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BMW Hid Mini Cooper Transmission Defect: Suit

By **Allison Grande**

Law360, New York (November 30, 2011, 2:19 PM ET) -- A Mini Cooper owner launched a putative class action in New Jersey federal court last week, alleging BMW of North America LLC concealed a defect in the transmission of certain Mini vehicles that caused them to prematurely and unexpectedly break down.

Despite knowing and even issuing bulletins to only its dealers acknowledging that the continuously variable transmission in 2002 through 2006 Mini and 2005 through 2008 Mini Convertible vehicles contained dangerous design and manufacturing flaws, BMW hid this problem from its customers and failed to offer a suitable repair, according to the complaint lodged Nov. 23.

"Because BMW will not notify class members that the CVT transmission is defective, plaintiff and class members (as well as members of the general public) are subjected to dangerous driving conditions that often occur without warning," the complaint said, additionally alleging that BMW through its dealers has profited by selling replacement parts to class members.

If plaintiff and class members had been aware of this defect at the time of sale or lease, they would not have purchased these vehicles or would have paid less for them, the complaint adds.

The suit seeks certification of a nationwide class of all current and former owners and lessees, except those in California, of the subject Mini vehicles and a subclass of current and former South Carolina purchasers, as well as the award of actual, general, special, incidental, statutory, treble, punitive and consequential damages and injunctive relief.

Plaintiff and South Carolina resident Lynette Bourne-Miller purchased a 2004 Mini Cooper from a local dealership in October 2003, according to the complaint.

Bourne-Miller began experiencing problems with her vehicle when at 21,000 miles her CVT transmission began sticking in one position when it was driven at about 50 to 60 mph, which caused the revolutions per minute to rise, the complaint says.

The dealership made several repairs covered under her warranty in January 2006 and again when she experienced a similar problem in July 2008, but during her third trip to the dealer in January, the plaintiff was informed that the transmission needed to be replaced at a cost of \$7,340, a repair that she did not make because BMW refused to pay the entire cost, according to the complaint.

Bourne-Miller alleges that the problems with her transmission were not unique, and that "hundreds, if not thousands," of vehicles equipped with a factory-installed CVT transmission — a type of automatic transmission that uses a system of pulleys with a metal belt or chain running

between them that enables the engine to run at its most efficient RPMs for a range of vehicle speeds — have failed “suddenly and unexpectedly, at any time and under any driving condition or speed.”

This transmission failure results in unsafe conditions, including but not limited to transmission slips, loss of forward propulsion, significant delays in acceleration, loud noises coming from the CVT transmission and total transmission failure while driving, which could contribute to traffic accidents that could lead to personal injury or death, according to the complaint.

In support of its claim that BMW knew or should have known about this alleged defect since 2002, the suit details dozens of consumer complaints filed with the National Highway Safety Administration that “demonstrate that the defect is widespread and dangerous, expensive to repair, and that it manifests without warning.”

These safety complaints — along with several technical safety bulletins that BMW began issuing to its dealers about this defect in November 2004 after its receipt of customer complaints and dealership repair orders — also indicate BMW's “awareness of the problems with the CVT transmission, the costs associated with the necessary repairs and how potentially dangerous the defective condition is for consumers,” the complaint alleges.

The plaintiff is represented by Matthew R. Mendelsohn of Mazie Slater Katz & Freeman LLC.

Counsel information for BMW was not immediately available.

The case is Bourne-Miller v. BMW of North America LLC et al., case number 2:11-cv-06909, in the U.S. District Court for the District of New Jersey.

--Editing by Lindsay Naylor.

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