

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 25-2994

Caption [use short title]

Motion for: Leave to file amicus curiae brief in support of Plaintiff-Appellee Cecelia Pryce

Set forth below precise, complete statement of relief sought: United Policyholders seeks leave of Court to file a brief as Amicus Curiae in support of Plaintiff-Appellee Cecelia Pryce

Pryce v. Progressive Cas. Ins. Co.

MOVING PARTY: United Policyholders

OPPOSING PARTY: Progressive Casualty Insurance Co.

- Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Joshua Gold, Esq.

OPPOSING ATTORNEY: Kymberly Kochis

[name of attorney, with firm, address, phone number and e-mail]

Anderson Kill PC, 7 Times Square, 15th Fl New York, New York 10036, 212-278-1000 jgold@andersonkill.com

Eversheds Sutherland (US) LLP, 1114 Avenue of the Americas, The Grace Building, 40th Floor, New York NY 10036; 212-389-5000; kymkochis@eversheds-sutherland.com

Court- Judge/ Agency appealed from: E.D.N.Y. - Frederic Block

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1): Yes No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below? Has this relief been previously sought in this court?

Opposing counsel's position on motion: Unopposed Opposed Don't Know Does opposing counsel intend to file a response: Yes No Don't Know

Requested return date and explanation of emergency:

Is the oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has the appeal argument date been set? Yes No If yes, enter date:

Signature of Moving Attorney:

/s/Joshua Gold

Date: 6/15/2026

Service: Electronic Other [Attach proof of service]

25-2994

United States Court Of Appeals
for the
Second Circuit

CECELIA PRYCE, suing individually on her own behalf and representatively on behalf of a class of plaintiffs similarly situated,

Plaintiff-Appellee,

- v. -

PROGRESSIVE CASUALTY INSURANCE COMPANY,

Defendant-Appellant,

PROGRESSIVE CORPORATION, PROGRESSIVE DIRECT INSURANCE COMPANY,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
No. 1:19-cv-01467-FB-JAM

**DECLARATION OF JOSHUA GOLD, ESQ. IN SUPPORT OF MOTION
FOR LEAVE TO FILE BRIEF OF PROPOSED *AMICUS CURIAE* UNITED
POLICYHOLDERS IN SUPPORT OF THE PLAINTIFF-APPELLEE
CECELIA PRYCE**

OF COUNSEL:
AMY BACH, ESQ.
RICHARD B. OATIS, ESQ.
UNITED POLICYHOLDERS
917 Irving St., Suite 4
San Francisco, CA 94112
Tel: (415) 393-9990
Fax: (415) 677-4170

JOSHUA GOLD, ESQ.
ANDERSON KILL P.C.
7 Times Square
New York, New York 10036
Tel: (212) 278-1000
*Attorney for Amicus Curiae
United Policyholders*

Dated: June 15, 2026

DECLARATION OF JOSHUA GOLD, ESQ.

I, Joshua Gold, hereby declare as follows:

1. I am a shareholder in the law firm of Anderson Kill, P.C., counsel for *Amicus Curiae* United Policyholders. I am admitted to practice in this Court.

2. I make this declaration upon personal knowledge.

3. I make this declaration in support of United Policyholders' Motion pursuant to Federal Rule of Appellate Procedure 29(b) to file a proposed brief as *amicus curiae* in support of Plaintiff-Appellee Cecelia Pryce, suing individually on her own behalf and representatively on behalf of a class of plaintiffs similarly situated. A copy of the proposed *amicus* brief is attached as Exhibit 1.

4. United Policyholders is a nationally respected section 501(c)(3) organization. Founded in 1991, it serves as an information resource and voice for individual and commercial insurance consumers throughout the United States.

5. The organization's work is supported by donations, foundation grants and volunteer labor, and is divided into three main areas: Roadmap to Recovery® (disaster recovery and claims help), Roadmap to Preparedness (insurance literacy and disaster preparedness), and Advocacy and Action (advancing the interests of insurance consumers and public policy).

6. United Policyholders serves an important purpose by representing the interests of policyholders. Most insurance consumers cannot afford legal counsel to

pursue their rights and interests, while insurance companies have extensive resources to retain counsel at major firms to oppose providing coverage to their policyholders. Insurance companies enjoy a significant advantage in coverage disputes because policies are frequently written on standardized forms that policyholders do not have the power to revise. United Policyholders seeks to level the playing field between these parties by offering otherwise vulnerable policyholders similar resources and comparable counsel to those of insurance companies. These cases often raise important insurance coverage and consumer issues.

7. Public officials, insurance regulators, and academics frequently seek United Policyholders' expertise in connection with insurance and legal matters. The organization often works with state regulators on matters related to policy sales, claims, and consumer rights, and it represents insurance consumers at proceedings of the National Association of Insurance Commissioners ("NAIC").

8. United Policyholders also serves on the Federal Advisory Committee on Insurance ("FACI"), which briefs the Federal Insurance Office and, in turn, the U.S. Treasury Department, on issues related to industry practice and consumer protection.

9. United Policyholders has regularly appeared as *amicus curiae* in some of this country's most important insurance cases. It has filed *amicus* briefs on key

issues of law across over 40 states since its founding. The organization works to counterbalance the widely-represented interests of insurance companies by advocating for policyholders in forums throughout the country.

10. In this case, United Policyholders seeks to appear as *amicus curiae* to discuss key issues related to the duty of good faith and fair dealing and the reasonable expectations doctrine. United Policyholders seeks to emphasize the importance of these doctrines, especially as they relate to policyholder and consumer rights.

11. All of the legal research and writing in this brief has been performed by unpaid volunteer counsel. No party to this appeal has participated in the drafting of this brief or funded this work.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 15, 2026.

/s/ Joshua Gold
Joshua Gold, Esq.

EXHIBIT 1

25-2994

United States Court Of Appeals
for the
Second Circuit

CECELIA PRYCE, suing individually on her own behalf and representatively on behalf of a class of plaintiffs similarly situated,

Plaintiff-Appellee,

- v. -

PROGRESSIVE CASUALTY INSURANCE COMPANY,

Defendant-Appellant,

PROGRESSIVE CORPORATION, PROGRESSIVE DIRECT INSURANCE COMPANY,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
No. 1:19-cv-01467-FB-JAM

**PROPOSED BRIEF OF *AMICUS CURIAE* UNITED POLICYHOLDERS IN
SUPPORT OF THE PLAINTIFF-APPELLEE CECELIA PRYCE**

OF COUNSEL:
AMY BACH, ESQ.
RICHARD B. OATIS, ESQ.
UNITED POLICYHOLDERS
917 Irving St., Suite 4
San Francisco, CA 94112
Tel: (415) 393-9990
Fax: (415) 677-4170

JOSHUA GOLD, ESQ.
ANDERSON KILL P.C.
7 Times Square
New York, New York 10036
Tel: (212) 278-1000

*Attorney for Amicus Curiae
United Policyholders*

Dated: June 15, 2026

CORPORATE DISCLOSURE STATEMENT

United Policyholders advises the Court that it is a non-profit 501(c)(3) consumer organization and that it does not have a parent corporation, subsidiary, or corporate affiliate.

TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT	i
STATEMENT OF INTEREST OF AMICUS CURIAE	1
PRELIMINARY STATEMENT	3
ARGUMENT	4
I. Insurance Companies Owe Their Policyholders a Duty to Act With Good Faith and Fair Dealing	4
II. Progressive’s Methodology Is Outside Any Policyholder’s Reasonable Expectations.....	6
CONCLUSION	7
CERTIFICATE OF COMPLIANCE	9

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>511 W. 232nd Owners Corp. v. Jennifer Realty Co.</i> , 98 N.Y.2d 144 (2002)	4
<i>Allstate Prop. & Cas. Ins. Co. v. Wolfe</i> , 629 Pa. 444 (2014)	2
<i>Belt Painting Corp. v. TIG Ins. Co.</i> , 100 N.Y.2d 377 (2003)	2
<i>Bi-Economy Mkt., Inc. v. Harleysville Ins. Co. of N.Y.</i> , 10 N.Y.3d 187 (2008)	2, 5
<i>Consol. Edison Co. v. Allstate Ins. Co.</i> , 98 N.Y.2d 208 (2002)	2
<i>Cont'l Ins. Co. v. Honeywell Int'l, Inc.</i> , 234 N.J. 23 (2018)	2
<i>Cragg v. Allstate Indem. Corp.</i> , 17 N.Y.3d 118 (2011)	6
<i>Dalton v. Educ. Testing Serv.</i> , 87 N.Y.2d 384 (1995)	5
<i>Dean v. Tower Ins. Co. of N.Y.</i> , 19 N.Y.3d 704 (2012)	6
<i>Federated Dep't Stores, Inc. v. Twin City Fire Ins. Co.</i> , 807 N.Y.S.2d 62 (1st Dep't 2006)	5
<i>Humana Inc. v. Forsyth</i> , 525 U.S. 299 (1999)	2
<i>Julian v. Hartford Underwriters Ins. Co.</i> , 45 Cal. 4th 747 (2005)	2
<i>Keyspan Gas E. Corp. v. Munich Reinsurance Am., Inc.</i> , 73 N.Y.3d 113 (2018)	2
<i>Sproull v. State Farm Fire & Cas. Co.</i> , 2021 IL 126466 (2021)	2

TABLE OF AUTHORITIES
(continued)

	Page(s)
<i>Travelers Cas. and Sur. Co. v. Certain Underwriters at Lloyd’s of London</i> , 96 N.Y.2d 583 (2001)	2
<i>U.S. Underwriters Ins. Co. v. City Club Hotel, LLC</i> , 3 N.Y.3d 592 (2004)	2
<i>Universal American Corp. v. Nat’l Union Fire Ins. Co.</i> , 25 N.Y.3d 675 (2015)	2
<i>Zicherman v. State Farm Fire & Cas. Co.</i> , 698 F. Supp. 3d 564 (E.D.N.Y. 2023)	7
 Statutes	
New York Insurance Law §§ 5101-09	3, 4, 5, 6, 7
 Other Authorities	
R. Stern et al., <i>Supreme Court Practice</i> (1986)	2

STATEMENT OF INTEREST OF AMICUS CURIAE

United Policyholders is a non-profit 501(c)(3) organization that has served as a trusted and reliable source of information, and an advocate for individual and business insurance consumers, throughout the nation for over thirty years. Its work is supported by grants, donations, and volunteers, and is divided into three programmatic areas: Roadmap to Recovery® (disaster recovery and claim help), Roadmap to Preparedness (insurance and financial literacy, and disaster preparedness), and Advocacy and Action (advancing pro-consumer laws and public policy).

Through the Roadmap to Preparedness, United Policyholders helps renters, homeowners, and small business owners protect their assets and build financial safety nets. Through the Roadmap to Recovery, it helps victims of loss navigate the insurance claim process. And through its Advocacy and Action, United Policyholders advocates for the interests of insurance consumers when courts, regulators, and legislators evaluate public policy or dispute resolution matters.

United Policyholders serves on the Federal Advisory Committee on Insurance, which briefs the Federal Insurance Office and, in turn, the U.S. Treasury Department. It also serves as an official consumer representative in the proceedings of the National Association of Insurance Commissioners.

United Policyholders has regularly appeared as *amicus curiae* in the nation's most important insurance cases, filing amicus briefs on key issues of law across more than 40 states since its founding in 1991. United Policyholders assists courts by providing an intellectual counterbalance to insurance industry arguments and promoting the evenhanded development of insurance law. The U.S. Supreme Court and state appellate courts regularly accept and cite these briefs,¹ including the New York Court of Appeals.²

An amicus is often in a superior position to “focus the court’s attention on the broad implications of various possible rulings.” R. Stern et al., *Supreme Court Practice*, 570-71 (1986). United Policyholders does just that in its proposed brief by providing insight on key issues related to (i) the duty of good faith and fair dealing and (ii) the reasonable expectations doctrine.

¹ See, e.g., *Humana Inc. v. Forsyth*, 525 U.S. 299, 314 (1999); *Sproull v. State Farm Fire & Cas. Co.*, 2021 IL 126466 ¶ 53 (2021); *Cont’l Ins. Co. v. Honeywell Int’l, Inc.*, 234 N.J. 23, 64 (2018); *Allstate Prop. & Cas. Ins. Co. v. Wolfe*, 629 Pa. 444, 452-53 (2014); *Julian v. Hartford Underwriters Ins. Co.*, 45 Cal. 4th 747, 760 (2005).

² See, e.g., *Keyspan Gas E. Corp. v. Munich Reinsurance Am., Inc.*, 73 N.Y.3d 113 (2018); *Universal American Corp. v. Nat’l Union Fire Ins. Co.*, 25 N.Y.3d 675 (2015); *Bi-Economy Mkt., Inc. v. Harleysville Ins. Co. of N.Y.*, 10 N.Y.3d 187 (2008); *U.S. Underwriters Ins. Co. v. City Club Hotel, LLC*, 3 N.Y.3d 592 (2004); *Belt Painting Corp. v. TIG Ins. Co.*, 100 N.Y.2d 377 (2003); *Consol. Edison Co. v. Allstate Ins. Co.*, 98 N.Y.2d 208 (2002); *Travelers Cas. and Sur. Co. v. Certain Underwriters at Lloyd’s of London*, 96 N.Y.2d 583 (2001).

Proposed *amicus curiae* United Policyholders (“UP”) respectfully requests that the Court accept this brief, and for the reasons below, affirm its ruling granting summary judgment to Pryce on the issue of liability.

PRELIMINARY STATEMENT

UP respectfully submits this brief in support of the insurance coverage case brought by Plaintiff-Appellee Cecelia Pryce (“Pryce”), suing individually on her own behalf and representatively on behalf of a class of plaintiffs similarly situated, against Defendant-Appellant Progressive Casualty Insurance Company (“Progressive”).

In the case at bar, Pryce was injured in a car accident and submitted a claim for no-fault benefits to Progressive, with whom Pryce had a valid policy (the “Policy”) providing up to \$50,000 in no-fault benefits coverage (“Personal Injury Protection” or “PIP” coverage). In calculating wage loss benefits, if the policyholder earns gross wages greater than \$2,500 per month, Progressive first caps the gross wage figure at \$2,500 per month. Then, Progressive subtracts the amount of New York State disability payments the policyholder received. From there, Progressive subtracts 20% of that reduced total pursuant to the statutory wage offset provided in New York Insurance Law §§ 5101-09 (the “No-Fault Statute”), followed by any other offsets.

After applying these offsetting payments, Progressive pays the resulting total to its policyholder as a lost wage benefit. In Pryce’s case, because she made more than \$2,500 per month when she was injured, she received about \$1,400 per month in lost wage benefits. Yet, Progressive still applied the full \$2,500 figure to count towards exhausting the \$50,000 PIP coverage limit. As a result of following this practice, a policyholder’s benefits may be (and are) deemed exhausted sooner than expected, despite the fact that the policyholder never actually received payments at that higher amount.

As set forth below, UP respectfully submits that Progressive’s methodology in determining benefits under the No-Fault Statute, resulting in premature coverage exhaustion, runs afoul of New York insurance law, violates the insurance doctrines designed to protect policyholders, and runs counter to a policyholder’s reasonable expectations. UP therefore asserts that the District Court’s ruling granting summary judgment for Pryce on the issue of liability should be affirmed by this Court.

ARGUMENT

I. Insurance Companies Owe Their Policyholders a Duty to Act With Good Faith and Fair Dealing

In New York, “all contracts imply a covenant of good faith and fair dealing in the course of performance.” *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144, 153 (2002). Such a covenant includes a promise that “neither

party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.” *Dalton v. Educ. Testing Serv.*, 87 N.Y.2d 384, 389 (1995). This duty is recognized as “an integral part of an insurance contract.” *Federated Dep’t Stores, Inc. v. Twin City Fire Ins. Co.*, 807 N.Y.S.2d 62, 66 (1st Dep’t 2006). An insurance company’s duty to act in good faith includes consideration of the fact that in purchasing insurance, a policyholder “may also bargain for the peace of mind, or comfort, of knowing that it will be protected in the event of a catastrophe.” *Bi-Economy Mkt., Inc. v. Harleystville Ins. Co. of N.Y.*, 10 N.Y.3d 187, 194 (2008).

There is perhaps no better example of a policyholder’s desire for peace of mind when purchasing insurance than that of no-fault automobile insurance coverage. Indeed, Progressive’s ubiquitous and non-stop advertising campaign makes clear that Progressive is selling its policyholders on the promise of peace of mind. In purchasing these auto policies from Progressive, Pryce and the other policyholders in this case bargained for the peace of mind and comfort associated with prompt—and full—payment for medical expenses and lost wages resulting from any injuries sustained in an automobile accident.

Rather than fulfilling its end of the bargain with full payment in accordance with the No-Fault Statute, Progressive utilized a methodology to calculate benefits that contravened the statute by improperly applying statutory offsets and thus

prematurely exhausting claimants' limits. It is concerning that an innocent policyholder suffering due to a traumatic event should suffer from an insurance company tactic that improperly diminishes insurance protection.

This claims tactic is not only improper pursuant to the No-Fault Statute; it is directly antithetical to the duty to act in good faith pledged by Progressive to its policyholders when it sold these policies. Pryce and the other plaintiffs purchased this coverage with the expectation and belief that Progressive would act in their interests and provide them with the fullest extent of benefits possible under the Insurance Law and the policies. Instead, Progressive decided to defy the requirements of the No-Fault Statute, improperly include offsets toward exhausting the limits of the policy, and, in so doing, unfairly and prematurely exhaust the benefits to which these drivers and insureds are contractually entitled.

Accordingly, these policyholders have not received the bargained-for fruits of their contract, and Progressive has violated its good faith obligations by using these improper calculations of benefits.

II. Progressive's Methodology Is Outside Any Policyholder's Reasonable Expectations

Insurance policies must be interpreted in a manner consistent with the reasonable expectations of the average policyholder. *See Dean v. Tower Ins. Co. of N.Y.*, 19 N.Y.3d 704, 708 (2012); *Cragg v. Allstate Indem. Corp.*, 17 N.Y.3d 118, 122 (2011). Any motorist purchasing no-fault insurance coverage is "buying

protection against a catastrophe.” *See Zicherman v. State Farm Fire & Cas. Co.*, 698 F. Supp. 3d 564, 569 (E.D.N.Y. 2023). It necessarily follows that any reasonable policyholder in the situation at bar would believe that they were entitled to, and would receive, the maximum amount of benefits promised under the contract.

Here, Pryce reasonably expected that she would be fully entitled to no-fault benefits until the \$50,000 limit was exhausted. It would not be within the reasonable expectations of any policyholder that its insurance company would apply funds that the policyholder never actually received in order to reach the limits under the policy. Rather, a reasonable policyholder would justifiably expect that Progressive would act in its policyholders’ best interests, provide them with the full benefits owed to them under the No-Fault Statute and the Policy, and act with the good faith required. This is especially so considering the nature of no-fault benefits and the protection sought by policyholders in the event of an unexpected catastrophe. Progressive’s contravention of the statute stands in stark contrast to those reasonable expectations.

CONCLUSION

For the reasons stated above, United Policyholders respectfully requests that this Court affirm the decision of the District Court granting summary judgment for Plaintiff-Appellee on the issue of liability.

Dated: June 15, 2026
New York, New York

Respectfully submitted,

ANDERSON KILL P.C.

By: /s Joshua Gold

Joshua Gold, Esq.
7 Times Square, 15th Floor
New York, NY 10036
212-278-1000
jgold@andersonkill.com

*Attorney for Amicus Curiae
United Policyholders*

OF COUNSEL:

Amy Bach, Esq.
Richard B. Oatis, Esq.
United Policyholders
917 Irving St., Suite 4
San Francisco, CA 94112
Tel: (415) 393-9990
Fax: (415) 677-4170

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Local Rule 29.1(c) and Local Rule 32.1(a)(4)(A) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), this document contains 1573 words as calculated by the word processing system used to prepare this brief. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using 14 point Times New Roman.

Dated: June 15, 2026

ANDERSON KILL P.C.

/s/ Joshua Gold

Joshua Gold, Esq.

7 Times Square, 15th Floor

New York, New York 10036

Tel: (212) 278-1000

Fax: (212) 278-1733

Email: jgold@andersonkill.com