

**STATE OF MICHIGAN
22ND CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

ANGELA PERRY, et al.

Plaintiffs,

v.

PROGRESSIVE MARATHON INSURANCE
COMPANY, et al.

Defendants.

Case No. 22-000971-CK

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ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

At a session of said Court, held in Ann Arbor,
County of Washtenaw, State of Michigan on:

Date: 3/7/23

Present: Timothy P. Connors
Hon. Timothy Connors
Circuit Court Judge

Before the Court is Plaintiffs Angela Perry's and Michael Peterson's Motion for Class Certification, which Defendants Progressive Marathon Insurance Company and Progressive Michigan Insurance Company oppose. The Court reviewed the briefing and evidence filed in connection with this Motion. The Court heard oral argument from counsel and also relies on the arguments made at class certification in *Ubillus v. Progressive Marathon Insurance Company*, Case No. 2019-741-CK, also pending before me.

For the reasons stated on the record, the Court is of the opinion that Plaintiffs' Motion for Class Certification should be granted as set forth below.

I. The Putative Progressive Michigan Class

As to the putative class with policies issued by Progressive Michigan Insurance Company, the Court makes the following findings:

1. Plaintiff Angela Perry is a member of the Progressive Michigan Class, as defined below;
2. The Progressive Michigan Class is adequately defined so that its potential members can be identified;
3. Under MCR 3.501(A)(1)(a), the members of the Progressive Michigan Class are so numerous that joinder of all members is impracticable;

4. Under MCR 3.501(A)(1)(b), there are questions of law or fact common to the members of the Progressive Michigan Class that predominate over questions affecting only individual members;

5. Under MCR 3.501(A)(1)(c), the claims of Plaintiff Angela Perry are typical of the claims of the Progressive Michigan Class;

6. Under MCR 3.501(A)(1)(d), Plaintiff Angela Perry and the Progressive Michigan Class Counsel appointed below will fairly and adequately assert and protect the interests of the Progressive Michigan Class; and

7. Under MCR 3.501(A)(1)(e) and MCR 3.501(A)(2), the maintenance of this action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

The Court, therefore, **ORDERS** as follows:

1. The Court **CERTIFIES** the following Class (the “Progressive Michigan Class”):

All people insured by Progressive Michigan Insurance Company (“Progressive Michigan”) and whose insurance covers a vehicle with private-passenger physical damage coverage for comprehensive or collision loss who made a first party claim that was adjusted by Progressive Michigan as a total loss and who received an actual cash value payment from Progressive Michigan that did not include Tax, Title, and/or Registration fees, from July 18, 2016, until the date of this certification order.

Excluded from the Class is Progressive Michigan, including any parent, subsidiary, affiliate, or controlled person of Progressive Michigan; Progressive Michigan’s officers, directors, agents, or employees; the judicial officer assigned to this litigation; and members of their staffs and immediate families.

2. The Court **APPOINTS** Plaintiff Angela Perry as Progressive Michigan Class Representative.

3. The Court **APPOINTS** the following as Progressive Michigan Class Counsel: Jeff Ostrow of the law firm Kopelowitz Ostrow Ferguson Weiselberg Gilbert; E. Powell Miller, Sharon S. Almonrode, and Brian M. Saxe of the law firm The Miller Law Firm, P.C.; Andrew Shamis of the law firm Shamis & Gentile, P.A.; and Scott Edelsberg of the law firm Edelsberg Law, P.A.

4. The Court **DIRECTS** the Parties to confer and attempt to agree upon a plan for giving notice of the certification of the Progressive Michigan Class under MCR 3.501(C). If the Parties are unable to agree upon a plan of notice, they shall present the Court with one filing setting forth the points on which they agree and those on which they do not, with each party explaining its position with respect to the points of disagreement. A hearing for entry of order regarding Progressive Michigan Class notice is hereby set for 1 PM on March 16, 2023.

II. The Putative Progressive Marathon Class

As to the putative class with policies issued by Defendant Progressive Marathon Insurance Company, the Court makes the following findings:

1. Plaintiff Michael Peterson is a member of the Progressive Marathon Class, as defined below;
2. The Progressive Marathon Class is adequately defined so that its potential members can be identified;
3. Under MCR 3.501(A)(1)(a), the members of the Progressive Marathon Class are so numerous that joinder of all members is impracticable;
4. Under MCR 3.501(A)(1)(b), there are questions of law or fact common to the members of the Progressive Marathon Class that predominate over questions affecting only individual members;

5. Under MCR 3.501(A)(1)(c), the claims of Plaintiff Michael Peterson are typical of the claims of the Progressive Marathon Class;

6. Under MCR 3.501(A)(1)(d), Plaintiff Michael Peterson and the Progressive Marathon Class Counsel appointed below will fairly and adequately assert and protect the interests of the Class; and

7. Under MCR 3.501(A)(1)(e) and MCR 3.501(A)(2), the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

The Court, therefore, **ORDERS** as follows:

1. The Court **CERTIFIES** the following Class (the “Progressive Marathon Class”):

All people insured by Progressive Marathon Insurance Company (“Progressive Marathon”) and whose insurance covers a vehicle with private-passenger physical damage coverage for comprehensive or collision loss who made a first party claim that was adjusted by Progressive Marathon as a total loss and who received an actual cash value payment from Progressive Marathon that did not include Tax, Title, and/or Registration fees, from July 18, 2016, until the date of this certification order.

Excluded from the Class is Progressive Marathon, including any parent, subsidiary, affiliate, or controlled person of Progressive Marathon; Progressive Marathon’s officers, directors, agents, or employees; the judicial officer assigned to this litigation; and members of their staffs and immediate families.

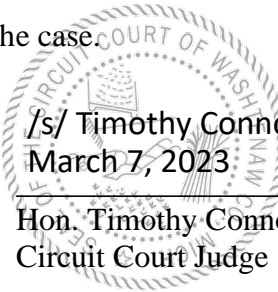
2. The Court **APPOINTS** Plaintiff Michael Peterson as Progressive Marathon Class Representative.

3. The Court **APPOINTS** the following as Progressive Marathon Class Counsel: Jeff Ostrow of the law firm Kopelowitz Ostrow Ferguson Weiselberg Gilbert; E. Powell Miller, Sharon S. Almonrode, and Brian M. Saxe of the law firm The Miller Law Firm, P.C.; Andrew Shamis of the law firm Shamis & Gentile, P.A.; and Scott Edelsberg of the law firm Edelsberg Law, P.A.

4. The Court **DIRECTS** that notice of the certification of the Progressive Marathon Class under MCR 3.501(C) shall be given to the Class as part of the notice plan approved in the related case of *Ubillus v. Progressive Marathon Insurance Co.*, Case No. 2019-741-CK to the extent the Progressive Marathon Class in this case overlaps with the one certified in *Ubillus*. To the extent there is not overlap, the Parties are to confer and attempt to agree upon a plan for giving notice of the certification of the Progressive Marathon Class under MCR 3.501(C). If the Parties are unable to agree upon a plan of notice, they shall present the Court with one filing setting forth the points on which they agree and those on which they do not, with each party explaining its position with respect to the points of disagreement. A hearing for entry of order regarding the non-overlapping Progressive Marathon Class notice is hereby set for 1 PM on March 16, 2023.

This is not a final order and does not close the case.

IT IS SO ORDERED on March __, 2023.



/s/ Timothy Connors
March 7, 2023

Hon. Timothy Connors
Circuit Court Judge

Approved as to form:

By: /s/ *Brian M. Saxe*

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DATED: March 1, 2023