

IIA WNY

I-WAYS

MAGAZINE

December
2016

INDEPENDENT INSURANCE AGENTS ASSOCIATION OF WESTERN NEW YORK, INC.

keeping you
up to
speed



wnyagent.com

A Message from the PRESIDENT



I would like to thank Jill Muratori for presenting the Legislative update at our Legislative breakfast on October 19, 2016. IIAAWNY had another successful year in getting our legislative agenda in front of the Senate and Assembly with the establishment of a State Insurance Advisory Board passing both houses and the Worker Comp Premium Increase Notices passing in the Assembly.

One the newest issues facing the industry is the new proposed Cybersecurity Regulation that would require agencies with over 1,000 customers, \$5 million in annual revenue and \$10 million in total assets to develop a Cybersecurity program. This regulation is currently in the comment period but the committee is trying to push this through for early 2017 inception. While the current proposal will only affect the larger agencies, it is only a matter of time before the criteria for a Cybersecurity program expands to include all of us. That is why IIAAWNY is closely monitoring this regulation. We plan to have a future meeting surrounding this topic and cyber insurance in general.

On September 30th I had the honor to present the IIAAWNY Bravery Award to Lt. David Lauber and Firefighters James Boyak, Joseph Marchitte, and Robert Carnevale at the 126th Buffalo Fire Department Awards Ball. The Independent Insurance Agents have a long tradition with the Buffalo Fire Department as this award has been given out for over 100 years.



This year, the Holiday Luncheon will be held at Park Country Club on December 2nd. This is always one of our larger events of the year so make your reservations as soon as possible. We will be honoring the men of Ladder 4, 1st Platoon for their actions at the luncheon.

Please tune in to WGRZ – Channel 2 at 7:52 a.m. on December 2nd for IIAAWNY's appearance and donation for Food 2 Families. This is another community cause that IIAAWNY has been supporting in conjunction with the Food Bank for 20 plus years.

The organization also just co-sponsored a Next Gen networking event with the Young Insurance Professionals on November 3rd. We are looking to grow Next Gen over the course of 2017 to help those insurance people who are under 40 develop the necessary relationships to be successful in our industry. There is no additional membership fee to be a part of Next Gen. Please look for future events in our upcoming newsletters and email communications.

We will be focusing on enhancing the benefits provided to our membership and I would encourage everyone to contact myself or any board members with your comments. We are working on a short survey that will be coming out in 2017 to get your opinions on how to grow membership support within the association. We hope some of the meeting topics we are working on for 2017 will help these efforts.

Matt Saxe
President IIAAWNY

OFFICERS:

Matthew Saxe
President

Tamara Storch, ACSR, AINS
Vice President

Kathleen Rapasadi
Treasurer

BOARD OF DIRECTORS:

Vic Rutecki
Chair of the Board

Karen M. Catalano
Theresa Crisp
Doreen DeCarlo
Ashley Engl
David Gelia
Jamie Murphy
Mark O'Brien
Stephen Seitz
Megan Spiegelhoff

Jeanne Hellert
Executive Secretary

GENERAL ENQUIRIES

P.O. Box 983
Orchard Park, NY 14127

Phone: (716) 207-3886

iiawny@gmail.com
www.wnyagent.com

Contact our Board at:
[www.wnyagent.com/
officers-directors/](http://www.wnyagent.com/officers-directors/)



PLEASE JOIN US!

The Annual IIAAWNY Holiday Party

Friday December 2, 2016 | 12:00 PM Cocktails | 1:00PM Luncheon

Park Country Club | Williamsville, NY

*New
Location!*

To register, please visit <https://icob.wufoo.com/forms/iaawny-2016-holiday-party/>

In keeping with our tradition, we will be collecting for the Western New York Food Bank. Your cash/check contributions are greatly appreciated. All contributors will be eligible for our door prize drawing.

Corporate
Sponsorships
available for
just \$250

IIAAWNY Legislative Breakfast

October 19, 2016 at the Hilton Garden Inn Buffalo Airport



Left: IIAAWNY hosted its annual Legislative Breakfast with guest speaker Jill Muratori from Barrett Associates. Jill is pictured on the right along with Kathy Weinhemier from IABNY and Assemblyman Ray Walter.

Project Invest 2016-17 School Season Seeking Volunteers to Present Insurance Topics to High School Seniors

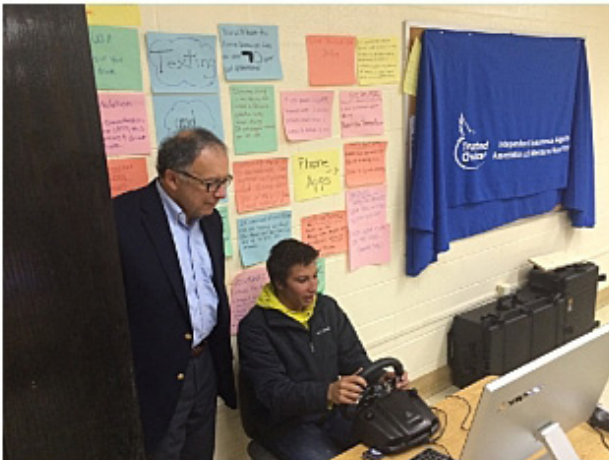
Our course is currently being presented at the following high schools:

- Lake Shore Central
- Hamburg
- West Seneca East
- West Seneca West
- Iroquois Central
- Depew

To learn more about this program & these opportunities, all interested Insurance personnel please reach out to Karen Catalano or Theresa Crisp at projectinvestwny@gmail.com

Did You Know?

The **IIAAWNY Distracted Driving Simulator** is available to you, our valued members, to showcase the dangers of driving while texting? Please make a reservation to use the Simulator at your next event! Simply call our local office at 716.207.3886 or email iiaawny@gmail.com to schedule your date and time. Please plan on about 45 minutes to an hour of training to learn the proper set up and program features of the simulator.



Did You Know?

IIAAWNY has a career page on our website?
Check it out! wnyagent.com/career



On Thursday, November 3rd NeXtGen teamed up with YIP of NY to host a Networking Event at Bada Bing Bar and Grill. Participants enjoyed food, drinks, and speed- networking with other Insurance Professionals. Those who attended had the opportunity to meet and learn from a variety of other professionals working in the Insurance Industry. Thanks to all who attended and helped to make it a success!



Pictured Above: Fred Holender, Lawley, Audrey Manzella, RPS – Cowles & Connell, and Gary Hollederer, Russell Bond & Co.



Pictured Above: Mhairi Bittler, Lovullo Associates LLC, Natalie Golubski, Russell Bond & Co., and Cris Tyler, Superior Payment Plan, LLC.

**Thank you to our
sponsors!**

GOLD Sponsors:



SUPERIOR
PAYMENT PLAN, LLC

Russell Bond
Insurance Wholesalers



SILVER Sponsor:



**Raffle Baskets generously
donated by:**

Lawley



Travelers Foundation Accepting Applications for Community Resilience Award

2017 Travelers Excellence in Community Resilience Award Recipient to Receive \$100,000

NEW YORK, Nov. 8, 2016 – The Travelers Foundation, the charitable arm of The Travelers Companies, Inc. (NYSE: TRV), today announced that it is accepting applications for its annual Travelers Excellence in Community Resilience Award. The award was created to recognize nonprofits dedicated to helping communities prepare for, and recover from, catastrophic events. The winning organization will receive a \$100,000 grant, presented at the annual “Kicking Off Hurricane Preparedness Season” symposium in June, hosted by the company’s public policy division, the Travelers Institute.

“We’re looking for organizations that are advancing the country’s disaster preparedness and response capabilities,” said Marlene Ibsen, CEO and President of the Travelers Foundation. “The ability to effectively plan for catastrophes can make an incredible difference in the amount of time it takes a community to recover.”

Previous Travelers Excellence in Community Resilience Award recipients are All Hands Volunteers, a nonprofit disaster relief organization, and Team Rubicon, a nonprofit that leverages the skills and experiences of military veterans to deploy emergency response teams after disasters.

For award criteria, applicant guidelines or to apply, please visit the Travelers Community website. Applications will be accepted now through Dec. 5, 2016.

Another fabulous and moving event at Progressive!

On November 10, 2016, Progressive Insurance held their annual Veterans’ Day celebration. They gave away two cars as part of their Recycled Rides program to two deserving veteran families from our local community. Progressive was also able to give out over \$3,000 worth of gift cards! Most of the donated gift cards came from area businesses located near Progressive on Transit. Plus Progressive had a “jeans day at work” for \$5 per employee and other work events to collect money that they used to buy gift cards!

Congratulations to Progressive for their support of our veterans!

Submitted by,
Barbara Duke
Amedeo J Duke Agency, Inc.



Above, Barb Duke with Veteran Willie Chillis and nine-year old daughter, Korina. On the right, Barb with Allen Finn, 14 year veteran of the Navy as a Hospital Corpsman.

An Insurer's Denial Of Coverage Is Not Consumer-Oriented Conduct In Violation of N.Y. General Business Law § 349

JD&K Assoc., LLC v. Selective Ins. Group, Inc., 38 N.Y.S.3d 658 (4th Dep't 2016)

For answers to your legal questions, feel free to contact

Marco Cercone, Esq. or
Sean Costello, Esq

Rupp, Baase, Pfalzgraf,
Cunningham LLC
1600 Liberty Building
Buffalo, New York 14202

716-854-3400
www.ruppbaase.com

Insureds are not entitled to recover their attorneys' fees when they sue their insurance company over a disclaimer. Many plaintiffs' attorneys try to work around that rule by claiming that the insurance company's disclaimer violated General Business Law ("GBL") § 349, which outlaws "[d]eceptive acts or practices in the conduct of any business." A plaintiff can recover treble damages and attorneys' fees if it prevails on a GBL § 349 claim, but must prove: (1) that the challenged act or practice was consumer-oriented; (2) that the act or practice was misleading in a material way; and (3) that the plaintiff suffered injury as a result of the deceptive act.

In *JD&K*, the defendant insurer disclaimed coverage for two large depressions that appeared in the concrete slab floor of the insured premises based on an "Investigative Engineering Analysis Report" prepared by a non-engineer investigator and the insurer's interpretation of the policy. The insurer's disclaimer was improper and the plaintiff was entitled to "partial summary judgment on its breach-of-contract cause of action inasmuch as an extension of coverage in the policy unambiguously provided coverage for plaintiff's loss."

The plaintiff was not content only with breach-of-contract damages and pursued a GBL § 349 claim on the basis that the defendant "retained a non-engineer to conduct the investigation and misrepresented the investigator's credentials to plaintiff in disclaiming coverage for the property loss." After discovery on the question of whether the insurer used similar tactics with other insureds, the insurer was able to secure summary judgment dismissing the GBL § 349 claim.

The GBL § 349 claim failed because the insurer demonstrated that its coverage decision was based on the particular facts concerning the underlying claim and the language of the insurance policy. The coverage dispute and process-

ing of the claim was unique to the parties to the insurance contract, and did not affect the public at large. The insurer demonstrated that it "had not implemented any type of practice of hiring an unqualified site investigator and then misrepresenting his or her qualifications to render an investigative report as a method of deceiving unsuspecting policyholders and improperly disclaiming coverage." Although it had denied coverage based on reports prepared by the non-engineer investigator a few times over 15 years, this was not a "broad impact on consumers at large" required to sustain a GBL § 349 claim. Finally, the insured was not damaged by the allegedly-deceptive act because the insurer did not rely on the investigator's professional opinions. Its disclaimer was based on the investigator's factual observations that the damage was caused by settling of the concrete slab, with water discharge from a drainpipe as a contributing factor, plus the insurer's erroneous decision to "disclaim coverage even after the policy extension applicable to certain water damage was brought to their attention."

Practice Pointer: Insureds often seek to augment the value of their lawsuit by seeking extra-contractual damages. One such tactic is to make a claim for a violation of GBL § 349. While these claims often do not prevail, they do impact insurers and agents because they require significant discovery during the course of litigation, and they often involve the discovery of information and documents from unrelated claim files in an effort to establish a pattern and practice of conduct by the insurer that allegedly is misleading. While discovery in these cases can be burdensome, if agents maintain accurate records that demonstrate their conduct was solely based on their handling of the insured's account and was not based on some pattern and practice that could be misleading to the public, a GBL § 349 claim is likely to fail.

**AFFILIATE
SPOTLIGHT**

**The assurance you feel
with a trusted colleague.
That's Preferred.**

It's the confidence you have from working with
someone who calls themselves your "Partner."

It's reliability. It's reputation.
It's *Working Assured*.



www.preferredmutual.com

 **Preferred
Mutual**
Live Assured™

HOME • AUTO • BUSINESS

Preferred Mutual Insurance Company | One Preferred Way, New Berlin, NY 13411