

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**If You Have Ever Owned Or Leased A 1999-2006 Model
Year BMW 3 Series Vehicle, You May Be Entitled To
Benefits Under This Settlement. Please Read This Notice
Carefully, As It Affects Your Legal Rights.**

*The United States District Court for the Central District of California authorized this notice.
This is not a solicitation from a lawyer.*

- Under the terms of a proposed class action settlement, class members may present their 1999-2006 Model Year BMW 3 Series vehicles to an authorized BMW dealership for inspection and, if needed, repair of the vehicle's sub-frame.
- Class members may also be entitled to reimbursement of sub-frame repair expenses that they previously incurred.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
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.
EXCLUDE YOURSELF	You will not be entitled to participate in the settlement if you choose this option.
OBJECT OR COMMENT	Write the Court about why you do, or do not, like the settlement. You must remain in the class to comment in support of or in opposition to the settlement.
ATTEND THE HEARING	Ask to speak to the Court about the fairness of the settlement.

1. **THE LITIGATION:** The lawsuit was filed in October 2006. The lawsuit alleges that the sub-frame in 1999-2006 Model Year BMW 3 Series vehicles are defective in that the rear axle supports weaken from the constant loading and unloading associated with normal driving, eventually fracturing and ripping away from the chassis sheet metal. The lawsuit asserts claims against the North American distributor of BMW vehicles, BMW of North America, LLC, ("BMW NA") for breach of warranty and violation of consumer protection laws.

2. **BMW'S POSITION:** BMW NA 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, including that the vehicles at issue are defective. BMW NA 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 United States residents who (i) currently own or lease a Class Vehicle, or (ii) formerly owned or leased a Class Vehicle and incurred an out-of-pocket expense relating to the repair of his/her vehicle's sub-frame due to the Sub-Frame Condition.

Class Vehicles are BMW E46 Vehicles distributed by BMW NA in the United States. BMW E46 Vehicles consist of all 1999-2006 Model Year 3 Series vehicles and does not include the Z3 model vehicle (E36) or Z4 model vehicle (E85). **Sub-Frame Condition** refers to a fracture or fractures on the rear axle supports for the sub-frame of the Class Vehicles.

Excluded from the Class are:

- (1) BMW NA, its subsidiaries and affiliates, officers, directors, and employees;
- (2) Insurers of Class Vehicles;
- (3) All entities claiming to be subrogated to the rights of Class Members;
- (4) Issuers of extended vehicle warranties;
- (5) Individuals who validly opt out of the settlement;
- (6) Any judge to whom this matter is assigned, and his or her immediate family;
- (7) Any current or former owner or lessee of a Class Vehicle whose Class Vehicle was modified for racing, whether sanctioned or not;
- (8) Any current or former owner or lessee of a Class Vehicle that has been modified with suspension parts and/or wheels of a different size; and
- (9) Any current or former owner or lessee of a Class Vehicle that has released his/her claims against BMW NA related to the Sub-Frame Condition.

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, Suite 1400, San Francisco, California 94108; and Melissa M. Harnett, Wasserman, Comden & Casselman, LLP, 5567 Reseda Blvd., Suite 330, P.O. Box 7033, Tarzana, California 91357.

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 and available at the dedicated website concerning this settlement: www.E46subframeclassactionsettlement.com.

(a) **National Sub-Frame Inspection and Repair Program.** Under the proposed settlement, if you own or lease a Class Vehicle with an expired new car, certified pre-owned, or BMW extended warranty, you will have one year from the Effective Date of the settlement to present your vehicle for inspection and, if needed, repair of the Sub-Frame Condition at an authorized BMW dealership in the United States. If you own or lease a Class Vehicle with a non-expired new car, certified pre-owned, or BMW extended warranty, you will have one year from the expiration of your warranty to present your vehicle for inspection and, if needed, repairs of the Sub-Frame Condition, at an authorized BMW dealership in the United States.

(b) **Reimbursement for Sub-Frame Inspection and Repair Expenses.** Under the proposed settlement, BMW NA will reimburse you in full for out-of-pocket expenses you paid

for sub-frame repairs conducted at an authorized BMW repair facility prior to the Effective Date of the settlement. For sub-frame repairs completed prior to the Effective Date at repair facilities other than an authorized BMW dealership, BMW NA will reimburse you for your actual out-of-pocket repair expenses in an amount not to exceed (i) the number of work hours allotted in the current BMW repair procedure, at the repair facility's standard hourly rate at the time of repair, and (ii) any costs charged to you for parts related to the sub-frame assembly. To obtain reimbursement, you must complete the enclosed claim form, which can also be obtained at www.E46subframeclassactionsettlement.com and mail it to the claims administrator, postmarked no later than one year from the Effective Date of the settlement.

(c) **Effective Date of the Settlement.** Class members' time to obtain Settlement Benefits is measured from the settlement's **Effective Date**, which is the date that court approval of the settlement becomes final. In the absence of an appeal, the parties expect the approximate Effective Date to be September 2, 2009. Updates on the Effective Date and other deadlines under the settlement will be posted on www.E46subframeclassactionsettlement.com.

6. **ATTORNEYS' FEES, EXPENSES AND INCENTIVE AWARD:** From before the filing of the lawsuit in October 2006 to the present, Class Counsel have not received any payment for their services in prosecuting the case, nor have they been reimbursed for their out-of-pocket costs. If the Court approves the proposed settlement, Class Counsel will apply to the Court for an award of \$1,100,500 in attorneys' fees and reimbursement of \$22,000 in expenses. Class Counsel will also apply to the Court for an incentive award to the named plaintiff in the amount of \$2,500, 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 NA and will not reduce the benefits available to you under the settlement. 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, BMW Financial Services, LLC., every other entity involved in the design, development, manufacture, or distribution of Class 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, related to the sub-frame of any Class Vehicle. The settlement and judgment will not release any claims for personal injury, any subrogation claims, or claims related to sub-frame assemblies damaged as the result of an accident.

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. For information about settlement approval and any changes to the attached Information and Repair Schedule, please visit www.E46subframeclassactionsettlement.com.

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, postmarked no later than **July 15, 2009**, to the Class Counsel and BMW NA's counsel at the following addresses:

CLASS COUNSEL

Eric H. Gibbs
Girard Gibbs LLP
601 California Street, Suite 1400
San Francisco, California 94108

COUNSEL FOR BMW NA

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

Your request must be signed by you, include your name and address, and specifically state that you request to be excluded from the Class in *Bacca v. BMW of North America, LLC*. 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 object to 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 **July 15, 2009**: (1) file with the Clerk of the Court of United States District Court for the Central District of California, 312 N. Spring Street, Los Angeles, California 90012 and (2) serve upon Eric H. Gibbs, Girard Gibbs LLP, 601 California Street, 14th Floor, San Francisco, California 94108 (Class Counsel) and Roy M. Brisbois, Lewis Brisbois Bisgaard & Smith LLP, 221 North Figueroa Street, Suite 1200, Los Angeles, California 90012 (counsel for BMW NA), a written objection, including (i) a reference to *Bacca v. BMW of North America, LLC*, Case No. CV 06-06753 DDP (C.D. Cal.); (ii) your full name, address and telephone number; (iii) the year, model, and vehicle identification number (VIN) of the Class Vehicle that you own or lease or previously owned or leased; (iv) a written statement of all grounds for the objection accompanied by any legal support for your objection; (v) copies of any papers, briefs, or other documents upon which the objection is based; (vi) a list of all persons who will be called to testify in support of the objection (if any); (vii) a statement of whether you intend to appear at the fairness hearing; and (viii) your signature or your counsel's signature. To appeal from any provision of the order approving the Settlement as fair, reasonable and adequate, the award of incentive payments, or to the award of reasonable attorneys fees and expenses paid by Defendant and awarded to Plaintiff's Counsel, you must appear

in person, or through your counsel, or seek leave of Court excusing such appearance prior to the fairness hearing, or as otherwise may be permitted by the Court at the fairness hearing. 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 **August 3, 2009, at 10 a.m.**, in Courtroom 3, Western Division Spring Street Courthouse, United States District Court for the Central District of California, 312 N. Spring Street, Los Angeles, California 90012, the Honorable Dean D. Pregerson, United States District Judge, 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 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 December 19, 2008, on file with the Court, and also available at the dedicated website of www.E46subframeclassactionsettlement.com. 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 Records Public Window, United States District Court for the Central District of California, 312 N. Spring Street, Room G-8, Los Angeles, California 90012 and at www.E46subframeclassactionsettlement.com.

11. **ADDITIONAL INFORMATION:** You can get more information by viewing the settlement website at www.E46subframeclassactionsettlement.com, or writing to Class Counsel at this address: Eric H. Gibbs, Girard Gibbs LLP, 601 California Street, Suite 1400, San Francisco, California 94108. Please include the reference *Bacca v. BMW*.

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

BY ORDER OF THE COURT

Dated: May 12, 2009

Clerk of the Court