

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT

DANIELLE GONDOLA, individually,  
And on behalf of all others similarly situated,  
Plaintiffs,

v.

PROGRESSIVE DIRECT INSURANCE  
COMPANY,  
Defendant.

C.A. No.

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**CLASS ACTION COMPLAINT AND JURY DEMAND**

1. Plaintiff Danielle Gondola (“Gondola” or “Plaintiff”) is an individual residing in Canton, Norfolk County, Massachusetts.

2. Gondola brings this case as a putative class action. It includes claims of unfair trade practices involving complex issues, including class actions that do not involve personal injury. Accordingly, admission into the business litigation session of this Court will be sought.

3. Defendant Progressive Direct Insurance Company (“Progressive”) is an Ohio corporation with a principal place of business located at 6300 Wilson Mills Road, Mayfield Village, Cuyahoga County, Ohio.

4. Progressive is an automobile insurer authorized to transact business in the Commonwealth of Massachusetts. It sells insurance policies to Massachusetts consumers throughout the Commonwealth including in Suffolk County.

5. As an approved insurer licensed by the Division of Insurance in the Commonwealth, Progressive must comply with all state laws and regulations concerning coverage options available to its customers.

6. Massachusetts law unambiguously requires all “insurance companies undertaking to issue motor vehicle liability policies” in the Commonwealth to offer its customers physical damage insurance, which includes collision coverage, limited collision coverage, fire and theft coverage, and comprehensive coverage. *See* G. L. c. 175, § 113H.

7. The statute then goes on to say that an insurer can refuse collision coverage, only for six situations, that are articulated in the statute. *Id.* This includes the following:

- on a vehicle customarily driven by or owned by persons convicted within the most recent five year period of any category of vehicular homicide, auto insurance related fraud, or motor vehicle theft;
- on a vehicle customarily driven by or owned by persons who have, within the most recent five year period, made an intentional and material misrepresentation in making claim under such coverages;
- on a vehicle customarily driven by or owned by persons who have been involved in four or more accidents in which such person has been deemed to be at fault in excess of fifty per cent within the three years immediately preceding the effective date of the policy;
- on a vehicle customarily driven, or owned by persons convicted one time within the most recent three year period of any category of driving while under the influence of alcohol or drugs;
- on any motor vehicle for which a salvage title has been issued by the registrar of motor vehicles; or
- on a high-theft vehicle which does not have at least a minimum anti-theft or auto recovery device as prescribed by the commissioner of insurance.

*See id.*

8. Beyond these reasons articulated in the statute, all insurers must offer each customer collision coverage.

9. Gondola sought a policy of automobile insurance coverage with Progressive and Progressive placed her in a six-month policy term, on or about December 20, 2023, for two vehicles.

10. During the sale transaction, Progressive refused to offer first-party physical damage coverage to Gondola, despite her and/or her vehicles not falling into any of the statutorily articulated exceptions.

11. Gondola would have purchased collision and comprehensive coverage had Progressive not refused.

12. Gondola proceeded with purchasing Massachusetts Personal Auto Policy #975820727, that included various coverages for her 2022 Mazda CX-30 (VIN No. 3MVDMBDL7NM444940) (the “Vehicle”). Premiums in the amount of \$931.00 were assessed in order to obtain a six month the policy. The policy did not, however, include collision coverage and comprehensive because Progressive unlawfully refused to offer it to her at the time she purchased the policy.

13. Progressive maintained that the reason it refused to offer collision coverage was due to a “binding restriction,” that it baldly claimed was legal. However, Progressive never articulated the lawful basis for this “binding restriction” and how it could, as a matter of law, supersede statutory authority to the contrary and deprive a Massachusetts consumer of the statutory protections mandated by the Legislature.

14. Twenty-one days later, on January 10, 2024, Gondola was involved in a three-vehicle collision that caused physical damage to the Vehicle resulting in a total loss. She promptly reported it to Progressive, who opened a claim (Claim No. 24-4902901).

15. At all relevant times, Gondola cooperated with Progressive in all matters relating to her claim.

16. Rather than pay the claim, however, Progressive assigned the claim to an adjuster whose job it was to look for reasons to deny the claim and withhold payment.

17. Ultimately, Progressive denied the claim, resulting in Progressive's failure to indemnify Gondola for the loss incurred to her Vehicle.

18. Gondola has suffered substantial financial damages arising out of Progressive's refusal to offer collision and comprehensive coverage to her, and failure to pay the claim for damages to her Vehicle.

19. Plaintiff brings this action on behalf of herself and as a class action, pursuant to the provisions of Rules 23(a) and (b) of the Massachusetts Rules of Civil Procedure and G. L. c. 93A, § 9(2) on behalf of a class consisting of all Massachusetts customers of Progressive Direct Insurance Company who were refused the option to purchase optional insurance coverage due to a binding restriction from November 4, 2020 to the present.

20. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of his claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

21. Numerosity – Mass. R. Civ. P. 23(a)(1). The class is so numerous that individual joinder of all class members is impracticable. Plaintiff believes that there are hundreds of class members. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

22. Commonality and Predominance – Mass. R. Civ. P. 23(a)(2) and 23(b). This action involves common questions of law and fact, which predominate over any questions affecting only individual class members. All class members were subject to the same unfair and deceptive conduct, and all involve common questions of law and fact.

23. Typicality – Mass. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the claims

of the other members of the class because, among other things, all class members were similarly injured through the uniform refusal to offer optional auto insurance coverage during a binding restriction.

24. Adequacy of Representation – Mass. R. Civ. P. 23(a)(4) and G. L. c. 93A, § 9(2). Plaintiff is an adequate class representative because his interests do not conflict with the interests of the other members of the class he seeks to represent; he has retained counsel competent and experienced in class action litigation, and Plaintiff intends to prosecute this action vigorously. The class's interests will be fairly and adequately protected by Plaintiff and counsel.

25. Similarly Situated and Injured Persons – G. L. c. 93A, § 9(2). The proposed class consists of customers who have suffered the same injury as the Plaintiff and who, for the reasons stated above, are similarly situated to each other and to the Plaintiff.

26. Superiority – Mass. R. Civ. P. 23(b). A class action is superior to any other available methods for fairly and efficiently adjudicating this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages suffered by Plaintiff and the other members of the class are relatively small compared to the burden and expense that would be required to individually litigate their claims against a corporate behemoth like Progressive, so it would be impracticable for class members to individually seek redress for Progressive's wrongful conduct. Even if the class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

**COUNT ONE**  
**UNFAIR AND DECEPTIVE BUSINESS PRACTICES, G. L. c. 93A/176D**

27. Plaintiff repeats and realleges the allegations set forth above as if fully contained herein.

28. Progressive is engaged in trade or commerce for purposes of G. L. c. 93A.

29. Progressive is also engaged in the business of insurance for purposes of G. L. c. 176D.

30. Progressive has implemented a systemic, predetermined refusal to offer optional automobile insurance coverages due to a so-called “binding restriction” that runs counter to established Massachusetts law that limits the circumstances under which an insurer can refuse to offer optional coverages.

31. This has caused Massachusetts insured drivers to involuntarily forego desired coverages.

32. Because Progressive has violated G. L. c. 175, § 113H, its conduct was unfair and deceptive, has caused harm and injury to its insureds, and is actionable under G. L. c. 93A and/or 176D.

33. Progressive has also violated G. L. c. 176D, § 3(9)(a) by misrepresenting to its customers that it has no duty to offer optional coverages to its insureds.

34. All other acts and practices as alleged herein, constitute unfair and deceptive business practices proscribed by G. L. c. 93A and 176D.

35. These acts and practices have occurred primarily and substantially – if not exclusively – in Massachusetts.

36. The unfair and deceptive acts or practices set forth herein were committed knowingly and willfully and have caused and continue to cause Gondola (and all members of the

putative class) the loss of money, in an amount to be proven at trial.

37. On June 28, 2024 and July 1, 2024 Gondola served Progressive with demand letters pursuant to G. L. c. 93A, § 9 on behalf of herself and a putative class.

38. To date, Progressive has failed to respond with a reasonable offer of settlement.

39. Gondola and members of the class are entitled to treble damages, costs and attorneys' fees for the unfair and deceptive business practices set forth herein.

### **PRAYER FOR RELIEF**

WHEREFORE, the plaintiff, Danielle Gondola, individually and on behalf of all others similarly situated, respectfully requests that the Court order the following relief:

- A. An award of actual and statutory damages;
- B. Treble damages as required by law;
- C. Attorneys' fees and costs;
- D. Such other and further relief as may be just and proper.

### **JURY DEMAND**

The plaintiff, Danielle Gondola, individually and on behalf of all others similarly situated, demands a trial by jury of all claims in this Complaint so triable.

Respectfully submitted,

*/s/ Joshua N. Garick*

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Dated: November 4, 2024