

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

GONZALO UBILLUS, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

MARATHON INSURANCE
COMPANY,

Defendant.

CASE NO. 2019-741-CK
HON. TIMOTHY P. CONNORS

Michael L. Pitt (P24429)
Beth M. Rivers (P33614)
**PITT, MCGEHEE, PALMER BONANNI &
RIVERS, P.C.**
117 W. Fourth Street, Suite 200
Royal Oak, MI 48067
(248) 398-9800
mpitt@pittlawpc.com
brivers@pittlawpc.com

Attorneys for Plaintiffs

Scott R. Jeeves (admitted *pro hac vice*)
Roger L. Mandel (admitted *pro hac vice*)
JEEVES MANDEL LAW GROUP, P.C.
2132 Central Avenue
St. Petersburg, FL 33712
sjeeves@jeeveslawgroup.com
rmandel@jeevesmandellawgroup.com

Craig E. Rothburd (admitted *pro hac vice*)
CRAIG E. ROTHBURD, P.A.
320 W. Kennedy Blvd. – Suite 700
Tampa, FL 33606
craig@rothburdpa.com
Attorneys for Plaintiffs

Elaine M. Pohl (P60359)
PLUNKETT COONEY
38505 Woodward Ave., Suite 100
Bloomfield Hills, MI 48304
(248) 901-4000
epohl@plunkettcooney.com

Attorneys for Defendant

Karl A. Bekeny (admitted *pro hac vice*)
Benjamin C. Sassé (admitted *pro hac vice*)
Ethan W. Weber (admitted *pro hac vice*)
TUCKER ELLIS LLP
950 Main Avenue, Suite 1100
Cleveland, OH 44113
(216) 592-5000
(216) 592-5009 (Fax)
karl.bekeny@tuckerellis.com
benjamin.sasse@tuckerellis.com
ethan.weber@tuckerellis.com

Attorneys for Defendant

**ORDER GRANTING PLAINTIFF’S MOTION FOR PARTIAL SUMMARY
DISPOSITION, DENYING DEFENDANT’S MOTION FOR SUMMARY DISPOSITION,
AND DENYING WITHOUT PREJUDICE PLAINTIFF’S MOTION TO STRIKE
DEFENDANT’S AFFIRMATIVE DEFENSES**

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

Date:

1/6/23

Present:

Hon. Timothy Connors
Circuit Court Judge

Before the Court are Plaintiff Gonzalo Ubillus’s Motion for Partial Summary Disposition and Motion to Strike Progressive’s Affirmative Defenses and Defendant Progressive Marathon Insurance Company’s Motion for Summary Disposition. The Court reviewed the briefing filed in this matter and the PowerPoint presentations provided to the Court by the parties. On September 22, 2022, and September 26, 2022, the Court heard oral argument from counsel and reviewed the PowerPoint presentations submitted by each party.

For the reasons stated on the record, the Court is of the opinion that Plaintiff’s Motion for Partial Summary Disposition should be granted, that Defendant’s Motion for Summary Disposition should be denied, and that Plaintiff’s Motion to Strike Defendant’s Affirmative Defenses should be denied without prejudice.

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

1. Pursuant to Count I of the Complaint, the Court **GRANTS** Plaintiff summary disposition on his claim for declaratory judgment as to sales tax, certificate of title fees, and transfer of registration fees. The Court declares that, as a matter of law, without regard to whether he ever purchased a replacement vehicle and incurred such costs, Progressive was obligated to pay Plaintiff up front (under his Policy as part of its cash payment to him of the actual cash value of his total loss vehicle) 6% sales tax under MCL § 205.52(1), a \$15.00 certificate of title fee under MCL § 257.806, and an \$8.00 transfer of registration fee under MCL § 257.809, in connection

with Plaintiff's covered total loss because he was reasonably likely to incur those costs as of the date of loss;

2. Pursuant to Count I of the Complaint, the Court **GRANTS** Plaintiff's request for partial summary disposition on his claim for declaratory judgment as to documentary preparation fees as described in MCL § 492.113(2)(a). The Court declares that as a matter of law, Progressive was obligated to pay documentary preparation fees to Plaintiff, up front (under his Policy as part of its cash payment to him of the actual cash value of his total loss vehicle) and without regard to whether he ever purchased a replacement vehicle and incurred such fees, if he was, as of the date of loss, reasonably likely to incur such fees;

3. Pursuant to Counts II and III of the Complaint, the Court **GRANTS** Plaintiff summary disposition against Progressive for breach of contract in the amount of \$515.72, which is comprised of: (a) sales tax of 6% amounting to \$492.72; (b) a certificate of title fee of \$15.00; and (c) a transfer of registration fee of \$8.00;

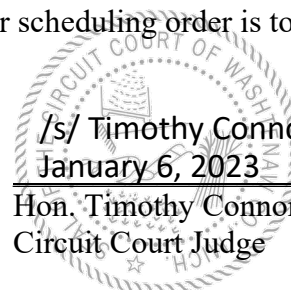
4. The Court **GRANTS** Plaintiff's request for pre-judgment interest, post-judgment interest, and costs of Court;

5. The Court **DENIES** Defendant's Motion for Summary Disposition; and

6. The Court **DENIES WITHOUT PREJUDICE** Plaintiff's Motion to Strike Defendant's Affirmative Defenses. Defendant was directed, should it so choose, to file amended affirmative defenses setting forth the factual bases for any of the affirmative defenses it intends to pursue, and Defendant did so on October 26, 2022.

This Order does not close the case. A further scheduling order is to issue.

IT IS SO ORDERED on January 6, 2023.

The seal of the Circuit Court of Washington is circular, featuring a central emblem with a scale of justice and a book, surrounded by the text "CIRCUIT COURT OF WASHINGTON" and "1889".
/s/ Timothy Connors
January 6, 2023

Hon. Timothy Connors
Circuit Court Judge

Approved as to form:

By: /s/ Michael L. Pitt

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RIVERS, P.C.**

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brivers@pittlawpc.com

Scott R. Jeeves (admitted *pro hac vice*)

Roger L. Mandel (admitted *pro hac vice*)

JEEVES MANDEL LAW GROUP, P.C.

2132 Central Avenue

St. Petersburg, FL 33712

sjeeves@jeeveslawgroup.com

rmandel@jeevesmandellawgroup.com

Attorneys for Plaintiffs

Dated: January 5, 2023

By: /s/ Elaine M. Pohl

Elaine M. Pohl (P60359)

PLUNKETT COONEY

38505 Woodward Ave., Suite 100

Bloomfield Hills, MI 48304

(248) 901-4000

epohl@plunkettcooney.com

Karl A. Bekeny (admitted *pro hac vice*)

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ethan.weber@tuckerellis.com

Attorneys for Defendant