

# **BBB National Programs Arbitration Program for Claims Arising Under Subaru Engine Bearings Class Action Settlement**

## **Information and Arbitration Rules**

### **INFORMATION**

BBB National Programs (“BBB NP”) is a nonprofit organization providing independent and impartial dispute resolution services to resolve disputes between a business and its customers.

Subaru of America, Inc. (“Subaru”) has agreed to participate in an arbitration process administered by BBB NP to resolve disputes for claimants who have been denied compensation under the terms of the class action settlement in the case of Vincent Salcedo et al. v. Subaru of America, Inc. et al., Civil Action No. 1:17-CV-08173 (D. N.J.).

You can find more information about the class action and settlement agreement at the following link: <http://www.enginebearings.settlementclass.com/>.

Arbitration in this program is available only to settlement class members who have been denied compensation by Subaru after a second review determination. The arbitrator’s authority is limited to deciding whether a claimant is entitled to reimbursement under the terms of the class action settlement, and the decision of the arbitrator is **final** and **binding** on both parties.

**Please note that, under the terms of the class action settlement, requests for arbitration must be filed within 30 days following the date of Subaru’s second review determination denying the reimbursement sought.**

Attached you will find:

- *BBB National Programs Arbitration Rules for Claims Arising Under Subaru Engine Bearings Class Action Settlement* describing the arbitration process and the remedies that may be awarded in arbitration.
- *Summary of Eligibility and Remedies* providing an overview of eligibility and remedies that may be awarded under the class action settlement. This summary also identifies documents that you need to submit in support of your claim. Please review the class action settlement for full details as to eligibility, remedies and required documentation.
- An arbitration request form with instructions.

### **How do I contact BBB National Programs?**

You can reach BBB National programs by calling 1.800.955.5100 or through our website at <https://www.bbbtnp.org>. All documents, correspondence, notices, and requests for records should be sent to BBB National Programs, Inc. at 3033 Wilson Blvd, Suite 600, Arlington, VA

22201. Documents and case-related information also may be faxed to BBB National Programs at 703-247-9700. Please include your case number on all documents submitted.

### **Beginning the process:**

You must complete the arbitration request form and submit it to BBB NP with any required documentation.

It is important that you submit complete information about your reimbursement request as required by the class action settlement. Should you encounter difficulty obtaining information, please let us know.

### **What is arbitration?**

Arbitration under this program is an informal process in which a settlement class member and Subaru present their positions in writing to an impartial third party, an arbitrator. The specific issues the arbitrator is asked to consider will be outlined in a document called the Agreement to Arbitrate, which will be drafted by BBB NP as described in the attached arbitration rules.

The arbitration will take place by written submission unless the arbitrator determines that a telephone or video hearing is needed. The arbitrator will review the written testimony and evidence, and oral testimony if there is a telephone/video hearing, and will issue a written decision that the arbitrator deems fair and falls within the arbitrator's authority under the arbitration rules and the terms of the class action settlement. As noted above, the arbitrator's decision is binding on both Subaru and the settlement class member.

### **Who is the arbitrator?**

Arbitrators are attorneys or other persons with arbitration experience who are interested in the fair and expeditious resolution of consumer disputes. They are trained and certified by BBB NP.

A single arbitrator will be assigned to decide your claim. Your arbitrator will be neutral and will be selected in a manner to avoid any conflict of interest. Prior to the arbitration we will provide you with a biography with the arbitrator's qualifications and background.

### **What will happen at the hearing?**

In most instances, the arbitrator will issue a decision based only on the written submissions of the parties. Initial positions will be exchanged between the parties for rebuttal comments prior to being sent to the arbitrator. If the arbitrator requests it, a telephone or video hearing may be held to provide the parties with the opportunity to present their positions orally.

### **Suggestions for preparing your case:**

Your written testimony should be clear, concise, and supported by relevant documentation.

Please submit to BBB NP a copy of all documents and testimony you wish the arbitrator to consider. **Please include all documents that are required to support your claim under the terms of the class action settlement.**

If you have relevant witnesses, please contact them and ask them to provide a written statement. You are responsible for your witnesses' submission of evidence.

Documentation and testimony from both parties should provide the arbitrator with all arguments and evidence you believe are relevant to the question of whether reimbursement should be awarded under the terms of the class action settlement.

## **ARBITRATION RULES**

### **1. DEFINITIONS**

The following list defines key words as they are used in these *Rules*:

- A.** “Arbitration” means the process in which an impartial person hears and decides disputes between a Settlement Class Member and Subaru relating to the denial of reimbursement under the terms of the Class Action Settlement.
- B.** “BBB NP” means BBB National Programs, Inc., administrator of the Arbitration.
- C.** “Claimant” means a Settlement Class Member whose claim for reimbursement under the terms of the Class Action Settlement has been denied after a second review determination by Subaru.
- D.** “Class Action Settlement” means the agreement by the parties in resolution of the *Vincente Salcedo et al. v. Subaru of America, Inc. et al.* class action lawsuit (Civil Action No. 1:17-CV-08173) (D. N.J).
- E.** “Dispute Resolution Specialist” means the BBB NP staff person assigned to help you resolve your dispute.
- F.** “Subaru” means Subaru of America, Inc.
- G.** “Parties” refers to the Claimant and Subaru.
- H.** “Settlement Class Member(s)” has the same meaning as that term is defined in the Class Action Settlement.
- I.** “We” and “Us” refers to BBB NP.
- J.** “You” refers to the Parties involved in the dispute being arbitrated.

### **2. SCOPE OF ARBITRATION**

Arbitration is limited to disputes filed by or on behalf of a Claimant to appeal the denial of a claim for reimbursement under the terms of the Class Action Settlement after a second review determination by Subaru. As required by the Class Action Settlement, the request to arbitrate must be submitted within 30 calendar days following the date of the second review determination.

### **3. SETTLEMENT**

The Dispute Resolution Specialist may assist in efforts to resolve your dispute prior to arbitration if requested by the parties. If you and the Subaru representative agree to a settlement, please inform your Dispute Resolution Specialist as soon as possible.

If both parties voluntarily decide to settle the dispute at any time before a decision is made by the arbitrator, the settlement will end the dispute and no decision will be made by the arbitrator. The Dispute Resolution Specialist will send each party a letter detailing the terms of the settlement.

#### **4. AGREEMENT TO ARBITRATE**

The Dispute Resolution Specialist shall prepare an Agreement to Arbitrate that lists the reimbursement sought by the Claimant under the terms of the Class Action Settlement.

The Agreement to Arbitrate shall include only the issues that fall within the scope of the Class Action Settlement and these *Rules*.

The Agreement to Arbitrate shall be sent to the parties along with the notice setting the initial deadline by which parties should submit their initial written positions, documentation, and any other evidence. If the Agreement to Arbitrate does not correctly describe the dispute you wish to address at the arbitration, immediately inform your Dispute Resolution Specialist.

The reimbursement sought by the Claimant must be within the scope of the Class Action Settlement, as outlined in these *Rules*. Remedies not provided for in the Class Action Settlement, such as punitive damages, allegations of fraud or claims for personal injury or mental anguish, shall not be arbitrated.

#### **5. SELECTING YOUR ARBITRATOR**

BBB NP maintains a pool of arbitrators who have been trained and certified by BBB NP. Arbitrators do not necessarily have mechanical or legal expertise.

BBB NP shall select the arbitrator in a procedure designed to avoid any conflict of interest and provide the parties with a neutral arbitrator. If a known financial, competitive, professional, family, or social relationship exists with any party (even if the arbitrator believes the relationship is so minor that it will have no effect on the decision), it shall be revealed to the parties and either party may request an alternative arbitrator.

If the arbitrator believes he or she cannot make an impartial decision in your case, he or she shall refuse to serve as an arbitrator. BBB NP reserves the right to reject an arbitrator for any reason(s) it believes will affect the credibility of the program.

#### **6. COMMUNICATING WITH THE ARBITRATOR**

You or anyone representing you shall not communicate in any way with the arbitrator about the dispute.

All communication with the arbitrator must be sent through the Dispute Resolution Specialist.

Violation of this rule compromises the impartiality of the arbitration process and may result in your case being discontinued.

## **7. REPRESENTATION**

You may present your own case or have someone represent you at your own expense.

If your representative is a lawyer, you must give the lawyer's name, address and telephone number to BBB NP at least 10 days before the hearing. Your Dispute Resolution Specialist will notify the other party to give it an opportunity to obtain a lawyer.

## **8. WRITTEN SUBMISSIONS**

In most cases, the arbitrator will issue a decision based on written information that the parties have provided. We will send a notice setting an **initial deadline** for the parties to submit their initial written positions, documentation, and any other evidence they wish the arbitrator to consider. We will exchange both parties' initial written submissions and provide the parties with an opportunity to submit responses. We will send a notice setting a **final deadline** for responses to the initial submissions. You will be sent notice of final deadline at least 10 days in advance of the deadline date. After the final deadline date, no further information will be accepted or provided to the arbitrator.

## **9. TELEPHONE/VIDEO HEARING**

If the arbitrator determines that a telephone or video hearing is necessary, we will set a date (usually 25-35 days after the case is opened) and a time (during normal business hours) for the hearing and will send you notice of that date at least 10 days in advance of the hearing.

If an emergency prevents you from attending a telephone/video hearing, call BBB NP at 1.800.955.5100 prior to the scheduled hearing time. We will decide if it can be rescheduled.

We reserve the right to make a final determination as to the time and date for a telephone or video hearing.

If one party does not attend a telephone/video hearing after receiving proper notice, the arbitrator will proceed with the hearing and receive evidence from the other party. The party who did not attend the hearing will be given the opportunity to present a position in writing within the time limits set by the Dispute Resolution Specialist. If that party's position is received in a timely manner, the Dispute Resolution Specialist will send a copy to the other party for comments before providing it to the arbitrator. If the absent party does not submit a response within the set time limits, the arbitrator may make a decision without that party's position.

## **10. OATH OF PARTICIPANTS**

The parties and witnesses shall be placed under oath at any telephone or video hearing. Attorney representatives are not required to be placed under oath.

## **11. TELEPHONE/VIDEO HEARING PROCEDURES**

If a telephone or video hearing is held, each party will be given an opportunity to make a presentation of its case and hear the other party's presentation. Parties may present witnesses and evidence in support of their case and shall have the opportunity to explain or rebut information presented by the other party. Parties may also question the other parties, their witnesses and their evidence. After everyone has presented his or her case, each party will be given an opportunity to make a closing statement.

## **12. DOCUMENTS OR OTHER EVIDENCE PRESENTED AT A TELEPHONE/VIDEO HEARING**

If a telephone or video hearing is held, parties should submit any written documents or evidence they wish to rely on to the Dispute Resolution Specialist at least three days before the hearing. If submitted timely, we will make every effort to provide this information to the other party and the arbitrator before the hearing.

If you have a witness who cannot attend a scheduled telephone or video hearing, you may present that person's written statement to the arbitrator. You must submit a copy to your Dispute Resolution Specialist to share with the other party and the arbitrator.

Please inform the Dispute Resolution Specialist at least five days prior to a telephone/video hearing if you will submit any taped or digitally recorded evidence for the hearing. The Dispute Resolution Specialist will make arrangements for this information to be provided to the other party and the arbitrator.

Before the arbitrator makes a decision, a party may ask the arbitrator for a reasonable number of days to respond to a written statement or document presented by the other party that was not shared prior to the telephone/video hearing. The arbitrator may grant the request at his or her discretion.

## **13. ADMISSION OF EVIDENCE AT THE TELEPHONE/VIDEO HEARING**

You may present your case without being restricted by courtroom rules of evidence. However, you should be sure your evidence is relevant to the case.

The arbitrator may limit a party's presentation if the arbitrator believes it is repetitious or irrelevant.

No new or additional evidence may be submitted after the telephonic hearing unless requested by the arbitrator.

## **14. RECORD OF HEARING**

BBB NP will maintain basic file information including documents and other evidence presented by the Parties. Copies of these materials and official arbitration forms relating to your case will be given to you upon request. A reasonable copying fee may be charged.

## **15. ARBITRATOR REQUEST FOR NEW OR ADDITIONAL EVIDENCE**

The arbitrator may request new or additional evidence at any time before a decision is made. The arbitrator will specify a deadline for submission of that evidence to BBB NP. The arbitrator may also request that new/additional evidence be presented at a telephone or video hearing.

New or additional evidence requested by the arbitrator must be received by BBB NP within the time period specified by the arbitrator. The Dispute Resolution Specialist will send a copy of any new/additional evidence submitted by one party to the other party with a request for a response within a specified time period. Both the new/additional evidence and any timely response shall be submitted by the Dispute Resolution Specialist to the arbitrator.

When the arbitrator is satisfied that all testimony and evidence have been presented, your hearing will be closed.

## **16. TIME LIMITS**

We shall make every effort to obtain a decision in your case within 40 days from the time your claim is filed.

## **17. THE DECISION**

When the arbitrator has reached a decision in your case, all parties will receive a written decision accompanied by the arbitrator's reasons for the decision. We will not read a decision to a party over the phone.

### **A. Scope of Decision**

A decision shall be one that the arbitrator considers fair and falls within the arbitrator's authority under these *Rules* and the terms of the Class Action Settlement. **The arbitrator's decision shall be binding on both parties.**

### **B. Relief That May Be Awarded**

**The arbitrator may award to the Claimant any reimbursement to which the Claimant is entitled under the terms of the Class Action Settlement.**

### **C. Clarifying the Decision**

You may request that the arbitrator clarify a decision if you do not understand what action is required by the decision, or if and the other party disagree about what action is required by the decision.

You may not ask the arbitrator to clarify the reasons for a decision. A request for clarification will not be accepted if it attempts only to challenge the conclusions of the arbitrator or reargue your case.

A request for clarification must be in writing and received by the BBB NP before the time performance is required under the decision.

An appropriate request for clarification of the decision will be sent to the other party for response. We will send your clarification request and any response to the arbitrator, who may either clarify the decision or let the decision stand as written. Before making a decision on the clarification request, the arbitrator may request a telephone conference with all parties.

#### **D. Correcting the decision or reasons for decision**

You may request correction of the decision or reasons for decision only if the decision or reasons contain a mistake of fact, contain a miscalculation of figures, or exceed the arbitrator's authority—as defined below.

A mistake of fact is not a conclusion of the arbitrator with which you disagree; it is a true error in an objective fact such as a date, time, place or name, and may justify correction only if it concerns the essence of the decision.

A miscalculation of figures is not a dollar figure you consider to be unfair; it is an arithmetic error.

The arbitrator has exceeded his or her authority if the award does not fall within the arbitrator's authority under these *Rules* or the terms of the Class Action Settlement.

A request for correction of a decision must be in writing and received by BBB NP before the time performance is required by the decision.

If your written statement to us is an appropriate request for correction, it will be handled in the same manner as a clarification request.

#### **E. Decision is impossible to perform or to perform on time**

If any party believes the arbitrator's decision cannot be performed within the established time limit or at all, that party should immediately inform us in writing. We will process your submission in the same manner as a request for clarification.

The arbitrator may request additional evidence or do anything necessary to confirm or deny the claim of impossibility of performance. If the arbitrator confirms such impossibility, the original decision may then be changed to include any remedy falling within the scope of these *Rules*.

If Subaru has exceeded the time for performance specified in the decision, the Claimant should notify us in writing. We will immediately contact Subaru and attempt to determine the reasons for its noncompliance.

#### **F. Mathematical errors/correction**

BBB NP reserves the right to correct obvious mathematical errors in the decision and/or obvious errors in the description of any person, thing or monetary amount.

#### **G. Suspending the time to perform**

If a party submits to us a written statement relating to clarification, correction or impossibility of performing the decision, the time for performance of the decision shall be suspended until the issue is resolved.

#### **H. After decision is issued**

BBB NP will send the arbitrator's decision to the Claimant and Subaru. Once the decision has been issued:

- The parties will be bound to abide by the decision and comply with its terms.
- If Subaru fails to perform according to the arbitrator's decision, the Claimant should notify BBB NP, who will then notify class counsel and Subaru.

### **18. TIMELY OBJECTIONS**

Any failure to follow these *Rules* that may significantly affect the independence, impartiality or fairness of the arbitration process should be brought to the attention of the BBB NP at the earliest opportunity.

Any party raising such objections should attempt to document the specific harm cause by the failure to follow these *Rules*. We may request that party put its objection in writing. We will make a final decision on the appropriate action to be taken if we determine a failure to follow these *Rules* has significantly affected the independence, impartiality or fairness of the arbitration process.

### **19. CONFIDENTIALITY OF RECORDS**

It is our policy that records of the dispute resolution process are private and confidential.

BBB NP will not release the results of an individual case to any person or group that is not a party to the arbitration unless all parties agree or unless such release is required by state law or regulation or pertinent to judicial or governmental administrative proceedings.

BBB NP may use information in our records to conduct general research, which may lead to the publication of aggregate data but will not result in the reporting or publication of any personal information provided to us by a party.

## **20. LEGAL PROCEEDINGS/EXCLUSION OF LIABILITY**

In submitting to arbitration under these *Rules*, the parties agree that the arbitrator shall not be subpoenaed by either party in any subsequent legal proceeding.

The parties further agree that BBB NP (including its employees) and/or the arbitrator shall not be liable for any act or omission in connection with any Arbitration.

## **21. INTERPRETATION OF RULES/RIGHT TO DISCONTINUE ARBITRATION**

BBB NP reserves the right, consistent with applicable state or federal law and the Class Action Settlement, to make the final decision on procedural questions, the scope of the issues to be arbitrated, eligibility of a claim for arbitration, and any other questions concerning the application and interpretation of these *Rules*.

BBB NP at all times reserves the right to discontinue or decline administration of arbitration for any case(s) due to the behavior of a party or a conflict with the Class Action Settlement or any state or federal law or regulation.

**SUMMARY OF ELIGIBILITY AND REMEDIES**  
**SUBARU ENGINE BEARINGS CLASS ACTION SETTLEMENT**

*Vincente Salcedo et al. v. Subaru of America, Inc. et al., Civil Action No. 1:17-CV-08173  
(D. N.J)*

[Note: This is a summary of eligibility and remedies that may be sought in arbitration for claims denied under the terms of the class action settlement. This is not intended to be a complete list of all requirements—please see the terms of the class action settlement for additional requirements.]

**1. ELIGIBLE VEHICLES**

The following vehicles are eligible:

- Model year 2012-2014 Subra Impreza WRX or a model year 2012 through 2017 Impreza WRX STi vehicle, with VIN ending in CG203168 and up (5-door models) or CG006225 through H9826807 (4-door models).

**2. ELIGIBLE CLAIMANTS**

**An eligible claimant must satisfy all the following criteria:**

- The claimant must be a current or former owner or lessee of an eligible vehicle who did not validly and timely opt out of the settlement class under the procedure set forth in the court’s preliminary order approving the class action settlement.
- The claimant must have presented an eligible vehicle to an authorized Subaru retailer for repair of a connecting rod bearing or main bearing related failure within the eligibility period outlined in the class action settlement.
- The eligible vehicle must not currently contain (or previously have contained) any Excluding Conditions as outlined below.

**3. QUALIFYING REPAIR**

A “qualifying repair” is defined as any type of repair, replacement, diagnosis, or inspection to address a “qualifying failure.”

A “qualifying failure” is the failure of an eligible vehicle’s engine connecting rod bearings or main bearings.

A “qualifying failure” does **not include** other failures (in the absence of a connecting rod or main bearing failure) such as engine failures caused by:

- Overheating

- Lack of lubrication from abuse or poor maintenance
- Detonation, Hydrostatic lock (hydrolock) or water damage
- Head gasket failure
- Turbocharger failure
- Camshaft failure
- Timing Belt failure
- Water pump failure
- Idler pulley failure
- Any piston or piston ringland failure

#### **4. REMEDIES THAT MAY BE SOUGHT IN ARBITRATION**

Claimants may seek reimbursement under the terms of the class action settlement for claims mailed or submitted online to Subaru no later than May 22, 2019 and denied by Subaru after a second review.

##### ***A. Reimbursement for qualifying repairs***

A claimant may seek reimbursement for out-of-pocket expenses paid for qualifying repairs to the extent the claimant has not already been reimbursed by Subaru or a third party.

##### **Claims must include a repair invoice or other document(s) that shows:**

- Repair date
- Vehicle mileage at repair
- Proof that vehicle was presented to authorized Subaru Retailer before repair
- Type of repair performed, including proof that the repair was related to a connecting rod or main bearing failure (including the parts repaired/replaced)
- Proof of payment and total amount paid (for both parts and labor)
- VIN, make, and model
- Facility name, address, and phone number that performed the repair

Reimbursement may be sought for qualifying repairs performed by an authorized Subaru dealer. Reimbursement may also be sought for qualifying repairs performed by independent repair shops, within limits set out in the class action settlement, only if the vehicle was first presented to an authorized Subaru dealer.

Claimants are not eligible for reimbursement if the vehicle's service documentation indicates that the qualifying repair was due to lack of, or insufficient, engine maintenance or failure to comply with the oil and oil filter and other maintenance requirements and time/mileage schedule of the vehicle's Warranty Maintenance Booklet and Owners' Manual.

In addition, a claimant may not seek reimbursement if any Excluding Conditions<sup>1</sup> are currently present or previously existing in claimant's vehicle:

**B. Reimbursement for rental vehicle or towing**

A claimant may seek reimbursement for towing and rental expenses, subject to important terms and limitations outlined in the class action settlement.

**Claims for towing and rental expenses must include a receipt or other document(s) that shows:**

- What was purchased (e.g., a rental car or towing service)
- Facility name, address, and phone number
- Amount paid
- Date purchased
- The date and type of the corresponding repair

**C. Reimbursement to settlement class members who sold or traded in eligible vehicle with a qualifying failure**

If you experienced a qualifying failure and sold or traded in your eligible vehicle prior to obtaining the repair, reimbursement may be available subject to important terms and limitations outlined in the class action settlement.

Claimant must demonstrate that all of the following conditions have been met:

- Eligible vehicle was presented to an authorized Subaru retailer with a qualifying failure
- Eligible vehicle was subsequently sold or traded in with an unrepaired qualifying failure within the extended warranty period
- Claimant received less than fair market value for the trade-in or sale as compared to the prevailing Kelly Blue Book value at the time of the transaction

**Claims must include a receipt or other document(s) that shows:**

- Proof that vehicle was presented to authorized Subaru Retailer
- Vehicle was sold/traded with unrepaired engine
- Vehicle mileage at sale/trade
- VIN, make, and model
- Date and location of sale/trade
- Condition of vehicle at sale/trade
- Amount received as a result of sale/trade