

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

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

Plaintiff,

v.

PROGRESSIVE MARATHON
INSURANCE COMPANY,
a Michigan corporation,

Defendant.

Case No. 19-000741-CK
Hon. Timothy Connors

CLASS ACTION

-Consolidated with-

ANGELA PERRY and
MICHAEL PETERSON,
individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

PROGRESSIVE MICHIGAN INSURANCE
COMPANY, a Michigan corporation, and
PROGRESSIVE MARATHON
INSURANCE COMPANY,
a Michigan corporation,

Defendants.

Case No. 22-000971-CK
Hon. Timothy Connors

CLASS ACTION

**ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

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**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

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

Date: 7/22/24

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

Before the Court is Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. The Court has carefully reviewed the record, including the motion, the

Settlement Agreement and Release and its attached exhibits.

WHEREAS, Plaintiffs Gonzalo Ubillus, Angela Perry, and Michael Peterson, on behalf of themselves and a proposed Settlement Class, and Defendants Progressive Michigan Insurance Company and Progressive Marathon Insurance Company have agreed, subject to Court approval, to settle these Actions upon the terms and conditions in the Agreement;

NOW, THEREFORE, based on the Agreement, and the files, records, and proceedings in these cases, and it appearing to the Court that a Final Approval hearing should be held on whether the proposed Settlement contained in the Agreement should be finally approved as fair, reasonable, and adequate;

IT IS HEREBY ORDERED that the Motion is GRANTED as follows:

1. The Agreement (including Exhibits) is incorporated by reference in this Order, and all terms the Agreement defines have the same meaning in this Order.

2. **Preliminary Approval of Settlement.** The Court preliminarily approves the Settlement as within the range of possible final approval, and as meriting submission to the Settlement Class for its consideration. The proposed Settlement terms are within the range of fairness, reasonableness, and adequacy under the circumstances to warrant providing Notice to the Settlement Class. The Agreement is the product of arm's-length negotiations between the Parties and their counsel. The Parties and their counsel had sufficient information to evaluate the strengths and weaknesses of the Actions and to conduct informed settlement discussions. Neither the Agreement nor its terms and provisions—nor any negotiations or proceedings connected with it—shall be construed as an admission or concession by the Released Persons of the truth of any allegations in the Actions or of any liability, fault, or wrongdoing of any kind whatsoever by the Released Persons.

3. **Jurisdiction.** This Court has jurisdiction over these Actions and all Parties, including Plaintiffs and all Potential Settlement Class Members.

4. **Conditional Certification of Settlement Class.** The Court previously certified a class against Progressive Marathon in *Ubillus*. See *Gonzalo Ubillus v. Progressive Marathon Insurance Company*, Case No. 19-000741-CK (Jan. 6, 2023) (order granting class certification). In *Perry*, the Court certified one class against Progressive Marathon and one class against Progressive Michigan. See *Angela Perry et al. v. Progressive Michigan Insurance Company et al.*, Case No. 2022-000971-CK (Mar. 7, 2023) (order granting class certification). The Parties propose a Settlement Class that is materially similar to the classes previously certified in the Actions.

5. For settlement purposes only, the Court conditionally certifies the following Settlement Class:

All Insureds covered under any Automobile Insurance Policy who made a first-party claim and received from Progressive a Total Loss Claim Payment within the Class Period.

6. Excluded from the Settlement Class are: (a) Progressive's present or former officers, directors, employees, and legal representatives; (b) the Neutral Evaluator, Class Counsel, the Washtenaw Circuit Court Judge presiding over this Action, mediator Michael Ungar, Esq., and any member of their respective immediate families; (c) Insureds with Covered Total Loss Claims for which Progressive received a valid and executed release; (d) Insureds who timely opted-out of any litigation class previously certified in the Actions; and (e) Potential Settlement Class Members who timely opt-out of the Settlement Class.

7. The Class Period is (a) July 18, 2013, through the date of Preliminary Approval for

Progressive Marathon, and (b) July 18, 2016, through the date of Preliminary Approval for Progressive Michigan

8. Under MCR 3.501(A)(1)(a), the Potential Settlement Class Members are so numerous that joinder of all members is impracticable;

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

10. Under MCR 3.501(A)(1)(c), the claims of Plaintiffs are typical of the claims of the Settlement Class;

11. Under MCR 3.501(A)(1)(d), Plaintiffs and Class Counsel appointed below will fairly and adequately assert and protect the interests of the Settlement Class; and

12. 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.

13. Gonzalo Ubillus, Michael Peterson, and Angela Perry are preliminarily appointed Class Representatives for the Settlement Class.

14. The following attorneys, all of whom were appointed as counsel for the previously certified classes in either *Ubillus* or *Perry*, are preliminarily appointed as Class Counsel for the Settlement Class: Jeff Ostrow of Kopelowitz Ostrow P.A.; E. Powell Miller, Sharon Almonrode, and Brian Saxe of The Miller Law Firm, P.C.; Andrew Shamis of Shamis & Gentile, P.A.; and Scott Edelsberg of Edelsberg Law, P.A.; Roger Mandel and Scott Jeeves of Jeeves Mandel Law Group, P.C.; Craig Rothburd of Craig E. Rothburd, P.A.; Michael Pitt of Pitt, McGhehee, Palmer, Bonanni & Rivers, P.C., and Casim Neff of Neff Insurance Law, PLLC.

15. **Notice Program, Claims Process, and Claim Forms.** The Court approves, as to form and content, Notices substantially in the forms attached as *Exhibits 2-6* to the Agreement, as well as Claim Forms substantially in the form attached as *Exhibits 7-9*. The Parties have discretion to jointly make non-material minor revisions to the Notices and Claim Forms before publishing.

16. The Court finds the Notice Program specified in the Agreement is reasonably calculated to give notice to the Settlement Class of: (a) the pendency of the Actions; (b) conditional certification of the Settlement Class; (c) the existence and terms of the Agreement; (d) Potential Settlement Class Members' rights to make Claims, opt-out of the Settlement, or object to the Settlement; and (e) matters to be decided at the Final Approval hearing. This Notice Program also satisfies the due process requirements of the Michigan and United States Constitutions, as well as the requirements of MCR 3.501(C). The Parties and Settlement Administrator shall comply with this Notice Program, including its procedures for Notices returned as undelivered due to an incorrect address.

17. Notice of the proposed Settlement shall not be provided to Insureds who opted-out of any litigation class previously certified in *Ubillus* or *Perry* because they already excluded themselves from the Actions.

18. To be timely, the Pre-Filled Paper Claim Form or Blank Claim Form must be postmarked on or before the Claim Deadline as specified in the Agreement. The Pre-Filled Electronic Claim Form or Blank Electronic Claim Form must be submitted electronically on the Settlement Website on or before 11:59 p.m. EST on the Claim Deadline, after which the Settlement Administrator shall deactivate the portal for submitting an Electronic Claim Form.

19. **Settlement Administrator.** The Court approves, and designates as Settlement Administrator, A.B. Data Group. Class Counsel and Progressive may by written agreement

substitute a different organization as Settlement Administrator, subject to approval by the Court. Absent agreement, either Class Counsel or Progressive may move the Court to substitute a different entity as Settlement Administrator, upon a showing of good cause. The Settlement Administrator must perform all obligations imposed by the Agreement, including:

a. Sending the Email Notice, Reminder Email Notice, Postcard Notice, and Reminder Postcard Notice, to the Potential Settlement Class Members, in the manner specified in the Notice Program;

b. Processing opt-out requests and objections to the Settlement;

c. Implementing the Claim process, in the manner specified in the Agreement;

d. The creation of a Settlement Website that shall contain: the Agreement; the Long Form Notice; a downloadable Blank Paper Claim Form;; the signed Preliminary Approval Order; and answers to frequently asked questions. The Settlement Administrator must add to the Settlement Website all other material settlement-related filings, including the Motion for Final Approval and the Application for Attorneys' Fees, Costs, and Service Awards. The Settlement Website must also contain Spanish translations of the Long Form Notice and Blank Paper Claim Form. The Settlement Website shall remain accessible until 180 days after all Settlement Class Member Payments are made.

e. Additionally, the Settlement Website shall have: (i) a "Make A Claim" button permitting a Potential Settlement Class Member to access, electronically sign, and submit a Pre-Filled Electronic Claim Form, (ii) a method to access, fill out, electronically sign and submit a Blank Electronic Claim Form with an electronic signature because a Potential Settlement Class Member does not have an Unique ID, and (iii) a method to request that a Blank Paper Claim Form be mailed or emailed to the Potential Settlement

Class Member.

f. The Settlement Administrator shall also maintain a toll-free IVR telephone system as further described in the Notice Program, along with a post office box for receiving opt-out requests, objections, and any other settlement-related communications. The Settlement Administrator shall promptly provide copies of all such settlement-related communications to Class Counsel and Defendants' Counsel.

20. **Final Approval Hearing.** A Final Approval Hearing shall be held before this Court at 9:30 a.m. on November 21, 2024, at the 22nd Circuit Court in Washtenaw County, 101 E. Huron Street, Ann Arbor, MI 48107-8645, or via video or teleconference. The Final Approval Hearing will address whether to enter a Final Approval Order that: (a) finally certifies the Settlement Class for settlement purposes only; (b) finds the Court has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve this Agreement; (c) gives Final Approval to the Settlement and directs the Parties and counsel to comply with and consummate the terms of the Agreement; (d) finds Class Counsel and the Plaintiffs adequately represented the Settlement Class; (e) finds the terms of this Agreement are fair, reasonable, and adequate to the Settlement Class Members; (f) finds that the Notice sent to the Settlement Class members complied with MCR 3.501(C) and the requirements of Due Process; (g) finds the Opt-Out List is a complete list of all Potential Settlement Class Members who have timely requested to opt-out of the Settlement and, accordingly, neither share in nor are bound by the Settlement; (h) provides that the Plaintiffs and all Settlement Class Members, and their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, attorneys, agents, assigns, and successors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have submitted a Valid Claim, and regardless of whether they have received actual

notice of the Settlement, have conclusively compromised, settled, discharged, and released all Released Claims against Progressive and the other Released Persons, and are bound by the provisions of this Agreement; (i) dismisses all claims in the Actions on the merits and with prejudice, and without attorneys' fees or costs except as provided herein, and entering Final Judgment thereon; and (j) determines the amounts of the Attorneys' Fees and Costs Award to Class Counsel and the Service Awards to the Plaintiffs.

21. **Filing of Claims.** Valid and completed Claim Forms must be submitted by the Claim Deadline, which is 15 days after the original date set for the Final Approval Hearing. Any errors or other deficiencies identified with completed Claim Forms shall be addressed in the manner specified in the Agreement.

22. **Opt-Out Requests.**

a. Any Potential Settlement Class Member who wishes to be excluded, meaning opt-out, from the Settlement Class and thus not bound by the terms of the Agreement must submit an opt-out request. To be effective, such a request must include the Potential Settlement Class Member's name, address, telephone number, email address (if any), an unequivocal statement the Potential Settlement Class Member wishes to be excluded from the Settlement Class, and the signature of the Potential Settlement Class Member. The request must be mailed to the Settlement Administrator and postmarked by the Opt-Out Deadline, which is 30 days before the original date set for the Final Approval Hearing. For the avoidance of doubt, any Potential Settlement Class Member who does not timely opt-out of this Settlement will be deemed a Settlement Class Member and release the Released Claims.

b. No one may exercise opt-out rights on behalf of any other person—whether as agent or representative or another or otherwise—except upon proof of a legal power of attorney,

conservatorship, trusteeship, or other legal authorization. No opt-out will be effective except as to the individual Potential Settlement Class Member requesting to opt-out of the Settlement Class. Thus, no one may exclude other Insureds within the Settlement Class as a group, class, or in the aggregate.

c. Any Potential Settlement Class Member who elects to opt-out shall not receive any benefits of the Settlement, shall not be bound by the terms of the Agreement, and shall have no standing to object to the Settlement or the Application for Attorneys' Fees, Costs, and Service Award.

d. No later than 10 days before the original date set for the Final Approval Hearing, the Settlement Administrator shall submit an affidavit or declaration to the Court which includes the Opt-Out List and attests to the accuracy of that list.

23. Objections.

a. Any Settlement Class Member who does not submit a valid and timely opt-out request may submit an objection to the Settlement and/or the Application for Attorneys' Fees, Costs, and Service Award. To be considered, the written objection must satisfy the requirements specified in the Long Form Notice. An objection request must be postmarked and mailed to the Settlement Administrator, and filed with the Court, no later than the Objection Deadline, which is 30 days before the original date set for the Final Approval Hearing.

b. Any Settlement Class Member shall have the right to appear and be heard at the Final Approval Hearing, either personally or through an attorney retained at the Settlement Class Member's own expense, provided an objection is timely filed. Each objections shall contain the following:

i. the objector's full name, mailing address, telephone number, and email address (if

- any);
- ii. all factual and legal grounds for the objection, accompanied by any documentation supporting the factual grounds and any legal support for the objection known to the objector or objector's counsel;
 - iii. a statement of his or her membership in the Settlement Class;
 - iv. the number of times the objector has objected to a class action settlement within the 5 years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
 - v. the identity of all counsel (if any) who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection, and whether they will appear at the Final Approval Hearing;
 - vi. the number of times the objector's counsel and/or counsel's law firm have objected to a class action settlement within the 5 years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;
 - vii. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;

- viii. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);
- ix. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- x. the objector's signature (an attorney's signature is not sufficient).

The Parties may conduct limited discovery on any objector or objector's counsel. The Parties shall file their response to timely filed objections no later than 5 days prior to the original date set for the Final Approval Hearing.

c. Any Settlement Class Member who does not timely file a written objection that complies with the requirements of this Order, the Agreement, and Long Form Notice shall not be heard at the Final Approval Hearing, and is barred from seeking any review of the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards.

d. No one may object on behalf of any other person—whether as agent or representative or another or otherwise—except upon proof of a legal power of attorney, conservatorship, trusteeship, or other legal authorization. No objection will be effective except as to the individual Settlement Class Member who objects. Thus, no one may object on behalf of other Insureds within the Settlement Class as a group, class, or in the aggregate.

e. The Settlement Administrator will give Progressive and Class Counsel a copy of each objection with supporting documentation received by the Settlement Administrator.

f. Settlement Class Members who object to the Settlement and/or the Application for Attorneys' Fees, Costs, and Service Awards shall remain Settlement Class Members and waive their right to pursue an independent remedy against Progressive and the other Released Persons. To the extent any Settlement Class Member objects to the Settlement, and such objection is overruled

in whole or in part, such Settlement Class Member will be forever bound by the Final Approval Order.

24. **Final Approval and Application for Attorneys' Fees, Costs, and Service Awards.** Plaintiffs shall file their Motion for Final Approval of the Settlement, and Class Counsel shall file their Application for Attorneys' Fees, Costs, and Service Awards, no later than 45 days before the original date set for the Final Approval Hearing. The motion and application and all supporting documentation shall be simultaneously posted to the Settlement Website. Defendants have no obligation to make a separate filing in support of the Motion for Final Approval, but they may do so if they desire.

25. If the proposed Settlement is not finally approved by the Court, the Settlement does not become effective, or if the Settlement becomes null and void or terminates pursuant to its terms, this Order and all later orders entered in connection with the Settlement shall become null and void and shall not be used or referred to for any purposes whatsoever in these Actions or in any other case or controversy. In this event, the Agreement and all negotiations and proceedings related to it shall be deemed to be without prejudice to the rights of the Parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Agreement.

26. Progressive maintains all defenses to class certification and this Order shall not be used as evidence or be construed as relevant to whether litigation classes, including the previously certified classes, should have been certified for class treatment.

27. The Class Representatives, all Potential Settlement Class Members, and any Persons purporting to act on their behalf are preliminarily enjoined from commencing, prosecuting, or continuing to litigate any action asserting against any of the Released Persons any

of the claims made in the Action or the Released Claims, either directly, representatively, derivatively, or in any other capacity, whether by a complaint, counterclaim, defense, or otherwise, in any court, agency, or other authority or forum wherever located.

28. Further proceedings in the Actions are stayed, except that the Parties are authorized to use all reasonable procedures in connection with the administration of the proposed Settlement that are not materially inconsistent with either this Order or the terms of the Agreement.

29. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to Potential Settlement Class Members. The Final Approval Hearing may, from time to time and without further notice to the Settlement Class Members, be continued by Order of the Court. However, any continuance by the Court will be noted on the Settlement Website.

30. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement

31. Based on the foregoing, the Court sets the following schedule of actions which must precede the Final Approval Hearing:

EVENT	DATE
Completion of Notice Program	September 22, 2024 (60 days before the original date set for the Final Approval Hearing)
Motion for Final Approval and Application for Attorneys' Fees, Costs, and Service Awards	October 7, 2024 (45 days before the original date set for the Final Approval Hearing)
Opt-Out Deadline	October 22, 2024 (30 days before the original date set for the Final Approval Hearing)
Objection Deadline	October 22, 2024 (30 days before the original date set for the Final Approval Hearing)
Parties to Respond to Objections	November 16, 2024 (5 days before the original date set for the Final Approval Hearing)

Final Approval Hearing	November 21, 2024, at 9:30 a.m. (a date no sooner than 120 days after Preliminary Approval)
Claim Deadline	December 6, 2024 (15 days after the original date set for the Final Approval Hearing)

IT IS SO ORDERED on July ____, 2024.



/s/ Timothy Connors
July 22, 2024
 Hon. Timothy Connors
 Circuit Court Judge

Approved as to Form:

/s/ Michael L. Pitt
 Michael L. Pitt (P24429)

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 in Ubillus Action*

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