\_

Sales Department Hours: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Service Department Hours: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Parts Department Hours: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Additional Customer Assistance Services: \_\_\_\_\_

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# VEHICLE WARRANTY INFORMATION

Model \_\_\_\_\_

Expedite Delivery ☒

Destination Delivery ☐

Serial Number \_\_\_\_\_

Delivery/turnover Mo \_\_\_\_\_ Day \_\_\_\_\_ Yr \_\_\_\_\_

VIN \_\_\_\_\_

Selling Dealer Code \_\_\_\_\_

Owner \_\_\_\_\_

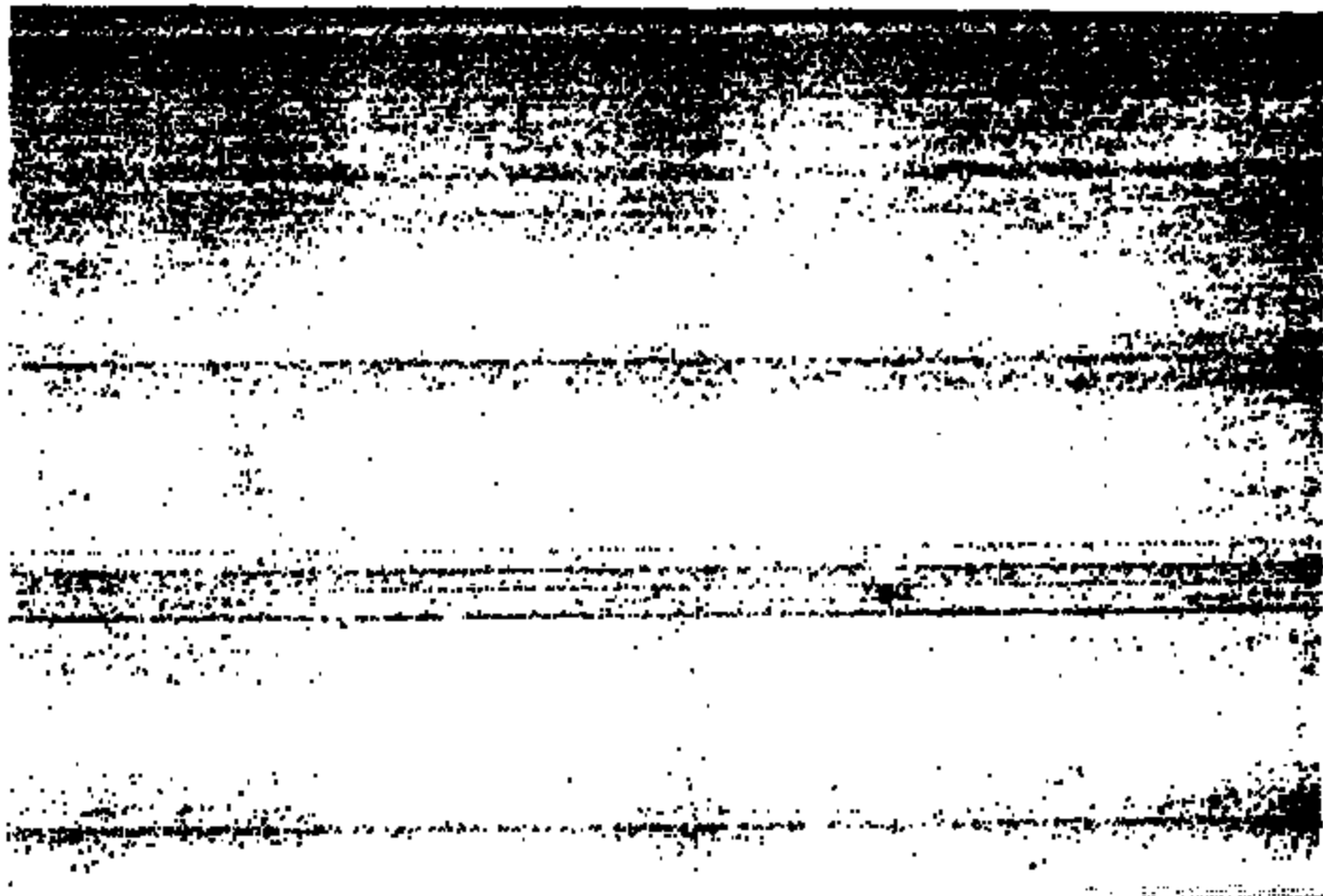
**LIMITED WARRANTY TERMS:** The best to occur of 4 Years or 50,000 miles from date of delivery or when put into service. (See details starting on page 11 of this booklet.)

Address \_\_\_\_\_

Other \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Owner's Signature \_\_\_\_\_



# NEW VEHICLE SYSTEMS CHECKOUT INSPECTION/DELIVERY

NEW VEHICLE  
PRE-DELIVERY  
INSPECTION  
PERFORMED

Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

Service Manager's Signature \_\_\_\_\_

## Delivery and Owner Instructions:

Owner instructed in operation of vehicle per  
Mercedes-Benz New Car Delivery Program ☒

Service and Warranty Information Booklet,  
Operator Manual and Service Booklet  
reviewed with owner ☒

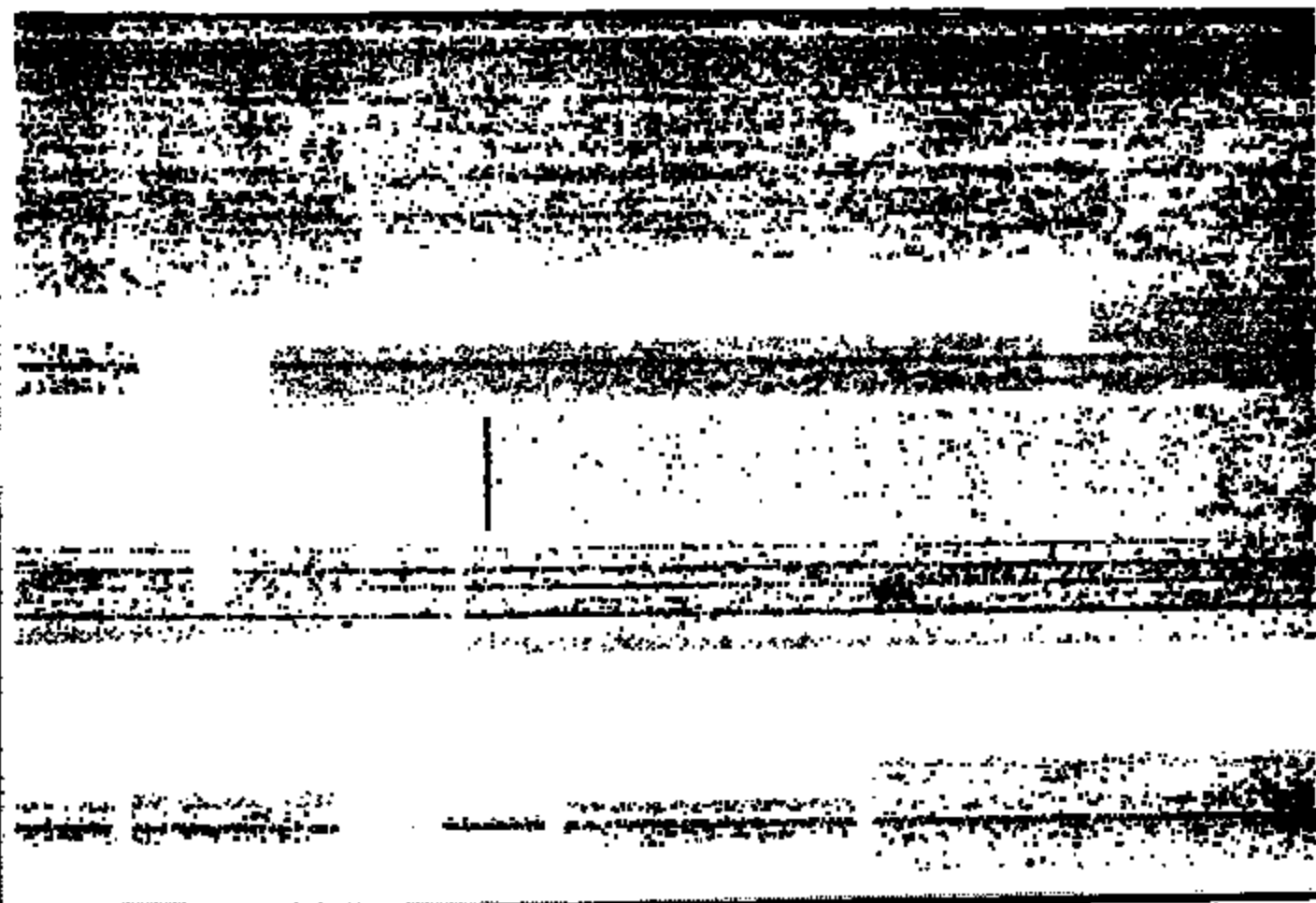
Owner introduced to Service Department ☒

Owner instructed on: Maintenance Commitment ☒  
Roadside Assistance ☒  
Toll Aid ☒

Mercedes-Benz Representative's Signature \_\_\_\_\_

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## TO THE OWNER

The subsequent pages of this Service and Warranty Information booklet describe some service requirements and the warranties you receive as a Mercedes-Benz owner.

Your car is covered under the terms of these "Warranties" and your Mercedes-Benz Center will exchange or repair any defective parts in accordance with the terms of each warranty within stated limits.

Please present this booklet to the Service Advisor at your Mercedes-Benz Center every time you have service or warranty work performed so this speeds service order write-up considerably.

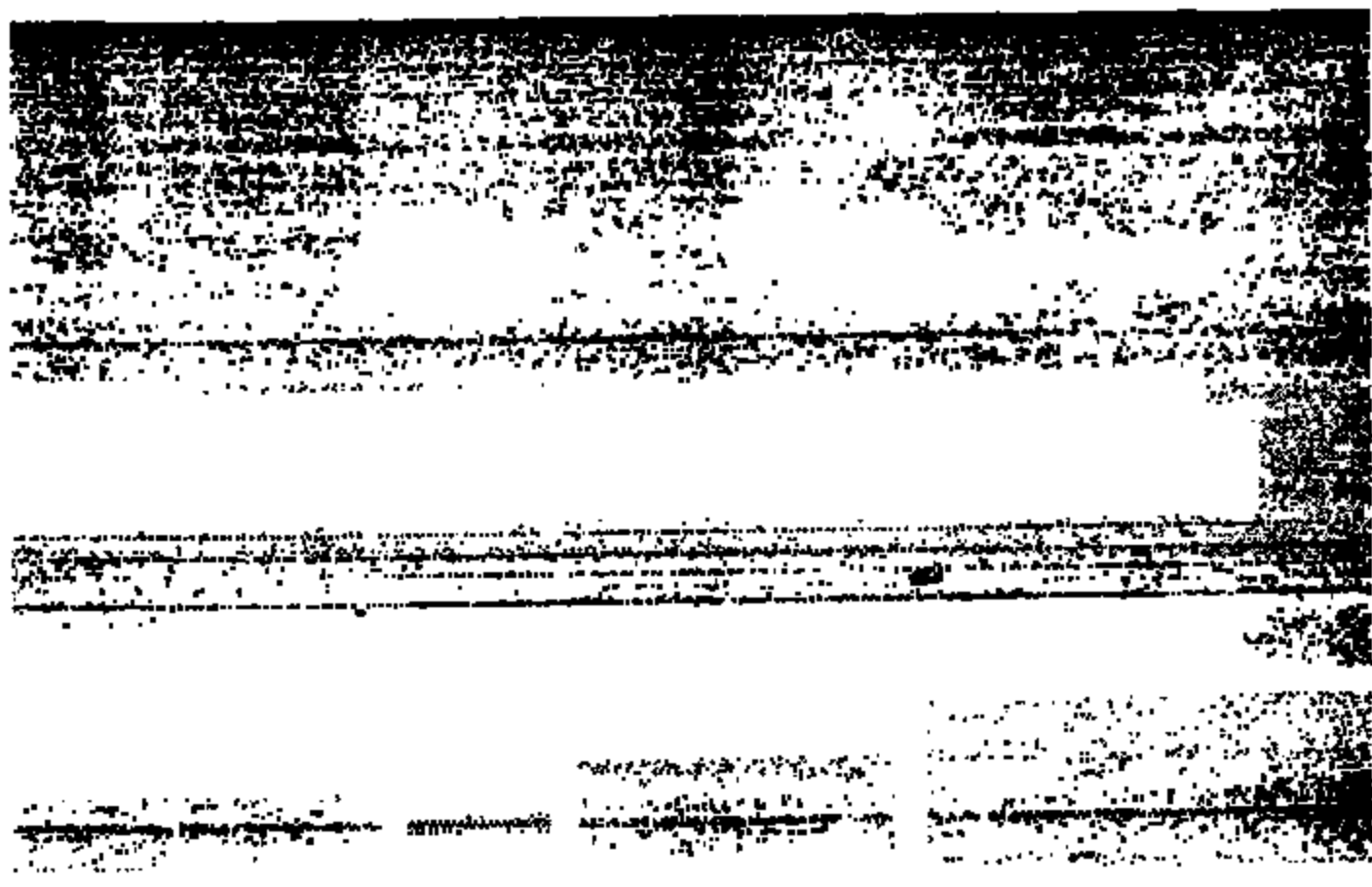
Please keep this booklet together with the Operator's Manual and other documents concerning your car so that future owners will have access to this literature if you should sell the vehicle.

### Replacement Parts for Your Mercedes-Benz

Genuine Mercedes-Benz parts, exchange units and factory approved accessories are the recommended replacement parts for your Mercedes-Benz passenger car and are available through your authorized Mercedes-Benz Center.

These parts meet the same exacting quality control standards as the original equipment on your car and comply with all applicable Federal and State safety regulations.

Consult your authorized Mercedes-Benz Center for warranty and other details. Also ask your Center about exchange parts under the Mercedes-Benz Exchange Program. These parts cost less than new parts but carry the same warranty terms.



## Mercedes-Benz Maintenance Commitment - MY 2002 Passenger Cars

Every model year 2002 Mercedes-Benz passenger car purchased from an authorized Mercedes-Benz Passenger Car Center is covered for all maintenance services specified in the Mercedes-Benz Service Booklet during the new vehicle warranty period of 48 months or 50,000 miles, whichever occurs first.

Any authorized Mercedes-Benz Center in the United States and Puerto Rico will perform the maintenance services specified in the Mercedes-Benz Service Booklet at the durations called for by the vehicle's Flexible Service System (FSS) at no expense to you. The cost of more frequent service is not covered by the Mercedes-Benz Maintenance Commitment. Any additional services must be performed at the owner's expense.

### Exclusions from Maintenance Commitment Coverage

Oil changes or other services performed outside the maintenance interval indicated by the vehicle's Flexible Service System.

Wear items such as, but not limited to, engine belts, brake discs, brake pads, brake pad wear sensors, clutch discs and clutch pressure plates.

Maintenance or service performed by other than an authorized Mercedes-Benz Center within the United States and Puerto Rico.

Wear and tear of soft trim items, such as, but not limited to, seats, carpets, moldings, headliner, door panels, chrome and wood trim.

Tires, wheel alignment and balance.

Note: Wheel alignment and balancing are covered under the Limited New Vehicle Warranty during the first 12 months or 12,000 miles, whichever comes first.

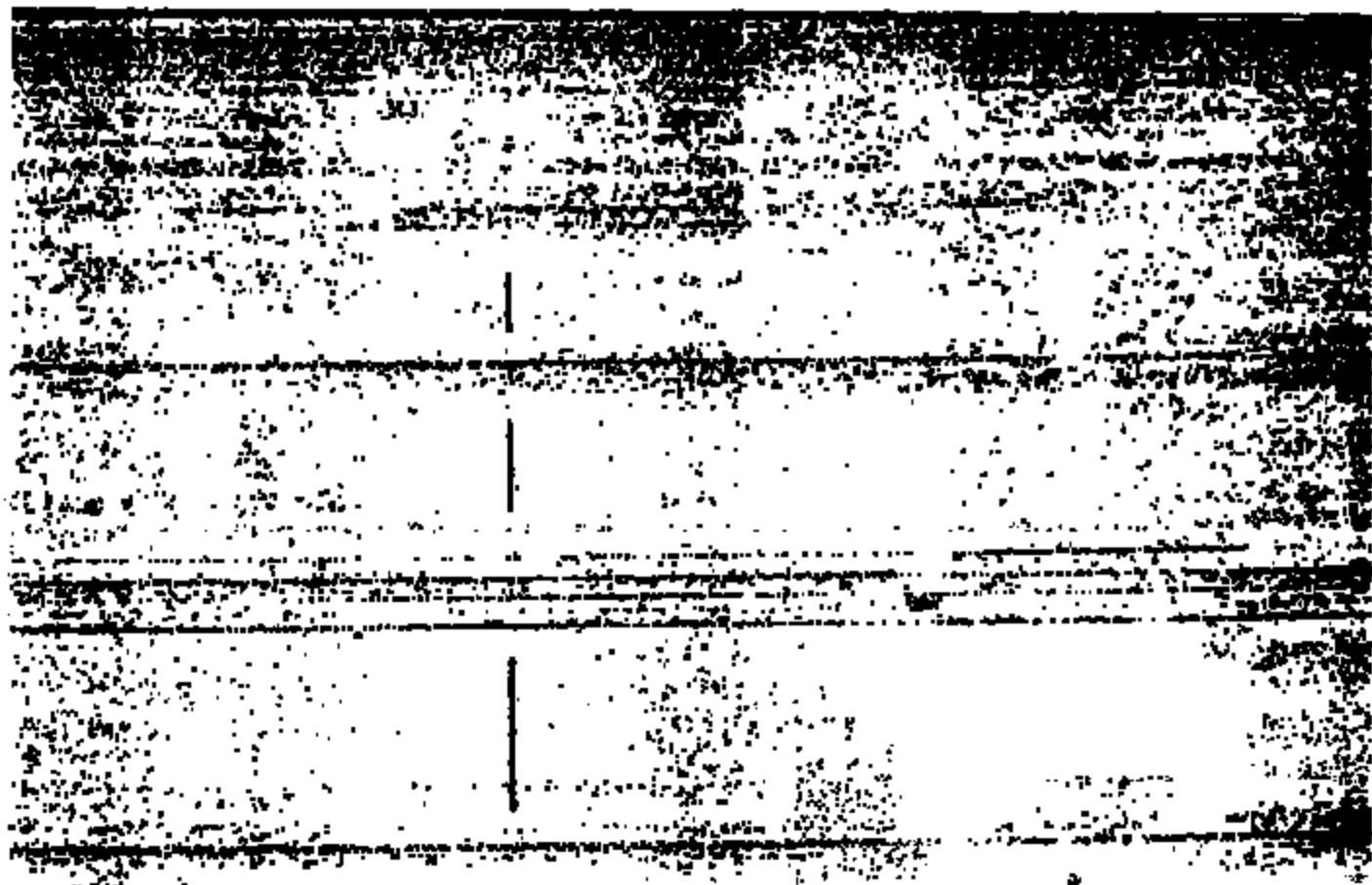
Tire rotations are performed under the B-service on an if necessary basis, however, NHTSA recommends that you follow your tire manufacturer's schedule for tire rotations, which are specific to the tires installed as original equipment. Tire rotations that are performed in accordance with the tire manufacturer's recommendations are not covered by the maintenance commitment.

Damage due to poor fuel quality, abuse, misuse, neglect, alteration, fire, accident, flood, improper repair or negligence and installation of non-Mercedes-Benz accessories.

Altered vehicle identification number or odometer irregularities or vehicles where the true mileage cannot be determined.

Maintenance or repairs performed after the vehicle is deemed a total loss.

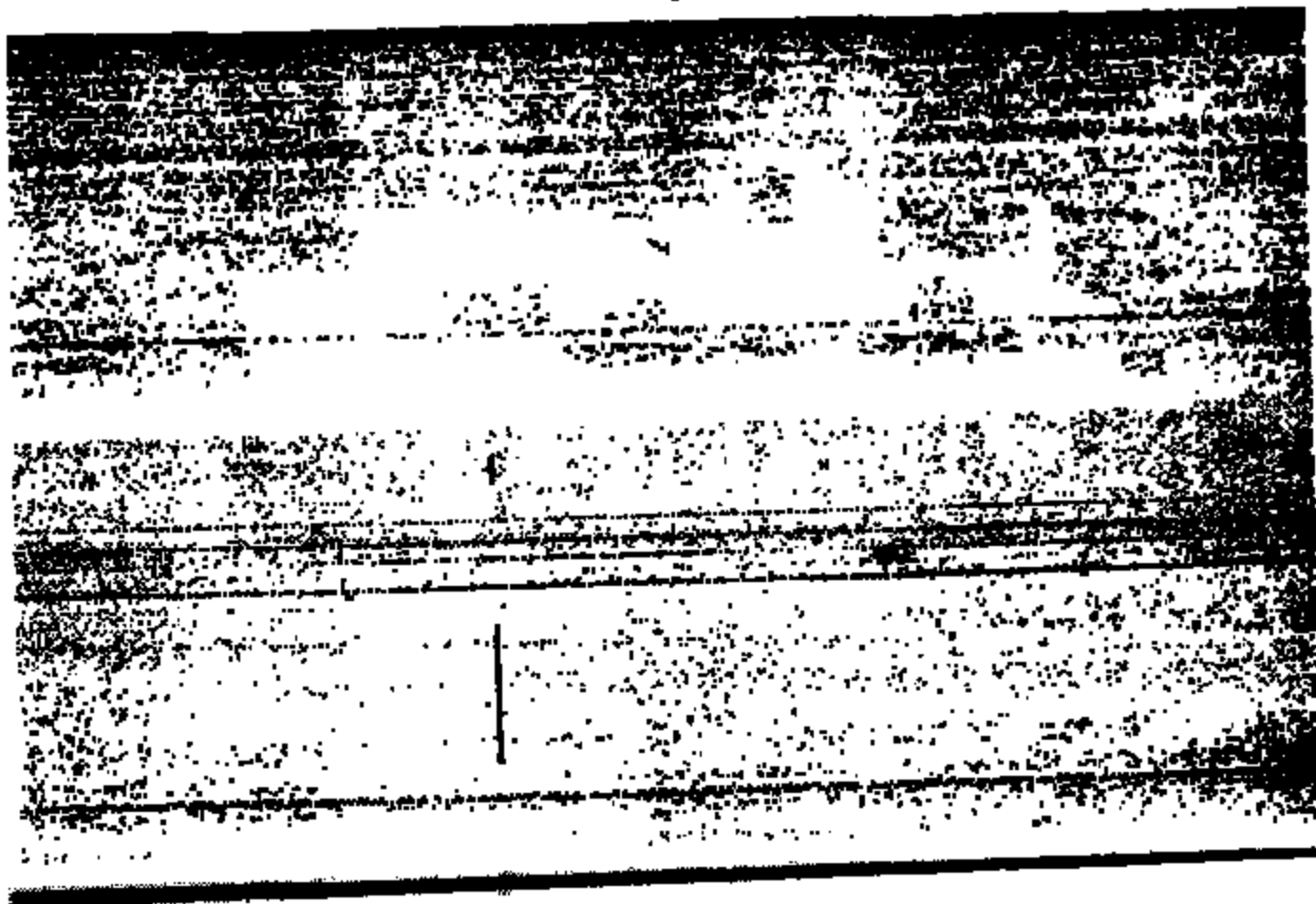
Vehicles used in competitive events.



**AS A MERCEDES-BENZ OWNER you deserve service unparalleled in the industry.**

**To meet your every possible service need, your authorized Mercedes-Benz Center employs a specially factory trained staff using the latest diagnostic and service techniques. Whether it is a small adjustment or major service, your Mercedes-Benz Center will accommodate you quickly and efficiently.**

**Finally, should you ever experience an emergency repair situation, our 24-Hour Around the Clock Roadside Assistance Program is only a toll free call away. (1-800-FOR-MERCEDES)**



**DISCOVERY REQUESTS**



IN THE CIRCUIT COURT IN AND FOR  
OSCEOLA COUNTY, FLORIDA

CASE NO.

[REDACTED]  
Plaintiffs,

v.

MERCEDES-BENZ U.S.A., LLC,

Defendant.

---

**INTERROGATORIES TO DEFENDANT**

NOW COME the Plaintiffs, [REDACTED] by and through  
KROHN & MOSS, LTD. and propounds the following Interrogatories to the Defendant,  
MERCEDES-BENZ U.S.A., LLC, to be answered in writing and under oath.

**INSTRUCTIONS**

1. Answer each interrogatory separately and fully in writing and under oath, unless it is objected to, in which event the reasons for such objection must be stated in lieu of an answer.
2. You are under a continuing duty to seasonably supplement your response with respect to any question when new or additional information becomes known. Additionally, you are under a continuing duty to seasonably amend a prior response if you obtain information upon the basis of which you know that the response was incorrect when made, or that the response, though correct when made, is no longer correct or true.

**INTERROGATORIES**

1. Please state the name and job title of the individual(s) providing the responses and signing the verification to these Interrogatories, including name, business and home address, employment, and job title of said individual(s).
2. Please identify by article number, date of issuance, description, and components

affected, those **TECHNICAL SERVICE BULLETINS, RECALL NOTICES, SPECIAL SERVICE MESSAGES, OR OTHER SERVICE/DIAGNOSTIC BULLETINS**, issued by Defendant for the same make and model vehicle as the subject vehicle that pertain to the alleged defects in the subject vehicle.

3. List the names, addresses, telephone numbers, social security numbers, and job titles of each agent or employee of Defendant who inspected the subject vehicle, performed repairs on the subject vehicle, or was present when these inspections and/or repairs took place. For each individual, please provide a brief factual summary of the nature and extent of said individual's inspection/findings.

4. Did Defendant issue a written warranty with the subject vehicle. If the answer to said interrogatory is "yes" please describe the written warranty or warranties issued with the vehicle.

5. When were you first notified of any alleged defects or complaints concerning the subject vehicle, and by whom. If such notice was made by phone calls from Plaintiffs, or anyone on Plaintiffs' behalf, please list each phone call by date, name of individual from Defendant that engaged in such phone conversation, and the substance of such conversation.

6. State whether Plaintiffs, or anyone on Plaintiffs' behalf, have ever notified Defendant that Plaintiffs no longer wanted the subject vehicle. If so, state when, whether oral or written notice was given, and state the name, address and job title of each person receiving said statement.

7. Please identify the equipment included and specifications of the subject vehicle including but not limited to its exact model name, engine size, transmission type, two wheel drive versus four wheel drive, etc.

8. Please identify the name, address, occupation, substance of expected testimony and summary of the grounds for each and every opinion, for ANY opinion/expert witness as defined by the applicable Rules of Civil Procedure. Please identify only those individuals that you anticipate calling as opinion/expert witnesses at trial and/or arbitration.

9. Please provide a brief chronological resume of each opinion/expert witness identified in the preceding paragraph, including any and all schools attended, certifications, honors achieved, memberships in professional organizations, other current employment(s), names and addresses of employers, and years of employment.

10. Please identify all factual information relied upon by the opinion/expert witness including, but not limited to, drawings, correspondence, memoranda, reports, tests, plans specifications, repair invoices, technical service bulletins, recalls, silent warranties and/or other documents whatsoever.

11. Please identify each and every fact/occurrence witness that Defendant will call at the trial and/or arbitration of this case, stating each individual's full name, address, current

employment, relationship to Defendant, substance of expected testimony and summary of testimony.

12. Did Plaintiffs abuse, neglect, alter, modify, or misuse the subject vehicle. If your answer to said interrogatory is "Yes" please state precisely and in detail each and every factual element upon which Defendant asserts that Plaintiffs abused, neglected, altered, modified, or misused the subject vehicle.

13. Please indicate how many cumulative days Defendant's records indicated that the vehicle was out of service by reason of any defect or condition complained of by Plaintiffs.

14. List all warranty claims submitted by Defendant's authorized dealers to Defendant in which said dealers requested reimbursement for warranty repairs performed on the subject vehicle. For all such claims, please list the dollar amount that Defendant reimbursed each authorized dealer.

15. Does Defendant have a "good will" repair policy. If the answer to said interrogatory is "Yes" please describe the policy and identify any repairs that Defendant paid for under its "good will" program. Please also list the reason said repair was paid under a "good will" determination.

16. Were any repairs performed on the subject vehicle for which Plaintiffs were not charged and the repairs were not covered by the applicable warranties for the subject vehicle. Please list all such repairs.

17. According to Defendant's records, were any repairs performed on the subject vehicle since the date of its manufacture to the date of purchase by Plaintiffs. Please list all such repairs.

18. Please provide the names, addresses and titles of all individuals employed by Defendant who have reviewed Plaintiffs' claims regarding the subject vehicle.

19. Define the word "defect" as used in Defendant's written warranty.

20. Has Defendant failed or refused to reimburse its authorized dealers for any warranty repairs and/or diagnostic procedures on this automobile. If the answer is "yes", state the reason the manufacturer did not make payment.

21. Did any individuals from Defendant's authorized dealers contact Defendant in an effort to seek assistance with the diagnosis or repair of the subject vehicle. If such contact was made, please identify the name, address and position of all individuals involved, the date of said contact and the substance of said contact.

22. Does Defendant provide training programs, manuals, videotapes, or other materials to either its authorized service dealerships or its own employees regarding the various state "Lemon Laws" or other breach of warranty laws. If so, please describe the nature and

extent of such training.

ALEX D. WEISBERG  
KROHN & MOSS, LTD.  
ATTORNEYS FOR PLAINTIFFS  
120 West Madison Street, 10<sup>th</sup> Floor  
Chicago, Illinois 60602  
(312) 578-9428  
(312) 896-5969 fax

By: \_\_\_\_\_

*Alex D. Weisberg*  
Alex D. Weisberg, Esq.  
FBN: 0366551

IN THE CIRCUIT COURT IN AND FOR  
OSCEOLA COUNTY, FLORIDA

CASE NO.

[REDACTED]  
Plaintiff,

v.

MERCEDES-BENZ U.S.A., LLC,

Defendant.

**REQUEST FOR PRODUCTION OF DOCUMENTS**

NOW COME the Plaintiff, [REDACTED] by and through KROHN & MOSS, LTD., and requests that Defendant, MERCEDES-BENZ U.S.A., LLC, produce, as well as uphold its continuing duty to reasonably supplement these requests as additional information becomes available, all documents of any kind or nature including, without limitation: charts, photographs, phone records and other data, computations from which information can be obtained, and any and all copies thereof within the possession of your agents, employees or authorized dealerships, relating to or connected with, *every document that you were asked to "identify" or used in supplying the information requested in Plaintiff's Interrogatories to Defendant.* In addition, and not by way of limitation, produce the following documents concerning the vehicle that is the subject of this action whether in the possession of the Defendant or its authorized dealership(s):

1. All pre-delivery repair orders pertaining to the vehicle.

2. All post-delivery repair orders pertaining to the vehicle.
3. All technicians' and/or mechanics' notes pertaining to the vehicle.
4. All time stamps and/or time punches relating to the time spent performing repairs to the vehicle.
5. The warranty repair history relating to the vehicle as kept in its ordinary course of business by this Defendant. This includes all computer records evidencing monetary amounts reimbursed to Defendant's authorized dealership(s).
6. All internal reports, memoranda, correspondence and zone office reports pertaining to the subject vehicle.
7. All reports, memoranda, correspondence, zone office reports and/or any other documentation created by Defendant or its authorized dealership(s) due to Plaintiffs' contact with Defendant or its authorized dealership(s) by way of either writing, telephone or in person.
8. All records, invoices, and other documentation relating to the sale of and/or purchase of the vehicle.
9. All copies of all written warranties issued by Defendant and/or its authorized dealership(s) regarding the vehicle. This request is being made to obtain an authentic, unaltered copy.
10. Any and all documents relied upon by Defendant in formulating its answer and affirmative defenses.
11. All documents upon which Defendant relies in believing its arbitration program meets the substantive provisions of the Magnuson-Moss Warranty Act; 16 CFR Part 703; and/or any applicable state law provisions.
12. All technical service bulletins, recall notices or product campaign bulletins whether performed or not, applicable to the vehicle as identified in your answer to Interrogatory number 2.
13. All engineering investigations documents by Defendant through its "QSF" (Quick Service Fix) process relating to the defects alleged in Plaintiffs' Complaint, of the Plaintiffs' year/model vehicle.
14. All "QSF" documents relating to the defects alleged in Plaintiffs' Complaint for the Plaintiffs' year/model vehicle.

15. All "Talking Papers," "Level Four documents," "advanced service information," "rapid response," special service information, technical training materials, continuing education materials, VSSM service library articles, Manufacture Audit Sampling Reports, Tech II bulletins, Know How Videos, engineering reports, analysis or memorandum, and any and all other documents referencing investigations or inquiries performed which relate to the allegations made herein regarding vehicles of the same year, make and model as Plaintiffs'.

16. Provide each and every opinion/expert witness report whether or not Defendant seeks to introduce it at the arbitration and/or trial of this case.

17. Any and all documents made available to Defendant's opinion/expert witness by Defendant or its attorney in preparing the opinion/expert witness report.

18. Curriculum vitae for any opinion/expert witness who has prepared a report regarding the vehicle whether or not said opinion/expert witness or the report are intended to be introduced at arbitration and/or trial of this case.

19. Curriculum vitae of any opinion/expert witness whose testimony Defendant intends to introduce at trial or arbitration.

20. Any and all documents prepared and/or generated by the opinion/expert witness including but not limited to: notes, memoranda and correspondence.

21. Any and all documents, papers, correspondence, memos, repair orders, work orders, computer print-outs, vehicle inquiry reports, documents, or receipts evidencing the performance of any repair work, whether covered under Defendant's warranty or not, done to the vehicle.

22. All sales brochures, sales manuals, literature, pictures, or any other promotional literature produced for the vehicle which is the subject matter of this litigation.

23. Any franchise contract(s) between Defendant and its authorized dealership(s) that performed repairs to the vehicle.

24. Every document that constitutes an extended service contract given by Defendant, its authorized dealership(s) or some third party to the Plaintiffs covering the vehicle.

25. All written correspondence forwarded by either the Plaintiffs, Plaintiffs' attorney or anyone else acting on Plaintiffs' behalf, informing Defendant or its authorized dealership(s) that Plaintiffs no longer wishes to retain possession of the vehicle.

26. Provide all documentation supporting Defendant's and its authorized dealership(s) policies to perform "goodwill" repairs (or any repairs performed that were free of charge to Plaintiffs but not covered under Defendant's written warranty) to the vehicle.

27. Provide all documentation evidencing the performance of "goodwill" repairs (or any repairs performed that were free of charge to Plaintiffs but not covered under Defendant's written warranty) to the vehicle whether authorized by Defendant or its authorized dealership(s).

28. Provide any lists authored by Defendant that decipher any diagnostic codes or repair codes that Defendant instructs its authorized dealership(s) to document on the repair orders.

29. Provide copies of any training manuals, videotapes or other materials which Defendant provides to its authorized service dealerships regarding the "Lemon Law" or other breach of warranty laws.

ALEX D. WEISBERG  
KROHN & MOSS, LTD.  
ATTORNEYS FOR PLAINTIFFS  
120 West Madison Street, 10<sup>th</sup> Floor  
Chicago, Illinois 60602  
(312) 578-9428  
(312) 896-5969 fax

By: \_\_\_\_\_

Alex D. Weisberg, Esq.  
FBN: 0566551



**IN THE CIRCUIT COURT IN AND FOR  
OSCEOLA COUNTY, FLORIDA**

**CASE NO.**



**Plaintiff,**

**v.**

**MERCEDES-BENZ U.S.A., LLC,**

**Defendant.**

\_\_\_\_\_ /

**REQUESTS FOR ADMISSION**

NOW COME the Plaintiff, [REDACTED] by and through KROHN & MOSS, LTD., and requests that the Defendant, MERCEDES-BENZ U.S.A., LLC, make the following admissions for the purpose of this action only:

- 1 Defendant provided a written warranty for the subject vehicle.
- 2 Plaintiff's vehicle was brought to Defendant and/or an authorized service dealer of Defendant for repairs at least once within the time provided for under any of Defendant's warranties.
- 3 Defendant received written notification that Plaintiff no longer wanted to retain ownership of the subject vehicle.
- 4 The Defendant and/or its authorized service dealers have been unable to correct all of the defects in the subject vehicle which were complained of by Plaintiff within any applicable warranty period.
- 5 Plaintiff's vehicle has not been repaired after a reasonable number of attempts.
- 6 The defects alleged in Plaintiff's Complaint remain uncorrected.
- 7 Defendant has not offered to repurchase or replace Plaintiff's vehicle.

8. Plaintiffs have not abused the subject vehicle.
9. Plaintiffs have not neglected the subject vehicle.
10. Plaintiffs have not modified the subject vehicle.
11. Plaintiffs have not altered the subject vehicle.
12. All repairs performed on the subject vehicle were covered under Defendant's applicable warranty(ies).
13. The subject vehicle was subject to repair three (3) or more times for substantially the same nonconformity(ies) during the first twenty-four (24) months of ownership thereof, and the nonconformity(ies) for which it was subject to said repairs continue to exist.
14. The subject vehicle has been out of service in excess of thirty (30) calendar days during the Plaintiffs' first twenty-four (24) months of ownership thereof, by reason of the defects alleged in Plaintiffs' Complaint.
15. The subject vehicle was subject to repair four (4) or more times for substantially the same nonconformity(ies) during the first twenty-four (24) months of ownership thereof, and the nonconformity(ies) for which it was subject to said repairs continue to exist.
16. Defendant has a process by which engineers investigate via a "QSF" (Quick Service Fix) process.
17. Defendant has a process by which engineers offer Special Service Messages" on OASIS of "QSF" (Quick Service Fix) process, when they become available.
18. That the "QSF" process is designed to provide a Quick Service Fix within 90 days as the target time window.
19. Defendant continues to manufacture and deliver vehicles to it's authorized dealers while engineering investigates for "QSF" problems.
20. The QSF process repairs can be adopted into Technical Service Bulletins at a later date by Defendant.
21. The QSF process repairs may be adopted into print in whole or part into Defendant's shop manuals.

ALEX D. WEISBERG  
KROHN & MOSS, LTD.  
ATTORNEYS FOR PLAINTIFFS  
120 West Madison Street, 10<sup>th</sup> Floor  
Chicago, Illinois 60602  
(312) 578-9428  
(312) 896-5969 fax

By: \_\_\_\_\_

Alex D. Weisberg, Esq.

FBN: 0566551

### Master Overview Wimmer, Donald and Fiercloth, Allen

<b>Long Rider Name:</b> Donald Wimmer and Allen Fiercloth, individually and on behalf of all others similarly situated v. Mercedes-Benz USA, LLC		<b>Master Number:</b> PC0011007 <b>Worst VIN:</b> WDBJF66GEYA
<b>Master Type:</b> Product Claim <b>Legal Area:</b> Litigation Matters <b>Line Area:</b> <b>TREAD:</b>	<b>Rec'd Date:</b> 12/28/2003 <b>Serve Date:</b> 12/28/2003 <b>Close Date:</b> <b>Accident Date:</b>	
<b>Dispute:</b> Yes <b>Fact Map:</b> No <b>Suspended?</b> Yes		

#### Description:

**Plaintiffs:** [REDACTED] individually and on behalf of all others similarly situated, demand judgment against Defendant, Mercedes-Benz USA, LLC, for compensatory damages, plus pre- and post-judgment interest, costs, punitive damages, and any other such further relief to which they and the class are entitled, injunctive and declaratory relief regarding Mercedes-Benz to cease and desist from its current business practice of concealing the nature and extent of the inherent defect in the Subject Vehicle and compelling Mercedes-Benz to recall and repair the Subject Vehicle at its sole expense for alleged breach of contract, breach of warranty and violations of the Magnuson-Moss Warranty Act, the State Consumer Protection Statutes including Deceptive and Unfair Trade Practices Act with respect to the class action consisting of all persons since 1996 who purchased or leased Mercedes-Benz E-Class, CLK, M-Class and S-Class automobiles ("Subject Vehicles") in the State of Florida and throughout the United States. It is alleged that the Subject Vehicle at the time of their sale and/or lease were defective in their design and/or manufacture; specifically, there are defects in the Subject Part, which cause the part and associated parts to suddenly, catastrophically and prematurely fail when used in its usual and intended manner which can cause and has caused substantial damage to the Subject Vehicles. It is further alleged that Mercedes-Benz has manufactured, supplied, promoted, sold and leased vehicles when it knew the subject part alleged to be defective in the harmonic balancer/crankshaft pulley or should have known that its vehicles equipped with the Subject Part would experience a variety of mechanical failures.

Master handled through DCAG Tampa Coordinating Council.

#### Players

Name	Relationship	Type	Role	Start Date	End Date
In the Circuit Court of the 11th		Other	Court	1/11/2004	
Court Center 123 - Legal		Religious Entity	Court Center	12/29/2003	
Circuit Court, Miami-Dade		Other	Court	1/11/2004	
Amata, Sandra/Sydney		Other	Plaintiff Firm	12/28/2003	
Amata, Esq., Francis A.		Other	Plaintiff Attorney	12/29/2003	
Beynon, Frank F.		Assigned Staff	Primary Legal Contact	12/29/2003	
Blackwell, Esq., Donald A.		Other	Plaintiff Attorney	12/29/2003	
Bryan, Chris LLP		Selling People and Entities	Outside Counsel Firm	12/29/2003	
Fiercloth, Allen		Other	Plaintiff	12/29/2003	
Herring, Esq., Peter		Selling People and Entities	Outside Counsel Attorney	12/29/2003	
Mercedes-Benz USA, LLC		Other	Defendant	12/29/2003	
Wimmer, Donald		Other	Plaintiff	12/29/2003	

**Matter Overview****Dispute**

Court/Purpose:	In the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida		
Case/Docket No:	83-397-10-CA-31	SOL. Begin:	
Our Role:	Defendant	SOL. Expire:	

PC390.1687

**CIVIL COVERSHEET**

This civil cover sheet and the information contained here does not replace the filing and service of pleadings or other papers as required by law. This form is required by the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statute 28.075 (See instructions).

**I. CASE STYLE**

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE  
COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: 03-29731 (A31)

\_\_\_\_\_ individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

MERCEDES-BENZ USA, LLC, a foreign  
corporation,

Defendant.



**II. TYPE OF CASE** Place an "x" in one box only. If the case fits more than one type of case, select the most definitive.

**DOMESTIC RELATIONS**

- ☐ Simplified Divorcement  
☐ Annulment  
☐ Support IV-D  
☐ UIFSA IV-D  
☐ UIFSA Non IV-D  
☐ Domestic Violence  
☐ Other domestic relations

**TORTS**

- ☐ Professional Malpractice  
☐ Products Liability  
☐ Auto Negligence  
☐ Other Negligence (Adversity)

**OTHER CIVIL**

- ☒ Contract  
☐ Construction  
☐ Real Property/Mortgage Foreclosure  
☐ Eminent Domain

**III. IS A JURY TRIAL DEMANDED IN COMPLAINT?** ☒ Yes ☐ No

DATE: 12/22/03

Signature of Attorney for Party Initiating Action:

ANANIA, BANDELAYDER & BLACKWELL  
Attorneys for Plaintiff  
International Plaza - Suite 3308  
100 N.E. Second Street  
Miami, Florida 33132-2714  
(305) 773-4900

By:

Francis A. Anania  
Fla. Bar No. 160256  
Donald A. Blackwell  
Fla. Bar No. 370967

ANANIA, BANDELAYDER, BLACKWELL, BALMGARTEN, TORRICELLA &amp; STEN



within 20 days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defense with the Clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED ON DEC 22 2004, 2003

HARVEY RUVIN

\_\_\_\_\_  
as Clerk of Said Court

HATTIE STREETER  
by: \_\_\_\_\_  
as Deputy Clerk

(Court Seal)

*Page 2 - Summons to Mercedes-Benz, USA, LLC (PL: Donald Warner, et al.)*

ANANTA, BANDELAIDEL, BLACKWELL, BAUMGARTEN, TORRICELLA & STEN

BANK OF AMERICA TOWER, SUITE 400, 100 SE SECOND STREET, MIAMI, FLORIDA 33134-3444 • TELEPHONE (305) 372-4800 • FAX (305) 372-4801



IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT, IN AND FOR MIAMI-  
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: 03-29730

CA 31

[REDACTED], individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

MERCEDES-BENZ USA, LLC, a foreign  
corporation,

Defendant.

**CLASS ACTION COMPLAINT**

The Plaintiffs, [REDACTED] and SUMMER BRETT  
(sometimes collectively referred to as "Plaintiff"), individually and on behalf of all others similarly  
situated, hereby sue the Defendant, MERCEDES-BENZ USA, LLC, a foreign corporation, and  
alleges as follows:

**JURISDICTION AND PARTIES**

1. This is an action for damages in excess of the minimum jurisdictional requirements of  
this Court, exclusive of attorney's fees, interest and costs.
2. The Plaintiff, [REDACTED] is and, at all times material to this Complaint, was  
a resident of Hillsborough County, San City Center, Florida.
3. The Plaintiff, [REDACTED] is and, at all times material to this Complaint,  
was a resident of Hillsborough County, Tampa, Florida.

ANANIA BANDKLAUER BLACKWELL BAUMGARTEN TORRICELLA & STEN

ATTORNEYS AT LAW, 1000 BAY STREET, SUITE 1000, MIAMI, FLORIDA 33131 • TELEPHONE (305) 573-4800 • FAX (305) 573-4801



Case No: \_\_\_\_\_ Page 3

12. MERCEDES BENZ is subject to the jurisdiction of this Court, pursuant to Florida's Long Arm Statute, Section 48.193, Florida Statutes, by reason of one or all of the following:

- a. Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency<sup>2</sup> within this state;
- b. Committing a tortious act within this state;
- c. Causing injury to persons or property within this state arising out of an act or omission by the Defendant outside this state, and at or about the time of the injury, either:
  - 1. The Defendant engaged in solicitation or service activities within this state; or
  - 2. Products, materials, or things processed, serviced, or manufactured by the Defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade or use; and
- d. Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.

13. Moreover, MERCEDES BENZ is engaged in substantial and not isolated activity within this state and such activity is wholly interstate, intrastate or otherwise.

14. MERCEDES BENZ is further subject to the jurisdiction of this Court pursuant to Florida's Long Arm Statute, Section 48.193, Florida Statutes, by reason of the fact that it committed a tortious act within this state against the Plaintiff.

ANANIA BANDKLAYDER, BLACKWELL BALMGARTEN, TORRICELLA & STEN

Case No: \_\_\_\_\_  
Page 4**GENERAL ALLEGATIONS**

15. The Subject Vehicles are and, at the time of their sale and/or lease, were defective in their design and/or manufacture.

16. Specifically, there are defects in the Subject Part, which cause the part and associated parts to suddenly, catastrophically, and prematurely fail when used in its usual and intended manner.

17. The sudden, catastrophic, and premature failure of the Subject Part also can cause and has caused substantial damage to the Subject Vehicles.

18. The foregoing defects diminish the value of the Subject Vehicles, result in costly repairs, and may result in injury to MERCEDES BENZ customers and their passengers.

19. MERCEDES BENZ is and, since at least 1996, has been aware of the defects in the Subject Part. However, upon information and belief, MERCEDES BENZ made a conscious decision not to notify owners or lessees of the Subject Vehicles of the problem, let alone to recall the Subject Vehicles.

20. Instead, in an effort to preserve the marketability of its products, MERCEDES BENZ sometimes treats the defects in the Subject Part as a warranty item, but only for those customers who experience and seek to remedy the problem during the warranty period.

21. In other instances (i.e., when an affected vehicle is out of warranty), MERCEDES BENZ and its dealers replace the Subject Part and repair any associated engine damage at the owner's expense (at least with respect to all or a portion of the labor charge).

22. In still other instances, MERCEDES BENZ has, upon information and belief, simply replaced the Subject Part during unrelated service or repair visits without any notice to its customers.

Case No: \_\_\_\_\_  
Page 5

23. Indeed, upon information and belief, MERCEDES BENZ has misrepresented and continues to misrepresent the existence and magnitude of the defective condition of the Subject Part to consumers by stating that it is an isolated, rather than a product-wide, defect.

24. Finally, MERCEDES BENZ has failed to notify automotive repair facilities other than its authorized dealers of the nature and existence of the alleged defect and/or the appropriate repair of the problem or reimburse its customers for the substantial cost of such repairs.

25. Plaintiffs have retained the undersigned counsel to prosecute this action and have agreed to pay them a reasonable fee.

26. All conditions precedent to the filing of this action have been performed, have occurred, or have been waived.

#### **CLASS ACTION ALLEGATIONS**

27. Plaintiffs bring this action on behalf of themselves and all other similarly situated consumers of the Subject Vehicles as a class action, pursuant to Fla. R. Civ. P. 1.220(b)(2) or (b)(3).

28. The class consists of:

All persons and entities in the United States who purchased or leased MERCEDES BENZ E-Class, CLK Class, M-Class and S-Class vehicles, containing the Subject Part.

29. Plaintiffs believe there are tens of thousands of members of the above-described class. However, the exact number and identities of those class members presently is unknown to Plaintiffs, but is or may be known to MERCEDES BENZ. In any event, the class is so numerous that joinder of all members is impracticable.



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Page 7

dispositive of the interest of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

36. MERCEDES BENZ has established a business practice with respect to addressing the defective condition of the Subject Part and/or has acted or refused to act on grounds generally applicable to each member of the class, thereby making corresponding relief appropriate with respect to the class as a whole.

37. The questions of law or fact common to the members of the classes predominate over any questions affecting any individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy between Plaintiffs and MERCEDES BENZ.

38. The class is readily definable and, in part, is one for which records exist.

39. Proof of damage is a common issue and can be established uniformly for the class as a whole.

40. Through a uniform and common course of conduct, MERCEDES BENZ has manufactured, supplied, promoted, sold and leased vehicles when it knew or should have known that its vehicles equipped with the Subject Part would experience a variety of mechanical failures.

#### **COUNT 1: NEGLIGENCE (ALL PLAINTIFFS)**

41. Plaintiffs reallege and incorporate by reference the allegations in Paragraph Nos. 1 through 40, as if fully set forth herein.

42. MERCEDES BENZ designed, manufactured, tested, inspected, distributed and sold the Subject Vehicles and the Subject Part for their usual and intended usage.

ANANIA, BARKLEY, BLACKWELL, BALMGARTEN, TORRICELLA & STEN

Case No: \_\_\_\_\_  
Page 5

43. MERCEDES BENZ breached the duty of reasonable care that it owed to the Plaintiffs and other members of the class with respect to the Subject Vehicles, by, among other things:

- (a) negligently designing and/or manufacturing the Subject Vehicles;
- (b) negligently testing or failing to test the Subject Vehicles for defects;
- (c) negligently inspecting or failing to inspect the Subject Vehicles for defects;
- (d) negligently warning or failing to warn consumers of known defects in the Subject Vehicles; and
- (e) such other negligent acts and omissions as discovery may reveal.

44. As a direct and proximate result of MERCEDES BENZ's negligence, Plaintiffs and other members of the class have suffered and will continue to suffer damages, including, but not limited to, loss of value, loss of use, physical damage to the Subject Vehicles, and other injuries and damages described herein.

WHEREFORE, the Plaintiffs, [REDACTED] and [REDACTED] individually and on behalf of all others similarly situated, demand judgment against the Defendant, MERCEDES-BENZ USA, LLC, for compensatory damages, plus pre- and post-judgment interest, costs and any and all such further relief to which they and the class are entitled.

**COUNT II: BREACH OF EXPRESS WARRANTY (ALL PLAINTIFFS)**

45. Plaintiffs reallege and incorporate by reference the allegations in Paragraph Nos. 1 through 40, as if fully set forth herein.

ANANIA BANDELAIDER, BLACKWELL BAUMGARTEN, TORRICELLA & STEN



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Page 9

46. MERCEDES BENZ designed, manufactured, tested, inspected, distributed and sold the Subject Vehicles and the Subject Part for their usual and intended usage.

47. MERCEDES BENZ expressly and affirmatively represented to the Plaintiffs and every other class member that the Subject Vehicles were state of the art vehicles.

48. MERCEDES BENZ further represented to the Plaintiffs and every other class member that the Subject Vehicles were free of defects in materials and workmanship.

49. MERCEDES BENZ breached each and every one of those warranties with respect to the Subject Vehicles, in that, among other things:

- (a) the Subject Vehicles are defective in their design and/or manufacture;
- (b) the Subject Part is defective in its design and manufacture;
- (c) the Subject Part fails suddenly, prematurely and catastrophically; and
- (d) such other breaches as discovery may reveal.

50. As a direct and proximate result of MERCEDES BENZ's breach of warranty, Plaintiffs and other members of the class have suffered and will continue to suffer damages, including, but not limited to, loss of value, loss of use, physical damage to the Subject Vehicles, and other injuries and damages described herein.

WHEREFORE, the Plaintiffs, [REDACTED]

[REDACTED] individually and on behalf of all others similarly situated, demand judgment against the Defendant, MERCEDES-BENZ USA, LLC, for compensatory damages, plus pre- and post-judgment interest, costs, and any and all such further relief to which they and the class are entitled.

ANANIA BANDKLAUER, BLACKWELL BALDWIN, TORRICELLA & STEN

Case No: \_\_\_\_\_

Page 10

**COUNT III: BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (ALL PLAINTIFFS)**

51. The Plaintiffs reallege and incorporate by reference the allegations in Paragraph Nos. 1 through 40, as if fully set forth herein.

52. MERCEDES BENZ designed, manufactured, tested, inspected, distributed and sold the Subject Vehicles for their normal and intended usage.

53. MERCEDES BENZ impliedly warranted to the Plaintiffs and every other class member that the Subject Vehicles were of good and merchantable quality and fit for their intended purpose.

54. MERCEDES BENZ breached that implied warranty of merchantability in one or all of the following material respects:

- (a) the Subject Vehicles are defective in their design and/or manufacture;
- (b) the Subject Part is defective in its design and manufacture;
- (c) the Subject Part fails suddenly, prematurely and catastrophically; and
- (d) such other breaches as discovery may reveal.

55. As a direct and proximate result of MERCEDES BENZ's breach of warranty, Plaintiffs and other members of the class have suffered and will continue to suffer damages, including, but not limited to, loss of value, loss of use, physical damage to the Subject Vehicles, and other injuries and damages described herein.

WHEREFORE, the Plaintiffs

individually and on behalf of all others similarly situated, demand judgment against the

ANANIA BANDKLAYDEH, BLACKWELL, BALMGARTEN, TORRICELLA & STEN;

Attorneys for Plaintiffs

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Page 11

Defendant, MERCEDES-BENZ USA, LLC, for compensatory damages, plus pre- and post-judgment interest, costs, and any and all such further relief to which they and the class are entitled.

**COUNT IV: VIOLATION OF STATE CONSUMER PROTECTION STATUTE,  
INCLUDING DECEPTIVE AND UNFAIR TRADE PRACTICES ACTS**

56. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1 through 40, as if full set forth herein.

57. MERCEDES BENZ's conduct as alleged herein constitutes unconscionable, deceptive, or unfair acts or practices in the conduct of trade or commerce in violation of any and all state consumer protection and/or deceptive and unfair trade practice acts.

58. Specifically, MERCEDES BENZ failed to adequately disclose to or, alternatively, fraudulently and actively concealed from purchasers and/or lessees of the Subject Vehicles material information relating to the defective and dangerous condition of the Subject Part.

59. The deceptive and unfair business practices of MERCEDES BENZ, as more fully described above, were intended to induce and did induce Plaintiffs and other members of the Class to purchase and/or lease or, alternatively, to pay for repairs to the Subject Vehicles.

60. As a direct and proximate result of MERCEDES BENZ's unconscionable, deceptive, or unfair acts or practices, Plaintiffs and other members of the class have suffered and will continue to suffer damages, including, but not limited, the cost of repairs and the loss of market value.

61. In addition, as a direct and proximate result of MERCEDES BENZ's unconscionable, deceptive, or unfair acts or practices, Plaintiffs have been required to retained the undersigned counsel to enforce their statutory rights and they have agreed to pay them a reasonable fee.

Case No: \_\_\_\_\_  
Page 12

62. Plaintiffs are entitled to an award of reasonably attorney's fees and costs under the express provisions of all state consumer protection and/or deceptive and unfair trade practice acts, including Sections 501.2105 and 501.211, Florida Statutes.

WHEREFORE, the Plaintiff [REDACTED] and [REDACTED]

[REDACTED] individually and on behalf of all others similarly situated, demand judgment against the Defendant, MERCEDES-BENZ USA, LLC, for compensatory damages, pre- and post-judgment interest, costs, attorney's fees, and any and all such further relief to which they and the class are entitled. Plaintiffs further demand injunctive and declaratory relief requiring MERCEDES BENZ to cease and desist from its current business practice of concealing the nature and extent of the inherent defect in the Subject Vehicles and compelling MERCEDES BENZ to recall and repair the Subject Vehicles at its sole expense.

**COUNT V: UNJUST ENRICHMENT**

63. Plaintiffs reallege and incorporate by reference the allegations in Paragraph Nos. 1 through 40, as if full set forth herein.

64. MERCEDES BENZ and its dealers intended to and, in fact, did benefit and profit from the course of unconscionable, deceptive, and/or unfair conduct more fully described herein, in the form of the sale, lease and/or repair of the Subject Vehicles.

65. MERCEDES BENZ, in turn, accepted and/or retained those benefits and profits for its own use, notwithstanding the fact that it knew that they resulted from its own wrongdoing, as more fully described herein, and, therefore, that it was not entitled to those benefits.

ANANA, BANDKLOYER, BLACKWELL, BALMGARTEN, TORRICELLA & STEN

Case No: \_\_\_\_\_ Page 13

66. As a direct and proximate result of its misconduct, as more fully described herein, MERCEDES BENZ has been unjustly enriched at the expense of Plaintiffs and the other class members.

WHEREFORE, the Plaintiffs, [REDACTED] individually and on behalf of all others similarly situated, demand judgment against the Defendant, MERCEDES-BENZ USA, LLC, in the form of disgorgement and restitution for any profits, benefits, or other revenues that MERCEDES BENZ has derived from its misconduct, together with pre- and post-judgment interest, costs, and any and all such further relief to which Plaintiffs and the class are entitled.

**COUNT VI: VIOLATION OF MAGNUSON-MOSS CONSUMER  
PRODUCT WARRANTY ACT**

67. Plaintiffs reallege and incorporate by reference the allegations in Paragraph Nos. 1 through 40, as if full set forth herein.

68. This is an action for damages not less than and not greater than the amounts necessary to prosecute a claim and for the amounts allowable under the Magnuson-Moss Consumer Product Warranty Act, 15 U.S.C. §2301, *et seq.*

69. At all times material to this action, MERCEDES BENZ impliedly warranted to the Plaintiffs and every other class member that the Subject Vehicles were merchantable, pursuant to the Magnuson-Moss Consumer Product Warranty Act, 15 U.S.C. §2301, *et seq.*

ANANIA, SANDKLAYDER, BLACKWELL, BALMIGARTEN, TORRICELLA & STEN

3333 N. WINTER AVENUE, SUITE 400, BOCA RATON, FLORIDA 33431-1111 - TELEPHONE (305) 393-4000 - FAX (305) 393-4001

Case No: \_\_\_\_\_  
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70. MERCEDES BENZ breached that warranty and, in doing so, violated the Magnuson-Moss Consumer Product Warranty Act, 15 U.S.C. §2301, *et seq.* in one or all of the following material respects:

- (a) the Subject Vehicles are defective in their design and/or manufacture;
- (b) the Subject Part is defective in its design and manufacture;
- (c) the Subject Part fails suddenly, prematurely and catastrophically; and
- (d) such other breaches as discovery may reveal.

71. As a direct and proximate result of that breach, of warranty, Plaintiffs and other members of the class have suffered and will continue to suffer economic damages, including, but not limited to, loss of value, loss of use, physical damage to the Subject Vehicles, and other injuries and damages described herein.

72. Plaintiffs are entitled to recover their reasonable attorney's fees and costs, pursuant to the Magnuson-Moss Consumer Product Warranty Act, 15 U.S.C. §2301, *et seq.*

WHEREFORE, the Plaintiffs, [REDACTED]

[REDACTED] individually and on behalf of all others similarly situated, demand judgment against the Defendant, MERCEDES-BENZ USA, LLC, for compensatory damages, plus pre- and post-judgment interest, costs, attorney's fees, and any and all such further relief to which they and the class are entitled.

#### **COUNT VII: INJUNCTIVE RELIEF**

73. Plaintiffs reallege and incorporates by reference the allegations in Paragraph Nos. 1 through 40, as if full set forth herein.

ANANIA BANDERLAYDER, BLACKWELL BALMGARTEN, TORRICELLA & SPEN

SANKU & ANANIANI, P.C., 11000, SUITE 1100, 11000 SECOND STREET, MIAMI, FLORIDA 33154 • TELEPHONE (305) 555-5555 • FAX (305) 555-5555

Case No: \_\_\_\_\_

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74. MERCEDES BENZ has engaged and is continuing to engage in a course of unconscionable, deceptive, and/or unfair conduct in connection with the sale, lease and/or repair of the Subject Vehicles.

75. Plaintiffs are entitled to injunctive relief requiring MERCEDES BENZ to cease and desist from its current business practice of concealing the nature and extent of the inherent defect in the Subject Vehicles and compelling MERCEDES BENZ to recall and repair the Subject Vehicles at its sole expense.

#### **DEMAND FOR JURY TRIAL**

Plaintiffs and the class demand trial by jury on all issues so triable as a matter of right.

#### **PUNITIVE DAMAGES**

Pursuant to Section 768.72, Florida Statutes, Plaintiffs hereby notify the Court and all interested parties that, at the appropriate time, they intend to seek leave of Court to amend their Complaints to assert claims for punitive damages against MERCEDES BENZ based upon its fraudulent, willful and wanton misconduct, as more fully alleged herein.

DATED this 22nd day of December, 2003.

ANANIA, BANDKLAYDER, BLACKWELL, BALMGARTEN  
TORRICELLA & STEN  
Attorneys for Plaintiffs  
Bank of America Tower, Suite 4300  
100 Southeast Second Street  
Miami, Florida 33131  
Telephone: (305) 373-4900  
Facsimile: (305) 373-6914

By: 

Francis A. Anania

ANANIA, BANDKLAYDER, BLACKWELL, BALMGARTEN, TORRICELLA & STEN

BANK OF AMERICA TOWER, SUITE 4300, 100 SE SECOND STREET, MIAMI, FLORIDA 33131 • TELEPHONE: (305) 373-4900 • FACSIMILE: (305) 373-6914

Case No: \_\_\_\_\_  
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Florida Bar No. 160256  
Donald A. Blackwell  
Florida Bar No. 370967

- and -

Robert Adams, Esq.  
Kandrick Blackwell, Esq.  
Stephen C. Diaco, Esq.  
ADAMS, BLACKWELL, & DIACO, P.A.  
101 E. Kennedy Boulevard  
Tampa, Florida 33602  
Telephone: (813) 221-8669  
Fax: (813) 221-8850

ANANIA BANDKLYDER, BLACKWELL BALMGARTEN, TORRICELLA & STEN

NAME OF AMERICA 11000 NITELAND ROAD SECOND STREET ARIANE FLORIDA 33411 • TELEPHONE (304) 373-0700 • FAX (304) 373-0700



**PE03-058**

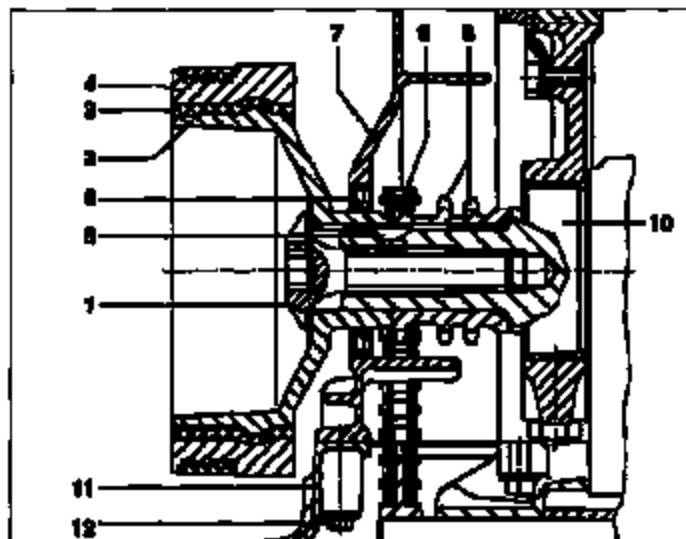
**HOGAN&HARTSON**

**3/12/04**

**FOR MERCEDES-BENZ  
ATTACHMENT C**

## Shown on engine 112

- 1 M16 x 1.5 x 77 control bolt
- 2 Vibration damper secondary part
- 3 Elastomer
- 4 Vibration damper primary part
- 5 Woodruff key
- 6 Radial shaft seal
- 7 Timing case cover
- 8 Crankshaft sprocket (timing drive)
- 9 Crankshaft sprocket (oil pump drive)
- 10 Crankshaft
- 11 Top part of oil pan
- 12 Bolt for attaching oil pan



P03.30-0262-11

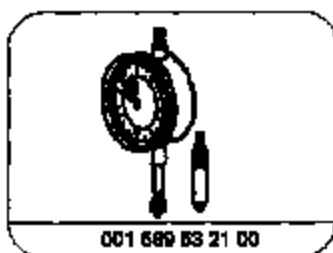
AR03.30-P-1600-01B	Inspecting belt pulley / vibration damper for axial and radial runout		
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#### Belt pulley / vibration damper

Number	Designation		Motor 112, 113.94/ 96/98	Engine 113.992	Engines 113.990/ 991
9509.90-P-1001-02A	Permissible difference at vibration damper	Radial runout mm	0,5	0,4	0,4
		Axial runout mm	0,3	0,2	0,4

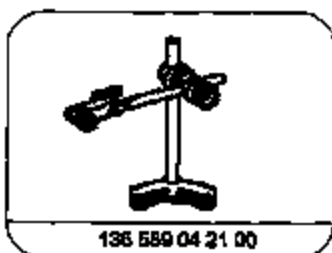
#### Belt pulley / vibration damper

Number	Designation		Engine 271	Engine 275, 285
9503.30-P-1001-02C	Permissible difference at vibration damper	Radial runout mm	0,3	-
		Axial runout mm	0,3	0,3








001 589 53 21 00

Dial gage



136 589 04 21 00

Dial gage holder

- 1  Bolt dial gage holder (03) into timing gage cover.
- 2  Insert dial gage (04) into .
- 3 **Inspect axial runout**  
Position tracer pin (05) of  dial gage (04) at measuring point (B).
- 4 Rotate belt pulley/vibration damper (62) by hand, inspect axial runout.
- 5 **Inspect concentricity**  
Position tracer pin (05) of  dial gage (04) at measuring point (A).
- 6 Rotate belt pulley/vibration damper (62) by hand, inspect concentricity.

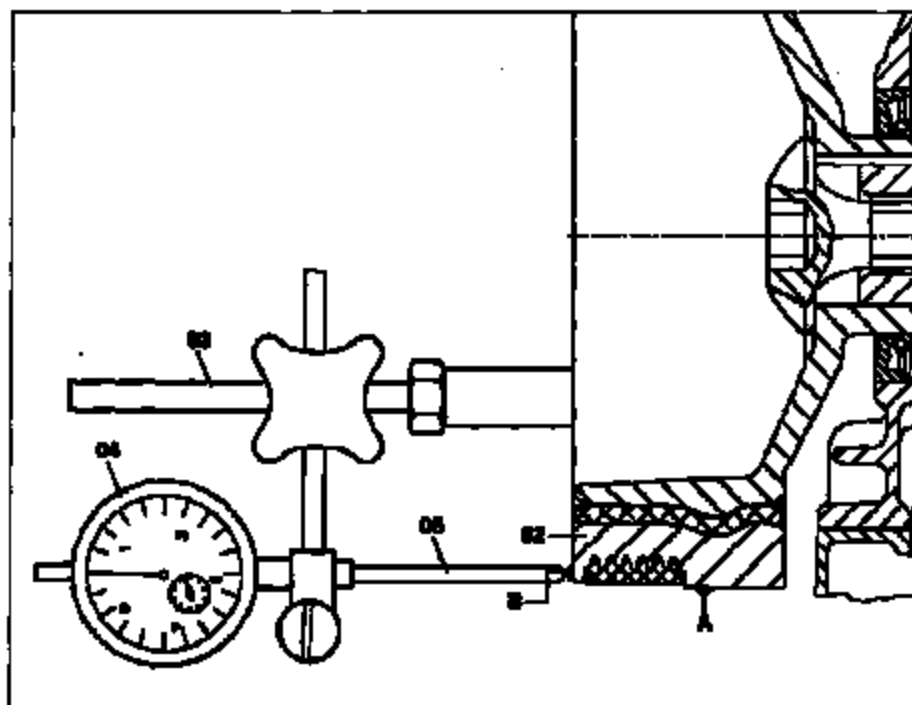
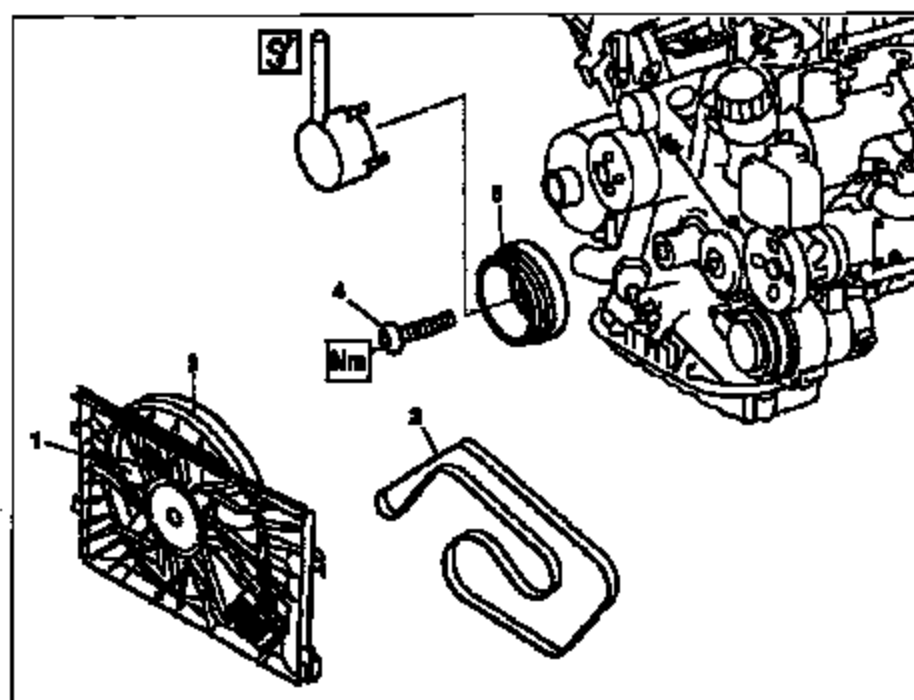


FIG. 50-00000-00

ENGINE 112.947 In MODEL 170  
 ENGINE 112 In MODEL 202, 208, 209, 210, 220  
 ENGINE 113 In MODEL 209, 210, 220  
 ENGINE 112.913 In MODEL 211.081  
 ENGINE 112.949 In MODEL 211.085  
 ENGINE 113.967 In MODEL 211.070  
 ENGINE 113.981 In MODEL 163.174  
 ENGINE 113.963 In MODEL 230.475  
 ENGINE 113.992 In MODEL 230.474  
 ENGINE 113.990 In MODEL 211.076 /276  
 ENGINE 112.973 In MODEL 230.467

Shown on engine 112

- 1 Electric fan
- 2 poly-V-belts
- 3 Fan shroud
- 4 Central bolt
- 5 Belt pulley/vibration damper



P03.30-2028-06

	<b>Remove/install</b>		
<b>Danger</b>	Risk of death. Death may result if vehicle slips or topples from the lifting platform.	Align vehicle between columns of lifting platform and position the four support plates below support points specified by vehicle manufacturer.	AS00.90-Z-0010-01A
1.1	Remove engine compartment paneling	Except Model 230.475 Model 230.467/474 Model 210, 220 Model 202, 208, 210 Model 163.174 Model 170 Model 209 Model 211	AR61.20-P-1105R AR61.20-P-1105M AR61.20-P-1105AB AR61.20-P-1105GH AR61.20-P-1105A AR61.20-P-1105P AR61.20-P-1105T
2.1	Remove engine trim panel with integrated air cleaner	Unclip covering on front side of engine. Remove air cleaner by pulling vertically up and off the cylinder head covers.	
2.2	Remove air cleaner	Model 170.466 Model 211.076/276 Model 215.374, 220.074/174 Model 230.474	AR08.10-P-1150SVK





### Damper request

In cooperation with Germany we would like to request your assistance with the collection of vibration dampers from certain M112 and M113 engines. The return of and reimbursement for the collected parts will be handled outside of the normal warranty channels. Please find the necessary information below.

#### Criteria

We are interested in parts from vehicles that meet the following parameters:

1. Model year 1998 or 1999 with M112 or M113 engine.
2. Vehicles must have at least 30,000 miles.
3. Only original dampers or replacement parts that have accumulated at least 30K miles.
4. We do not need vibration damper part number 112 035 09 00.
5. No dampers from AMG vehicles are required.

#### Information Needed

Please fill in the following blanks and return a copy of this form and a copy of the R.O. as noted below.

1. Model number, i.e., (E320) \_\_\_\_\_
2. Last seven characters of serial number, i.e., (A123456) \_\_\_\_\_
3. Complete engine serial number, i.e., 112941 30 654321 \_\_\_\_\_
4. Mileage \_\_\_\_\_
5. Retail delivery date \_\_\_\_\_
6. Removal or Repair Date \_\_\_\_\_
7. Dealer code \_\_\_\_\_
8. R.O. number \_\_\_\_\_
9. Reason for removal or repair, (If the damper is defective place an "X" by Warranty. If the damper is not failing please an "X" by Sample test)

Warranty \_\_\_\_\_ Sample test \_\_\_\_\_

#### Shipping of removed parts

Please box and ship these parts separately from other warranty returns. Failure to do so may result in payment delay. Please ship as indicated below, return receipt requested, and keep copies of all for your records.

Mercedes Benz USA  
1 Glenview Road  
Montvale, NJ 07645  
Attention: Dennis Keaveney  
(201) 573-4139

#### Payment Information

DO NOT submit a warranty claim! As stated above please include a copy of the R.O. that reflects your charge for the total replacement. You will be reimbursed for the repair over your consolidated parts statement.

Questions? Please contact your SPOM or RTC at (650)548-5042