

I-WAYS MAGAZINE

BIG I WNY | DECEMBER 2019

Promoting the value of **independent insurance agents** in Western New York



PRESIDENT'S MESSAGE

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Wow, it's incredible how fast time is flying by! This is my sixth year serving on the Big I WNY board, and I truly feel blessed to have the opportunity to serve as your Big I WNY President. The team of Big I WNY Officers and Directors are energized and ready to serve our members this year. Our board's first meeting of the year was spent strategizing ways to continue to grow our membership and plan exciting events for 2020. We are also looking forward to continuing to grow Project InVest and NeXtGen – the future of our industry! I'm very excited to see what we can accomplish this year.

On September 26th, our Annual Directors and Officers Installation dinner was held at The Columns. It was great to celebrate with family, friends, and so many of our members and affiliates. A special thanks to all of the sponsors who supported this ceremony and dinner!

The Big I WNY board kicked off our year with the "Raise the Rooftop" Happy Hour on October 10th at the brand new Patrick's Rooftop Bar at 500 Pearl. Then, on October 24th we held our Annual Legislative Breakfast at The Buffalo Club. Thank you to Scott Hobson, from Big I NY for providing a legislative briefing on hot topics related to our clients insurance needs and our industry.

On October 26th, I had the privilege of attending the 129th Buffalo Professional Firefighter's Awards Ball on behalf of Big I WNY to present the Independent Insurance Agent Bravery Award to Lt David Collins and FF Ryan Morrissey. On May 8, 2019 Engine 19 responded to heavy fire conditions in a 3-story building at 1074 Elmwood Avenue. A victim was seen screaming for help from the window on the 2nd floor. LT Collins instructed his crew to emplace a hand line and FF Ryan Morrissey to place a 24' ladder up to the window where the victim was. With high heat and heavy smoke, LT Collins ascended to the top of the ladder and brought the flailing victim out while FF Morrissey secured and footed the ladder with both people on the ladder to a precarious situation. Congratulations to Lt David Collins, FF Ryan Morrissey, and all of the others honored at the event!



On November 5th, NeXtGen held the 4th Annual Speed Networking Event at Big Ditch Brewing Company. Insurance professionals from across WNY gathered to enjoy some delicious beers, appetizers and networking. This event continues to get bigger and better every year!

Later that week, Big I WNY supported the local Keys to Progress event held by Progressive Insurance. A group of us from the board attended the local event where two deserving Veterans from WNY were awarded vehicles, insurance, and registration. It was a very heartwarming ceremony and Big I WNY was proud to donate gift cards to the two recipients.

Our next event will be our Annual Holiday Party on December 6th. I hope to see everyone there! It's always a wonderful opportunity to meet and reconnect with those working in and supporting the local Independent Insurance Industry. As a reminder, all proceeds from this event are donated to FeedMoreWNY (formerly Food Bank of WNY). We look forward to presenting a donation to this organization at the Food 2 Families event held at Tops Markets on Friday, December 6th.

As this year ends, we continue to reflect on all that we are grateful for. On behalf of Big I WNY I would like to express gratitude to all of our members and affiliates. Thank you for the opportunity to serve you. Wishing all of you the best of holidays and a prosperous 2020!



Ashley Engl, ACSR, GBDS
President, Big I WNY
Lawley Insurance

Big I WNY Installation of Officers & Directors

Thursday September 26, 2019 | The Columns Banquets



The Big I WNY Installation of Officers and Directors is a wonderful time to reflect on our amazing history and celebrate the past and present. The new Board was inducted on September 26th at the The Columns. Several past presidents participated in the program. Lou Atti of Tompkins Insurance Agencies served as our Master of Ceremonies. Kathleen Rapasadi, also of Tompkins Insurance, provided a recap of the past year as our association president. Vic Rutecki, Rutecki Agency, conducted the Past Presidents' Oath and swore in the Directors. Tamara Storch, The Evans Agency, swore in our new president, Ashley Engl of Lawley Insurance. Ashley gave an inspiring speech about her plans for the coming year.

Thank you to all who attended and continue to support Big I WNY!

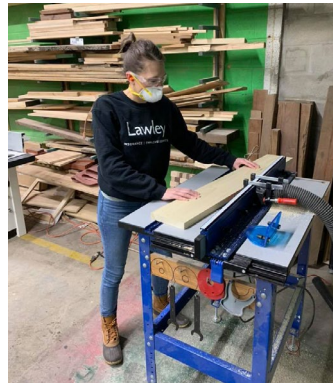
Big I WNY Beds for Buffalo



NeXtGen Buffalo has been proud to support and volunteer with the Beds for Buffalo project since 2017. This year the Service Collaborative of WNY (TSC) continues its successful initiative in addressing the extreme level of child poverty through the Beds for Buffalo project. This year the Beds for Buffalo Project will build and furnish 200 twin beds for children in need throughout Niagara, Erie, and Cattaraugus Counties.

NeXtGen Buffalo spent the mornings of Sept 20th and Oct 18th at The Foundry to contribute to this great cause. NeXtGen volunteers assisted with sawing, planing, sanding, drilling, and much more.

For more information on this project, you can visit their website:
<https://www.tscwny.org/Beds-for-Bufferalo>



NeXtGen Speed Networking

November 5, 2019 | Big Ditch Brewing Co.



On November 5th, NeXtGen hosted the 4th Annual Speed Networking Event at Big Ditch Brewing Co. There were 30 insurance professionals in attendance who enjoyed delicious Big Ditch beer, snacks, and conversation!

THANK YOU TO OUR SPONSORS:

Platinum- WH Greene and Associates
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Big I WNY Legislative Breakfast

Thursday, Oct. 24, 2019 | Buffalo Club



Each October, Big I WNY hosts a Legislative Breakfast for our members to meet and make meaningful connections with our elected officials and staff in order to build relationships with the people who will help our industry with important legislation in Albany. Thank you to Senator Robert Ortt and Assemblyman Angelo Morinello along with many staff who attended our Legislative Breakfast at the Buffalo Club on October 24. We also thank Phil Bolen and Ed Draves from Bolton-St. Johns for joining us. Scott Hobson from Big I NY provided important talking points for our attendees to keep the conversation going at [Independent Agents Advocacy Day](#) in Albany on March 3, 2020.



Progressive Keys to Progress



Our President, Ashley Engl, and Directors Megan Spiegelhoff, Demi Walsh, and Josh Watkins attended the 2019 Progressive Keys to Progress event on November 7, 2019. Progressive, along with various collision shops, Enterprise Rent a Car and several other businesses and organizations awarded vehicles, registration, insurance and numerous gift cards to two deserving veterans in WNY. Progressive has provided over 600 cars nationwide since the inception of the program! Big I WNY was more than happy to donate gift cards to this year's Keys to Progress recipients and to attend this wonderful event.



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Raise the Rooftop Happy Hour

October 11, 2019 | Patrick's Rooftop Bar



Big I WNY enjoyed a beautiful October evening atop the new 500 Pearl at Patrick's Rooftop Bar. The view of the city was spectacular and everyone enjoyed the sunset over Lake Erie. Thank you to all who attended!

Big I WNY Christmas Luncheon

December 6, 2019 | Twentieth Century Club



Big I WNY celebrated the holiday season in style on December 6! The day started with members of the Board of Directors appearing on WGRZ TV Channel 2 where our association presented our donation of \$2,500 to FeedMore WNY through the Food 2 Families program. Next the Board had their monthly meeting at the Twentieth Century Club with guests Kathy Lawler and Brian Bixby from Big I NY. Then it was time to party with members and guests for our annual holiday lunch. We toasted Kevin Johns from Travelers on his upcoming retirement. Thank you to all who supported this event with donations to FeedMore WNY and door prize donations. Cheers to a happy holiday season!

APPELLATE COURT RELAXES LEGAL STANDARD TO PERMIT DISCOVERY ON CONSEQUENTIAL DAMAGES CLAIMS

Recently, a New York appellate court held that insureds are not subject to a heightened pleading standard when alleging claims for consequential damages against their insurers. *D.K. Prop., Inc. v. Natl. Union Fire Ins. Co. of Pittsburgh*, 168 A.D.3d 505 (1st Dep't 2019) (citing *Panasia Estates, Inc. v. Hudson Ins. Co.*, 886 N.E.2d 135 (2008); *Bi-Econ. Mkt., Inc. v. Harleysville Ins. Co. of New York*, 886 N.E.2d 127 (2008)).

In *D.K. Prop., Inc.*, the Appellate Division reversed the Supreme Court's decision that dismissed the insured's claim for consequential damages on both its breach-of-contract and breach of implied covenant of good faith and fair dealing causes of action. The court utilized the holdings in two Court of Appeals decisions (see citations above) to reach its conclusion further solidifying the law as it pertains to the legal sufficiency of an insured's allegations of consequential damages at the pleading stage of litigation. The Court reached its holding by looking at the insured's complaint, which alleged the following: the defendant made increasingly unreasonable and burdensome demands on the insured throughout the claim investigation process; the defendant made the claim expensive for the insured to pursue in hopes the insured would abandon the claim altogether; and the defendant's long and drawn out investigation had caused the structure damage to the insured's property to worsen.

The court decided that the insured's allegations contained in its complaint were sufficient to permit the insured to pursue discovery on consequential damages in connection with the lawsuit.

Practice Pointer: The court's holding in *D.K. Prop., Inc.* loosens the legal standard to permit discovery on claims for extra-contractual damages in insurance litigation. Often times, insurers will move to dismiss these extra-contractual damages claims early on in the litigation

to prevent insureds from engaging in discovery that amounts to a fishing-expedition that could involve the discovery of claim files of other insureds not involved in the litigation. Typically those claims were dismissed early on during the litigation. However, recent court decisions, including this one, demonstrate a shift in the courts that permit these claims to survive a motion to dismiss. This, in turn, will provide insureds with an opportunity to engage in discovery on those claims. To protect themselves, insurers and their agents should be vigilant in maintaining adequate and comprehensive documentation of an insured's account, including any documentation relating to the claims being investigated as not only will they be needed during the discovery phase of the litigation, but also may be demanded in connection with litigation of similar claims presented by other insureds that are challenged in litigation. Prior to disclosing any information from any agent or insurance company files, it is good practice to consult with your counsel to determine whether the information requested is relevant and necessary to the litigation in the first instance.

For answers to your legal questions, feel free to contact Marco Cercone, Esq. or Steven Stachowski, Esq. at Rupp Baase Pfalzgraf Cunningham LLC, 1600 Liberty Building, Buffalo, New York 14202, 716-854-3400 www.ruppbaase.com.

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This holiday season, we're reflecting on all that you, our members, have done for your communities. You build beds for children in need, run races to raise money for medical research, host food drives for local food banks, grant wishes to children with life-threatening diseases, donate your money to high school scholarships, volunteer your time at non-profits, and so much more.

Thank you for giving back to your community in Western New York.
We're so grateful you are a part of **ours**.



Happy Holidays,

BIG I | NEW YORK

WHAT WE'RE TALKING ABOUT

On Our Mind: Preparing for a Cyber Breach

Two Minutes With Tim: NY Cyber Reg - Certification of Compliance Reminders

Child Victims Act Claims - What If The Insurer No Longer Exists?

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Have you watched our new YouTube series? Introducing, I Didn't Know You Have That. In it, we go over all of the lesser-known benefits you get as a part of your Big I NY membership!

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- Rules for Developing the Correct Premium

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Register Now

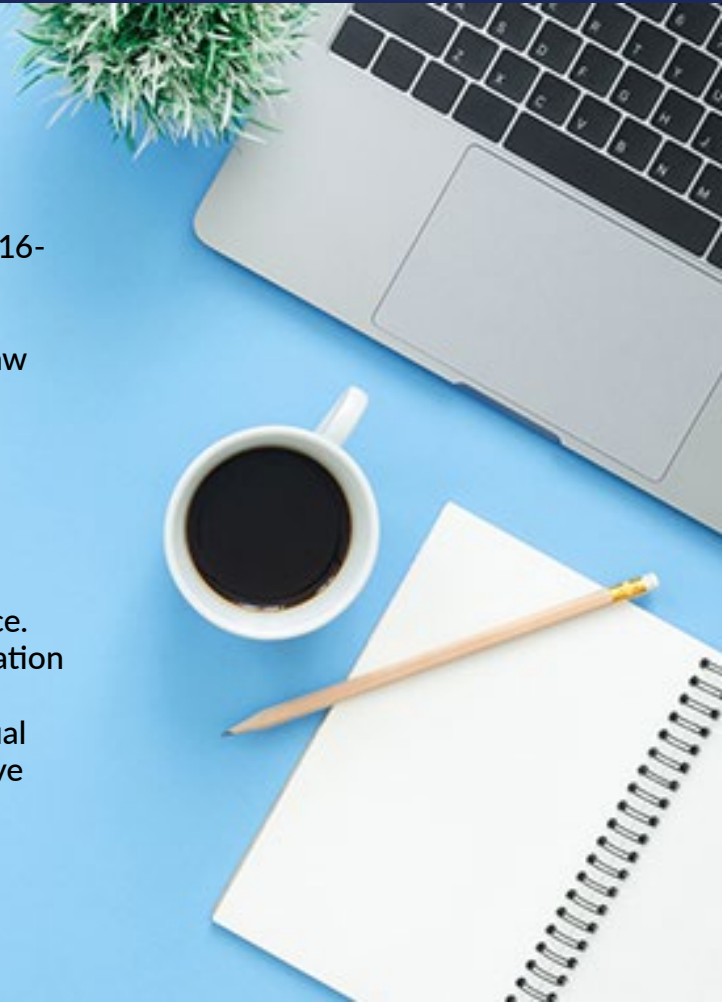
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