

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ARTEM V. GELIS, *et al.*,

Plaintiffs,

v.

BMW OF NORTH AMERICA, LLC

Defendant.

Civil Action No. 2:17-CV-007386-SDW-CLW

**LIMITED OBJECTION OF CLASS
MEMBER TO CLASS ACTION
SETTLEMENT WITH REQUEST TO
APPEAR TELEPHONICALLY AT FINAL
APPROVAL HEARING ON FEBRUARY 16,
2021**

Pursuant to the Court's September 9, 2020 Order Granting Preliminary Approval of Class Action Settlement, Lawrence Brocchini, a Settlement Class Member (as defined in the August 21, 2020 Settlement Agreement), submits the following limited objection:

1. I was, until October 2020 the owner of a BMW X3 xDrive 28i, VIN 5UXWX9C52D0A25586, purchased as a Certified Pre-owned BMW from Ridgefield BMW in Ridgefield, Connecticut in or about July 2016.
2. I have an address at 66 Mineola Avenue, #203, Roslyn Heights, New York 11577, Tel. 914-419-1403.
3. During 2020, as a result of a service visit on an unrelated issue, Rallye BMW in Westbury, New York advised me that my BMW was experiencing timing chain failure and needed to be replaced pursuant to service bulletin SI B11 03 17. At that time, my car had approximately 56,700 original miles.
4. Rallye BMW advised me that BMW of North America had extended the warranty for this condition to 7 years and 70,000 miles, and that my condition fell squarely within the warranty. Because my BMW is a model year 2013, I felt a great sense of relief.

5. That relief was short-lived. Rallye BMW said the model year did not matter. It advised that the warranty ran from the “retail in service date,” which, according to the dealership (which I have no independent knowledge of, as I bought my car CPO) for my BMW is October 12, 2012. So, Rallye BMW advised me that although the work that was needed is the work covered by the SI B1103 17 and the extended warranty, I was not eligible for warranty service. That struck me as grossly unfair.

6. Having no other option, and facing tremendous potential danger to my family and me from a catastrophic engine failure while at highway speed, not to mention even greater cost of replacing a blown engine, I authorized Rallye BMW to replace the timing chain and other defective parts identified in SI B1103 17. That work was performed from September 23-25, 2020, as the attached invoice shows. The cost to me, which I paid in full, was \$3,646.73.

7. Based on Google searches and review of this Court’s PACER system, I understand that BMW North America has agreed to a settlement that has been preliminarily approved, but will not be approved and effective until sometime in 2021. Notwithstanding this limited objection, I have no choice and thus intend to remain within the class. As a Class Member, I intend to submit my claim for reimbursement as soon as possible. But, as discussed below, I object to the Settlement because it is unfair to me and potentially others based on what seems to be an oversight in drafting that can easily be addressed.

8. Because I experienced the timing chain failure and needed to have it serviced before the Effective Date, and while my car had less than 70,000 miles and had more than 7 years but less than 8 years in service, as I understand the Settlement, under Section III. A, ¶2, I will be reimbursed only 75% of the \$3,646.73 repair cost.

9. However, under Section III.B ¶3, if I waited until after the Effective Date, because my car has less than 70,000 miles, regardless of its age, I would be compensated 100%. Of course, that delay would have basically rendered my vehicle unusable for months and months, since vehicles like mine diagnosed with this condition are supposedly subject to catastrophic and dangerous engine failure while at speed at any time.

10. Thus, the Settlement Agreement seems unfair because I will receive 25% less, about \$900.00, in reimbursement because I had service done prior to the Effective Date. It seems unlikely that the parties intended that vehicle owners who diligently undertake repairs rather than waiting for the Effective Date would receive 25% less reimbursement than people situated exactly the same who wait until after the Effective Date. The current provisions incentivize owners to wait.

11. The parties can easily address this anomaly, which may be a simple oversight in drafting, with very little economic impact, as it involves only vehicles (i) between 7 and 8 years of service, (ii) with less than 70,000 miles, and (iii) that are serviced in this period while the Court is considering whether or not to approve the Settlement Agreement, but before the Effective Date.

12. To be clear, I do NOT exclude myself, *i.e.*, opt-out, of the Settlement Class, and intend to file a claim for reimbursement.

13. I have not objected to any other class action settlement in any other court in the United States in the previous five (5) years.

14. To my surprise, as of this date, I have still not yet received a copy of Settlement Class Notice.

15. I respectfully request the opportunity to be heard telephonically on this issue at the February 16, 2020 Final Approval Hearing.

Dated: East Hills, New York
November 12, 2020

Respectfully submitted,
Lawrence Brocchini
Lawrence Brocchini

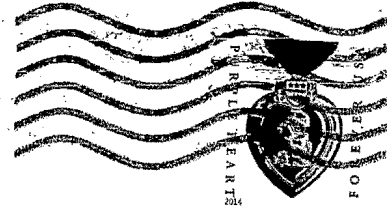
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EAST DISTRICT OF NEW YORK

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Clerk of the Court
U.S. District Court for the District of New Jersey
50 Walnut Street
Newark, NJ 07102

Attn: C.A. No. 2:17-CV-007386-SDW-CLW

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