

## BMW of North America Clarifies New Car Warranties: Some Simple Steps Toward the Center

BY MIKE MILLER

BMW “tuning” means modification of the car with high performance parts. The Factory engineers a certain degree of performance compromise into the cars for the sake of ride comfort, quietness and fuel compatibility. The best tuners may have tuning packages from mild to wild, but the key is to leave the Bimmer’s personality intact while ameliorating some of the performance compromises engineered at the Factory. In Europe, tuning is a very popular way of individualizing an automobile without effecting a full blown personality change. Larger wheels and tires combine with shorter, stiffer springs, more aggressive shock absorbers and larger diameter anti-sway bars to enhance cornering and high speed stability. Engine management systems are modified with a more aggressive chip for the computer. The list of other possible engine and drivetrain mods is as long as your wallet is thick.

Until recently, the BMW tuning phenomenon in North America was confined largely to off-warranty vehicles. Reasons? A few. Many new BMWs are leased. Few people want to buy expensive performance parts and then take them off when it’s time to return what is essentially a rented car. Also, we went through a period of time in the ‘80s and early ‘90s when BMW’s image as a manufacturer of performance cars was not very well marketed in the U.S. Yes, we had the M3, M5 and M6, but the television commercials showing them parked on grass while Muffy watched Biff play polo did nothing to convey a performance image. With new thinking at BMW NA, the formation of the M-Brands division headed up by Erik Wensberg and BMW NA’s involvement in North American motorsports, this is changing. There is no denying that more of the motoring public in the U.S. is once again identifying BMW with performance. The majority of M cars built are sold here. And people want to tune them.

Another reason new BMWs were not often tuned in the U.S. was the *perception* that any modification done to the car would immediately void the warranty in its entirety. Notwithstanding the fact that a small minority of retailers may have taken this attitude, this was never the case from a legal perspective. Without launching into a legal diatribe, a warrantor (on who makes or gives a warranty) generally may not give a warranty and then simply

say, “it’s void,” because the product was modified. Rather, in most jurisdictions the modification, either alone or by virtue of its installation, must be shown to have been the cause or a substantial contributing factor in the failure. By way of example, if you install a set of performance springs and shocks in your new BMW, and then the power windows won’t go up, you’ve not voided your warranty with respect to the power windows. However, if you install tires that are too wide, or wheels that are the wrong offset, or springs that are too low and some type of body or suspension damage results, then you’ve voided your suspension or body warranty with respect to that damage. Obviously, if the aftermarket part itself fails, your only warranty on that part is what may be given by its manufacturer.

With the increased interest in tuning exhibited by new BMW owners, a clarification of the BMW New Vehicle Limited Warranty, as it’s called, was in order. Accordingly, the BMW NA Warranty Department issued to all U.S., retailers Service Information Bulletin Number 01 03 97 in April of 1997. Shortly thereafter, we read in *Car and Driver* and *Road & Track* that Dinan Engineering, Inc., a well-respected and long-standing West Coast BMW tuner, was gearing up to sell high performance parts and packages through certain BMW retailers! Comparisons with Alpina in Germany are inevitable. As a licensed manufacturer, rather than a tuner, Alpina, GmbH, sells cars through Alpina retailers in Germany and the UK. Frankly, the Dinan story is the biggest news since the E30 N3 was announced for the U.S. market in 1987.

We spoke with Steve Dinan regarding this apparent new relationship. Steve indicated that he had had no significant warranty problems arise with respect to his parts. However, he was concerned with possible lapses in warranty coverage as a result of his tuning program. Taking the initiative (as he always does), Steve simply implement his own warranty program with respect to his parts. Simply put, Dinan Engineering will match the remainder of any factory warranty on systems modified by their parts. Going one step beyond, Dinan will also cover *consequential* damages from a defect in their parts. Labor to diagnose and repair the problem is also covered by Dinan Engineering, and this is a first in the industry, to our

knowledge. Further, Steve told us that if a customer buys his products and installs them himself, and a valid warranty claim arises, Dinan Engineering will pay labor to have the customer’s car repaired. We know of no other tuner who would even consider going that far. In fact, their mere suggestion would probably be found humorous. With Dinan products, there will be no lapse in warranty coverage. Even Dinan supercharged cars may be covered, but here the customer must purchase a power train warranty from Dinan.

When the idea came up, Richard T. Brekus was sent to tour the Dinan Engineering facility in Mountain View, California. Mr. Brekus is Manager of Product Planning and Strategy at BMW NA. Apparently he was impressed, and having met the gentleman, one gets the impression that Mr. Brekus is not easily impressed. Pursuant to arrangements that will be officially made between Dinan Engineering and selected BMW retailers in the U.S., VIN numbers and modification data for Dinan cars will be provided to BMW NA and entered into their computer system so that when a retailer reviews the service history of a car as part of service or fault diagnosis, the Dinan information will be right there on the screen. As set forth in the following interview with Mr. Brekus, BMW NA’s official position is that the flow of information concerning what cars have been modified is from Dinan Engineering to NA Headquarters and there is nothing flowing the other way in terms of proprietor BMW software data.

Steve Dinan stated that packages will be offered for sale at selected BMW retailers in the U.S.; there are 21 so far. These packages are specifically designed for the BMW retailer. Both NA and Steve are mum on the question of whether similar arrangements may be made with other U.S. tuners. Mr. Brekus reiterated that there is no relationship with Dinan, but also indicated that in terms of a relationship between Dinan and BMW NA retailers, there is a question as to whether other tuners would be capable of offering unbroken warranty coverage. This leaves the impression that the warranty aspect will be a pivotal aspect for the retailers. Steve also stated that his products would continue to be sold directly through his facility and Dinan distributors. The only difference between what ships from Mountain View and what will be available from participating BMW

retailerships is that computer chips sold by retailerships will have the top speed governor intact, apparently an executive decision on Steve's part. If you want true top speed, you'll have to buy your chip from Dinan directly.

We interviewed Mr. Roland J. Feiner, BMW NA Warranty Manager, Mr. Brekus and Erik Wensberg at BMW NA Headquarters in Montvale, New Jersey on Friday, June 13, 199. Product Information Manager Rob Mitchell was also present.

**Roundel:** *Throughout the years, we've heard reports from Club members that certain BMW retailers were in effect telling them their entire warranty was completely voided due to the installation of one or more aftermarket performance parts. We understand that BMW of North America has taken steps to address this situation. Could you explain what has happened for our members?*

**Mr. Brekus:** We have received feedback from a number of customers, many of them in the Club of course, that they would make what they would consider simple modification to their car—they would put an aftermarket exhaust system on it, they might change shocks and springs, some would put a chip in the car. They would take the car into the retailer with what they [the customer] considered to be an unrelated problem, such as the power seats wouldn't work, and they were told [by the retailer] that, "You've modified the car, the car is no longer covered by BMW of North America's warranty." That was causing quite a bit of customer dissatisfaction, not to mention some hard questions for Erik Wensberg at Club events. So we sat down with Roland Feiner who is the master of what we do on the warranty side, and said, "Is this really the case?" He said, "No, of course not, as a vehicle manufacturer we do not void the warranty. What we do is say that if you modify something the warranty on the part that has been modified is no longer valid, and if the modified part effects another system then that effected system would not be covered under warranty." So we basically said, well OK, we should clarify that with our retailers so that we don't have this sort of wholesale...you're not a member of the family anymore so to speak because you've played with our car. So we've issued a Service Bulletin that said as much. On vehicles which have been modified, the parts that are modified are no longer covered and any systems effected by the modified part are no longer covered. You get into some issues about things such as air conditioning systems for instance. I don't think people understand just how interrelated the systems in our vehicles are. So you put a chip in our engine control module, while in actual-

ity the engine control module controls the air conditioning system. It decides when the compressor turns on and off, those sorts of things, so you can get into a situation where you put a chip in a car and you have a problem with the air conditioning system which my seem unrelated, but in fact they are related. What we hope by clarifying the warranty is that a retailer, instead of just rejecting that situation outright, would take a closer look at the situation and say, "Is the modification responsible for the problem or not?" There are some diagnostic ways that can be determined. That's basically it.

**Mr. Feiner:** We looked to our policy and procedures and verified whether they support that customer concern, and we issued a Service Information Bulletin to clarify our position. Quoting from one of the passages in the Bulletin, "A repair is not covered by the BMW warranties if the modification has contributed to or was directly the cause of the failure." In other words, if the modification did not contribute to the customer's concern, then it's covered under warranty.

**Roundel:** *The initial determiner of that question would be the retailer of course. But what about in the event of a dispute with that retailer as to whether the modification contributed to or was the direct cause of the problem?*

**Mr. Feiner:** We would look at the individual case and communicate with the retailer to try and find out what the problem is.

**Roundel:** *Say I'm a customer, and I come into the retailer with a chip in my car, and I'm having a problem with one of the power windows and the retailer tells me that the chip caused the window problem and I disagree with that assessment, what do I do then?*

**Mr. Brekus:** You basically just disagree with the retailer. The retailer is the primary source of contact for the customer. The next level of contact would be the Field Service who would then get involved and they would then communicate with the retailer and either make an assessment on their own or come back in through Mr. Feiner.

**Mr. Feiner:** The retailer would normally call us. We would try to clarify the issue.

**Roundel:** *Do you anticipate some working relationship with the various tuners who provide aftermarket high performance parts for BMWs in the U.S.?*

**Mr. Brekus:** When you say a working relationship—Dinan is, you can see from the ads Dinan has been running and now there's some articles in *Car and Driver* and *Road & Track*—

Steve had talked to us about the warranty issue—just because we're "out there" so to speak. Many of us here are enthusiasts as well, so we're familiar with all the different people [who provide aftermarket high performance parts]. A number of the tuners, Steve included, have brought up this issue of warranty coverage in terms of running their business. We've heard this from customers and then we've heard it from people in the marketplace as well; we need to take a look at it. The clarification is as you saw. Steve has taken a step that I don't think anybody else has taken, but that doesn't mean that somebody else wouldn't or couldn't. He's basically said, "I have confidence in my modifications, so I can create a warranty on my own that basically picks up where BMW's warranty drops off." And that's essentially what he's done. He's sent out a number of communications now clarifying his warranty position, and he's created saying that he'll match BMW's warranty for his parts for the remaining term of the BMW warranty or for two years unlimited miles. He's tried to make his warranty processing procedures as seamless as possible so from a customer's standpoint, it's hard for them even to know even who's actually covering the warranty issue. But that's something he's done completely on his own, so when you ask the question, "Do you see more of a relationship between BMW of North America and the tuners?" It's not really about a relationship, there isn't a relationship, but is there room in the marketplace for both to exist? The answer is yes.

**Roundel:** *By "relationship," we mean a freer exchange of information.*

**Mr. Brekus:** We're very protective of our information.

**Roundel:** *What about incoming information from the tuners?*

**Mr. Brekus:** We're asked. One of the things that would help us is if the tuners tell us which cars have been modified. So Steve for instance is now asking his customers for their VIN number, etc., and he's going to tell us that. I mean we really didn't ask him to do that, but in the discussions when he talked to us we talked about the fact that one of the problems we have is that, from a warranty standpoint, somebody puts a chip in the car but when they go to the retailer they're nervous—"I've got a chip in the car, that means my warranty is void so I'm not going to say anything to the retailer about the fact that there's a chip in the car." The retailer then spends hours trying to diagnose a problem, assuming that the chip in the car is the correct chip. And his diagnostic equipment is trying to talk to that Motronic and there

are things built into that chip that may even confuse the DIS tester. Two hours later he finally discovers there's a chip in the car, and then he's out two hours worth of diagnosis. He's unhappy, the customer's unhappy because now the retailer says, "Hey there's a chip in the car. I'm not going to touch it, and now you owe me for two hours of diagnosis." So, Steve has basically said, well if that's the case I'll tell you which cars have a chip, and then from a repair procedure standpoint for instance, if there's a chip in the car you can swap a Motronic unit and if that fixes the problem, then clearly it's my problem. If that doesn't fix the problem then perhaps there's something else. So, that kind of information, certainly Steve has said he'll take it and give it to us, and I presume that if there are other tuners who want to do something similar we would take the information as well.

**Roundel:** *We understand that BMW of North America is very protective of electronic data regarding engine management systems which is considered to be proprietary in nature. But a number of tuners have expressed the belief that if BMW of North America were to be a little more forthcoming with that information perhaps many drivability problems and potential warranty disputes could be averted in that way. Perhaps that information could be used in order to, for example, properly tune a chip so that it would not interfere with the operation of the air conditioning system, to use your own example. Do you anticipate a time when there might be a freer exchange of that type of information at any time in the future?*

**Mr. Brekus:** Not really. That is our intellectual property. It's what we spend so much time developing. It is the magic that makes BMWs as good as they are. It's no different than, for instance, trying to modify your own copy of Microsoft Word™. So you decide you're going to call the people at Microsoft and ask them for the code so you can rewrite Microsoft Word™ and make it faster. They're likely to tell you, "Now wait a minute. That's our intellectual property. We've done it. How could you we know how our software would work if we gave you that information?" So, no. You're welcome to try and figure it out yourself. There are legal issues about reverse engineering. You're not allowed to do that. You can create a duplicate but it has to be done independently. You can't reverse engineer what's already been there. And we know that a lot of the tuners try to crack the codes. It's difficult because everything is so interrelated. It's not simple software. It's not one software release for a given car. One sensor changers and the

software release has to change to go along with it. It gets pretty complicated and there are drivability problems that come along when people do this incorrectly.

**Mr. Wensberg:** Look at it another way. You know as well as we do that BMW around the world—England, Germany, Australia—you name it, has a relationship with many well known tuners. Some of the relationships are quite close, Alpina being a good example. The United States market, whether we like it or not, is much different. From a liability standpoint there are many issues. The American regulations are much stiffer from an emissions standpoint. That has prevented that type of relationship from occurring naturally as it has in other markets around the world. But we talk to our colleagues in Europe all the time about this issue. We know many of these people [European tuners]. When we go to Europe we meet with them and talk about what they're doing. We have some of their sales literature and so forth. We don't see anything necessarily wrong with what they are doing. The point being, where you have people that are trying to build a legitimate business in the U.S. market, trying to real engineering her in the United States, we are not trying to be obstructionists. Dinan is a good example. He fully researches his products. He does things very carefully. Maybe Reeves Callaway is another example of someone you could look at as a very credible engineering-based firm that really is trying to do something within the parameters of the legal climate, and otherwise of the United States market. Roland [Feiner] put it in terms the other day which we thought made a lot of sense. We have two issues here. One is with the customer. The other is with our retailer. You and I have both seen it. You have a very good customer to whom the retailer has sold, say, five cars, and he has an M3, and he puts an [aftermarket] exhaust system on the car. He comes to the retailer with a power window problem. Now the retailer is in a very awkward position. Technically speaking, the car has been modified and he's not supposed to get too involved in this and he's not sure where the boundaries are, unsure of his position. He's anxious about it. Yet here he has a very good customer who is very enthusiastic about BMW, he's bought five cars from him, so he's trying to keep this guy happy. We are trying to take some simple steps toward the center. And if people like Steve Dinan can come forward with solid businesses based on solid engineering, willing to put very businesslike warranties behind their own work and their own products, then there is room for us to exist in the middle. Our retailer benefits because he has a clearer idea of where he stands with the customer and with BMW. The cus-

tomers benefits because he can have an [aftermarket] exhaust system on his car and still get his window fixed. The whole notion of sharing information between us came out of the fact, as Richard [Brekus] points out, if it becomes a guessing game, and everyone is kind of dodging around not wanting to reveal what's really going on here, a lot of time and effort is waste—and that equates to money. It also equates to suspicion and ill will. If we know exactly that this car has an exhaust system and a chip, is it germane to the problem of not? Let's move on. If it is germane, the retailer can get Steve's people on the phone and solve it that way. That is the notion of the discussions: simple steps from both parties, working toward a beneficial middle ground for everybody.

**Mr. Brekus:** But that doesn't extend to sharing software. Sorry. I know it gets harder and harder. I know they're having a tough time, now with OBD-II there's a requirement for an anti-tamper system in the software. It used to be that the software looked for a simple check sum to relay to the check engine light. Now there is a much more esoteric system that moves where that check sum is, and hides where it is, moves it to different places at different times to respond to the requirement that there be anti-tamper capabilities.

**Roundel:** *AutoThorty has successfully tuned and OBD-II 1997 Z3 2.8—I saw it at Pacono Raceway about a month ago. Dinan is already selling a chip for OBD-II cars. So we're not even through the model year and the uncrackable codes have been cracked. We have information that Steve Dinan is right there with his M3 program. You've started answering some of our questions before we could ask them. Perhaps this one is best directed at Erik Wensberg...*

**Mr. Brekus:** He's getting better answers from Erik! [Laughter]

**Roundel:** *They say Steve Dinan is going to be selling tuned cars through BMW retailerships...*

**Mr. Wensberg:** That's a good example of misinformation. [Steve Dinan] has a few of our retailers that are in fact Dinan outlets as well. I think he'd like to work on signing up a few more. That's really his business, not our. The program you're talking about I think is the 850 off lease package.

**Mr. Brekus:** You can go even a little bit further. Steve has said that he'd like to have good representation in the market and he thinks some of our BMW retailers would be a good way to do that. In essence, from our standpoint, he's right. They would basically be representing Dinan as independent businesses. But if you

think about it from the customer standpoint and even from our own standpoint, now you have someone who's truly an expert on the car, knows how to service the car, is in the business of satisfying customers, and is likely to take the tuners, let's take Dinan as an example, the retailer is likely to install the tuner's parts in a professional way. He's likely to understand the BMW and how to install it in a professional way. He's not likely to play with it. Other people might decide that they know even more, so they decide to mix and match...

**Mr. Wensberg:** "If the spring rate is good, doubling it must be even better..."

**Mr. Brekus:** So they may take some parts from one tuner and other parts from another tuner and put them together on one car to try and make sort of the ultimate car. They might be successful, they might not. They might end up engineering basically a basket case. So, from our standpoint, if Steve finds retailers who want to represent him, and do it professionally, I think that's a plus for our customers. That's a plus for those retailers. And I presume it's a plus for Steve as well. It does make the warranty situation a little easier too, because in the end we care that our customers are well treated. If one of our customers has put a Dinan chip in the car, and for whatever reason there's a version change that someone hasn't picked up, and that creates a drivability problem, the person takes it in, the retailer knows there's a Dinan chip in the car, he swaps the Motronic unit [with a known good one], he realizes the that the chip is the problem, instead of turning to the customer and saying, "hey, you're out of luck," he just calls Steve, whom he represents, and says, "Steve, what's going on?" and Steve says, "Oh yeah... a version change. I'll ship you another chip." The customer never knows who covered the cost of diagnosing and repairing the car. All he knows is he had a problem with his BMW, he took it to the BMW retailer, they fixed it and now he's happy. So, I think that Steve is approaching some of our retailers. I don't know whether others will do it as well.

**Roundel:** *Would it be accurate to say that, within a short time, we'll be able to buy a complete, brand new BMW tuned by Dinan Engineering off the showroom floor at selected BMW retailers?*

**Mr. Brekus:** As I understand it, Steve is working on that kind of program with some of our retailers. *Car and Driver* ran an article and talked about this "off lease program." It talked about 850s and M3s as well. The idea being that somehow—the implication of the *Car and Driver* article was that we were basically trying to do something with Steve to push 850s off lease—that he would modify them and they

would be sold through retailers. Steve, I think, sees an opportunity. He designed a lot of interesting parts for the 850s back when they were introduced. I think what he would like to do with retailers that would represent him is basically put together a package that, if a customer said, "I can now buy an 850 off lease, through the BMW Certified Pre-Owned program for a lot less money than I would have paid for a new 850, and I'm going to put some Dinan parts into it," sure, that would be a marketing concept for Steve, but it has nothing to do with us.

**Mr. Wensberg:** Mike, I think the example you're referring to is like the Reeves Callaway situation with Chevrolet, or Saleen with Ford. Clearly there are people out there doing this. We're nowhere near that stage.

**Roundel:** *Let's phrase the question in another way. We're all familiar with the relationship that Alpina has with BMW AG and BMW of Great Britain. Do you suppose there'll ever be a day when Dinan Engineering would be to BMW NA as Alpina is to BMW AG and BMW GB?*

**Mr. Brekus:** I can't really answer the question. California is a long way from Germany. Alpina is just down the road from Munich. That relationship goes back sixty years...

**Mr. Feiner:** That relationship goes back to the very beginning.

**Mr. Brekus:** Alpina enjoys a relationship that is very different even that [A.C] Schnitzer. Schnitzer's relationship with BMW is essentially the same as Steve Dinan's relationship with BMW. They are a tuner. Even though they run a fair amount of our racing programs. Alpina has a particular relationship...

**Roundel:** *As a manufacturer...*

**Mr. Brekus:** Yes, as a manufacturer. Essentially they buy uncompleted vehicles from us and those vehicles are then titled in Germany as an Alpina not as a BMW. That's a very different kind of relationship. You know, Steve being in California—you know, OK we're starting to build some cars in Spartanburg [South Carolina]... it's a long way away and certainly—I presume I'll be here for awhile—but I can't see it in my lifetime. But that's not to say it couldn't happen. But it's certainly not in the cards and it's certainly not something that we're actively trying to create.

**Roundel:** *Do BMW NA's corporate attorneys have sort of the ultimate veto power over the nature of any relationship BMW NA may have with Dinan Engineering—in terms of corporate liability jitters?*

**Mr. Brekus:** BMW of North America is run as a team. Any discussions like this, about

what we do in terms of products, advertising, relationships, marketing efforts, etc., get discussed jointly, by people from marketing, engineering, warranty and service, from public relations and legal. Everyone gives their input. As a business, it's always about managing risk, about achieving things in the market place and about managing risk. So, whether it's an ad or a relationship or a relationship or anything else, the legal department really has a voice, but in the end there's the Chairman, the President and the Chief Financial Officer who together make up the board of BMW of North America and we have discussions and make proposals. All the input is considered in making a decision. There's nobody who's sitting in a high chair saying, "Nope, you've gone too far." We actually have a very good relationship with our chief general counsel.

**Roundel:** *What if a customer with a Dinan car comes into a retailership that does not have this working relationship with Dinan, and he has a problem with the car...*

**Mr. Brekus:** Then the situation becomes more complicated. From our standpoint it's still the same. We cover what's not been modified. Steve's position is also, as I understand it, Steve needs to talk for himself in terms of what his warranty is, but I can tell you what I think he'd say. I think he'd said, it doesn't matter whether [the car] comes into a Dinan authorized retailership or otherwise [his parts are still covered by his warranty]. But the issue that gets a little more complicated is that someone has to convince that retailer, who has no relationship with Dinan, to pick up the phone and call Dinan and tell them what the problem is, or another tuner if another tuner does something similar, and get an agreement with that tuner as to what's wrong, what needs to be fixed, how much time it will take, how much they should be charged for that...clearly it's possible, but I think it's a little bit more complicated.

**Roundel:** *Will that issue be addressed in a future Service Information Bulletin?*

**Mr. Brekus:** No, that's not our business.

**Roundel:** *Well, we thank you gentlemen for your time and consideration in granting this interview. We look forward to seeing you at the BMW CCA Oktoberfest '97 in Waterviller Valley, NH...*