



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

MAY 29 2008

1200 New Jersey Avenue SE
Washington, DC 20590

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jan Urbahn, Manager
Safety Engineering and Intelligent Transportation Systems
BMW of North America, LLC
P.O. Box 1227
Westwood, NJ 07675

NVS-212-pco
EA08-001

Dear Mr. Urbahn:

As you know, the Office of Defects Investigation (ODI) of the National Highway Traffic Safety Administration (NHTSA) has upgraded its investigation of the Occupant Classification System (OCS) on the subject vehicles (defined below) from a Preliminary Evaluation (PE07-045) to an Engineering Analysis (EA08-001). NHTSA is investigating allegations of OCS failures resulting in deactivation of the front passenger seat airbag and the illumination of the OCS light and/or the illumination of the Airbag Warning Lamp (AWL) on the subject vehicles. This letter requests you to provide certain information described below regarding the subject vehicles.

Unless otherwise stated in the text, the following definitions apply to this information request:

- **Subject vehicles:** a) all Model Year (MY) 2004 - 2006 BMW 5 Series, 7 Series, X3, and Z4 vehicles; and MY 2006 BMW 3 Series, 6 Series, X5, and M5 vehicles equipped with the "original" OC3 sensor mat with side bolster sensors, b) all other MY 2006 to MY 2008 BMW vehicles equipped with the "improved alloy" sensor mat, and c) all other MY 2006 to MY 2008 BMW vehicles equipped with the improved "smaller sensor mat" (without the side bolster sensors) in the passenger seat manufactured for sale or lease in the United States.
- **Subject component:** the OCS seat mat located in the passenger seat.
- **BMW:** BMW Group, including but not limited to BMW of North America LLC and Bayerische Motoren Werke Aktiengesellschaft (BMW AG); all of their past and present officers and employees, whether assigned to its principal offices or any of its field or other locations, including all of its divisions, subsidiaries (whether or not incorporated), and affiliated enterprises and all of their headquarters, regional, zone, and other offices and their employees; and all agents, contractors, consultants, attorneys, and law firms and other persons engaged directly or indirectly (e.g., employee of a consultant) by or under the control of BMW (including all business units and persons previously referred to); who are or were



involved in or after September 1, 2002, in any way with any of the following related to the alleged defect in the subject vehicles:

- a. Design, engineering, analysis, modification, or production (e.g., quality control);
 - b. Testing, assessment, or evaluation;
 - c. Consideration or recognition of potential or actual defects, reporting, record-keeping, and information management (e.g., complaints, field reports, warranty information, part sales), analysis, claims, or lawsuits; or
 - d. Communication to, from, or intended for zone representatives, fleets, dealers, or other field locations, including but not limited to people who have the capacity to obtain information from dealers.
- **VDO Automotive AG/Continental AG:** Continental Teves AG, all of its past and present officers and employees, whether assigned to its principal offices or any of its field or other locations, including all of its divisions, subsidiaries (whether or not incorporated) and affiliated enterprises and all of their headquarters, regional, zone, and other offices and their employees, and all agents, contractors, consultants, attorneys, and law firms and other persons engaged directly or indirectly (e.g., employee of a consultant) by or under the control of Continental Teves AG & Co. (including all business units and persons previously referred to), who are or, in or after September 1, 2002, were involved in any way with any of the following related to the subject condition in the subject peer vehicles:
 - a. Design, engineering, analysis, modification or production (e.g., quality control);
 - b. Testing, assessment, or evaluation;
 - c. Consideration or recognition of potential or actual defects; reporting, record-keeping, and information management (e.g., complaints, field reports, warranty information, part sales); analysis; claims; or lawsuits; or
 - d. Communication to, from, or intended for zone representatives, fleets, dealers, or other field locations, including but not limited to people who have the capacity to obtain information from dealers.
 - **Alleged defect:** failure of the OCS seat mat located in the passenger seat.
 - **Document:** "Document(s)" is used in the broadest sense of the word and shall mean all original written, printed, typed, recorded, or graphic matter whatsoever, however produced or reproduced, of every kind, nature, and description, and all non-identical copies of both sides thereof, including, but not limited to, papers, letters, memoranda, correspondence, communications, electronic mail (e-mail) messages (existing in hard copy and/or in electronic storage), faxes, mailgrams, telegrams, cables, telex messages, notes, annotations, working papers, drafts, minutes, records, audio and video recordings, data, databases, other information bases, summaries, charts, tables, graphics, other visual displays, photographs, statements, interviews, opinions, reports, newspaper articles, studies, analyses, evaluations, interpretations, contracts, agreements, jottings, agendas, bulletins, notices, announcements, instructions, blueprints, drawings, as-builts, changes, manuals, publications, work schedules, journals, statistical data, desk, portable and

computer calendars, appointment books, diaries, travel reports, lists, tabulations, computer printouts, data processing program libraries, data processing inputs and outputs, microfilms, microfiches, statements for services, resolutions, financial statements, governmental records, business records, personnel records, work orders, pleadings, discovery in any form, affidavits, motions, responses to discovery, all transcripts, administrative filings and all mechanical, magnetic, photographic and electronic records or recordings of any kind, including any storage media associated with computers, including, but not limited to, information on hard drives, floppy disks, backup tapes, and zip drives, electronic communications, including but not limited to, the Internet and shall include any drafts or revisions pertaining to any of the foregoing, all other things similar to any of the foregoing, however denominated by BMW, any other data compilations from which information can be obtained, translated if necessary, into a usable form and any other documents. For purposes of this request, any document which contains any note, comment, addition, deletion, insertion, annotation, or otherwise comprises a non-identical copy of another document shall be treated as a separate document subject to production. In all cases where original and any non-identical copies are not available, "document(s)" also means any identical copies of the original and all non-identical copies thereof. Any document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by BMW or not. If a document is not in the English language, provide both the original document and an English translation of the document.

- **Other Terms:** To the extent that they are used in these information requests, the terms "claim," "consumer complaint," "dealer field report," "field report," "fire," "fleet," "good will," "make," "model," "model year," "notice," "property damage," "property damage claim," "rollover," "type," "warranty," "warranty adjustment," and "warranty claim," whether used in singular or in plural form, have the same meaning as found in 49 CFR 579.4.

In order for my staff to evaluate the subject condition, certain information is required. Pursuant to 49 U.S.C. § 30166, please provide numbered responses to the following information requests. **Insofar as BMW has previously provided a document to ODI, BMW may produce it again or identify the document, the document submission to ODI in which it was included, and the precise location in that submission where the document is located. Where possible, only provide data not previously provided to the agency as appropriate for each item below.** When documents are produced, the documents shall be produced in an identified, organized manner that corresponds with the organization of this information request letter (including all individual requests and subparts). When documents are produced and the documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation.

Please repeat the applicable request verbatim above each response. After BMW's response to each request, identify the source of the information and indicate the last date the information was gathered.

1. State in a table format, within the body of the response letter and in an electronic spreadsheet, by model series, model year, the total number of each group of subject vehicles (“original”, “improved alloy” and improved “smaller sensor” mats) BMW has manufactured for sale or lease in the United States. Separately, for each vehicle manufactured to date by BMW, state the following:
 - a. Make;
 - b. Model Series;
 - c. Model Year;
 - d. Vehicle identification number (VIN);
 - e. Date of manufacture (in “yyyy/mm/dd” date format);
 - f. Date warranty coverage commenced (in “yyyy/mm/dd” date format);
 - g. The State in the United States where the vehicle was originally sold or leased (or delivered for sale or lease);
 - h. The mat type (“original”, “improved alloy” or improved “smaller sensor” mat) and
 - i. The seat type/covering code (if differs from within a model series).

Provide the tables in Microsoft Access 2000, or a compatible format, entitled “PRODUCTION DATA.”

2. State within the body of the response letter and in an electronic spreadsheet, table showing the number of each of the following, received by BMW, or of which BMW is otherwise aware, which relate to, or may relate to, the alleged defect in each group of subject vehicles (“original”, “improved alloy” and improved “smaller sensor” mats):
 - a. Consumer complaints, including those from fleet operators;
 - b. Field reports, including dealer field reports;
 - c. Reports involving a crash/fire, injury, or fatality, based on claims against the manufacturer involving a death or injury, notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle, property damage claims, consumer complaints, or field reports;
 - d. Property damage claims (including own vehicle); and
 - e. Third-party arbitration proceedings where BMW is or was a party to the arbitration; and
 - f. Lawsuits, both pending and closed, in which BMW is or was a defendant or codefendant.

For subparts “a” through “d,” state the total number of each item (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted separately. Multiple reports of the same incident are also to be counted separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be counted as a crash report, a field report and a consumer complaint). Identify reports that have a duplicate with either other mfg reports/claims or with ODI.

In addition, for subparts “d” through “f,” identify the parties to the action, as well as the caption, court, docket number, and date on which the complaint or other document initiating the action was filed. Also identify if crash or injury is alleged.

Provide the tables in Microsoft Excel 2000, or a compatible format, entitled "MANUFACTURER REPORT COUNT."

3. Separately, for each item (complaint, report, claim, notice, or matter) within the scope of your response to Request No. 2, state the following information for the subject vehicle:
 - a. BMW's file number or other identifier used;
 - b. The category of the item, as identified in Request No. 2 (i.e., consumer complaint, field report, etc.);
 - c. Vehicle owner or fleet name (and fleet contact person), address, and telephone number;
 - d. Vehicle's VIN;
 - e. Vehicle's make, model and model year;
 - f. Vehicle's mileage at time of incident;
 - g. Incident date (in "yyyy/mm/dd" date format);
 - h. Report or claim date (in "yyyy/mm/dd" date format);
 - i. Whether a crash is alleged;
 - j. Whether property damage is alleged;
 - k. Number of alleged injuries, if any;
 - l. Number of alleged fatalities, if any.

Provide this information in Microsoft Access 2000, or a compatible format, entitled "REQUEST NUMBER TWO DATA."

4. Produce copies of all documents related to each item within the scope of Request No. 2. Organize the documents separately by category (i.e., consumer complaints, field reports, etc.) and describe the method BMW used for organizing the documents for the subject vehicles only.
5. State within the body of the response letter and in an electronic spreadsheet, by model series and model year a total count for all of the following categories of claims, collectively, that have been paid by BMW to date that relate to, or may relate to, the alleged defect in each group of subject vehicles ("original", "improved alloy" and improved "smaller sensor" mats): warranty claims; extended warranty claims; claims for good will services that were provided; field, zone, or similar adjustments and reimbursements; and warranty claims or repairs made in accordance with a procedure specified in a technical service bulletin or customer satisfaction campaign.

Separately, for each such claim, state the following information:

- a. BMW's claim number;
- b. Vehicle owner or fleet name (and fleet contact person) and telephone number;
- c. VIN;
- d. Repair date (in "dd/mm/yyyy" date format);
- e. Vehicle mileage at time of repair;
- f. Repairing dealer's or facility's name, telephone number, city and state or ZIP code;
- g. Labor operation number;

- h. Problem code;
- i. Replacement part number(s) and description(s);
- j. Concern stated by customer; and
- k. Comment, if any, by dealer/technician relating to claim and/or repair.

Provide the summary warranty data tables also electronically in Microsoft Excel 2000, or a compatible format, entitled "WARRANTY DATA SUMMARY." Provide the warranty data file in Microsoft Access 2000, or a compatible format, entitled "WARRANTY DATA."

6. Describe in detail the search criteria used by BMW to identify the claims identified in response to Request No. 5, including the labor operations, problem codes, part numbers and any other pertinent parameters used. Provide a list of all labor operations, labor operation descriptions, problem codes, and problem code descriptions applicable to the alleged defect in the subject vehicles. State, by make and model year, the terms of the new vehicle warranty coverage (including the subject component) offered by BMW on the subject vehicles (i.e., the number of months and mileage for which coverage is provided and the vehicle systems that are covered). Describe any extended warranty coverage option(s) that BMW offered for the subject vehicles and state by option, model, and model year, the number of vehicles that are covered under each such extended warranty.
7. Produce copies of all service, warranty, and other documents that relate to, or may relate to, the alleged defect in the subject vehicles (all issued revisions), that BMW has issued to any dealers, regional or zone offices, field offices, fleet purchasers, or other entities. This includes, but is not limited to, bulletins, advisories, informational documents, training documents, or other documents or communications, with the exception of standard shop manuals. Also include the latest draft copy of any communication that BMW is planning to issue within the next 120 days.
8. 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. This includes but is not limited to any and all actions by VDO Automotive AG relating to micro-cracks in the OC3 seat mat. 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.

9. Describe all modifications or changes made by, or on behalf of BMW, in the design, material composition, manufacturing, quality control, supply, or installation of the subject component, from the start of production to date, which relate to, or may relate to, the alleged defect in the subject vehicles. This includes but is not limited to any and all modifications or changes by VDO Automotive AG relating the OC3 seat mat and all subsequent designs. For each such modification or change, provide the following information:
- a. The date or approximate date on which the modification or change was incorporated into vehicle production identifiable by MY, date of build or VIN in the "PRODUCTION DATA" table of Request No. 1;
 - b. A detailed description of the modification or change;
 - c. The reason(s) for the modification or change;
 - d. The part numbers (service and engineering) of the original component;
 - e. The part number (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.

Also, provide the above information for any modification or change that BMW is aware of which may be incorporated into vehicle production within the next 120 days.

10. Produce one each of the following:
- a. Exemplar sample from one of the X3, 5-Series or 7-Series vehicle/seat type showing the progression of designs from the "original", "improved alloy" and improved "smaller sensor" mats of a given vehicle/seat type.;
 - b. Field return samples of the "original", "improved alloy" and "smaller sensor" subject component exhibiting the subject failure mode; and
 - c. Any kits and software changes (including patches, modifications/rework procedures, and software reprogramming) that have been released, developed or being develop, by BMW for use in service repairs to the subject component/assembly which relate, or may relate, to the alleged defect in the subject vehicles.
11. Furnish copies of all communications sent from and received by BMW that relate to or may relate to the alleged defect; including but not limited to such communications between BMW and VDO Automotive AG and between employees and/or entities within BMW (e.g., any such communication between BMW of North America LLC and BMW AG).

12. Furnish BMW's assessment of the alleged defect in the subject vehicle, including:
 - a. The causal or contributory factor(s);
 - b. The failure mechanism(s);
 - c. The failure mode(s);
 - d. The risk to motor vehicle safety that it poses;
 - e. What warnings indicator (system has not failed yet), if any, the operator and the other persons would have that the alleged defect was beginning to occur or subject component is starting to malfunction; and
 - f. What failure indicator (system is no longer operable), if any, the operator and the other persons would have that the alleged defect has occurred or subject component had malfunctioned

This letter is being sent to BMW pursuant to 49 U.S.C. § 30166, which authorizes NHTSA to conduct any investigation that may be necessary to enforce Chapter 301 of Title 49 and to request reports and the production of things. It constitutes a new request for information. BMW's failure to respond promptly and fully to this letter could subject BMW to civil penalties pursuant to 49 U.S.C. § 30165 or lead to an action for injunctive relief pursuant to 49 U.S.C. § 30163. (Other remedies and sanctions are available as well.) Please note that maximum civil penalties under 49 U.S.C. § 30165 have increased as a result of the recent enactment of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Public Law No. 106-414 (signed November 1, 2000). Section 5(a) of the TREAD Act, codified at 49 U.S.C. § 30165(b), provides for civil penalties of up to \$6,000 per day, with a maximum of \$16,375,000 for a related series of violations, for failing or refusing to perform an act required under 49 U.S.C. § 30166. See 49 CFR 578.6 (as amended by 71 Fed. Reg. 28279 (May 16, 2006)). This includes failing to respond to ODI information requests.

If BMW cannot respond to any specific request or subpart(s) thereof, please state the reason why it is unable to do so. If on the basis of attorney-client, attorney work product, or other privilege, BMW does not submit one or more requested documents or items of information in response to this information request, BMW must provide a privilege log identifying each document or item withheld, and stating the date, subject or title, the name and position of the person(s) from, and the person(s) to whom it was sent, and the name and position of any other recipient (to include all carbon copies or blind carbon copies), the nature of that information or material, and the basis for the claim of privilege and why that privilege applies.

BMW's response to this letter, in duplicate, together with a copy of any confidentiality request, must be submitted to this office by the following schedule: the response to requests 1 through 7 is due June 20; the response to the remaining requests is due date July 31. **All business confidential information must be submitted directly to the Office of Chief Counsel as described in the following paragraph and should not be sent to this office.** In addition, do not submit any business confidential information in the body of the letter submitted to this office. Please refer to EA08-001 in BMW's response to this letter and in any confidentiality request submitted to the Office of Chief Counsel. If BMW finds that it is unable to provide all of the information requested within the time allotted, BMW must request an extension from Mr. Thomas Z. Cooper at (202) 366-5218 no later than five business days before the response due date. If BMW is unable to provide all of the information requested by the original deadline, it

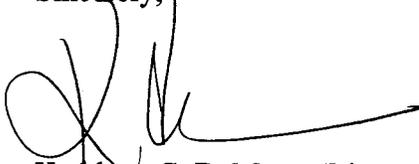
must submit a partial response by the original deadline with whatever information BMW then has available, even if an extension has been granted.

If BMW claims that any of the information or documents provided in response to this information request constitute confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. § 1905, BMW must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 CFR Part 512, as amended, to the Office of Chief Counsel (NCC-111), National Highway Traffic Safety Administration, Room W41-227, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. BMW is required to **submit two copies of the documents containing allegedly confidential information (except only one copy of blueprints) and one copy of the documents from which information claimed to be confidential has been deleted.** Please remember that the word "CONFIDENTIAL BUSINESS INFORMATION" must appear at the top of each page containing information claimed to be confidential, and the information must be clearly identified in accordance with 5 U.S.C. § 512.6. If you submit a request for confidentiality for all or part of your response to this IR, that is in an electronic format (e.g., CD-ROM), your request and associated submission must conform to the new requirements in NHTSA's Confidential Business Information Rule regarding submissions in electronic formats (49 CFR 512.6(c)). See Federal Register, volume 72, page 59434 (October 19, 2007).

Please send email notification to Peter Ong (Peter.Ong@dot.gov) and to ODI_IRresponse@dot.gov when BMW sends its response to this office and indicate whether there is confidential information as part of BMW response.

If you have any technical questions concerning this matter, please call Peter Ong of my staff, at (202) 366-0853.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. DeMeter', with a long horizontal flourish extending to the right.

Kathleen C. DeMeter, Director
Office of Defects Investigation
Enforcement