

Notice of Certification of a Class Action

**Have you owned or leased a MINI Cooper model year 2002-2008?
If so, a class action lawsuit may affect your rights.**

This notice is for all persons or entities in Canada who are or were owners or lessees of:

- i) a 2002, 2003, 2004, 2005, or 2006 model year MINI Cooper or MINI Cooper S vehicle; or
 - ii) a 2005, 2006, 2007, or 2008 model year MINI Cooper Convertible or MINI Cooper S Convertible (the “Class Cars”),
- and their estates, executors, successors or assigns (the “Class” or “Class Members”).

A class action has been certified by the Ontario Superior Court of Justice against BMW Canada Inc. and its parent company BMW AG (together “BMW”). This class action is called: *Peter Scott Harris v. Bayerische Motoren Werke Aktiengesellschaft and BMW Canada Inc.*, Court File No. CV-14-497479-00CP (the “Action”).

The Action claims that there are dangerous defects in the Class Car’s power steering system that can cause the vehicles to lose power steering assist. The Action claims that in some cases, the alleged defects can result in car fires.

BMW denies that the Class Cars have dangerous defects, and denies that the Class Cars present any risk of loss of control or car fires.

The Action seeks to recover the costs that Class Members have paid out-of-pocket to have the allegedly defective power steering system repaired, or for the cost to have any repairs which may be required done now. It also seeks to recover any other losses that Class Members have incurred for personal injuries or property damage caused by the allegedly defective power steering system, as well as punitive damages.

LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

DO NOTHING - Stay in the lawsuit	If you do nothing, you will automatically be included as a member of the Class. You do not need to take any further action now to stay in the lawsuit. As a Class Member, you will be bound by any judgment on the common issues or any Court-approved settlement. By doing nothing, you are choosing to stay in the lawsuit. You will keep your right to share in possible money or other benefits that may come from the trial or a possible settlement; however, you will also be bound by any negative results. You are giving up the right to sue BMW on your own regarding the allegedly defective power steering systems in the Class Cars.
OPT OUT - Exclude yourself from the lawsuit	If you choose to opt out of the class action, then you will not be bound by any court orders in the proceeding. This means that you will get no money or benefits if the action succeeds or a settlement is negotiated. This also means that you will not be bound by any negative results. If you exclude yourself, you keep the right to sue BMW on your own regarding the allegedly defective power steering system in the Class Cars. If you intend to opt out and sue BMW on your own, you should be aware that there may be limitation periods that apply to your claim, and the time within which an action may be started. You should consult a lawyer to obtain advice about your rights to bring an individual action before you opt out.

Your rights and options are explained in this notice.

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BASIC INFORMATION

1. Why did I get this notice?

The Ontario Superior Court of Justice authorized this notice to let you know that it has allowed, or “certified,” a class action lawsuit that may affect your rights. The lawsuit is known as: *Harris v. Bayerische Motoren Werke Aktiengesellschaft and BMW Canada Inc.* Bayerische Motoren Werke Aktiengesellschaft (“BMW AG”) and BMW Canada Inc. are the defendants. BMW AG is the parent company of BMW Canada Inc.

The Ontario Superior Court has allowed this action to be prosecuted as a class action. This is called “certification.” If the action is not settled, there will be a trial to decide certain “common issues” that relate to the Plaintiff’s claims that the Defendants acted in a manner that caused harm to the members of the Class.

A copy of the Court’s Reasons for Decision approving the action as a class proceeding can be viewed at www.minicooperclassaction.ca or www.miniclassaction.ca under the Documents tab.

Assuming that there is a common issues trial, and that the issues are decided in favour of the Class, but the Court is not able to assess all of the Class’ losses, there may then be a process to determine the amount of damages to which each Class Member is entitled. If that happens, each Class Member can decide whether they wish to participate in the process to claim for their own losses.

If you meet the Class definition, you will be bound by the Court’s decisions as the case proceeds to the end of the common issues trial. You will also be bound by any settlement that is approved by the Court.

2. What is a class action?

In a class action, one or more people called “Representative Plaintiff(s)” (in this case, Peter Scott Harris) sue on behalf of people who have similar claims (in this case, the people who own(ed) or lease(d) the allegedly defective MINI Cooper vehicles). Together, all of these people are called a “Class” or “Class Members.” The allegedly defective MINI Cooper vehicles are referred to as the “Class Cars.” One court will resolve the issues that are the same for everyone affected (known as the “common issues”) at a common issues trial. The Court’s decision will bind everyone in the Class, except for those who exclude themselves from the class action.

THE CLAIMS IN THE LAWSUIT

3. What does the lawsuit complain about?

The Action alleges that the Defendants breached their duty of care owed to the Class through allegedly negligent design and manufacture of the Class Cars’ power steering system, and that the Defendants breached their duty to warn about the alleged defects.

A copy of the Fresh as Amended Statement of Claim can be viewed on Class Counsel’s website at www.miniclassaction.ca under the Documents tab.

4. How do the Defendants answer these allegations?

The Defendants have denied that they are liable to the Class, and that they have breached any duty owed to the Class. They argue, among other things, that they were not negligent in any respect, the alleged defects in the power steering system in the Class Cars do not present any risk of harm to people or property, and they previously provided all owners and lessees of the Class Cars with an extended multi-year warranty for the power steering system in the Class Cars. A copy of the Fresh as Amended Statement of Defence can be viewed on Class Counsel’s website at www.miniclassaction.ca under the Documents tab.

5. Has the Court decided who is right?

No decision about whether the Plaintiff or the Defendants are right has been made. This will be decided at the common issues trial. The trial will not take place for some time. Updates about the status of the action will be posted on Class Counsel’s website www.miniclassaction.ca.

6. What is the Plaintiff asking for?

The Action seeks payment to the Class Members for the cost of repairs to the Class Cars that they have already paid out-of-pocket, or the cost to repair the alleged defects, if they have not already been repaired. It also seeks compensation for the Class for any property damage or personal injury that any Class Members have incurred which was caused by the allegedly defective power steering system, punitive damages, and interest.

The details of the specific claims are set out in the Fresh as Amended Statement of Claim (see link at #3, above).

7. What are the common issues?

The Certification Order sets out all the common issues that have been certified by the Court. They are:

- a. Were the Class Cars designed and manufactured by Bayerische Motoren Werke Aktiengesellschaft (BMW AG) with one or more design or manufacturing defects that can cause the loss of power steering assist, engine component melting or smouldering, and/or a vehicle fire (a Defect)?
- b. If the answer to common issue A is yes, is any such Defect dangerous and/or does any such Defect render the Class Cars unfit for their intended purpose?
- c. If the answer to common issue B is yes, when did the Defendants know or ought they to have known of the dangerous Defect(s)?
- d. Did BMW AG owe a duty of care to the Class Members with respect to the design, manufacturing, and/or testing of the Class Cars?
- e. If so, did BMW AG breach the standard of care owed to Class Members in respect of the design, manufacturing, and/or testing of the Class Cars?
- f. Did BMW Canada, Inc. (BMW Canada) owe a duty of care to the Class Members with respect to the distribution of the Class Cars?

- g. If so, did BMW Canada breach the standard of care owed to the Class Members by distributing the Class Cars containing a dangerous Defect?
- h. Did the Defendants, or either one thereof, owe a duty of care to (i) warn the Class Members of the dangerous Defect(s), and/or (ii) to recall and repair the Class Cars?
- i. If so, did either or both of the Defendants breach the relevant standard of care by (i) failing to warn the Class Members of the dangerous Defect(s), and/or (ii) failing to recall and repair the Class Cars?
- j. Can the Class Members assert a claim for pure economic loss, including the cost of repairs to the Class Cars, and diminution in value of the Class Cars?
- k. If the answer to common issue J is yes, what is the cost to repair the Defect(s)?
- l. Can the Class Members elect to waive the tort and seek disgorgement of the profits earned by the Defendants on the Class Cars? If so, what is the amount of such profit?
- m. Does the conduct of the Defendants, or either one thereof, warrant an award of punitive damages? If so, in what amount?

These are the issues that will be decided at the common issues trial. The certification order can be viewed on Class Counsel's website at www.minicooperclassaction.ca or www.miniclassaction.ca under the Documents tab.

8. Is there any money available now?

No. There is no money available now because the Court has not yet decided whether the Defendants did anything wrong. There is no guarantee that the Action will be successful for the Class; however, if money becomes payable, you will be notified about how to ask for a share.

WHO IS INCLUDED IN THE LAWSUIT

9. How do I know if I am part of this class action?

You are a part of this class action if you are or were an owner or lessee of:

- i) a 2002, 2003, 2004, 2005, or 2006 model year MINI Cooper or MINI Cooper S; or
- ii) a 2005, 2006, 2007, or 2008 model year MINI Cooper Convertible or MINI Cooper S Convertible;

or if you are such a person's executor, successor or assign.

10. What do I do if I am not sure if I am included?

If you are still not sure whether you are included in the Class, you may call Waddell Phillips PC at 1-800-430-3107 or email reception@waddellphillips.ca with questions. A confidential inquiry can also be made by completing the form at <https://waddellphillips.ca/class-actions/mini-cooper-power-steering-class-action/>.

RIGHTS AND OPTIONS FOR CLASS MEMBERS

11. What happens if I do nothing?

If you do nothing, then you will automatically be included in the class action as a Class Member. You will be legally bound by all orders and judgments of the Court. This means that if a judgment is made by the Court, or if a settlement is reached between the parties, and the settlement is approved by the Court, you are bound by the result.

You will not be able to start or continue with a lawsuit against BMW about the same legal claims that are included in this Action. If the Class gets money or benefits from BMW as a result of a judgment or a settlement between the parties, you will be notified about how to ask for a share or what your options are at that time.

12. What happens if I exclude myself?

You can exclude yourself by a process known as “opting out.” If you opt out, you will not be able to get any money or benefits from this Action if a judgment is granted or a settlement is reached. But, if you exclude yourself, you may sue BMW on your own. You will not be bound by anything that happens in this Action.

To exclude yourself (opt out) of the Action, follow the instructions at #14, below.

13. If I don’t exclude myself, can I sue later?

No. Unless you exclude yourself, you give up the right to sue BMW for the legal claims in this Action. You must opt out from this lawsuit if you want to start your own lawsuit about defects in the power steering system in the Class Cars.

The deadline to opt out/exclude yourself is **November 5, 2020**.

14. How do I ask to be excluded?

To exclude yourself, you must send a completed, signed copy of the Opt-Out (Exclusion Request) Form to the Notice Administrator. The Opt-Out (Exclusion Request) Form is available for download at www.minicooperclassaction.ca or www.miniclassaction.ca under the Documents tab. You may also send a letter or email to the Notice Administrator, including your name, address, the year, make and model of your Mini Cooper, along with its VIN (if available), which clearly states that you are opting out of the *Harris v. BMW (Mini Cooper)* class action.

If you mail your Opt-Out (Exclusion Request) Form or letter, it must be postmarked by November 5, 2020. If you email your Opt-Out (Exclusion Request) Form or email message, it must be time-stamped as having been sent by November 5, 2020 at 5 p.m. PST.

Opt-Out (Exclusion Request) Form are to be sent to:

MINI Cooper Power Steering Class Action
c/o RicePoint Administration Inc.
P.O. Box 4454, Toronto Station A
25 The Esplanade
Toronto, ON M5W 4B1
Email: minicooperclassaction@ricepoint.com

Deadline for Opting Out:

No Opt-Out (Exclusion Request) Form or requests to opt out will be accepted after 5 p.m. PST on November 5, 2020. If you have not excluded yourself from the action by that date and time, you will automatically be included in the Action as a Class Member, and you may not exclude yourself thereafter.

THE LAWYERS IN THIS CASE

15. Do I have a lawyer?

Class Counsel are two law firms: Waddell Phillips Professional Corporation of Toronto, Ontario; and Podrebarac Barristers Professional Corporation of Toronto, Ontario. Class Counsel are the Plaintiff’s lawyers, and are prosecuting the action for the benefit of the Class as a whole. Class Counsel are experienced in handling similar cases.

More information about Waddell Phillips Professional Corporation, their practices, and their lawyers’ experience is available at www.waddellphillips.ca.

More information about Podrebarac Barristers Professional Corporation, their practices, and their lawyers’ experience is available at www.podrebaracbarristers.com.

16. How will the lawyers be paid?

Class Counsel have been retained by the Plaintiff on a contingency fee basis. If Class Counsel gets money for the Class, they will ask the Court to approve payment of their fees and expenses from the amount to be paid to the Class. The fee request will not exceed 25% of the money recovered. If the Court grants their request, the fees and expenses will either be deducted from any money obtained for the Class or paid separately by the Defendants. You will not have to pay any of these fees and expenses personally out-of-pocket. Class Counsel do not get paid any fees until and unless the Court approves the amount to be paid.

The Representative Plaintiff has also received financial support for this class action from the Ontario Class Proceedings Fund. The Fund will indemnify the Plaintiff for any adverse court cost awards, and it is paying for many of the disbursements that are being incurred to prosecute the case, such as experts' fees and examiner expenses. In exchange for its support, the Fund will be paid a levy of 10% of the net proceeds of any judgment or settlement, and be repaid the disbursements that it has paid.

THE TRIAL

17. How and when will the Court decide who is right?

Unless the action is resolved by a settlement, the Plaintiff will have to prove his claims at a common issues trial. During the trial, a judge will hear all of the evidence against the Defendants, as well as all the Defendants' evidence about why they should not be held responsible for the claims made against them. The judge will then decide the common issues, set out above at #7.

The common issues trial is still a long way off in the future. Before then, the parties will go through the usual steps in the litigation process, including an exchange of relevant documents, and examinations for discovery (depositions). Expert witnesses will be retained, and there will be exchanges of their reports. Given the backlog in the civil courts, if there is no settlement, it could be several years before the common issues trial is heard by the Court.

18. Do I have to come to the trial?

No. You do not need to attend the common issues trial. Class Counsel will present the case for the Plaintiff, and the Defendants' lawyers will present their defences. You are welcome to watch any part of the trial, or any court hearings before the trial, but you don't have to. If you wish to participate as a witness at the common issues trial, you should contact Class Counsel, and they will discuss that option with you.

19. Will I get money after the trial?

If the Plaintiff succeeds at the trial or if a settlement is approved by the Court, you will be notified about how to ask for a share of the proceeds.

Based on the common issues that were allowed by the Court, it is possible that each Class Member will have to prove their entitlement to receive a payment individually after the common issues are decided, if the Court is unable to make a determination of the Class' damages on an aggregate basis.

If losses have to be proven individually after the common issues trial, you will get a notice that explains what you need to do to prove your entitlement to compensation.

GETTING MORE INFORMATION

20. How do I get more information about the lawsuit?

This notice summarizes the lawsuit. More details are in the Fresh as Amended Statement of Claim and in the Certification Order, which can be viewed at www.minicooperclassaction.ca or www.miniclassaction.ca.

You may send questions to Class Counsel at:

Waddell Phillips Professional Corporation Barristers 36 Toronto Street, Suite 1120 Toronto ON M5C 2C5 reception@waddellphillips.ca 1-800-430-3107 (toll-free)	Podrebarac Barristers Professional Corporation 100 King Street West, Suite 5600 Toronto ON M5X 1C9 kp@toughcounsel.com 416-568-1299
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You may also fill in the confidential inquiry form on Class Counsel's website at www.miniclassaction.ca.

This notice was approved by the Ontario Superior Court of Justice. It is a summary of the terms of the certification order. If there is a conflict between the provisions of this notice and the terms of the certification order, the certification order prevails.