

# THE **E&S** *Empire Express*

## ELANY Leads Producer Coalition on Cybersecurity Regulation Compliance Change

**E**LANY has organized a coalition of seven New York producer trade groups to seek a clarification of the New York Department of Financial Services' cybersecurity regulation. The regulation currently applies to producers who do not actively engage in licensed activities, imposing onerous and unnecessary compliance burdens. These licensees are typically retirees, teachers or trade association Board members who have no involvement with risk placements or access to nonpublic information, but wish to maintain their licenses as a credential

or prerequisite qualification for the work they do.

Because these individuals do not conduct any functions pursuant to their license and do not plan to do so in the future, performing a risk assessment, establishing policies and procedures for the secure disposal of certain nonpublic information, and implementing a written third-party service provider security policy are meaningless requirements. They present no exposure to cyber incidents for insurance consumers or the licensee.

Therefore, we have sent a [joint letter](#) to Justin Herring, Executive

Deputy Superintendent, Cybersecurity Division requesting that the regulation FAQs be amended to state that a producer is fully exempt from the regulation if they do not act or aid in any manner in soliciting, negotiating or selling any insurance, health maintenance organization or annuity contract or in placing risks or taking out insurance on behalf of an insured other than themselves, and do not maintain Nonpublic Information or Information Systems. We were joined in the letter by PLANY, Big I NY, PIWA, CIBGNY, NAIFA-NY and NYSAHU. ■

## ELANY Advocates for its Proactive Legislative Program

**E**LANY is engaged in active advocacy on behalf of its three proactive bills—[excess line diligent effort and affidavit modernization](#), [medical malpractice excess line reform](#) and [insurability of punitive damages](#). The excess line diligent effort and affidavit reform bill would eliminate the diligent effort/declinations requirement for excess line commercial lines policies that are placed by a retail broker through an unaffiliated wholesaler, as well as reduce the declination reporting elements on affidavits from seven to three. The medical malpractice excess line reform bill would strike the requirement that one of the three declinations required when placing an excess line medical malpractice policy for doctors, dentists

and general hospitals be from the Medical Malpractice Insurance Pool (residual market mechanism), which as the market of last resort, does not typically decline risks and, therefore, effectively blocks excess line insurers from writing these risks. Finally, the insurability of punitive damages bill would permit insurance coverage of punitive damages for non-auto commercial lines policies except where the harm was intended.

The excess line diligent effort and affidavit modernization legislation has been passed by the Senate, as has the medical malpractice excess line reform bill. We thank our sponsor, Senator Neil Breslin, for shepherding both through the Senate. ■

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# ELANY Guides Brokers Through Pandemic Emergency Regulation Compliance

The most impactful measure for excess line insurers and brokers in 2020 was [Governor Cuomo's Executive Order 202.13](#) and the Department of Financial Services' ("DFS") subsequent Emergency Regulation. Together, they imposed a 60-day moratorium on cancellation, nonrenewal and conditional renewal of most individual and small employer commercial policies, granted a premium payment grace

period, and required policyholder and producer notifications, although the moratorium and grace period applied only to policyholders that affirmatively asserted a financial hardship due to COVID-19. In response to an outreach by ELANY, the DFS issued guidance exempting commercial excess line policies from these requirements except where the peril of fire covered real property. In addition, ELANY counseled excess

line brokers on compliance with the regulation both through bulletins and individual discussions. We also shared information and perspectives with numerous other New York insurance organizations.

ELANY, WSIA and PIWA released a [joint statement](#) commending the DFS and explaining both the long-term and short-term importance of respecting the status of the excess line marketplace. ■

## ELANY'S 2021 ANNUAL MEMBERS' MEETING

MAY 27, 2021

GO TO [WWW.ELANY.ORG](http://WWW.ELANY.ORG) TO REGISTER

## New York Legalizes Paid Surrogacy

Last year, New York enacted legislation to legalize paid surrogacy arrangements in the state. As a result of ELANY's advocacy, two new kinds of insurance coverage have been authorized that eligible excess line insurers may write. Effective February 15, 2021, excess line brokers became eligible to place both donor medical expense and credit insurance coverages for intended parents (individuals who intend to be legally bound as the parent of a child) in paid surrogacy arrangements.

First, [§1113](#) of the Insurance Law was amended to authorize donor medical expense insurance for intended parents who have entered into a gametes (reproductive cells) donor agreement. Second, [§1113\(17\)](#) was amended to authorize a new kind of credit insurance (excess line brokers are explicitly permitted by law to place credit insurance risks) indemnifying an intended parent for financial loss

THE NEW LAW  
PRESENTS SIGNIFICANT  
OPPORTUNITIES FOR  
EXCESS LINE BROKERS  
TO SERVE A NEW GROUP  
OF INSURED.

incurred as a result of the failure by the person acting as surrogate to perform under the surrogacy contract.

The new law presents significant opportunities for excess line brokers to serve the needs of a new group of insureds. Excess line surrogacy insurance policies are subject to the diligent effort requirement and must, of course, be filed with ELANY for review and stamping. For more information, please see [Bulletin 2021-01](#). ■

## Richardson Elected Chair of ELANY



ELANY congratulates Jim Richardson on his election as ELANY's Chairman of the Board at the 2020 Annual Members' Meeting.

Jim has led ELANY through the many unique challenges of the past year with vision, focus and determination. If "may you live in interesting times" is indeed an ancient curse, ELANY has been blessed to have Jim's leadership to help us navigate them.

In the finest New York tradition, Excelsior Jim! ■

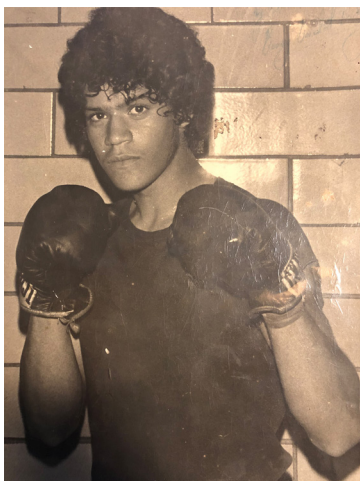
EMPLOYEE SPOTLIGHT

# Benedict (Ben) Bardeguez

PC ANALYST/HELPDESK



Ben Bardeguez began boxing at the age of 13 when his Taikwando coach introduced him to the art of boxing. He was drawn to the idea immediately because



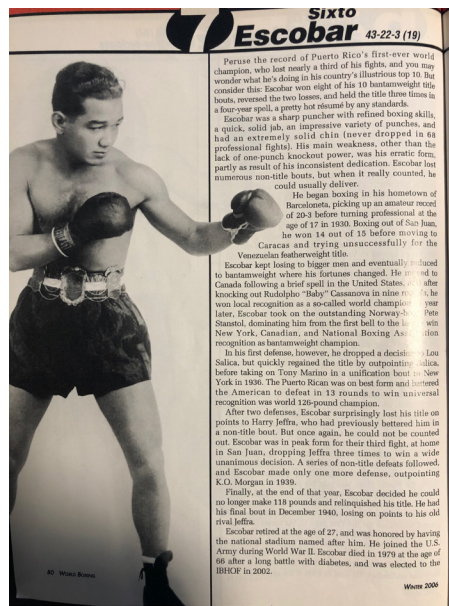
BEN, AGE 16

his idol, Bruce Lee, was a champion boxer and a martial arts expert. Ben trained at St. Mary's Recreation Center as an amateur boxer in the early 1970s. During his time at St. Mary's, Ben sparred with the likes of David Vasquez (pictured below), a New York Golden Gloves champion from 1967 to 1969.



Ben also trained at the Morrisania Youth Center in the Bronx under Leon Washington, a former professional middleweight, who also trained WBA world junior middleweight champion Davey Moore. Ben fought as an amateur boxer in the Golden Gloves, in local amateur fights and trained with many professionals.

Boxing is in Ben's blood. His great Uncle was Sixto Escobar, Puerto Rico's first world champion. Sixto was inducted into the International Boxing Hall of Fame in 2002.



SIXTO ESCOBAR FEATURED IN WORLD BOXING, WINTER 2006

Ben served in the Army, 82nd Airborne, from 1979 to 1983 and was selected as drill Instructor at Fort Leonard Wood. He attended Airborne School Basic training in Fort Leavenworth as a Combat/Engineer/Electrician and later joined Fort Bragg's boxing team.



BEN AT FORT BRAGG

After the Army, Ben continued to box, and he was cast as an extra in the movie Terrible Joe Moran alongside Davey Moore. He attended several technical schools and colleges, perfecting his skill as an IT technician, and graduated from Control Data Institute.



BEN FIGHTING JOHN MARSHAL IN THE GOLDEN GLOVES, 1983

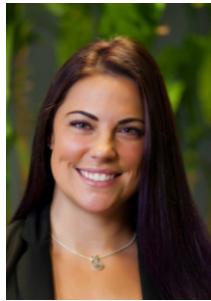
Today, Ben is a key member of ELANY's IT team and has been since 2008. The entire staff knows that you can count on him. He is reliable, knowledgeable and yet, a quiet gentleman...all the attributes of true champion. ■

## ELANY Welcomes Jillian Maxwell and Adriane Bringe

ELANY is pleased to announce the addition of Jillian Maxwell as Human Resources Manager and Adriane Bringe as Accounting Manager.

Jillian Maxwell brings over 16 years of experience to ELANY in Human Resources. Prior to ELANY, Jillian was the owner and operator of JAM HR Consulting, Inc., where she helped small businesses with all of their HR needs. Before she started her own company, Jillian spent 13 years at Valiant where she was responsible for all aspects of human resources including onboarding/offboarding, employee grievances, benefits administration, payroll, time and attendance, and performance management.

Jillian received a BBA from Hofstra University and has the professional designations SPHR and SHRM-SCP.



JILLIAN MAXWELL

Adriane Bringe steps into the role of Accounting Manager for ELANY with over 20 years of experience in the financial services industry.

Prior to ELANY, Adriane was the Operations Manager for a full-service broker dealer. Working alongside the Managing Directors and Director of Compliance, she was responsible for the administrative and operational support to the firm as well as the point of contact for the Clearing Firm for all operational items and liaison for the Financial Consultants.

Subsequently, Adriane spent over seven years as the Office Manager for a full-service benefits firm specializing in qualified plan design, administration, wealth management, employee benefits and insurance planning. She managed



ADRIANE BRINGE

daily accounting tasks, licensing, contracting, and acted as liaison with vendors, clients, accountants, financial institutions and insurance carriers.

Adriane received her Bachelor of Arts degree from Rutgers University in New Jersey and lives in Long Island with her husband and three children. In her free time, she enjoys volunteer work and spending time with her family, preferably on the beach.

Dan Maher, Executive Director at ELANY, said, "I am very excited to have Jillian and Adriane join the management team at ELANY. They bring strong credentials and experience to us but most importantly, a dedication and work ethic you always look for but seldom find. I am quite confident that ELANY will benefit, and our new managers will both succeed and enjoy the new opportunities presented." ■

### *In Memoriam*

## Harvey Leff and Mike Orlando

2020 was a devastating year for so many, and the passing of Harvey Leff and Michael Orlando has left a void in the hearts of everyone who knew them. Combined, Harvey and Michael had over 90 years of experience in the insurance industry. They were wonderful friends, consummate professionals and committed to helping those in need.

Harvey Leff was a longtime, active member of PIANY, NYIA and PIWA. He served on the Board of CIBGNY and was a member of the ELANY Advisory Council.

"The best part of our industry is the

people that work in it and Harvey Leff exemplified the best of the best. He was

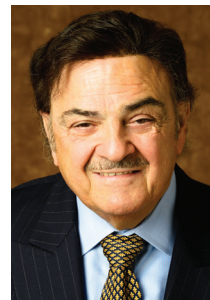


HARVEY LEFF

a true gentleman and a genuinely kind person," said ELANY Board Member Robert Shapiro.

Mike Orlando was a well-known and highly respected insurance industry

leader who quietly built NIF, North Island Facilities, from a small family business into one of New York's largest and successful wholesale broking specialist. Mike was one of those rare people in the business who



MICHAEL ORLANDO

was liked by all, even his competitors.

"Mike was smart, successful, loyal, but most of all caring. The finest of men and a sweetheart of a guy who will be missed by all who knew him," said Jim Richardson, ELANY Chairman.

Dan Maher, Executive Director of ELANY, said, "These two men were not just friends but family to me. Harvey was the type of marketing specialist who was sincerely interested in you and your family. Everyone just naturally wanted to work with him.

"I met Mike many years ago when he purchased my Dad's firm. I watched Mike turn into a major wholesaler in New York. He was quiet, smart and generous, a magnificent combination." ■

## Senator James Seward Retires

New York Senator James Seward, long time Chair of the Insurance Committee, retired after serving out his last elected term in 2020.

The Senator experienced a relapse of bladder cancer in 2019 and believed that attending to his condition would prevent him from devoting the time needed for his duties in the Senate.

Senator Seward sponsored several ELANY bills, including legislation extending ELANY's mandate multiple times. His door was always open and his willingness to consider data-driven advocacy based on practical



**SENATOR JAMES SEWARD**

industry operations led to well-reasoned legislation.

Senator Seward has always been a highly respected legislator who listened to all sides and crafted practical, balanced approaches that facilitated business and served consumers.

"I always respected Jim for his knowledge and skills as a leader in the Senate but I will miss him as the friend he has always been to me," said Dan Maher, Executive Director of ELANY.

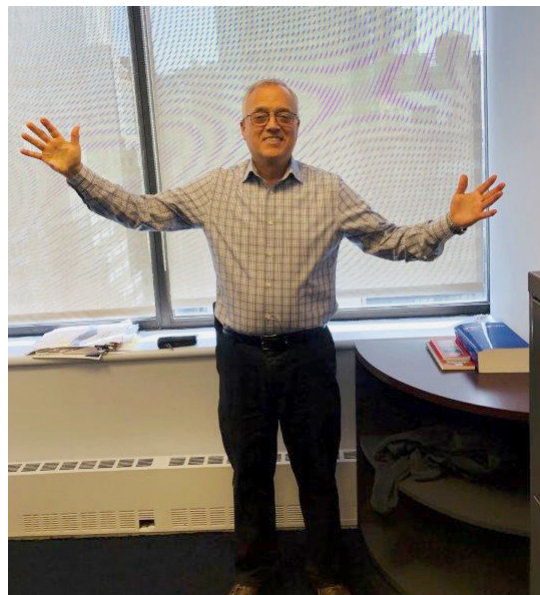
Senator Seward will be missed in the halls of the Capitol, and we at ELANY wish him a very happy retirement. ■

## Gene Nunziata Rides Off Into the Sunset

**"JUST WHEN I THOUGHT I WAS OUT, THEY PULL ME BACK IN" - MICHAEL CORLEONE**

It was a sunny day in June of 2007 when Gene Nunziata walked out of his office at the New York State Insurance Department for the last time. Head of the Department's excess line unit, he had decided that 36 years of service to the state was enough. When Gene started at the Department, the Miracle Mets, Jets and Knicks were all recent champions, humans were still walking on the moon, 18-year-olds were being given the right to vote and Walt Disney World was opening its doors for the first time. Now, the Jets were readying to embark on a 4-12 season and Fergie was topping the charts. Things had certainly changed, and it was time to enjoy a well-earned retirement.

Then the phone rang. It was ELANY's Executive Director, Dan Maher, and by September, Gene's plans for rest and relaxation were on indefinite hold as he began a second career at ELANY. For more than 13 years, Gene was a familiar voice on the other end of the telephone for numerous brokers,



**"GENE WAS A TRUSTED  
CONFIDANT AND  
FRIEND.... I'M GLAD  
I TALKED HIM OUT OF  
HIS FIRST RETIREMENT!"  
- DAN MAHER**

answering compliance questions and problem-solving. He offered the type of insights and advice that only a career such as his could provide. A walking excess line encyclopedia, he was a much beloved member of the ELANY team and a mentor to many.

"Gene was a trusted confidant and friend," said Dan Maher. "He and I brainstormed numerous issues, and he always brought a reasoned and pragmatic perspective. I'm glad I talked him out of his first retirement!"

Last June, after having become a consultant to ELANY, Gene decided to finish what he started 13 years ago, retiring for good. His sharp wit, kindness and professional acumen are already sorely missed. The pride of St. Francis College is now enjoying time with his family, looking forward to future travel and praying for a Jets Super Bowl. Two out of three ain't bad! ■

# Avoid Regulatory and Filing Bear Traps

*There are many regulatory and policy filing requirements that brokers would be wise to heed. Here are several notable ones.*

- It is unlawful to deliver an excess line policy declaration page or cover note in New York unless it is first stamped by ELANY. If a broker needs to deliver evidence of coverage to an insured prior to obtaining a stamped declarations page or cover note, they can use a “confirmation of placement of coverage” as discussed in the ELANY Says section of the ELANY website.
- Binding authorities between excess line brokers and eligible insurers are permitted but must meet the requirements set forth in Regulation 41 and be filed with ELANY. Take note that the DFS objects to defining an excess line broker as an agent, general agent or managing general agent of the company in a binding authority agreement. In addition, these agreements should not be multiparty agreements authorizing more than one insurer or more than one brokerage entity. See the ELANY Says section of our website.
- Group or Master policies, where unaffiliated insureds are provided property-casualty coverage under one policy, may not be placed in the excess line market. A number of producers have been fined for participating in such placements. There are a couple of exceptions that allow for group property-casualty insurance policies. Please see the ELANY Says section of our website for more information.
- Part A and Part C affidavits are specifically approved by the DFS as to both content and style. Brokers who use non-conforming affidavits will have their transactions suspended and returned.
- Excess line brokers are required to submit for stamping all premium bearing endorsements that modify the premium initially reported to ELANY on a declaration page, binder, or cover note. Account currents, billing statements or invoices and the like are not acceptable documents for stamping and will not be processed by ELANY.
- ELANY cannot process continuous until canceled policies. The excess line law contemplates inception and expiration dates after which a new diligent search is required as a prerequisite to renewal. Moreover, the law requires taxes to be paid on a policy’s written premium in the tax year of the inception date. As a continuous policy, any subsequent premium billed essentially as an installment would cause tax penalties and interest to accrue if processed in a subsequent tax year. ELANY will only process an extension for a period of one year or more if a policy insures a specific construction project.
- ELANY will stamp binders and confirmations when the document clearly states that coverage is bound, placed or being confirmed. A marked-up policy application, submission, quote or any other document that does not purport to provide coverage is unacceptable. When ELANY stamps a document to be delivered to an insured, the document must clearly indicate to the insured that coverage has been bound.
- Either the excess line broker or the producing broker must provide the insured with a Notice of Excess Line Placement at the time of placement. The broker, who provides the written notice, should answer affirmatively in the appropriate affidavit (Part A- Question 2(c) or Part C- Question 3) that notice was provided. ELANY will accept affidavits where both Part A and Part C answer these questions in the affirmative. ELANY examiners will require a change to the affidavit where the broker who provided the notice answers the affidavit question “No” when that broker’s name is on the Notice of Excess Line Placement submitted to ELANY.
- Although not a requirement, ELANY strongly encourages producing brokers to utilize ELANY’s electronic filing portal to create Part C affidavits. Handwritten Part C forms are often sloppy, illegible or contain errors that require additional work on the part of wholesale brokers. Errors can also delay the review and stamping of a policy, which is detrimental to both brokers and insureds. Use of the electronic form will eliminate many follow-up contacts by ELANY.■

## Premiums Up, Transactions Down

**F**or the first time, New York excess line gross premium exceeded \$5 billion in 2020, a 3.9% increase over 2019. However, the number of excess line transactions filed with ELANY for the same period decreased by 5.3%. The trend continued for the first quarter of 2021. The first three months of this year saw a 6.4% decrease in filings of excess line transactions with ELANY compared with 2020, but gross premium increased by 10% for the same comparative period.

We believe this reflects the economic impact of the pandemic on New York businesses, as well as a hardening market in which the cost of coverage increases and risk appetite narrows.■