

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

**If You Own Or Lease A BMW 5-Series Automobile For
Model Year 2004 Or 2005 (Produced On Or Before
March 31, 2005) That Has Multifunction Seats Without
Climate Control Or Sport Seats, You May Be Entitled To
Benefits Under This Settlement. Please Read This Notice
Carefully, As It Affects Your Legal Rights.**

The Superior Court of the State of California for the County of Los Angeles authorized this notice. This is not a solicitation from a lawyer.

Under the terms of the settlement, a class member may return his or her Subject Vehicle (defined below) to an authorized BMW dealership to have the airbag system reprogrammed, which will update or revise the system's software to improve the seat occupation detection system.

PARTICIPATE IN THE SETTLEMENT	If you agree with the proposed settlement, you need not do anything until after the Court decides whether to approve the settlement. If the settlement is approved, you will receive a notification that reprogramming is available and how to obtain it.
EXCLUDE YOURSELF	You will not be entitled to participate in the settlement if you choose this option.
OBJECT OR COMMENT WHILE REMAINING IN THE CLASS	Write the Court about why you do, or do not, like the settlement. You must remain in the class and settlement to object or comment.
ATTEND THE HEARING	Ask to speak to the Court about the fairness of the settlement.

I. **THE LITIGATION:** The lawsuit was filed in December 2004. The complaint alleges that current-generation BMW 5-Series automobiles (platform designation E60) from model year 2004 and model year 2005, produced on or before March 31, 2005, and equipped with Multifunction Seats without climate control or with Sport Seats (referred to in this notice as "Subject Vehicles") have a "seat occupation detection system." The system is intended to deactivate the front passenger front and side airbags when the front passenger seat is occupied by a child whose weight does not exceed a certain threshold, and to keep such airbags activated when the front passenger seat is occupied by an adult whose weight exceeds that threshold. When the airbags are deactivated, an indicator above the interior rear-view mirror is illuminated.

The lawsuit alleges that the system malfunctions by deactivating the front-passenger airbags even if the front passenger seat is occupied by an adult whose weight exceeds the activation threshold, which will be referred to in this notice as the "Misrecognition Problem." Since the filing of this lawsuit, BMW has developed an update or revision of the software governing the airbag system to correct the Misrecognition Problem, which can be installed by upgrading the software. The current complaint alleges that BMW has failed to notify all Subject Vehicle owners and lessees and offer to perform the reprogramming free of cost to them. Based on the foregoing, the lawsuit asserts claims on behalf of a nationwide class of Subject Vehicle owners and lessees against BMW of North America, LLC, for violations of the California Song-Beverly Consumer Warranty Act, the Consumers Legal Remedies Act, the California unfair-competition law (Bus. & Prof. Code § 17200 et seq.), similar consumer protection statutes of the other forty-nine states and the District of Columbia, and the federal Magnuson-Moss Warranty Act.

2. **BMW'S POSITION:** BMW has expressly denied and continues to deny all charges of wrongdoing or liability against it arising out of the allegations and claims asserted in the lawsuit. BMW has vigorously resisted the lawsuit's allegations and claims and has asserted and continues to assert defenses to those claims.

3. **NOTICE:** This notice is designed to inform members of the class of the pendency of this litigation and of the proposed settlement and to describe your rights and options if you are a member of the class.

4. **SETTLEMENT CLASS:** The following class has been conditionally certified: all residents of the United States who, as of March 13, 2007, own or lease a BMW 5-Series automobile from the 2004 model year or the 2005 model year (produced on or before March 31, 2005), and equipped with either Multifunction Seats without climate control or with Sport Seats ("Subject Vehicles"). Subject Vehicles exclude cars on which the reprogramming has already been performed by upgrading the software, including an upgrade performed when an Occupant Classification mat was replaced.

Excluded from the class are BMW; any affiliate, parent, or subsidiary of BMW; any entity in which BMW has a controlling interest, any officer, director, or employee of BMW; any successor or assign of BMW; anyone employed by counsel for Plaintiff in this action; any Judge to whom this case is assigned as well as his or her immediate family; and all persons who timely and validly request exclusion from the class pursuant to this notice.

To represent the above class for purposes of the settlement, the Court has appointed the named Plaintiff to serve as the class representative and has appointed Plaintiff's counsel to serve as Class Counsel: Eric H. Gibbs, Girard Gibbs LLP, 601 California Street, 14th Floor, San Francisco, California 94108; and Anthony K. Lee, attorney at law.

5. **SETTLEMENT BENEFITS.** The following description of the settlement benefits is qualified in its entirety by reference to the Settlement Agreement, a copy of which is on file with the Court.

a. **Reprogramming of seat occupation detection system.** Under the proposed settlement, BMW has agreed to provide reprogramming for the seat occupation detection system in your Subject Vehicle, meaning an update or revision of the system's software that BMW has designed to significantly reduce the chances of the Misrecognition Problem occurring. If the

settlement is approved, BMW will make the reprogramming available through its dealers and will perform the reprogramming at your request. The reprogramming will be performed free of charge so long as you request the reprogramming within the time limit of the New Vehicle Limited Warranty for the car (i.e., four years after the date of purchase or lease). The mileage limit of the warranty does not apply in this situation. Furthermore, if your warranty is due to expire in 2007 because of the four-year time limit, you will have up to and including December 31, 2007 to request reprogramming. If the settlement is approved, BMW will mail a notification to class members stating that the reprogramming is available and providing more information on how to obtain the reprogramming.

b. **Limited waiver of warranty mileage limit.** Under the settlement, BMW will also waive the mileage limit of its New Vehicle Limited Warranty with respect to the seat occupation detection system components causing the Misrecognition Problem.

c. **Class members' retention of certain claims.** Furthermore, if you continue to experience the Misrecognition Problem after obtaining the reprogramming described above, you retain any rights you would have in the absence of the Settlement to pursue an action against BMW asserting statutory consumer protection claims, breach-of-warranty claims, lemon law related claims, or any other claims under state law. The deadline to bring such claims will be (1) six months after the date the reprogramming was performed or (2) the deadline set by the applicable statutes of limitations, whichever is longer.

6. **ATTORNEYS' FEES, EXPENSES AND INCENTIVE AWARD:** From the filing of the lawsuit in December 2004 to the present, Class Counsel have not received any payment for their services in prosecuting the case, nor have they been reimbursed for any out-of-pocket costs. If the Court approves the proposed settlement, Class Counsel will apply to the Court for an award of \$760,000 in attorneys' fees and expenses. Class Counsel will also apply to the Court for an incentive award of \$5,000 to the named Plaintiff, for his initiative and effort in pursuing this litigation for the benefit of the class. Any award of attorneys' fees and expenses and any incentive awards will be paid by BMW. Under no circumstances will you be personally liable for attorneys' fees or expenses or the incentive award.

7. **RESULT IF COURT APPROVES SETTLEMENT:** If you fall within the class definition and remain in the class, and the settlement is approved, the Court will enter a judgment dismissing the lawsuit with prejudice, and releasing any and all claims that you may have against BMW of North America LLC, Bayerische Motoren Werke AG, every other entity involved in the design, development, manufacture, or distribution of the Subject Vehicles, and the foregoing entities' past and present officers, directors, shareholders, predecessors in interest, and successors in interest, including any claim for violations of federal, state, or other law, whether known or unknown, arising from the Misrecognition Problem. The settlement and judgment will not release any claims for personal injury or the claims described above at heading 5.c Class members' retention of certain claims.

8. **YOUR OPTIONS:** if you are a member of the class, you have the following options:

(a) **PARTICIPATE IN THE SETTLEMENT:** if you agree with the proposed Settlement, you need not do anything until after the Court decides whether to approve the Settlement. Thereafter, you will receive a notification that reprogramming is

available and how to obtain it. If you wish to comment in favor of the Settlement, you may send your comment to: Eric H. Gibbs, Girard Gibbs LLP, 601 California Street, 14th Floor, San Francisco, California 94108.

- (b) **REQUEST TO BE EXCLUDED:** If you do not want to stay in the Class, then you must send a written notice of your request to exclude yourself from the Class, so that it is received no later than August 10, 2007, to Class Counsel and BMW's counsel at the following addresses:

Eric H. Gibbs
Girard Gibbs LLP
601 California Street, 14th Floor
San Francisco, California 94108

Class Counsel

Roy M. Brisbois
Lewis Brisbois Bisgaard & Smith LLP
221 North Figueroa Street, Suite 1200
Los Angeles, California 90012

Counsel for BMW

Your exclusion request must include (i) your full name, address and telephone number, (ii) the vehicle identification number (VIN) of your Subject Vehicle(s), (iii) a statement that you request exclusion from the class and settlement in Kim v. BMW, Case No. BC326313, and (iv) your signature. If you validly and timely request exclusion from the class, (1) you will be excluded from the class; (2) you will not be entitled to the settlement benefits; (3) you will not be bound by the terms of the settlement, the judgment dismissing the lawsuit, or the release of claims provided by the settlement; and (4) you will not be entitled to comment on the proposed settlement or be heard at the fairness hearing described in Paragraph 9 below.

- (c) **OBJECT:** If you are a member of the class and you do not request to be excluded, you may object to the terms of the settlement or to Class Counsel's request for attorneys' fees and expenses. You may, but need not, enter an appearance through counsel of your choice. If you do, you will be responsible for your own attorneys' fees and costs. If you object to the settlement, you must, on or before August 10, 2007: (1) file with the Office of the Clerk of the Superior Court of the State of California for the County of Los Angeles, located at Central Civil West, 600 South Commonwealth Avenue, Los Angeles, California 90005 and (2) serve upon Eric H. Gibbs, Girard Gibbs LLP, 601 California Street, 14th Floor, San Francisco, California 94108 and Roy M. Brisbois, Lewis Brisbois Bisgaard & Smith LLP, 221 North Figueroa Street, Suite 1200, Los Angeles, California 90012 (counsel for BMW), a written objection, including (i) your full name, address and telephone number, (ii) the year, model, and vehicle identification number of your vehicle, along with proof that you owned or leased a Subject

Vehicle, in the form of a true copy of a vehicle title, registration, or license receipt, (iii) a written statement of all grounds for the objection accompanied by any legal support for your objection, (iv) copies of any papers, briefs, or other documents upon which the objection is based, (v) a list of all persons who will be called to testify in support of the objection (if any), (vi) a statement of whether you intend to appear at the fairness hearing, and (g) your signature or your counsel's signature. Also, at the start of your objection, please include a reference to Kim v. BMW, Case No. BC326313. If you intend to appear at the fairness hearing through counsel, the objection must also state the identity of all attorneys representing you who will appear at the fairness hearing. Class members who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the settlement.

9. **FAIRNESS HEARING:** On September 14, 2007, at 9:00 a.m., in Department 307, in the Superior Court of the State of California for the County of Los Angeles, Central Civil West Courthouse, 600 South Commonwealth Avenue, Los Angeles, California 90005, the Honorable Wendell Mortimer Jr., Judge of the Superior Court, will hold a fairness hearing for the purpose of deciding (a) whether the settlement should be approved as fair, reasonable, and adequate for the class; (b) whether a judgment granting approval of the settlement and dismissing the lawsuit with prejudice should be entered; and (c) whether Class Counsel's application for attorneys' fees and expenses and an incentive award for the named Plaintiff should be granted. The hearing may be postponed, adjourned, or rescheduled by the Court without further notice to the class. You do not need to attend this hearing to remain a member of the class or participate in the settlement.

10. **EXAMINATION OF PAPERS FILED IN THE CASE:** This notice is a summary and does not describe all details of the settlement. For full details of the matters discussed in this notice, you may wish to review the Settlement Agreement dated March 6, 2007, on file with the Court. A complete copy of the Settlement Agreement and all other pleadings and papers filed in the lawsuit are also available for inspection and copying during regular business hours at the Office of the Clerk of the Court, Superior Court of the State of California for the County of Los Angeles, Central Civil West Courthouse, 600 South Commonwealth Avenue, Los Angeles, California 90005.

11. **ADDITIONAL INFORMATION:** You can get more information by contacting Class Counsel through www.girardgibbs.com/bmw or writing to Class Counsel at this address: Eric H. Gibbs, Girard Gibbs LLP, 601 California Street, 14th Floor, San Francisco, California 94108. Please include the reference Kim v. BMW.

**PLEASE DO NOT CONTACT THE COURT WITH QUESTIONS
ABOUT THIS NOTICE.**

Dated: July 6, 2007

BY ORDER OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR LOS ANGELES COUNTY

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