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GENERAL ENQUIRIES

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A Message from the PRESIDENTS COUNCIL



Mark Garvelli, Dave Gelia, and I are delighted to once again accept leadership roles in this great organization. After all, IIAAWNY members are the True Choice for every insured and policyholder in Western New York. Mark will guide the board and its committees as President; Dave will re-energize our current membership as VP and I am committed to grow NeXtGen into tomorrow's leaders. It is with this three prong approach IIAAWNY will position itself for another century of serving the independent insurance agency community.

We have a new Executive Director, Jeanne Hellert, who comes to us with years of experience assisting other associations to grow and prosper. The entire board will be relying on her to keep us focused and moving forward. I have known her for many years and admire her professionalism. Every association she is involved with is highly respected within their field. She will prove to be a valuable asset to IIAAWNY.

Our next event is our annual Roger Gurney Memorial golf outing June 30th at Orchard Park Country Club. You can log onto our website for sponsorship opportunities and register for golf. I guarantee a great day and lots of socializing and golf!

As always, we are grateful for our many sponsors for all of our events. They enable us to continue our work at the local level year in and year out.

Finally, volunteer on committees and join the fun we have as a group of professionals.

See you around.

Paul R. Chisholm VP IIAAWNY Insurance Associates Marketplace Agency, Inc. 3849 Delaware Ave. Kenmore, NY 14217

Out & About

From local events planned for you - our members - to presenting awards in our community, your local team is working hard for you.

Save the Date!

Legislative Breakfast - October 16, 2014

Meet your elected representative from our local area and discuss the issues critical to our industry.

Jill Muratori, IIABNY Legislative Representative, will speak about the insurance issues from both a legislative and regulatory perspective.

Location:

Protocol Restaurant, Transit Road Williamsville

Registration: 8:15am

Breakfast:

8:30am - 9:00am

Speaker:

9:00am - 10:00am

Cost:

\$25.00 pre-paid \$30.00 at the door

Reservation link will be included in a future newsletter and e-mail.

Dates to Note

June 30

Golf Outing

Orchard Park Country Club Orchard Park

October 16

Legislative Breakfast

Protocol Restaurant Williamsville



2014 IIAAWNY Roger Gurney Golf Outing

JUNE 30 **2014**

We are fast approaching our Annual Roger Gurney Golf Outing. On June 30, 2014 please join us for a great day of golf at the Orchard Park Country Club. This is our 2nd time back to Orchard Park Country Club for this event. The course was designed by Walter Travis and opened in 1928.

We will start the day with an all-American theme picnic on the patio at 11:00 a.m. The range and putting green will be open for your enjoyment. At the turn, there will be refreshments and snacks and, of course, there will be beverage carts on the course.

There will be a shot gun start at 12:30 p.m. We have contests for longest drive and closest to the pin. At 5:30 p.m., we will have cocktails and hors d'oeuvres. Dinner will be at 6:30 p.m.

Hurry! Space is limited. This is a premier event.

Can't make golf? Don't worry, come for the dinner. See everyone at Orchard Park Country Club on June 30!

- The Golf Committee



IIAAWNY Roger Gurney Memorial Golf Outing

Orchard Park Country Club, S4777 South Buffalo Street, Orchard Park, NY 14127

June 30, 2014	Name Company
•	EmailPhone Number
Schedule of Events	Golf & Dinner Dinner Only I cannot attend but please accept my donation
11:00 a.m. – 12:30 p.m.	Register me as:
Lunch Buffet on the Patio	An Individual Part of a Group
	Person #2
11:00 a.m. – 12:30 p.m.	Person #3
Driving Range Open	Person #4
12:30 p.m.	Total Amount Due (golf/donations): \$
Shotgun	
	Payment Method:Credit CardCheck (payable to IIAAWNY)
5:30 p.m. – 6:30 p.m.	
Cocktails / Hors d'oeuvres	Please list desired foursome partners and company if you are not registering a complete foursome above:
6:30 p.m.	
Steak Dinner	Comments:
Full Day (golf, lunch, cocktails & dinner):	All reservations are first come, first serve basis.
\$180 per golfer	Register at https://icob.wufoo.com/forms/iiaawny-2014-golf-sponsor-form/
Cocktails & Dinner Only:	If paying by mail, please include a copy of your email confirmation and send to:

Golf Attire: Country Club golf (no cargo pants/shorts or spikes)

Dinner Attire: Business Casual (no jeans)

IIAAWNY, PO Box 983 Orchard Park, NY 14127

\$60 per person



Past Presidents Oath given by Dick Poppa, IIABNY from L-R: Mark Garvelli, Walsh Duffield, David Gelia, United Insurance, Paul Chisholm, IAM Agency, Jo Ann Decker, CPCU, Decker Agency, Wendy Clemens, CIC, Decker Agency, Vic Rutecki, Rutecki Agency, Donald Houck, DL Houck Agency, Eric Keller, Keller & Co., Lou Atti, The Evans Agency, Joe Floss, CIC, Floss Agency, Nancy Ebert, Clauss & Co.



Christine & Mark Garvelli, Walsh Duffield



Mark Garvelli, Walsh Duffield, Lou Atti, The Evans Agency, David Gelia, United Insurance



Dick Budlong, NYCM Insurance, Debbie, Bridget & Don Houck, D L Houck Agency

LEGAL INSIDER

GOTCHA - OR DID I?

Legal Issues With Surveillance in Long-Term Disability Cases

For answers to your legal questions, feel free to contact Matthew D. Miller, Esq. at Rupp, Baase, Pfalzgraf Cunningham & Coppola LLC, 1600 Liberty Building Buffalo, New York 14202 716-854-3400 miller@ruppbaase.com www.ruppbaase.com

It is well known that an insurer has the right to investigate the validity of the facts on which its liability to pay depends before paying a claim under a policy, and surveillance can be a useful investigative tool to inform claims decisions. However, the right to investigate is not unlimited and surveillance only is useful when it is obtained properly and recorded accurately.

Anyone that has defended the use of surveillance to support a claims decision knows that plaintiffs like to challenge the surveillance as an invasion of his or her right to privacy or some act of bad faith. Most courts, when assessing the usefulness and weight of surveillance video, base their decisions on a reasonableness standard and further look at whether the pursuit of surveillance was triggered by some inconsistency in the claim file that required further investigation by the carrier. In other words, courts are looking to see whether the carrier had a good faith belief that the surveillance was warranted and that it was not simply a tool used to pressure or harass a claimant. Most courts recognize that outside the protections of his or her home, a plaintiff typically has a diminished expectation of privacy; courts examine each privacy claim on a case by case basis but are likely to find that there is no expectation of privacy by a claimant when he or she is engaged in an activity in plain view and is observed from a public place when the person observing the claimant has a right to be where they are.

Typically, a court will use surveillance video as one of several factors it considers when reviewing a claims denial or termination of benefits. For example, in an ERISA action the Second Circuit Court of Appeals, in Alto v. Hartford Life Ins. Co., found that the carrier's termination of benefits was supported by substantial evidence in the claim file, including surveillance video that showed the claimant had far greater functionality than claimed. Nonetheless, don't be fooled into believing that every surveillance video is the silver bullet you need to successfully defend a claim; courts often find surveillance unpersuasive. Courts will discredit surveillance by focusing on five primary issues: (1) the surveillance failed to show behavior that was inconsistent with the claim; (2) the surveillance was erroneous (i.e. that it was not of the claimant);

(3) the surveillance, although voluminous, included only a few minutes of inconsistent activity; (4) the surveillance shows activity, but not activity that is consistent with working in a specified occupation for the necessary time period; and/ or (5) the surveillance is the only evidence supporting denial of the claim.

Therefore, best practices tell us that it is critical to be diligent, careful, and methodical in making surveillance decisions and in presenting only the best evidence to the court. When obtained properly, it can be persuasive by showing inconsistencies between the limitations claimed by the plaintiff and the activities engaged in on the surveillance. Surveillance is best conducted after the claimant's alleged limitations are clear and a reasonable suspicion has arisen that the limitations either are exaggerated or inconsistent with other information in the claim file. Finally, it is important to impress upon the investigator the need to properly identify the subject and the need for specificity in the surveillance report; it should match the video as closely as possible so it can be used to undermine the claimant's credibility as a reporter of subjective complaints of pain or other limitations not measured by objective tests.





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