

**ATT: No**

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**LITE DEPALMA GREENBERG, LLC**

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**SUPERIOR COURT OF NEW JERSEY LAW**

**DIVISION: BERGEN COUNTY**

**DOCKET NO.:**

JOSELYN URENA, on behalf of herself

and all others similarly situated,

**CLASS ACTION COMPLAINT**

**AND JURY DEMAND**

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Plaintiff Joselyn Urena brings this action against Defendant BMW of North America LLC (herein, “BMW” or “Defendant”) by and through her attorneys, individually and on behalf of all others similarly situated, and alleges as follows:

**INTRODUCTION**

1. This is a class action lawsuit brought by Plaintiff on behalf of herself and a class of New Jersey residents who are current and former owners and lessees of model years (“MY”) 2008 to 2013 BMW M3 vehicles containing the S65 engines (the “Class Vehicles”).<sup>1</sup>

2. This action arises from Defendant’s failure, despite its longstanding knowledge of a material defect, to disclose to Plaintiff and similarly situated consumers that the S65 engines in the Class Vehicles contain, the “E90” vehicles. Plaintiff reser the vehicle to a defendant in the definition of Class Vehicles after conducting discovery.

connecting rod bearings, defective main bearings, defective connecting rod side clearances, -  
+and/or insufficient channels of engine lubrication) (the “Rotating Assembly Defect”). As explained below, when the connecting rod bearings and main bearings (the “Bearings”) begin to fail, metal debris from the defective Bearings is circulated throughout the engine via contaminated engine oil. This defect—which existed at the time each Class Vehicle was manufactured, and typically manifests itself during and shortly after the limited warranty period has expired—will inevitably cause the Class Vehicles to experience catastrophic engine failure. Further, due to insufficient oil lubrication in the S65 engines, the Class Vehicles often experience premature catastrophic engine failure that can result in stalling events while the vehicle is being operated.

3. Significantly, the Rotating Assembly Defect poses a safety risk to the operator and passengers of the Class Vehicles. The failure of the Bearings can cause complete catastrophic engine failure while the Class Vehicles are in operation at any time and under any driving conditions or speeds, and the insufficient lubrication reduces the time it takes the Class Vehicles to experience catastrophic engine failure. In particular, the vehicle’s hydraulic power steering is driven directly by the rotating assembly of the engine and, thus, a failure of the engine rotating assembly will cause a sudden and complete loss of power steering, significantly impairing the driver’s control of the vehicle. Upon information and belief, the braking systems within the Class Vehicles will also suffer a loss of power assistance when the defect manifests. This exposes the driver and occupants of the Class Vehicles, as well as others who share the road with them, to an increased risk of accidents, injuries, or death. In addition, catastrophic engine failure frequently results in a physical hole in the engine block, causing hot engine oil to escape, resulting in a fire and/or or the dramatic loss of traction for the Class Vehicle itself or other

vehicles on the roadway. As discussed further herein, numerous owners and lessees of the Class Vehicles have experienced engine damage and catastrophic failure while operating the Class Vehicles, thus placing themselves and those around them in immediate danger.

4. Not only did Defendant actively conceal the fact that particular components within the Class Vehicles' engines are defective and did not meet specifications, it did not reveal that the existence of the Rotating Assembly Defect would diminish the intrinsic and resale value of the Class Vehicles and lead to the safety concerns described herein.

5. BMW has long been aware of the Rotating Assembly Defect. Yet, notwithstanding its longstanding knowledge of this defect, BMW has routinely refused to repair the Class Vehicles without charge when the Rotating Assembly Defect manifests. Indeed, in many cases BMW has even refused to disclose the existence of the Rotating Assembly Defect when Class Vehicles displaying symptoms consistent with the defect are brought in for service, instead choosing to ignore the defect until it has resulted in significant mechanical problems, necessitating costly repairs to owners and lessees.<sup>2</sup>

6. Many other owners and lessees of the Class Vehicles have communicated with Defendant and/or Defendant's agents to request that it remedy and/or address the Rotating Assembly Defect and/or resultant damage at no expense. Defendant has routinely failed to do so.

7. BMW has also refused to take any action to correct this concealed Rotating Assembly Defect when it manifests in the Class Vehicles outside of the factory warranty period

of four (4) years or 50,000 miles. Since the defect often manifests shortly outside of the factory warranty time period for the Class Vehicles—and given Defendant’s knowledge of this concealed, safety-related defect—BMW’s attempt to limit the warranty with respect to the Rotating Assembly Defect is unconscionable and unenforceable here.<sup>3</sup>

8. Despite notice and knowledge of the Rotating Assembly Defect from the numerous complaints it has received, information received from dealers, National Highway Traffic Safety Administration (“NHTSA”) complaints, and its own internal records, including durability testing and replacement part sales, BMW has not recalled the Class Vehicles to correct such problem, offered its customers suitable repairs or replacements free of charge, or offered to reimburse its customers who have incurred out-of-pocket expenses to repair the defect.

9. As a result of Defendant’s unfair, deceptive, and/or fraudulent business practices, owners and/or lessees of the Class Vehicles, including Plaintiff, have suffered an ascertainable loss of money and/or property and/or loss in value. The unfair and deceptive trade practices committed by Defendant were conducted in a manner giving rise to substantial aggravating circumstances.

10. Had Plaintiff and other Class Members known of the Rotating Assembly Defect at the time of purchase or lease, they would not have bought or leased the Class Vehicles, or would have paid substantially less for them.

11. Plaintiff is also informed and believes, and on that basis alleges, that as the number of complaints increased, and Class Members grew dissatisfied with the performance of the Class Vehicles, Defendant was forced to acknowledge that the Class Vehicles suffer from an inherent defect.

12. As a result of the defect and the monetary costs associated with attempting to repair the Rotating Assembly Defect, Plaintiff and the Class Members have suffered injury in fact, incurred damages, suffered ascertainable loss, and have otherwise been harmed by Defendant's conduct.

13. Accordingly, Plaintiff brings this action to redress Defendant's violations of New Jersey law, including New Jersey's consumer-fraud statute, and also seeks recovery for Defendant's breach of express warranty, breach of implied warranty, breach of the duty of good faith and fair dealing, and common-law fraud.

### **JURISDICTION AND VENUE**

14. This Court has subject matter jurisdiction of this action. This Court has personal jurisdiction over Defendant BMW of North America because it owns, operates, and/or controls business operations, and/or does extensive business with others, in New Jersey and in Bergen County, and maintains its principal place of business is in Woodcliff Lake, New Jersey.

15. Venue properly lies in this County pursuant to Rule 4:3-2(a) of the New Jersey Rules of Court because Defendant maintains its principal place of business in this County.

### **PARTIES**

#### **Plaintiff Joselyn Urena**

16. Plaintiff Joselyn Urena ("Plaintiff Urena") is a citizen of the State of New Jersey, and currently resides in Oradell, New Jersey.

17. In or around May 2014, Plaintiff Urena purchased a pre-owned 2011 E92 BMW M3 from BMW of Tenafly, an authorized BMW dealership located in Tenafly, N.J. (VIN: WBSDX9C57BE585005). At the time of purchase, the vehicle had just 29,985 miles on the

odometer. Plaintiff Urena financed the purchase through BMW Financial Services, a subsidiary of Defendant.

18. In or about October 2014, at approximately 36,395 miles, Plaintiff Urena experienced sudden catastrophic engine failure. In particular, the engine shut off abruptly while driving on the highway.

19. Plaintiff Urena had the vehicle towed to BMW of Tenafly and an inspection of the vehicle revealed that the motor was seized. BMW of Tenafly declined to repair Plaintiff's vehicle under warranty claiming the engine was seized from "over-revving."

20. Plaintiff Urena then had her vehicle towed to an independent BMW repair facility, which confirmed the failed engine and quoted Plaintiff Urena \$15,000 for installation of a replacement engine.

21. Plaintiff declined to pay for the replacement engine and lost the use of her vehicle for an extended period. Because the vehicle was not operable due to a defect that Defendant knew about, but wrongfully failed to disclose to Plaintiff, Plaintiff stopped making payments on the vehicle. It was eventually repossessed by BMW Financial, thereby further causing financial harm to Plaintiff by depriving her of any equity she had, or might eventually have had, in the vehicle.

### **The Defendant**

22. Defendant BMW NA distributes, markets, sells, leases, warrants, services, and repairs passenger vehicles, including the Class Vehicles.

23. Defendant is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 300 Chestnut Ridge Road, Woodcliff Lake, New Jersey. Defendant is the American entity of BMW Germany, overseeing sales and

other operations across the United States. BMW distributes BMW vehicles and sells these vehicles through its network of dealers. Money received from the purchase of a BMW vehicle from a dealership flows from the dealer to BMW.

24. Upon information and belief, Defendant BMW developed, or significantly assisted in the development of, the post-purchase owner's manuals, warranty booklets and information included in maintenance recommendations and/or schedules for the Class Vehicles.

25. BMW engages in continuous and substantial business in New Jersey.

### **TOLLING OF STATUTES OF LIMITATIONS**

26. Any applicable statute(s) of limitations have been tolled by Defendant's knowing and active concealment and denial of the facts alleged herein. Plaintiff and the members of the Class could not have reasonably discovered the true, latent nature of the engine defect until shortly before this class action litigation was commenced.

27. In addition, even after Plaintiff and Class Members contacted Defendant and/or its authorized dealers for vehicle repairs concerning the Rotating Assembly Defect, they were routinely told by Defendant and/or through its dealers that the Class Vehicles were not defective. As described below, the true cause of the premature and catastrophic engine failure is the defective rotating assembly.

28. Defendant was and remains under a continuing duty to disclose to Plaintiff and the members of the Class the true character, quality, and nature of the Class Vehicles (



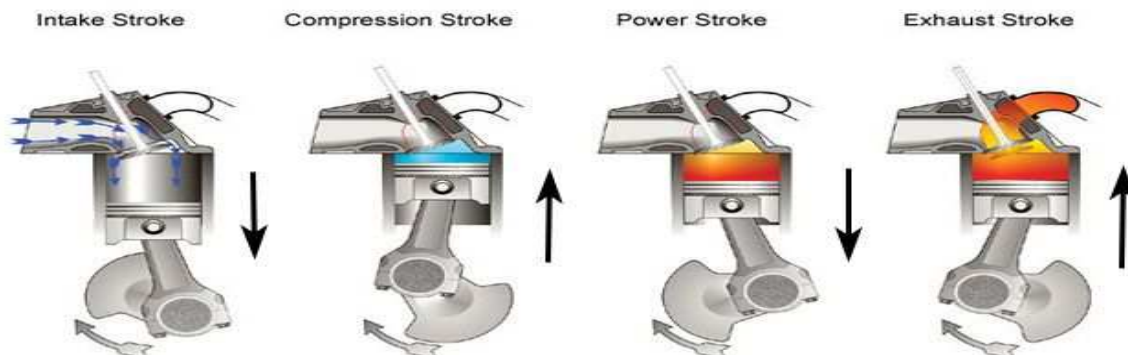
## FACTUAL ALLEGATIONS

### A. The Defective Rotating Assembly within the Class Vehicles

29. BMW is a multinational corporation with over 105,876 employees worldwide. BMW is currently the eleventh largest automobile manufacturer in the world by revenue.

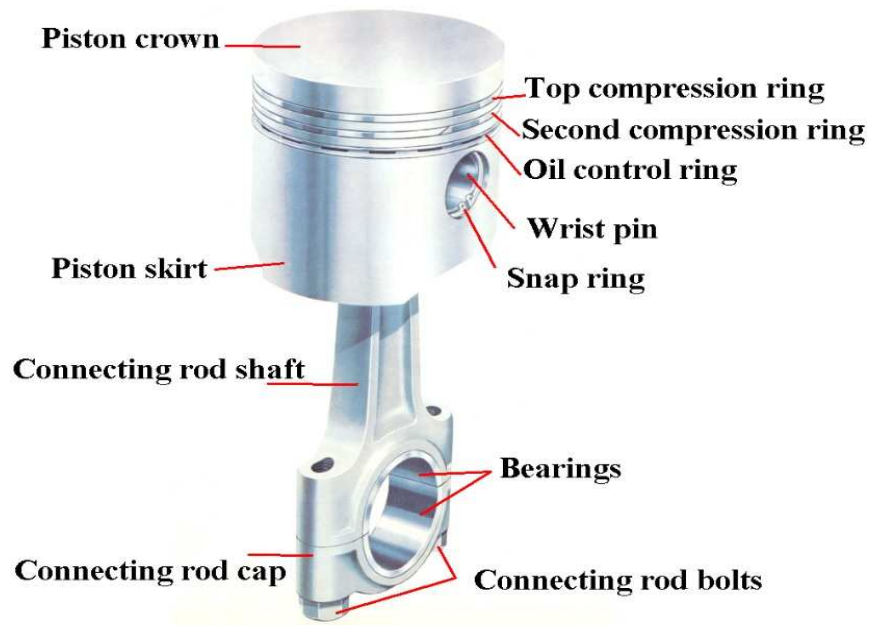
30. The S65 V8 engine (the “S65 Engine”), which BMW used in the Class Vehicles, is a four-liter V8 double overhead camshaft (“DOHC”) piston engine that was manufactured by Defendant’s German parent. The S65 Engine utilizes a conventional wet-sump lubrication system with two oil pumps.

31. As background, the S65 Engine contained in the Class Vehicles uses two sets of four reciprocating pistons to convert pressure into a rotational force. Gasoline is mixed with air in the combustion chambers of the engine. To generate such rotating motion, a four-step sequence is used (the “Combustion Cycle”). First, the intake stroke begins with the inlet valve opening and a vaporized fuel mixture being pulled into the combustion chamber. Second, the compression stroke begins with the inlet valve closing and the piston beginning its movement upward, compressing the fuel mixture in the combustion chamber. Third, the power stroke begins when the spark plug ignites the fuel mixture, expanding the gases and generating power that is transmitted through the piston to the crankshaft. And fourth, the exhaust stroke begins



with the exhaust valve opening and the piston moving back up, forcing the exhaust gases out of the cylinder. The exhaust valve then closes, the inlet valve opens, and the Combustion Cycle repeats itself. A diagram of the Combustion Cycle is below:

32. The pistons are connected to the crankshaft via the connecting rods. As the connecting rods move up and down during the Combustion Cycle, this causes the crankshaft to rotate, resulting in power that is ultimately transmitted to the drive wheels of the vehicle. During this cycle, the crankshaft rotates many thousands of times per minute within each of the eight (8) connecting rods. In order to reduce friction and promote longevity, this design utilizes a bearing placed between the connecting rod and crankshaft surfaces. As a result, the connecting rod bearings (or “rod bearings”) allow the crankshaft to rotate within the connecting rods during the Combustion Cycle. An exemplar diagram of the piston, connecting rod, connecting rod bearing and crankshaft is shown below:



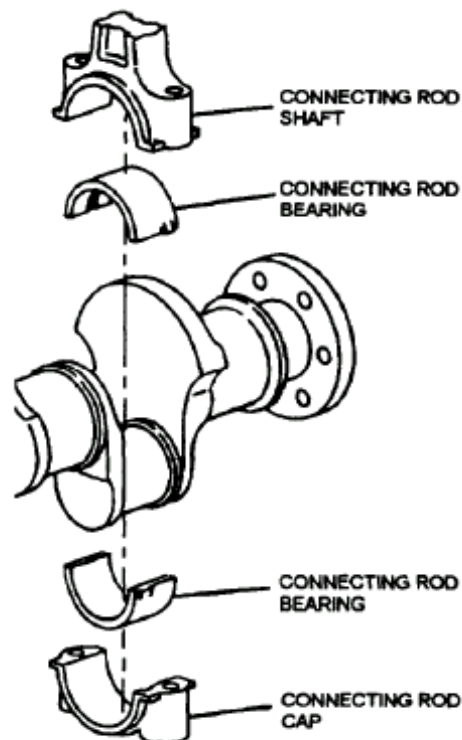
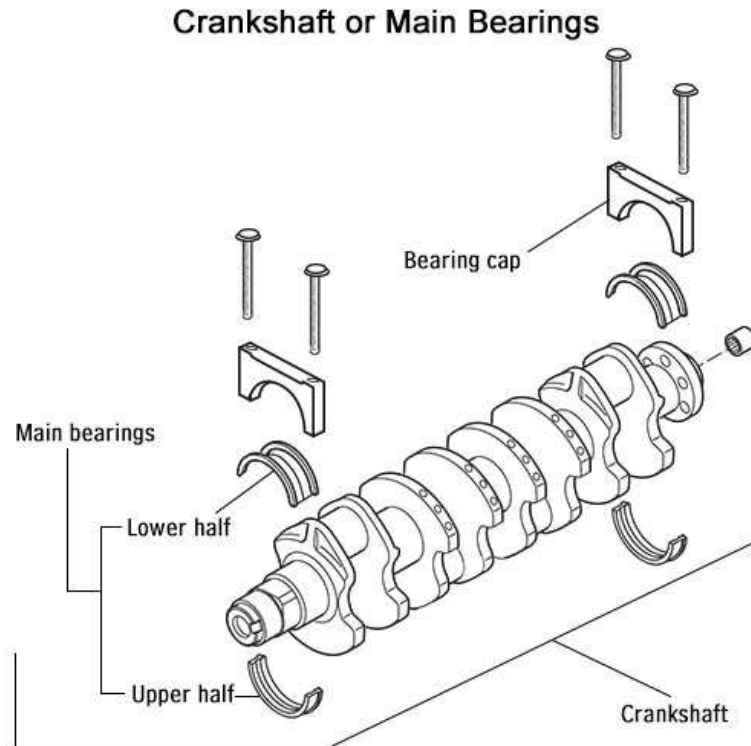


Figure 3-70.—Connecting rod bearings.

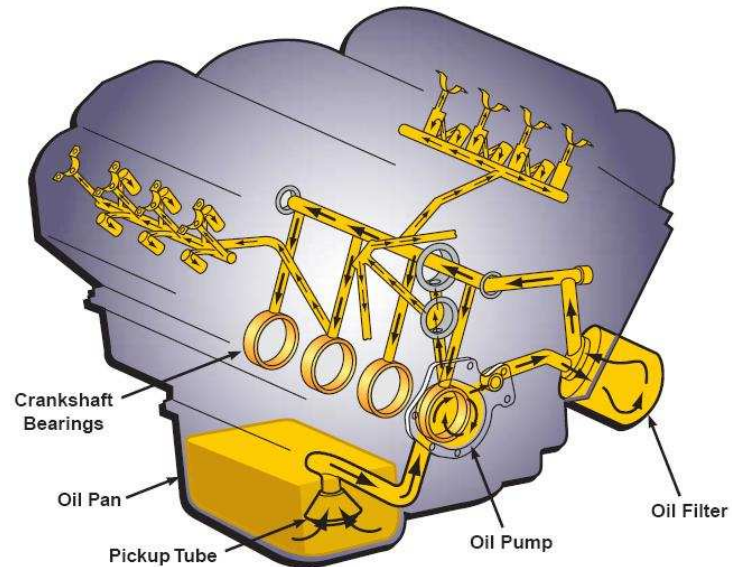
33. The main bearings, also referred to as “main crankshaft bearings,” support the crankshaft and help it rotate. The main bearings hold the crankshaft in place and prevent the forces created by the piston—and transmitted to the crankshaft through the connecting rods—from dislodging the crankshaft. Instead, through the use of main bearings, the crank is forced to convert the reciprocating movement into rotation, and thus, power and torque. The main bearings are mounted in the crankcase; however, the design of the S65 Engine obviates the need for bearing caps. An exemplar diagram of the main bearings is included below:



34. When the Class Vehicles are in operation, engine oil is used to lubricate the piston, cylinder wall, connecting rod bearings, main bearings, and other rotating and moving components as the pistons move up and down through the four-stroke sequence. Engine oil is necessary to reduce wear on moving parts throughout the engine, to improve sealing, and to cool the engine by carrying away heat from the moving parts. Engine oil also cleans and transports contaminants away from the engine to the oil filter. Oil is pumped and pressurized throughout the engine by two oil pumps in the S65 Engine. The oil pumps draw oil from the oil pan, located underneath the crankshaft assembly. The oil pumps pressurize the oiling system, forcing engine oil through the oil filter and then through passages in the engine to properly lubricate and reduce friction of the internal engine components. The engine oil then returns to the oil pan through small drainage holes located throughout the engine where it will be re-circulated by the oil pump. Below is a diagram illustrating the typical path and channels of engine oil lubrication in an

overhead cam engine:

### Engine Lubrication (Overhead Cam Shown)



35. The Bearings are also lubricated with engine oil in order to allow the pistons to rotate along the crankshaft via the connecting rods and connecting rod bearings. The main bearings allow the crankshaft to convert the reciprocating movement of the pistons into rotational power or force. The below picture illustrates a new, unused connecting rod bearing designed for the S65 Engine:



36. In a properly designed and manufactured engine, oil thoroughly coats the bearing surfaces so that the bearings rarely, if ever, actually touch the crankshaft or connecting rods, and are instead separated from metal-to-metal contact by a thin barrier of oil.

37. The defect inherent in the S65 Engine's rotating assembly causes an insufficient supply of engine oil to coat the Bearing surfaces, resulting in a thin (or, at times, non-existent) oil barrier between the Bearings and the corresponding metal parts they are designed to protect. The result is a significantly increased likelihood and frequency of contact between the connecting-rod bearings and the crankshaft, as well as, between the crankshaft and main bearings. This contact causes accelerated wear on the Bearings surfaces in the Class Vehicles, ultimately causing them to disintegrate and fracture.

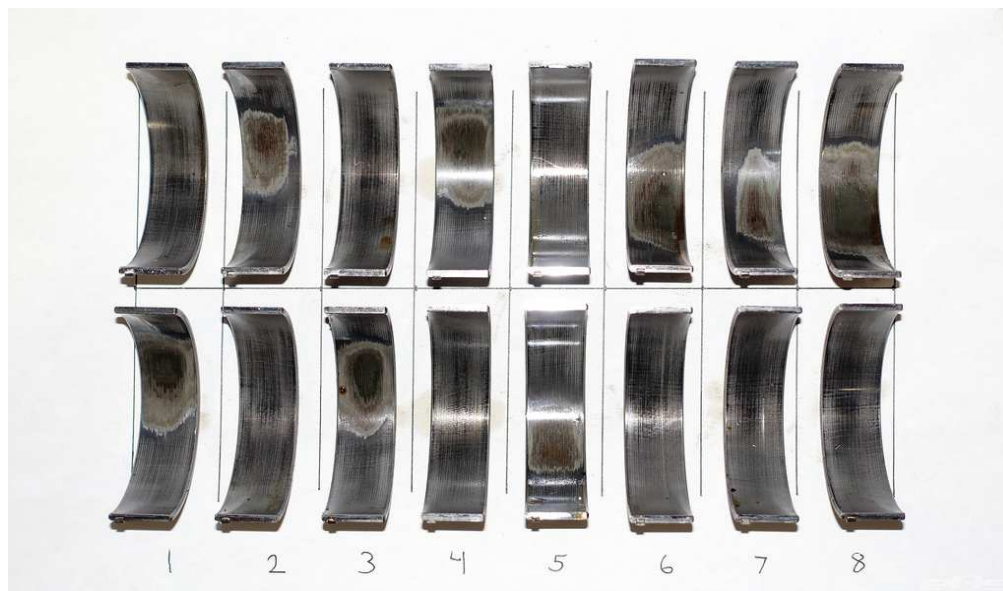
38. As the Bearings fracture, large amounts of metal debris begin to accumulate in the engine oil. As a result, the oil becomes so contaminated that the oil filter can no longer remove the plethora of metal debris from the oiling system. This contaminated engine oil is re-circulated

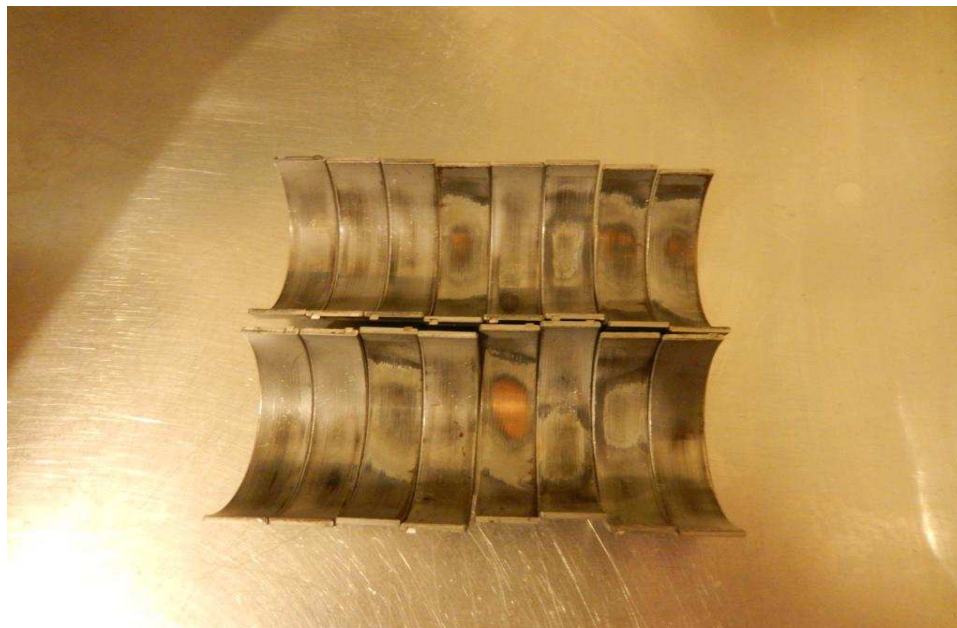


throughout the engine by the oil pumps, causing even more damage to the various engine components. Eventually, the wear associated with the Rotating Assembly Defect will result in catastrophic engine failure.

39. Additionally, as the connecting rod bearings and main bearings continue to fracture, the acceptable tolerances between the Bearings, the connecting rods, and the crankshaft begin to deteriorate rapidly. Eventually, the Class Vehicles can begin producing a “knocking” or “rattling” sound originating from the engine as a result of the deteriorating Bearings, a tell-tale sign known colloquially as “rod knock.”

40. Below are exemplar photographs of failed connecting-rod bearings removed from a Class Vehicle displaying typical “knocking” and “rattling.” As shown in the below photographs, the surfaces of the bearings have worn away due to severe metal-on-metal contact with the crankshaft revealing the inner metal core of the rod bearings. In some cases, fractures are also plainly visible where entire pieces of the bearings have broken away due to severe wear:





41. The main bearings in the Class Vehicles suffer from the same defect as the connecting rod bearings,



integrity cause damage to other critical components of the rotating assembly, including the crankshaft. Pictured below is the resulting damage to the crankshaft journal surface of a Class Vehicle due to premature connecting-rod and main-bearing wear:



43. In the Class Vehicles, the lubrication channels are defective and clog under normal use and proper maintenance. When the lubrication channels clog, engine oil is unable to be both pumped throughout the engine (through the oil pumps) or adequately return to the oil pan, causing a condition known as oil starvation in the engine. This results in insufficient lubrication throughout the Class Vehicles' engine, resulting in premature wear of the engine components and catastrophic engine failure that can result in stalling events while the vehicle is being operated.

44. The Rotating Assembly Defect poses serious safety and security issues for operators and occupants of the Class Vehicles. By way of example, the California Department of

Motor Vehicles asserts that stalled engines pose a significant safety risk and, as part of its safety curriculum, instructs how to properly respond to a stalled action in order to avoid further risk of injury.<sup>4</sup>

45. NHTSA takes a similar view of engine failure during vehicle operation. For instance, according to

assembly; (2) numerous early reports directly to Defendant BMW from owners whose cars manifested the Rotating Assembly Defect; and (3) the manifestation of the Rotating Assembly Defect in the S85, the predecessor to the S65 with an identical rotating assembly. Any one of these sources of information was sufficient to charge Defendant with knowledge of the Rotating Assembly Defect in the Class Vehicles prior to the sales that form the basis of this complaint.

**Inherent Flaw in the Manufacture of the S65's Rotating Assembly**

49. Perhaps the most obvious source of Defendant's knowledge of the defect in the rotating assembly of every Class Vehicle is the insufficient rod and main bearing clearance that is inherent in the S65 Engine. Notably, at least until 2011, Defendant's German entity sourced the rod bearings used in the S65 Engines from Mahle-Clevite, a well-known manufacturer of bearings in the automotive industry. Mahle-Clevite was the original equipment ("OEM") supplier of bearings in many prior BMW engines, and to others in the automotive industry.

50. As an OEM supplier of bearings across the automotive industry, Mahle-Clevite publishes specifications for rod and main bearing clearances that are generally regarded as the industry standard. Per those industry standards, an engine should have a minimum of 0.00075" to 0.0010" of clearance per inch of crankshaft diameter. Mahle-Clevite also recommends an

52. Measurements from dozens of disassembled, unmodified S65 Engines show that BMW built the S65 Engines with just

55. In short, when Defendant's German entity choose to manufacture the S65 Engine with just 0.00125" of rod and main bearing clearance instead of the 0.00203" to 0.00254" of rod bearing clearance and 0.0227" to 0.00286" of main bearing clearance called for by Mahle-Clevite's generally accepted design standards in the industry, Defendant knew or should have known that excessive and premature bearing failure was a foreseeable consequence of the chosen design, with a resulting vastly increased likelihood of premature engine failure.

**BMW Investigates Specific Reports of the Rotating Assembly Defect Very Early in S65 M3 Model Run**

56. Aside from the actual notice that flowed from Defendant's German entity's decision to manufacture the S65 Engine with less than half of the rod and main bearing clearance called for under generally accepted standards—and Defendant's actual notice of an issue during the design and production phases of the Class Vehicles—Defendant had further actual notice of the bearing defect no later than June 2008, and it is believed that at least one motor with a manifestation of the defect was sent back to the BMW factory in Germany by Defendant in June 2008 for disassembly and analysis.<sup>6</sup>

57. As specifically detailed in message-board threads related to this defect, an owner of an almost new E92 M3 presented his vehicle to a BMW dealership multiple times in or about May 2008 with "rattling" and "ticking" noises from his engine.<sup>7</sup> The owner was first told that the noises were not normal, and the dealer requested it be allowed to keep the vehicle for further investigation. After the dealer probed further, the owner was later told that the noises had been

investigated and were caused by normal exhaust heat expansion and contraction.<sup>8</sup>

58. The rattling and ticking noises got worse, so the owner returned to his dealer in early June 2008. A senior engineer from Defendant happened to be visiting the dealership that day. Defendant's engineer conducted a test drive of the vehicle, at which time he noted that the noise was of serious concern and seemed to be emanating from within the engine itself. According to the owner, Defendant's engineer told the dealer not to touch the engine, and instead requested the owner's permission to allow the motor to be shipped to Defendant's German entity so that it could be disassembled and inspected.<sup>9</sup> In a later post on the thread, the owner wrote that he received a follow-up call from the dealer who was still waiting for the owner's approval, and noting that "BMW was anxious to get his engine back ASAP."<sup>10</sup>

59. It is understood and believed that, at that time, based on its own inspection of a Class Vehicle, Defendant was confronted with clear evidence of the defect. Rather than replace or repair that particular engine, the customer was instead supplied with a new E92 M3 vehicle.<sup>11</sup>

60. Two other reports of E9x M3's exhibiting identical symptoms were posted on M3Post.com in June<sup>12</sup> and July 2008,<sup>13</sup> with one of the posters noting his BMW service

technician believed the problem was “bearings.”<sup>14</sup> That poster followed-up in October 2008, reporting that BMW replaced his vehicle.<sup>15</sup>

61. This same message board reveals that, in September 2008, another E9x M3 owner presented to a BMW dealership with the same “rattling” and “ticking” noises from his engine experienced by the other posters.<sup>16</sup>

62. In October 2008, another owner reported on the same message board that he brought his car to East Bay BMW and the service technician noticed a ticking noise he believed to be caused by “rod bearings.”<sup>17</sup>

63. In December 2008, yet another owner reported that he brought his E9x M3 to a BMW dealership with the same “rattling” and “ticking” noises. He was asked to leave his vehicle at the dealership, after which the dealer planned to contact BMW-NA.<sup>18</sup> After originally being told that the sound was “not normal in any way,” dealership personnel called the owner back to advise that the noises were instead caused by normal exhaust expansion and contraction. Reports from other owners of Class Vehicles has shown that the reference to “normal exhaust noises” is a common, pretextual explanation offered by technicians at BMW dealerships when vehicles are brought in with “rod knock” while still under the factory warranty.<sup>19</sup>

64. The same message board as well as numerous other online resources reveal that, between December 2008 and the end of 2012, dozens of owners of Class Vehicles in North America reported “rattling” and “ticking” noises—symptoms of rod bearing failure—to BMW dealerships, with numerous others suffering outright engine failures.<sup>20</sup> All of those reports predated Plaintiff’s purchase of her Class Vehicle. It is believed and understood that, with BMW’s established procedures, any episodes reported to BMW authorized dealerships were reported to Defendant BMW.

**Manifestation of Identical Rotating Assembly Defects in S85-Equipped BMWs**

65. Another source of Defendant’s knowledge of the defects inherent in the S65 Engine stems from BMW’s appreciation of the same exact defect in its predecessor engine, the 10-cylinder S85 engine in the E6x M5 and M6 vehicles.

66. The S85 engine was first introduced in 2005, three years before the first S65-equipped Class Vehicle was sold. From a design perspective, the S85 engine (a/k/a S85B50) is essentially a 10-cylinder version of the 8-cylinder S65 engine (a/k/a SB65B40), a fact that is underscored by Defendant’s own marketing materials which tout the fact that “[t]he S65B40 is derived from its big brother, the S85B50.”

67. Of particular note to this case is that, with the sole exception of the longer crankshaft in the S85, the rotating assemblies of both engines are



the only difference in the crankshafts is their length and the addition of journals for the extra two cylinders, but that in all other relevant respects—including the size of the crank journals—the crankshafts in the S65 and S85 engines are identical. Thus, the manifestation of a defect in the design of the S85 engine’s rotating assembly should have put Defendant on notice of the high likelihood of a similar problem in the S65 engine’s rotating assembly.

68. Plaintiff is aware that, no later than July 2007, Defendant was informed of at least one catastrophic engine failure in an S85-equipped BMW E60 M5 due to rod-bearing failure.<sup>21</sup> This particular engine failure was the subject of extensive public discussion on a popular online forum pertaining to the BMW M5/M6, a forum that BMW employees were known to periodically review and monitor.<sup>22</sup> This particular engine was presented to a BMW dealership in July 2007, at which point it was fully disassembled and inspected, with the findings (

70. Below are images of rod bearings removed from S85 engines showing



### **Other Sources of Defendant's Knowledge**

71. The experiences recounted above are by no means isolated or outlying occurrences. Indeed, the Internet is replete with examples of blogs and other websites where consumers have complained of the exact same Rotating Assembly Defect within the Class Vehicles. Upon information and belief, Defendant, through (1) its own records of customers' complaints, (2) dealership repair records, (3) records from the National Highway Traffic Safety Administration ("NHTSA"), (4) warranty and post-warranty claims, (5) internal durability testing, and (6) other various sources, were well aware of the engine defect but failed to notify consumers of the nature and extent of the problems with the Class Vehicles' S65 Engine or provide any adequate remedy.

72. Defendant routinely monitors the Internet for complaints similar in substance to those quoted above. Defendant's customer relations department routinely monitors the Internet

for customer complaints, and Defendant has retained the services of third-parties to do the same. Further, the customer relations division regularly receives and responds to customer calls concerning,

warranty repairs to Defendant because Defendant will not pay the service centers for the repair if the complaint, cause, and correction are not sufficiently documented and described.

75. Defendant knew or should have known about the Rotating Assembly Defect because of the high number of replacement parts likely ordered from BMW. All BMW service centers are required to order replacement parts, including engines, piston assemblies, connecting rod bearings and main bearings directly from Defendant. Other independent vehicle repair shops that service Class Vehicles also order replacement parts directly from Defendant. Defendant routinely monitors part sales reports, and are responsible for actually shipping parts requested by dealerships and technicians. Thus, Defendant has detailed, accurate, and real-time data regarding the number and frequency of replacement part orders. The sudden increase in orders for S65 Engines and engine components used in the Class Vehicles was known to Defendant, and should have alerted it to the scope and severity of the Rotating Assembly Defect.

76. The Defective Rotating Assembly affecting the Class Vehicles is widely acknowledged in the industry, as vendor websites selling aftermarket replacement bearing kits prominently note. The following quotes are from five of those websites:<sup>25</sup>

**Vendor 1:**

“The mighty and powerful BMW S65 has an “Achilles Heel”, it’s rod bearings. As great and powerful as BMW made the S65 engine, they left it lacking in a critical area—it’s rod bearing reliability.

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we wanted to get ahead of the curve and release the 3 proven products that will strengthen our favorite BMW engines. For those interested in the ultimate in oil management, our billet dry sump kit is for you!”

**Vendor 5:**

“The S65 engine has a known history of rod bearing failure, and if your engine is higher mileage, don't let this catastrophic failure happen to you. Replace your rod bearings and prevent a spun bearing which can trash your crankshaft.”

**C. Complaints Filed with NHTSA**

77. Representative examples of complaints on the NHTSA website regarding the Class Vehicles are included below (with emphasis supplied in capitalized bold, underlined letters).<sup>26</sup>

Date Complaint Filed: 07/20/2013

Date of Incident: 06/23/2013

NHTSA ID Number: 10525919

Manufacturer: BMW of North America, LLC

Vehicle Identification No. (VIN): WBSWD935X8P...(M3)

**SUMMARY:**

THE ENGINE IN MY BMW DIED AT 74,598 MILES, NO WARNING LIGHTS AND NO WEIRD NOISES. IT DIED WHEN I WAS DRIVING THE SPEED LIMIT (65) ON THE HIGHWAY DOING NOTHING OUT OF THE ORDINARY, WHEELS LOCKED UP IN TRAFFIC SO I HAD TO PUSH IN CLUTCH. IT WAS A VERY LIFE THREATENING SITUATION BECAUSE A BIG RIG ALMOST CRASHED INTO MY CAR. I COASTED TO THE SIDE OF THE HIGHWAY TO CHECK IT OUT: THE ENGINE WAS NOT OVERHEATING AND THERE WAS NO FLUIDS ON THE GROUND. AS I TRIED STARTING THE CAR UP AGAIN I COULD HEAR THE FUEL PUMP TURNING ON AND THE STARTER MOTOR CLICKING, BUT THE ENGINE WOULDN'T TURN OVER. I GOT THE CAR TOWED TO THE DEALERSHIP AND A FEW DAYS LATER IT WAS MADE KNOWN TO ME BY THE DEALERSHIP THAT MY ENGINE WAS SEIZED AND THAT I WOULD HAVE TO PAY \$19,000 FOR A NEW ENGINE AND \$6,000 FOR THE LABOR TO INSTALL IT. I MADE THE DEALERSHIP AWARE THAT I KEPT UP WITH THE MAINTENANCE, AND THAT NOTHING WAS INDICATING TO ME THAT MY ENGINE WAS ABOUT TO FAIL. I INSTRUCTED THE DEALERSHIP TO CONTACT BMW NORTH AMERICA (BMW HEADQUARTERS FOR NORTH AMERICA) FOR A "GOOD WILL" REPLACEMENT, BUT MY REQUEST WAS

**DENIED. THIS PROBLEM IS DIRECTLY RELATED TO THE ROD BEARING INSIDE THE ENGINE, WHICH GAVE OUT BECAUSE THERE IS NO ADEQUATE LUBRICATION TO THEM, I HEARD OF THESE ROD BEARINGS GIVING OUT ON THE S65 ENGINE ALL OVER WEB FORUMS, MULTIPLE PEOPLE HAVE HAD THIS HAPPEN TO THEM.** DURING MY WARRANTY PERIOD I DID LET THEM KNOW THAT MY CAR WOULD GO IN LIMP MODE (LOW POWER MODE ON ENGINE, MAX SPEED ABOUT 40MPH) AND I WAS HEARING TICKING NOISES (DEALERSHIP SAID THIS WAS NORMAL) THAT WERE NOT PRESENT WHEN THE CAR WAS REALLY NEW (THE FIRST 5000 MILES I PUT ON THE CAR). THE DEALERSHIP AND BMW NORTH AMERICA DON'T CARE ABOUT THESE PROBLEMS WHICH WERE PRESENT DURING MY ENTIRE OWNERSHIP OF THE CAR (IN WARRANTY PERIOD) AND THEY DENIED THE FREE REPLACEMENT BECAUSE MY CAR IS NOW OUT OF WARRANTY. \*TR

Date Complaint Filed: 04/26/2015

Date of Incident: 04/24/2015

NHTSA ID Number: 10712972

Manufacturer: BMW of North America, LLC

Vehicle Identification No. (VIN): WBSWD93558P...

**SUMMARY:**

ENGINE BEGAN SUDDENLY MAKING A VERY LOUD KNOCKING SOUND WITHOUT ANY WARNING, AND I DROVE IT STRAIGHT TO SANDY SANSING BMW SERVICE CENTER, WHERE THEY STATED THAT **THE VEHICLE HAS SUFFERED A CATASTROPHIC CRANK BEARING FAILURE.** THE ENGINE HAS TO BE REPLACED NOW... CAR HAS BEEN METICULOUSLY MAINTAINED AND ALWAYS SERVICED AT BMW DEALERS SINCE IT WAS NEW... A CAR WITH 56K MILES ON IT SHOULD NOT HAVE SUCH AN EXTREME FAILURE IN THIS NATURE...

Date Complaint Filed: 06/25/2015

Date of Incident: 05/05/2015

NHTSA ID Number: 10730302

Manufacturer: BMW of North America, LLC

Vehicle Identification No. (VIN): Not Available

**SUMMARY:**

TL\* THE CONTACT OWNS A 2008 BMW M3. WHILE DRIVING AT 60 MPH, THE CONTACT HEARD A SUDDEN KNOCKING SOUND AND THE VEHICLE STALLED. THE VEHICLE RESTARTED, BUT THE NOISE RECURRED. THE VEHICLE WAS TOWED TO A DEALER WHERE **IT WAS DIAGNOSED WITH ROD BEARING FAILURE AND THE ENGINE NEEDED TO BE REPLACED.** THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS NOTIFIED OF THE ISSUE. THE VIN AND FAILURE MILEAGE WERE UNAVAILABLE.

Date Complaint Filed: 08/20/2014

Date of Incident: 08/10/2014

NHTSA ID Number: 10626663



Manufacturer: BMW of North America, LLC

Vehicle Identification No. (VIN): WBSDX9C57BE...

SUMMARY:

TICKING NOISE IN THE ENGINE GRADUALLY GOT LOUDER. OIL WARNING THAT IT WAS LOW ON OIL. ADDED OIL, STILL SAID IT WAS LOW, THEN SAID IT WAS TOO MUCH. THEN SAID IT WAS LOW (**PARTICLES FROM BEARINGS WERE CLOGGED IN OIL SENSOR GIVING FALSE READING**). FINALLY PARKED CAR WHEN NOISE WAS SO GREAT THAT I THOUGHT IT WAS GOING TO BLOW UP. **ROD BEARS DISINTEGRATED ON CYLINDERS 2 AND 5. HAD TO REPLACE THE ENGINE.** \*TR

78. Upon information and belief, Defendant regularly monitors these NHSTA databases as part of its ongoing obligation to identify potential defects in its vehicles. NHTSA complaints establish that Defendant knew, or should have known, of the engine defect

and/or neglect to properly maintain the engine oil and/or engine oil level. This representation, however, is false as the rotating assembly is inherently defective and will inevitably fail.

83. In addition, upon information and belief, Defendant has also evaded its warranty obligations by requiring consumers to produce the entire maintenance history of the Class Vehicles, including a mandate that all oil changes be completed at a BMW dealership (an illegal requirement<sup>27</sup>), before determining whether to make the necessary repairs under warranty. Defendant, however, knows that the defect in the Class Vehicles' engines manifest despite owners and lessees following Defendant's recommended oil change schedule. In many instances, even if consumers produce vehicle maintenance history, Defendant blames the known Rotating Assembly Defect and resulting engine failure on the consumer, refuses to cover the necessary repairs under warranty, and charges in excess of \$20,000 to repair/replace the engine.

84. In many instances, consumers have incurred and will continue to incur expenses for the diagnosis of the Rotating Assembly Defect, repair and replacement of the S65 Engine, and the unnecessary and premature replacement of the bearings, crankshaft, oil pumps, and other damaged engine components.

### **CLASS ALLEGATIONS**

85. Plaintiff brings this action on her own behalf, and on behalf of the following class ("Class") pursuant to Rule 4:32 of the New Jersey Rules of Court:

All persons or entities in New Jersey who are current or former owners and/or lessees of a Class Vehicle.

86. Excluded from the Class are Defendant, its affiliates, employees, officers and directors, persons or entities that purchased the Class Vehicles for resale, and the Judge(s) assigned to this case. Plaintiff reserves the right to modify, change, or expand the Class

definition based on discovery and further investigation.

87. Numerosity: Upon information and belief, the Class is so numerous that joinder of all members is impracticable. While the exact number and identities of individual members of the Class are unknown at this time, such information being in the sole possession of Defendant and obtainable by Plaintiff only through the discovery process, Plaintiff believes, and on that basis alleges, that thousands of Class Vehicles have been sold and leased in New Jersey alone.

88. Existence and Predominance of Common Questions of Fact and Law: Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting individual Class Members. These common legal and factual questions include, but are not limited to, whether:

- a. the Class Vehicles were sold with the Rotating Assembly Defect;
- b. BMW knew of the Rotating Assembly Defect but failed to disclose the problem and its consequences to its customers;
- c. a reasonable consumer would consider the Rotating Assembly Defect or its consequences to be material;
- d. BMW failed to provide free repairs as required by its New Vehicle Limited Warranty;
- e. BMW should have disclosed the existence of the Rotating Assembly Defect;
- f. BMW failed to disclose the existence of the Rotating Assembly Defect; and
- g. Defendant's conduct violates the New Jersey Consumer Fraud Act, and the other statutes and common law as asserted herein.

89. Typicality: All of Plaintiff's claims are typical of the claims of the Class since Plaintiff purchased a Class Vehicle with the Rotating Assembly Defect, as did each member of the Class. Furthermore, Plaintiff and all members of the Class sustained monetary and economic

injuries including, but not limited to, ascertainable losses arising out of Defendants' wrongful conduct. Plaintiff is advancing the same claims and legal theories on behalf of herself and all absent Class Members.

90. Adequacy: Plaintiff is an adequate representative because her interests do not conflict with the interests of the Class that she seeks to represent, she has retained counsel competent and highly experienced in complex class action litigation, and intends to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiff and her counsel.

91. Superiority: A class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiff and members of the Class. The injury suffered by each individual Class Member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class-action device presents far fewer management difficulties, and provides the benefits of single adjudication, an economy of scale, and comprehensive supervision by a single court. Upon information and belief, members of the Class can be readily identified and notified based on,

Class, thereby making appropriate final equitable relief with respect to the Class as a whole.

**VIOLATIONS ALLEGED**

**COUNT I**

**VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT (“NJCF”) (N.J.S.A. 56:8-1,**

representing that the Class Vehicles have characteristics, uses, benefits, and qualities that they do not have; representing that the Class Vehicles are of a particular standard and quality when they are not; advertising Class Vehicles with the intent to not sell them as advertised; and otherwise engaging in conduct likely to deceive. Further, Defendant's acts and practices described herein offend established public policy because of the harm they cause to consumers, motorists, and pedestrians outweighs any benefit associated with such practices, and because Defendant fraudulently concealed the defective nature of the Class Vehicles from consumers.

98. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

99. Defendant's conduct caused Plaintiff and Class Members to suffer an ascertainable loss. Plaintiff and Class Members bought or leased Class Vehicles they otherwise would not have, overpaid for their vehicles, did not receive the benefit of their bargain, and their Class Vehicles suffered a diminution in value. Plaintiff and Class Members have also incurred, and will continue to incur, costs for diagnosis and repair of the Rotating Assembly Defect.

100. Plaintiff's and Class Members' damages are the direct and foreseeable result of Defendant's unlawful conduct. Had the defect in the Class Vehicles been disclosed, consumers would not have purchased the Class Vehicles or would have paid substantially less for them, and would have been spared the subsequent repair expenses and/or damages.

101. Pursuant to N.J.S.A. § 56:8-20, Plaintiff will serve the New Jersey Attorney General with a copy of this Complaint.

**COUNT II**  
**BREACH OF EXPRESS WARRANTY**

102. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

103. Defendant provided all purchasers and lessees of the Class Vehicles with the express warranties described herein, which became part of the basis of the bargain. Accordingly, Defendant's warranties are express warranties under state law.

104. The parts affected by the defect, including the rotating assembly and engine block, were manufactured by Defendant's German entity and distributed by Defendant in the Class Vehicles, and are covered by the warranties Defendant provided all purchasers and lessors of Class Vehicles.

105. Defendant breached those warranties by selling and leasing Class Vehicles with the defect, requiring repair or replacement within the applicable warranty periods, and refusing to honor the warranties by providing free repairs or replacements during the applicable warranty periods.

106. Plaintiff notified Defendant of the breach within a reasonable time, and/or was not required to do so because affording Defendant a reasonable opportunity to cure its breach of written warranty would have been futile. Defendant also know of the defect and yet has chosen to conceal it and to not comply with the warranty obligations.

107. As a direct and proximate cause of Defendant's breach, Plaintiff and Class Members bought or leased Class Vehicles they otherwise would not have, overpaid for their vehicles, did not receive the benefit of their bargain, and their Class Vehicles suffered a diminution in value. Plaintiff and Class Members have also incurred and will continue to incur costs related to the diagnosis and repair of the Rotating Assembly Defect.

108. Defendant's attempt to disclaim or limit these express warranties vis-à-vis consumers is unconscionable and unenforceable under the circumstances here. Specifically, Defendant's warranty limitation is unenforceable because they knowingly sold a defective

product without informing consumers about the defect.

109. The time limits contained in Defendant's warranty period were also unconscionable and inadequate to protect Plaintiff and members of the Class. Among other things, Plaintiff and Class Members had no meaningful choice in determining these time limitations the terms of which unreasonably favored Defendant. A gross disparity in bargaining power existed between Defendant and the Class Members, and Defendant knew or should have known that the Class Vehicles were defective at the time of sale and would fail after the expiration of the warranty period but still well before the end of the Class Vehicles' useful lives.

110. Plaintiff and the Class Members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Defendant's conduct described herein.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY**

111. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

112. Defendant was at all relevant times the distributor, warrantor, and/or seller of the Class Vehicles. Defendant knew or had reason to know of the specific use for which the Class Vehicles were purchased.

113. Defendant provided Plaintiff and the other Class Members with an implied warranty that the Class Vehicles and any parts thereof are merchantable and fit for the ordinary purposes for which they were sold. However, the Class Vehicles are not fit for their ordinary purpose of providing reasonably durable, reliable, and safe transportation at the time of sale or thereafter because, among other things and as Plaintiff found out first-hand, the Class Vehicles and their engines suffered from the Rotating Assembly Defect at the time of sale, which defect



causes the vehicles to experience premature and catastrophic engine failure. Therefore, the Class Vehicles are not fit for their particular purpose of providing durable, safe, and reliable transportation.

114. Defendant impliedly warranted that the Class Vehicles were of merchantable quality and fit for such use. This implied warranty included, among other things: (i) a warranty that the Class Vehicles and their engines were manufactured, supplied, distributed, and/or sold by Defendant were safe and reliable for providing transportation and would not experience premature and catastrophic engine failure; and (ii) a warranty that the Class Vehicles and their engines would be fit for their intended use while the Class Vehicles were being operated.

115. Contrary to the applicable implied warranties, the Class Vehicles and their engines at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiff and the other Class Members with reliable, durable, and safe transportation.

116. Defendant's actions, as complained of herein, breached the implied warranty that the Class Vehicles were of merchantable quality and fit for such use.

#### **COUNT IV** **COMMON LAW FRAUD**

117. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

118. Defendant made material omissions concerning a presently existing or past fact. For example, Defendant did not fully and truthfully disclose to its customers the true nature of the inherent defect with the S65 Engine, which was not readily discoverable until years later, often after the New Vehicle Limited Warranty has expired. As a result, Plaintiff and the other Class Members were fraudulently induced to lease and/or purchase the Class Vehicles with the said defect and all of the resultant problems.

119. Defendant conveyed information to Plaintiff and the Class regarding some of the necessary maintenance of the Class Vehicles for the continued safe, durable operation of the Class Vehicles. But Defendant omitted any reference to the Rotating Assembly Defect and did not advise that parts within the rotating assembly may become worn and will need replacing far sooner than would otherwise be true in virtually any other consumer vehicle. Defendant's act of conveying some maintenance information on the Class Vehicles but omitting a reference to the Rotating Assembly Defect did in fact reasonably convey to Plaintiff and the Class that there was no such defect or material maintenance/repair obligations associated with the Class Vehicles beyond what Defendant had stated or what might otherwise be known from ordinary consumer experience with the average production vehicle.

120. These omissions were made by Defendant with knowledge of their falsity, and with the intent that Plaintiff and the Class Members rely on them.

121. Plaintiff and the Class Members reasonably relied on these omissions, and suffered damages as a result.

**COUNT V**  
**BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

122. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

123. Every contract in New Jersey contains an implied covenant of good faith and fair dealing. The implied covenant of good faith and fair dealing is an independent duty and may be breached even if there is no breach of a contract's express terms.

124. Defendant breached the covenant of good faith and fair dealing by,

125. Defendant acted in bad faith and/or with a malicious motive to deny Plaintiff and the Class Members some benefit of the bargain originally intended by the parties, thereby causing them injuries in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and members of the Class, respectfully requests that this Court:

- A. Determine that the claims alleged herein may be maintained as a class action under R. 4:32-1, and issue an order certifying the Class as defined above;
- B. Appoint Plaintiff as the representative of the Class and her counsel as Class counsel;
- C. Award all actual, general, special, incidental, statutory, punitive, and consequential damages and restitution to which Plaintiff and the Class Members are entitled;
- D. Award pre-judgment and post-judgment interest on such monetary relief;
- E. Grant appropriate injunctive and/or declaratory relief, including, without limitation, an order that requires Defendant to repair, recall, and/or replace the Class Vehicles and to extend the applicable warranties to a reasonable period of time, or, at a minimum, to provide Plaintiff and Class Members with appropriate curative notice regarding the existence and cause of the Rotating Assembly Defect;
- F. Award reasonable attorneys' fees and costs; and
- G. Grant such further relief that this Court deems appropriate, equitable, and just.

**LITE DEPALMA GREENBERG LLC**

Dated: July 3, 2018

# Civil Case Information Statement

**Case Details: BERGEN | Civil Part Docket# L-004875-18**

**Case Caption:** URENA JOSELYN VS BMW OF NORTH AMERICA , LLC

**Case Initiation Date:** 07/03/2018

**Attorney Name:** BRUCE DANIEL GREENBERG

**Firm Name:** LITE DE PALMA GREENBERG LLC

**Address:** 570 BROAD STREET SUITE 1201  
NEWARK NJ 07102

**Phone:**

**Name of Party:** PLAINTIFF : URENA, JOSELYN

**Name of Defendant's Primary Insurance Company**  
(if known): Unknown

**Case Type:** COMPLEX COMMERCIAL

**Document Type:** Complaint with Jury Demand

**Jury Demand:** YES - 6 JURORS

**Hurricane Sandy related?** NO

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** NO

**THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE**

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** YES

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

Consumer Class Action

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

07/03/2018  
Dated

/s/ BRUCE DANIEL GREENBERG  
Signed

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Alleged Bearing Defect in BMW M3 S65 Engines Poses Serious Safety Risk, Class Action Claims](#)

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