

IIAAWNY



INDEPENDENT
INSURANCE AGENTS ASSOCIATION OF
WESTERN NEW YORK, INC.
FOUNDED IN 1841

I-WAYS

Information for
October 2011

P.O. Box 696
Williamsville, New York
14231

Tel (716) 926-0322
FAX (716) 633-8429
iaawny@gmail.com

www.wnyagent.com

Affiliated with:
INDEPENDENT INSURANCE
AGENTS AND BROKERS OF
NEW YORK, INC.

INDEPENDENT INSURANCE
AGENTS AND BROKERS OF
AMERICA

Officers:

Paul Chisholm, President
Mark Garvelli, Vice President
Wendy Clemens, CIC, CISR, Treasurer

Board of Directors:

Louis Atti, Chairperson of the Board
Barry Harper
Tom Ditzel
Christine Garvelli
Leo Kuziemkowski
Steven McCarville
Carl Maranto, Jr.

Barbara Duke, Executive Secretary

ANNUAL LEGISLATIVE BREAKFAST

Tuesday, October 11, 2011

Please join us for a legislative update
from Peter Carr IIABNY's Albany
Government Affairs team.

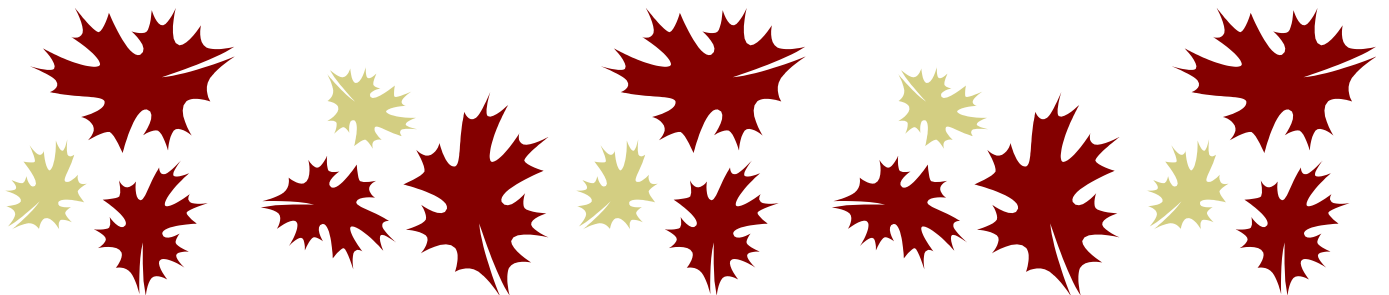
Milo's Restaurant
5877 Main Street, Williamsville, New York

Registration: 8:30am
Breakfast Meeting: 9:00am

Cost: \$20 per person in advance
\$25 per person at the door

RSVP Deadline 10/04/11
To Barb Duke

[Click Here to RSVP](#)



PRESIDENTS MESSAGE

Dear Members & Affiliates:

Welcome back from summer. Hope you had a relaxing time enjoying the weather (it finally turned out nice), family and all the attractions (festivals, golf courses and water sports). Buffalo is a great place to live, work and play.

I thank one and all for attending our installation at the Pierce Arrow Museum. I heard only compliments and thanks for this venue. As announced, our focus this year is youth. Barry Harper has graciously volunteered to head up the youth committee. This is in two parts: NextGen and Invest!

Next Gen is a group of under 40's who gather together for networking, education and fun. They met over the summer, formed a chapter under the auspices of IIAAWNY and planned their first event. This group of young people consists of anyone under 40 who works for an IIAAWNY member agency or affiliate. If you have any employees who are eligible, contact Barb, Barry or Carl Montano, Jr. to join. Keep you eyes on our website for more information.

Invest is a program that teaches high school students about the world of insurance and all the career opportunities right here in WNY. Barry will be looking for volunteers to teach those courses in several of our high schools in the first quarter 2012. We are also looking to add schools to our list. The tie in between the Invest program and NextGen, is that they have volunteered to help with the teaching. So we have youth teaching youth! But remember, they still need guidance from more seasoned veterans.

I hope to see all of you at our October meeting.

Paul

Paul Chisolm

President IIAAWNY

GOLF OUTING 2012



*The date for next year's outing will be **Monday, June 25, 2012**. It will be held at the Park Country Club, once again.*

I will be starting a committee in January. If you are interested in volunteering, please, contact Barb Duke or me. We are looking forward to a gorgeous day and many, many golfers.

Mark the date....It isn't too soon!

Wendy Clemens, Golf Chair '12

"THANK YOU to everyone who participated in this year's golf outing. We were able to make enough money for our InVest Scholarships! Your continued support for our annual outing is most appreciated!"

Mark Garvelli, Golf Chair '11

Upcoming Events:

**12/9/11 Holiday party
The Mansion on Delaware Ave**

**1/19/12 Affiliate Mixer/Wine Tasting
Pettibone's**

1/30-1/31/12 Capitol Event in Albany

2011 SPOOKTACULAR SOIREE

Calling all Goblins, Ghosts and Ghouls: Please join NeXtGen's newest Buffalo chapter in celebrating Halloween!

Open bar, including beer, wine and call liquor.
Food, music and giveaways. Costume contest
at 10:30.

Friday October 21, 2011 7pm—11pm
Pearl Street Grill & Brewery
76 Pearl Street
Buffalo, NY 14202



Tickets \$25 Pre-Sale/\$30 @ Door

Check us out on Facebook <http://www.facebook.com/pages/neXtgen-Buffalo>



LEGAL INSIDER

Court of Appeals Addresses Fiduciary Duty of Insurance Brokers in New York

In 2011, New York's highest court, the Court of Appeals, issued its long-awaited decision in *People ex rel. Cuomo v. Wells Fargo Insurance Services, Inc.*, 919 N.Y.S.2d 481 (2011) involving a lawsuit brought by New York's Attorney General based on allegations that an insurance broker breached its common-law fiduciary obligations to its clients by failing to disclose a contingent commission arrangement negotiated with certain insurance carriers.

In a unanimous opinion, the court rejected the claim, holding that "an insurance broker does not have a common-law fiduciary duty to disclose to its customers 'incentive' arrangements that the broker has entered into with insurance companies."

The basis of the Attorney General's claims was that Wells Fargo Insurance Services, Inc., an insurance broker, breached its fiduciary duties to its clients by failing to disclose the contingent commissions it received from insurers in connection with its clients' insurance placements. New York caselaw, most notably the Court of Appeals 1997 decision in *Murphy v. Kuhn*, long held that, absent "exceptional circumstances," the relationship between the brokers and their clients is not fiduciary in nature. In the *Wells Fargo* case, the Attorney General claimed that the normal relationship between a broker and an insured creates a fiduciary duty because, in New York, insurance brokers are considered agents of their clients, and a fiduciary duty generally lies at the core of every principal-agent relationship. The Attorney General also argued that while the *Murphy* decision limited brokers' duties in some respects, it did not relieve them from a duty of loyalty which should prohibit them from receiving undisclosed compensation.

The Court of Appeals was not convinced by the Attorney General's arguments. While the court stated that *Murphy* did not completely exempt insurance brokers from the general rule that an "agent owes a duty of loyalty to its principal," it nevertheless held that undisclosed compensation arrangements with insurance companies did not in and of themselves violate any such duty.

The *Wells Fargo* decision will make it very difficult to argue that an insurance broker owes a fiduciary duty to an insured absent exceptional circumstances. Despite this decision, it's important to note that a recently-adopted Insurance Department regulation (11 NYCRR 30.3[a][2]), effective January 1, 2011, requires disclosure to a purchaser of insurance if a broker "will receive compensation from the selling insurer. . . based in whole or in part on the insurance contract" that the broker sells. As a result, disclosure of "producer compensation" is now required by regulation, even though the failure to do so does not necessarily give rise to a claim of breach of fiduciary duty.

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